Cross-Submission by Genesis Power Limited

Trading as Genesis Energy

ON

Draft Decision on UTS Claims for 26 March 2011

19 MAY 2011

Cross-Submission by Genesis Power Limited

Trading as Genesis Energy

ON

Draft Decision on UTS Claims for 26 March 2011

To:	Carl Hansen
	Electricity Authority
	2 Hunter Street
	WELLINGTON
	submissions@ea.govt.nz
Date:	19 May 2011
Name:	Genesis Power Limited
Contact:	Malcolm Alexander
	General Manager Corporate Affairs
	11 Chews Lane
	WELLINGTON
Phone:	04 495 6353
E-mail	malcolm.alexander@genesisenergy.co.nz

Ref: SUB-11-025

genesis ENERGY

Contents

1. Introduction

1. The Electricity Authority ("**Authority**") received 35 claims that an undesirable trading situation ("**UTS**") occurred on 26 March 2011. Many of these claims also made allegations regarding Genesis Energy's conduct on, and in the period leading up to, that day.

2. On 6 May 2011, the Authority released a 72 page draft decision ("**draft decision**") exonerating Genesis Energy but reaching a preliminary finding that there was a UTS and that it would be appropriate to intervene to reset prices. The Authority invited submissions on its draft decision.

3. The Authority provided five working days for parties to consider the draft decision and prepare responses and received 20 submissions from:

   - thirteen registered Market Participants ("**Market Participants**")[1] (including two service providers);
   - eight of which were not claimants (including Genesis Energy); and
   - seven parties that are not registered Market Participants ("**contracted parties**").

4. The Authority has invited cross-submissions and provided parties with four working days to consider submissions and prepare their responses.

5. This is Genesis Energy's cross-submission. Appendix A provides our detailed responses to relevant points raised in other parties' submissions. The body of the cross-submission is divided into two parts. Section 2 makes a number of overarching comments regarding the proper application of the UTS regime. Section 3 comments on our view of the post-submissions status of the main limbs of the arguments in the draft decision.

[1] The Authority maintains a register of Market Participants in accordance with Section 27 of the Electricity Industry Act 2010 (http://www.ea.govt.nz/act-code-regs/particpant-register/).

2. Proper Application of the UTS Regime

UTS regime is not a market development mechanism

6. The UTS regime is directed at rapidly resolving situations that present a clear actual or imminent threat to the operation of the wholesale electricity market so as to restore normal market operation as soon as possible. Put simply, there should be little or no dispute as to whether a UTS in fact exists.

7. From the complete evidence now available following submissions, the events of 26 March 2011 fall a long way short of being a UTS. Normal market operation continued leading up to and during 26 March 2011 and has continued since. Many of the submissions provide conjecture regarding what *might* happen at some unspecified point in the future if prices become final, but none provide evidence that normal operation is actually or imminently threatened.

8. Instead, the submissions show that the events of 26 March 2011 have stimulated genuine debate and disagreement about aspects of market design. That is not surprising, given that numerous parties have submitted that the events on 26 March 2011 were part of normal market operation, and that they managed their risks accordingly. Further, such debate and disagreement is not new, and is properly addressed as part of the Authority's ongoing market development work.

9. It is not desirable to use the UTS regime to make *ad hoc* changes to market design that may have significant unintended consequences. The proper process for market development is described by sections 38 to 41 of the Electricity Industry Act 2010 ("**the Act**") and the consultation charter published by the Authority under section 41 of the Act. This process provides for robust analysis and consultation designed to ensure changes are well thought through and any potential unintended consequences are well understood. In Genesis Energy's view, any future consultation on how the Electricity Industry Participation Code ("**the Code**") might best be amended to handle situations such as occurred on 26 March 2011 would be prejudiced if the Authority has already drawn a line in the sand with a finding that a UTS existed.

10. Concerns about unintended consequences are raised by many of the submitters on the draft decision. This highlights the risk of using the UTS regime to effect market design changes both generally and in this particular case.

11. Many of the market design issues raised by parties are directly relevant to key Authority work streams (especially, scarcity pricing, dispatchable demand, demand-side bidding and forecasting and locational price risk management) that have been debated, analysed and consulted on extensively.

Market participation is a relevant factor in applying the UTS regime

12. As argued in our 13 May submission, in applying the UTS provisions in the Code the Authority must primarily concern itself with the position of parties that are Market Participants. That is because the legal test is whether an event threatens, or may threaten trading, or will or may preclude the maintenance of orderly trading or settlement.

13. Many of the UTS claimants are contractually exposed to spot market prices, or are advisors to contracted parties, rather than actual Market Participants. The claims and submissions of contracted parties should not be dismissed, and are particularly relevant to the Authority's ongoing market development programme, but their concerns are not directly relevant to deciding whether a UTS exists. In particular:

    - contracted parties cannot withdraw from participation in the wholesale electricity market and cannot adversely affect orderly trading in the wholesale electricity market because they are not participants in the wholesale electricity market; and

    - default by any of the contracted parties would be a matter to be resolved between that party and its retailer (or other contractual counterparty) and so could not threaten proper market settlement.[2]

14. Given that there must be a threat to orderly trading and proper settlement in order to meet the legal test for a UTS, maintaining a clear distinction and understanding of the difference between Market Participants and contracted parties with exposure to spot market prices is particularly important.

[2] We note that even if default by one or more of these parties led in turn to default by a Market Participant then there are mechanisms in Part 14 (Clearing and Settlement) of the Code to deal with this. We also note that submissions do not identify any prospect of a Market Participant defaulting on their settlement obligations.

Non-claimant Market Participants provide new information

15. The Authority received submissions from several Market Participants that were not UTS claimants and who, unlike the UTS claimants, have not had an opportunity to air their views in advance of the draft decision.[3] These parties are:[4]

    - Contact Energy;
    - Genesis Energy;
    - King Country Energy;
    - Norske Skog Tasman;
    - Todd Energy; and
    - TrustPower.

16. The submissions from these Market Participants highlight that parties, including consumers, net generators and net retailers, are able to successfully manage their exposure to the trading risks in the wholesale electricity market, including during events such as occurred on 26 March 2011. They also highlight that those parties will be aggrieved if the Authority confirms its draft decision.

17. Risk management of the type carried out by these parties contributes to the efficient operation of the overall market for supply of electricity to consumers, including the spot, hedge and retail markets.

18. These parties do not perceive a threat to orderly trading from the events of 26 March 2011, but do highlight the moral hazard that *ex post* regulatory intervention would cause and do express concerns about the potential for unintended consequences should the Authority confirm its draft decision or otherwise act to reset prices.

[3] We note from the draft decision (refer paragraph 66) that Todd Energy did have the opportunity for an interview with the Authority prior to release of the draft decision. Contact Energy on the other hand submits that it was refused the opportunity of an interview. In any event, other Market Participants have not previously had an opportunity to consider the evidence of non-claimants.

[4] NZX Limited and Transpower are service providers and are therefore also Market Participants but did not express views on the substantive elements of the draft decision.

There is no need for intervention

19. Genesis Energy remains of the view that the legally correct decision is a finding that there was no UTS. Given this, we consider that there is no question of "remedy" to address.

20. We also observe that submitters are almost universally unhappy with the proposed intervention by the Authority. Many submitters are concerned about the uncertain regulatory precedent that would be established by the draft decision and about the potential for unintended consequences.

21. Submitters disagree about the price that should be applied if prices are to be reset. Suggestions include the following:

    - many submitters argue that the proposed prices are too high and that prices from other "normal" trading periods should be used, with the week prior and the weekend following commonly cited;

    - Todd Energy raises valid concerns regarding the robustness of the input assumptions the Authority has used to model capital costs, delivered coal prices and the delivered cost of a flexible gas supply; and

    - many submitters argue the proposed prices are too low and point to other potential pricing benchmarks, such as, the recently reconfirmed Whirinaki capacity offer price ($5,000/MWh), high prices cleared and settled in previous trading periods, high prices previously offered ($10,000/MWh) and the value of lost load figure used for regulatory approval of transmission investments ($20,000/MWh).

22. There are also a range of submissions on the methodology for resetting prices and the treatment of a range of complicating factors, including:

    - the treatment of reserves, loss and constraint excess, generator constrain-on and load party constrain-off;

    - parties that claim they could have reduced load if they had taken steps to better inform themselves of market conditions, and would have done so at lower prices than cleared in the market;

    - claims that a counterfactual offer curve including Contact Energy's Taranaki Combined Cycle (TCC) plant should be constructed; and

    - dispute over the appropriate "value of lost load" figure to apply to the circumstances, including the suggestion that a pricing range should be used instead of a point value.

23. The intractability of the proposed remedy based on re-imagining what the participants would have done if they had appropriately hedged their risks is clearly highlighted by the Sapere proposal (provided in support of Mighty River Power's submission), which suggests that the re-run of prices include generation plant that was not offered into the market (TCC), and demand-side response that was not technically possible at the time of the high prices.

The UTS regime is not a broad-ranging "catch all"

24. It appears to Genesis Energy that those who seek intervention by the Authority have misconceived the true purpose of the UTS provisions. For example, the submission by Sapere (at pages 5 and 12) reiterates a claim made in earlier Sapere reports (provided in support of Mighty River Power's UTS claim) that the Authority should use the UTS provisions of the Code to "impute terms to the contract that the parties would have agreed to if they had bargained over all the relevant risks". Similarly, Professor Evans argues in his paper (provided in support of Meridian Energy's submission) that the UTS provisions of the Code are designed to serve as a catch-all to complete the inevitably incomplete Code. This approach is wrong, for both legal and economic reasons.

25. From a legal perspective, the scope and meaning of the UTS provisions must be determined by the words used. The clear scheme of the UTS provisions is that the threshold for intervention in the market is very high, and is only to be exercised in a narrow range of circumstances. Essentially, the UTS provisions provide emergency powers that allow the Authority to preserve the operation of the market. It is therefore incorrect to seek to interpret the provisions in a broad manner as a "catch all" to impute terms that parties would allegedly have thought of if they had bargained over all of the relevant risks.

26. Further, even if the imputation of terms analogy was applicable (which it is not), there is a high legal threshold before terms can be imputed into a bargain between parties. Essentially, the term must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it. Alternatively, the term must represent the obvious, but unexpressed intention of the parties. This threshold is not met in this case, given that the market can and is continuing to operate without intervention from the Authority, and the parties would never have agreed to fix a price that allows some parties to socialise the adverse impacts of their risk management decisions, and penalises those parties that adopted prudent risk management strategies.

27. From an economic perspective, the approach proposed by Sapere (and less explicitly by Professor Evans) to imputing terms implies that prices should be set at a level that spot-exposed parties wish they had hedged at before the event and at which hedges would have been offered before the event. This is clearly incorrect as it would substitute the Authority's assessment of what hedge market outcomes should have been for the actual hedge market transactions. All Market Participants (and parties exposed to spot prices) have bargained over the risks of high spot prices prior to the events of 26 March 2011. Protecting parties from decisions that they regret *ex post* is not consistent with efficient contracting or rule enforcement.

3. Main Lines of Argument

28. This section provides our post-submission view on the status of the lines of argument most relevant to the Authority's decision.

Draft finding that conduct not materially unlawful

29. None of the submissions challenge the Authority's finding that there has been no material breach of any law. Accordingly, Genesis Energy's view is that there is no basis for the Authority to change its preliminary finding in this respect.

30. Some submitters[5] do, however, argue that the Authority should not take a view on whether Genesis Energy engaged in conduct that is materially unlawful, on the basis that such findings are outside the Authority's jurisdiction.

31. In response, Genesis Energy notes that under the definition of a UTS, the Authority is required to consider whether there has been a "material breach of any law". The Authority has done so. Genesis Energy agrees that in the absence of a finding that there has been a breach of the law, for the purposes of considering whether a UTS exists, the Authority must proceed on the basis that there is no material breach of law.

32. Submitters concerns seem to be focused on the Commerce Act in this respect (section 36 in particular). Genesis Energy is confident that it has not acted in breach of the Commerce Act (or any other law). Indeed, Genesis Energy agrees with submitters that the Commerce Act provides a powerful incentive for Genesis Energy not to engage in conduct that harms competition in the market. In this context, Genesis Energy strongly refutes any suggestions that it should not have departed from "standard practice" in the market when it made its price offers.[6] Genesis Energy is not party to any "standard practice" in the market that influences the level of its price offers. Any such agreement to exercise restraint on pricing would in and of itself be anticompetitive and Genesis Energy would be concerned if other Market Participants were engaging in this conduct.

[5] Mighty River Power and New Zealand Steel.

[6] See paragraph 33 of the NERA report.

33. We also endorse Todd Energy's submission that "the EA's decision to interfere and modify genuine offers made by a participant is without precedent in the electricity market especially when that participant has not been found to have breached any rules or laws".[7]

Draft finding that conduct was not manipulative or misleading

34. Some submitters[8] have sought to challenge the Authority's finding that Genesis Energy did not engage in manipulative or misleading conduct. However, those submitters do not introduce any new evidence to support their arguments.

35. Any allegations that Genesis Energy engaged in manipulative conduct are very serious, and should not be made without strong evidence in support.

36. None of the cross-submitters challenge the Authority's findings that:

- the binding of the constraint depended on the actions of several participants;
- Genesis Energy's offers at Tokaanu, Rangipo and Tuai had no material effect on the constraint and its offer strategy was consistent with reducing its exposure to a net load position in the lower North Island and that of a rational operator managing its own risk position; and
- high offers alone cannot be evidence of manipulative activity, especially when they were submitted to the market a day before gate closure.

37. Given this, there is no basis for the Authority to alter its finding that "the facts do not support the claim that Genesis engaged in manipulative or attempted manipulative trading activity".[9]

38. Mighty River Power acknowledges that the compounding factors make it "more difficult to prove the components that constitute manipulation".[10] It then argues that if the compounding factors did not exist and similar outcomes had arisen, then manipulation would be in issue. Such a hypothetical situation is, of course, not before the Authority.

---

[7] Page 2 of Todd Energy submission.

[8] Powershop and Mighty River Power.

[9] Paragraphs 85 to 100 of the draft decision.

[10] Response to question 2, page 6 of Mighty River Power submission.

39. Only Mighty River Power, supported by Sapere Research Group, has commented on the Authority's finding that there was no conduct in relation to trading that is misleading or deceptive, or likely to mislead or deceive. However, they have not directly challenged the Authority's finding. In particular:

- Mighty River Power believes that the Authority has focused on whether or not anyone was actually misled or deceived, as opposed to the likelihood that any participant might be misled or deceived, and that the decision would benefit from a stronger analysis of the likelihood aspect. Genesis Energy believes that the Authority has appropriately focused on both limbs of the relevant test, and has correctly concluded that there was no conduct that was likely to mislead or deceive. In particular, the Authority's reasoning clearly analyses whether, from an objective perspective, there might have been misleading conduct. The Authority does not confine itself to addressing whether anyone was actually misled or deceived;

- Sapere appears to be concerned that misleading or deceptive conduct occurred because "Genesis was able to surprise the market".[11] However the clear facts before the Authority are that several Market Participants took notice that there was potential for high prices arising on 26 March 2011, and took steps to manage their risk accordingly. This strongly evidences the fact that there was no misleading or deceptive trading conduct.

Draft finding that parties could not manage their risks

40. The expert report by Professor Lew Evans draws a distinction[12] between risks of nature and strategic risk. The implication of this distinction is that it is appropriate for Market Participants to be fully exposed to risks of nature, but that UTS provisions should be used to manage strategic risk. While this distinction between these types of risks may be conceptually useful, it is incorrect to draw the conclusion that strategic risks cannot, or should not, be managed by Market Participants.

41. Efficient operation of the market requires generators to develop bidding strategies consistent with their ability to recover investment costs, given the vagaries of supply, demand and the transmission environment. The very design of an energy only market assumes that Market Participants manage a complex mix of risks of nature as well as strategic risk through a

[11] Page 5 of the Sapere Report.

[12] See paragraphs 23, 24, 30 and 34 of the NERA report.

combination of spot exposure, hedging, investment in generation and locational decisions.

42. Moreover, the analytical distinction between the risks of nature and the strategic risk is incorrectly applied to the events of 26 March 2011. On the facts, it is plainly wrong to say there were no risks of nature that were managed by the high prices on 26 March 2011. The Authority has found in the draft decision that both generation and transmission availability had material effects on prices. This caused supply north of the constraint to tighten, requiring higher priced Huntly units to be dispatched.

43. Professor Evans' report also suggests[13] that risks arising from the regional separation of the market are relevant to a UTS. This cannot be correct. On this logic, the entire design of the locational marginal pricing (LMP or "nodal") electricity market is a UTS, since it explicitly addresses the fact that transmission constraints may limit the geographic scope of competition to a particular region.

44. There are a range of market and regulatory responses that help to resolve these situations over time, including transmission investment, generation investment, demand-side response, financial transmission rights and active hedging strategies. An extreme solution to this issue is to move to zonal pricing – an option the Authority has explicitly rejected, correctly in our view, due to the operational efficiencies that are offered by the current nodal pricing system. Solutions to complex issues of market design such as these will not be found in the context of UTS claims, and need to go through the processes established for Code changes.

45. The Castalia report that accompanied our submission highlights[14] that Market Participants that adopted a conservative approach to purchasing their electricity on 26 March 2011 will feel understandably aggrieved by the declaration of a UTS. We note that such parties have made submissions highlighting the truth of this statement (Norske Skog Tasman, Todd Energy and King Country Energy). These submissions show that informed Market Participants fully understood the risks (both the risks of nature and the strategic risk derived from the risks of nature) and took effective action to manage those risks.

46. Overall, there is a strong theme running through the submissions supporting the Authority's draft decision that a UTS existed because by the time the event was upon them, these parties were not able to respond in real time. This may be strictly true. It is also completely irrelevant to assessing the

[13] Refer paragraphs 36 and 43 of the NERA report.

[14] Refer paragraph 80.

participants' (and consumers') ability to manage risks. The risks which eventuated on 26 March 2011 are inherent to the operation of the nodal, energy-only market, and effective tools (such as hedging, choosing an appropriate form of retail contract, receiving price notifications and so on) were readily available at the appropriate time. To use an analogy, the fact that no insurance company will accept cover while a house is burning is not a failure of the insurance market.

Draft finding that there was a "squeeze"

47. A key element of the draft decision was the finding that Genesis Energy's conduct was consistent with, or analogous to, the undesirable practice of "squeezing" a commodities market.

48. As pointed out in our first submission, Genesis Energy believes that the application of the "price squeeze" concept is misplaced, and confusing. This is shown by Powershop's submission, which states that it is curious that the Authority has concluded that there was a squeeze but no manipulative trading.[15]

49. In Genesis Energy's view, the correct position is that, given there has been no manipulative trading, there has also been no price squeeze.

50. Some submitters[16] have also alleged that Genesis Energy took advantage of transient market power arising from the transmission outage to realise prices well above the cost of supply. Yet those submitters have not challenged the Authority's finding that the outcomes on 26 March 2011 were produced by a convergence of events, some of which were outside of Genesis Energy's control.

51. In those circumstances, as addressed in our first submission, there should be no finding of a price squeeze.

52. Powershop cite a recent article by Pirrong entitled "Energy Market Manipulation: Definition, Diagnosis and Deterrence"[17] to establish the criteria for diagnosing when market manipulation is present. In fact, the author of this article notes that the legal tests for market manipulation in the United States are confused. He also notes that the application of the standards for market manipulation (recounted by Powershop) is muddled. By relying on these standards in the current case, we believe that the

[15] Page 2 of Powershop submission.

[16] Powershop, Meridian Energy, New Zealand Sugar Company Limited.

[17] Craig Pirrong (2010), "Energy market manipulation: Definition, diagnosis, and deterrence", Energy Law Journal, Vol. 31(1).

Authority risks introducing similar confusion and uncertainty into the New Zealand electricity market.

53. The major reason the test for market manipulation does not work (and has not been adopted by the Federal Energy Regulatory Commission in the United States) is that it is not possible to prove "artificial pricing". As Pirrong correctly states: "It is inherently more difficult to test for uneconomic withholding of production capacity in an electricity market, than for uneconomic delivery demands in the market for a storable commodity".

54. In this case, there is no evidence that the prices that cleared in the market on 26 March 2011 did not reflect the forces of supply and demand. Clearly, supply was limited – transmission capacity between Whakamaru and Otahuhu was limiting northward flows and generation capacity in Taranaki was not offered into the market. Demand was also higher than forecast.

55. Professor Evans considers that Genesis Energy's offers would normally equate with withdrawing the generation from offer. The implication was that such withdrawal was designed to cause the high price event. In the same vein, Sapere argue that Genesis Energy intended to cause artificial prices, saying explicitly (at page 5) that "Genesis chose to introduce a higher unprecedented offer price, and create a situation where that offer price would clear". These claims are used as evidence of the price squeeze.

56. We are troubled by the fact that economic experts infer an intent to Genesis Energy without any evidence. The facts of this case clearly show that all informed Market Participants were aware of the planned transmission constraint in the North Island and knew that it would increase the probability of prices being high. Genesis Energy had no control over two critical variables that led to high prices: demand being higher than forecast, and Contact Energy withdrawing generation from the market.

57. Overall, there is nothing in the submissions to support the claim of a price squeeze. We note that Meridian Energy's submission, which supports the Authority's draft decision, recognises the absence of any evidence for a price squeeze by urging the Authority not to rely on this concept in establishing a UTS. Of course, in the absence of a conceptual basis for the finding, the Authority would be forced to conclude that a UTS exists simply because the settlement prices don't feel right – an approach recommended by Meridian Energy.

4. Conclusions

58. The Authority should **confirm** its draft decision that Genesis Energy's conduct is not unlawful.

59. The Authority should **confirm** its draft decision that Genesis Energy's conduct does not constitute manipulative or attempted manipulative trading activity, and does not amount to conduct in relation to trading that is misleading or deceptive. Submitters have not provided any evidence that would support amending this decision, while submissions by non-claimant Market Participants reinforce the draft finding.

60. The Authority should **amend** its draft decision that there were forecast errors and that prudent Market Participants were unable to manage the trading risks relating to 26 March 2011. Submissions by non-claimant Market Participants reinforce that risks could be, and were, managed and that there were no forecast "errors".

61. The Authority should **amend** its draft decision that events relating to 26 March 2011 involved the undesirable practice of "squeezing" a market. The "squeeze" analogy is misapplied in the draft decision and is not supported by the evidence.

62. The Authority should **amend** its draft decision that events on 26 March 2011 threaten, or may threaten, trading on the wholesale market for electricity and would, or would be likely to, preclude the maintenance of orderly trading. Orderly trading continued throughout 26 March 2011 and has continued since.

63. The Authority should **amend** its draft decision that events on 26 March 2011 would, or would be likely to, preclude the proper settlement of trades. There is no evidence that the provisions in Part 14 (Clearing and Settlement) of the Code will fail to operate if interim prices for 26 March 2011 are made final.

64. The Authority should **amend** its draft decision that a UTS occurred on 26 March 2011, for the reasons set out above. Since there is no UTS, there is no case for intervention to reset prices.

Appendix A – Detailed Cross-Submission on Relevant Points

1. This appendix provides detailed cross-submissions on relevant points raised in other parties' submissions. We limit our response here to points relevant to the application of the UTS regime in Part 5 of the Electricity Industry Participation Code. Many submissions contain additional material of a general nature, or more relevant to market design considerations.

2. Each submission is covered in alphabetical order. Prior to each submission we identify whether the submitter is a claimant and whether they are a registered Market Participant. The latter point is relevant to the UTS decision, while submissions from non-claimants provide new perspectives that were not available prior to the draft decision.

1. Bryan Leyland (BL)

Claimant	No
Market Participant	No

Comment:

Submission does not raise any new points relevant to the UTS regime.

genesis ENERGY

2. Contact Energy Limited (CEL)

Claimant	No
Market Participant	Yes

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
CEL1	"Contact considers that serious, and unintended, consequences could potentially arise from the draft UTS decision if it is confirmed. Where participants are not incentivised to manage risk appropriately, this will be detrimental to the development of a liquid hedge market; the facilitation of which the Authority has identified as one of its key goals. Similarly, investment and operational signals could be affected if participants perceive risk of regulatory intervention to 'correct' what are normal market risks. This will impact appetite for investment and ultimately security of supply, which will not be in the long-term interests of consumers."	We agree with Contact Energy that the draft decision, if confirmed, could have serious and unintended consequences. Refer Section 5 of the Castalia report in our 13 May submission.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
CEL2	"The draft UTS decision states that Contact's decision to remove capacity at Stratford (the Taranaki Combined Cycle plant ("TCC")) was a factor in the outcomes of 26 March 2011. Contact's decisions to offer plant, or not, are based on price signals and an assessment of market conditions. The market price indicated was insufficient for Contact to operate TCC on 26 March 2011. In making this assessment, Contact had considered its risk position in the event that prices changed; we did not expect to rely on regulatory intervention if adverse outcomes emerged."	Contact Energy's description of its decision-making process is consistent with our expectations of the actions of a sophisticated Market Participant prudently and efficiently managing its risks.
CEL3	"The Authority's decision to determine 'remedial prices' for Huntly offers is also concerning." "Disagree with managing offer prices, further not satisfied that the prices proposed reflect estimate of return from low capacity factor peaking thermal plant."	Genesis Energy remains of the view that there was no UTS, therefore we consider that there is no question of remedy to address. We note the considerable disagreement amongst submitters on the Authority's proposed remedy, reinforcing the difficulty of attempting to reset prices *ex post*. We note that if the Authority does find that there is a UTS, it will need to consult with participants on the remedy, as required by clause 5.4(b) of the Code.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
CEL4	"It is disappointing that some important contextual information does not appear to have been a factor in the Authority's assessment of events. Contact indicated a desire to meet the Authority to discuss a number of issues but this offer was not taken up. Contact is particularly disappointed that the option of an interview was not extended to all participants. Contact would still like the opportunity to discuss its concerns with the Authority. We believe that there are significant unintended consequences that could potentially result from the draft UTS decision being confirmed unchanged."	We note Contact Energy's concerns with the Authority's process. Genesis Energy also has concerns regarding the process. Refer cover letter.
CEL5	"Considers that market prices have reflected supply and demand, and are consistent with work on, for example, scarcity pricing"	Agree.
CEL6	"Remedy does not address the likelihood of another similar UTS occurring."	Agree. In our opinion if the draft decision stands there will be a number of UTS claims in future trading periods as Market Participants attempt to discover what circumstances constitute a UTS.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
CEL7	An efficient market will determine who is best placed to manage risk. Contact did not expect to rely on regulatory intervention if adverse outcomes emerged Contact suggests that it is inappropriate to intervene to limit participants' risk via remedial outcomes.	Agree. Based on the claims and submissions received we consider this event illustrates the difference between those who adequately managed their commercial risk and those who did not. The draft decision, if confirmed, would create a moral hazard.

3. Fletcher Building Limited (FBL)

Claimant	Yes
Market Participant	Yes

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
FBL1	"We [consider] that the proposed remedial actions…are absolutely necessary to maintain market credibility."	Market credibility has not been damaged as a result of the events of 26 March 2011. Market Participants have continued to trade and settle in an orderly manner. We note that many of the Market Participants that submitted consider the proposed remedy would undermine confidence in the market.
FBL2	"The event…has forced a significant refocus on market tracking and review of levels of cover for our business units."	We note that this is likely either to lead to greater demand-side participation or increased hedge market activity, consistent with efficient market operation and contrary to concerns expressed in the draft decision regarding impacts on hedge market participation and demand response.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
FBL3	"We consider the $1,500 - $3,000 range to be extremely high."	Genesis Energy remains of the view that there was no UTS, therefore we consider that there is no question of remedy to address. We note the considerable disagreement amongst submitters on the Authority's proposed remedy, reinforcing the difficulty of attempting to reset prices *ex post*. We note that if the Authority does find that there is a UTS, it will need to consult with participants on the remedy, as required by clause 5.4(b) of the Code.
FBL4	Encourages improved early warning systems to protect the grid and market.	We note that several warning systems and information tools are available and that at least one demand-side participant who uses such systems has submitted (Norske Skog Tasman).

4. King Country Energy (KCE)

Claimant	No
Market Participant	Yes

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
KCE1	Description of risk management approach (paragraphs 2 to 7).	This description is consistent with our expectations of how a sophisticated Market Participant may prudently manage its commercial risk.
KCE2	"It is apparent from the UTS submissions that [variable spot exposure] arrangements have been entered into by a number of organisations that might not have good reason to monitor their risks or even an ability to drop much load when prices are high…we wonder whether these organisations truly understand their risks…we do not see it as the EA's role to bail them out in this case."	We agree that the financial position of parties with a contractual exposure to spot prices is a matter between those parties and their contractual counterparty and is not directly relevant to the Authority's consideration of whether to declare a UTS.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
KCE3	"…KCE has done the right thing in terms of risk management and is astounded that having done so during this incidence the EA would come along and retrospectively change the price outcome." "While resetting prices will diffuse the commercial consequences of the event for some, it may make investors nervous that high prices are not achievable in future and the regulator, having intervened once, might intervene again."	Agree.
KCE4	"The 26 March event highlights a number of parties (both customers and market participants) have not implemented effective risk management strategies or have made poor decisions. The outcome of the EA draft decision endorses those decisions and penalises those parties who manage these risks effectively."	Agree.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
KCE5	KCE disagrees with the basis for the proposed range, suggests $5,000 based on Whirinaki. "The Authority has the option of leaving prices unchanged."	Genesis Energy remains of the view that there was no UTS, therefore we consider that there is no question of remedy to address. We note the considerable disagreement amongst submitters on the Authority's proposed remedy, reinforcing the difficulty of attempting to reset prices *ex post*. We note that if the Authority does find that there is a UTS, it will need to consult with participants on the remedy, as required by clause 5.4(b) of the Code.
KCE6	KCE responded to the high prices over 26 March 2011 and started generation.	This contrasts with the preliminary finding that parties were not able to respond to prices on 26 March 2011.

5. Major Electricity Users Group (MEUG)

Claimant	No
Market Participant	No[18]

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
MEUG1	It is unclear how the draft decision is consistent with consideration of the effect on parties that made arrangements to manage their expectation that spot prices may have exceeded between $1,500/MWh and $3,000/MWh; and the effect on consumers that may have shed load based on prices posted on WDS or SPD ahead of and during these trading periods.	Genesis Energy remains of the view that there was no UTS, therefore we consider that there is no question of remedy to address. We note the considerable disagreement amongst submitters on the Authority's proposed remedy, reinforcing the difficulty of attempting to reset prices *ex post*. We note that if the Authority does find that there is a UTS, it will need to consult with participants on the remedy, as required by clause 5.4(b) of the Code.

[18] We recognise that, although MEUG is not a Market Participant, its membership includes many Market Participants, some of whom have submitted in support of the draft submission and some of whom have submitted in opposition to the draft submission.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
MEUG2	"Why was there no extreme price event the weekend following 26th March even though the conditions were similar? A review of the behaviour of parties to assess any actions taken to mitigate the potential risk for the two consecutive weekends might be insightful."	Genesis Energy agrees that the suggested review may be insightful from an ongoing market development point of view, but is not necessary for the purposes of deciding whether there was a UTS on 26 March 2011.

6. Meridian Energy Limited (MEL)

Claimant	Yes
Market Participant	Yes

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
MEL1	The Authority should clarify that concepts such as "net pivotal", "cornering" and "squeezing" are not a necessary part of or a substitute for the application of the UTS test in the Code. That could lead to technical arguments about intention, notice, and the interpretation of net pivotal which are not directly relevant to determining whether or not a UTS has occurred (that is, it is enough that Genesis was in a position to set the price at whatever level it offered).	Genesis Energy agrees that the Authority should apply the UTS test in accordance with the words used in the Code, and should not seek to introduce concepts of questionable relevance to that test. For the reasons set out in its submission, Genesis Energy disagrees that: • it was in a position to set the price at whatever level it offered; and • even if it was, that this in itself is insufficient to satisfy the UTS test.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
MEL2	"In particular, parts of the draft decision seem to imply that a UTS would not have arisen if Genesis had put participants and end users on sufficient notice…Meridian would still consider 26 March to have been a UTS if Genesis had given a week, a month or two years' notice."	Genesis Energy understood the Authority considered the question of notice in the context of whether Genesis Energy had engaged in misleading or deceptive conduct. We agree that there should be no notice obligations in that context. However, we are concerned that Meridian Energy's submission appears to suggest that the information available to Market Participants and the opportunity to respond and manage their risk accordingly, is irrelevant to whether a UTS occurred. That cannot be right.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
MEL3	"The Authority should not prescriptively describe the boundary between acceptable and unacceptable offers: it is enough to state that the 26 March situation was clearly across the line." "… the Authority should not seek to give participants detailed guidance about the circumstances in which prices far in excess of marginal generation costs can be achieved without fear of consequence. The final decision should just focus on the facts before the Authority, and the reasons those facts constitute a UTS. Any further guidance should be provided through amendments to the Code and following consultation."	Genesis Energy disagrees that its offer behaviour on and around 26 March 2011 was "clearly across the line". We agree that the Authority should not describe the boundary between acceptable and unacceptable offers, for the reason that whether or not a UTS existed as a matter of law is unlikely to depend on offer behaviour alone. Genesis Energy agrees that the Authority should focus on whether the facts before the Authority legally constitute a UTS and that any further guidance should be provided through amendments to the Code and following consultation.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
MEL4	"Unless the amendments outlined above are made to the draft decision, it could be read as inviting participants to: (a) put the market on notice that they may charge high, very high or excessive prices whenever they enjoy market power; and (b) regardless of (a), exercise transient market power when it exists by offering in at (say) a $20,000/MWh level, knowing that the only adverse consequence is that the Authority will find, and set prices at, the highest acceptable level."	As demonstrated by the events of 26 March 2011, a convergence of events outside of the control of the participant with alleged market power is required in order for offers to translate into dispatch prices.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
MEL5	"...the UTS rules can be thought of as efficiently filling unavoidable gaps in the Code. That is, by addressing behaviour not codified precisely, a UTS reduces the need for such codes, and enables independent participant decision-making that promotes a workably effective competitive market in electricity. Unless situations such as occurred on 26 March are remedied through a declaration of a UTS, incentives are created for all participants to take advantage of transient market power, resulting in a reduction of the dynamic efficiency and wider credibility of the New Zealand electricity market."	As explained in our 13 May submission, views on why UTS provisions might be helpful from an economic perspective cannot replace the requirement for the legal test to be applied in accordance with its terms. The UTS provisions clearly do not give the Authority legal power to intervene in the market every time it considers that a particular snapshot of outcomes might not be consistent with workable competition or dynamic efficiency. Genesis Energy disagrees with any assertion that the events of 26 March 2011 were inconsistent with dynamic efficiency.
MEL6	"Meridian notes that a broad approach (and one that looks at the future consequences which may result if particular behaviour is not remedied) is appropriate having regard to: (i) the Authority's statutory objective and the purpose of the market (ii) the need for a "gap filler" to protect the integrity of the market; and (iii) the range of situations described in paragraph (c) of the definition of a UTS and which colour the	This reasoning is internally inconsistent. The range of situations described in paragraph (c) of the definition of UTS reinforce that a very narrow approach is required to the interpretation of paragraph (a). The Authority's statutory objective is relevant to the question of restoring normal market operation under clause 5.5 of the Code. However, it is inappropriate to seek to use the statutory objective to broaden the interpretation of the UTS test, or give it a meaning that is inconsistent with the words used (we note that the UTS test has been implemented and applied long before the Authority's statutory

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
	interpretation of paragraph (a)."	objective was included in the Electricity Industry Act 2010). It is also clear from the scheme of the UTS provisions that its focus is on the immediate remedy of actual or imminent undesirable trading situations. In particular it cannot be used to give the UTS test a meaning and purpose that is inconsistent with the words used. It would be improper to seek to use the provisions to establish new market rules. That is appropriately done by amending the Code, if necessary.
MEL7	"...in its final decision the Authority should recognise that, while there has been abuse of transient market power in this case, the UTS regime is not well suited to a policy debate about the extent to which net pivotal generators should or should not be able to price at their whim."	Genesis Energy disagrees that there has been an abuse of transient market power in this case, for the reasons set out above. Genesis Energy agrees that the UTS regime is not well suited to a policy debate regarding the offer behaviour of net pivotal generators.
MEL8	"If un-remedied such prices could well become common … (as illustrated by the conduct of Contact Energy on 2 April 2011)…"	By extension, this is precisely why the events of 26 March 2011 were not a UTS. A UTS implies extreme rare events, not common occurrences. If Meridian Energy is concerned that the high prices of 26 March 2011 should not recur then this is a matter for a Code development.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
MEL9	"Such an approach [giving notice of high offer prices] would encourage generators to make generic statements that they intend to offer at (say) $19,000/MWh….. and would lead to exposed parties seeking hedges priced at the same price"	Refer LE5 below.
MEL10	"…a pragmatic approach is necessary which: ……(b) pending [consultation on market development], and given events on the day, normalises prices for the relevant period in a straightforward way, for example by recalculating final prices assuming Huntly was offered at its short run marginal cost of generation, as measured by the offer prices for the Huntly units during the period immediately prior to the transmission outage or alternatively a short term average." "…the proposed reset will mean participants are still likely to lose confidence in the integrity of the market and suffer financial consequences as a result of price squeezes."	Genesis Energy remains of the view that there was no UTS, therefore we consider that there is no question of remedy to address. We note the considerable disagreement amongst submitters on the Authority's proposed remedy, reinforcing the difficulty of attempting to reset prices *ex post*. We note that if the Authority does find that there is a UTS, it will need to consult with participants on the remedy, as required by clause 5.4(b) of the Code.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
Expert Evidence of NERA (Professor Lewis Evans)		
LE1	"Workable competition can be equated to the conditions for dynamic efficiency… Dynamic efficiency is the most important measure of performance because it is the source and outcome of investment and innovation… The Code embodies spot market rules that spot market participants are required to abide by. It is these spot market rules that enable a workably competitive market in electricity."	Agree that dynamic efficiency is important for market performance. Disagree that spot market rules alone will enable dynamic efficiency. Workable competition results from a combination of the investment signals provided by the spot, hedge and retail markets. This is evidenced by the fact that most investments in generation are not committed on the basis of spot price signals alone. Hedge markets and retail contracts provide investors with steady revenues that ensure investment viability. Professor Evans appears to acknowledge himself (at paragraph 25) that it is the operation of spot and contract markets that produce workable competition in electricity markets.
LE2	"Risks can be classified into two camps: risk of nature and strategic risk. Risk of nature includes intrinsic uncertainty in demand and in supply-side factors such as the weather, fuel availability and prices… Nature risk is addressed in decentralised electricity markets by the conjunction of spot and contracts markets, and the different strategies of generator and demand agents: for example, different generators seek different portfolios and experience relatively	Agree that both nature and strategic risks are found in markets with workable competition. Strategic risk distinguishes a workably competitive market from the unrealistic benchmark of perfect competition (which would only experience nature risk). The relevant question for the UTS decision is whether the way strategic risk was managed on 26 March 2011 caused a UTS. The answer is no. If the Authority is concerned about the level of strategic risk present in the spot market, then the appropriate way to address

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
	different fuel – e.g. reservoir inflows – availabilities over time. Risk of nature has a benefit in that it enhances competition in electricity markets." "Strategic risk stems from uncertainty about the behaviours or strategies of competitors in the market place. There are strategic risks in a workably-competitive market as well as one that has limited competition. "I have not been informed of any risk of nature that was managed by the extremely high prices of the event."	these concerns is through a Code change. Disagree that there are no risks of nature that were managed by the high prices on 26 March 2011. The Authority has found in the draft determination that both generation and transmission availability had material impacts on prices. This caused supply north of the constraint to tighten, requiring higher priced Huntly units to be dispatched. Professor Evans considers that Genesis Energy's offers would normally equate with withdrawing the generation from offer: an approach that is permitted under the Code and that would be in accord with an action in a workably competitive market. The transmission outage caused a tightening of supply and demand in the Auckland region, which falls within the category of a nature risk.
LE3	"The high prices would have imposed substantial costs on electricity retailers in the Auckland region that were not vertically integrated in the region… it is almost certain that non-vertically integrated retailers in this region would have found the episode extremely costly."	Disagree. Vertical integration between generation and retail is only one option available for managing the risk of high spot prices. Another viable option is to purchase hedge cover. In fact, other submissions suggest there are retailers that are not fully vertically integrated, but managed their risks well and avoided adverse financial impacts from this high price event (King Country Energy).

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
LE4	"Events in which regions become relatively isolated markets due to sanctioned Transpower actions, and perhaps for other reasons, become opportunities for a market participant to gain at the expense of other participants and consumers. It, and event events like it, are present in the minds of all market participants now and, absent the finding of a UTS, will be part of Participants strategy from this point forward..." "Unless explained by factors not covered in this analysis, the event reduced for the period it had effect, and for the foreseeable future, the ability of the NZEM to perform as "one" nationwide market and therefore reduces the ability of this market to be workably competitive."	In any nodal electricity market, transmission constraints create opportunities for the geographic scope of competition to be limited to a particular region. The 2009 Ministerial Review in New Zealand found that "there is scope for the exercise of short term market power in the spot market. This arises when the market is tight, for example, in a dry year or behind a transmission constraint". There are a range of market and regulatory responses to these situations over time, including transmission investment, generation investment, demand-side response, financial transmission rights, and active hedging strategies. An extreme solution to this issue is to move to zonal pricing – an option the Authority has explicitly rejected, correctly in our view, due to the operational efficiencies that are offered by the current nodal pricing system. Solutions to complex issues of market design such as these will not be found in the context of UTS claims, and need to go through the processes established for Code changes. The fact that high price events will form part of participant strategies from this point forward is a benefit of the events of the 26 March 2011. To the extent that participants had previously not managed risk well, greater scrutiny of market information will deliver improvements in efficiency.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
LE5	"The increased strategic uncertainty may also affect participation in the spot market by consumers and firms. It will also affect the contract positions of large industrial electricity consumers. It is likely that contracts for these consumers will cost more, or expressly exclude these predictable, high-priced episodes. "	While short maturity hedges may cost more as a result of spikes in spot prices, an efficient hedge portfolio will remain capped by the LRMC of new generation: if prices exceeded that benchmark, participants would have an incentive to invest in new plants or contract with such investors. Similarly, as long as an efficient hedge portfolio remains below LRMC, there is no incentive for new investment. Hence, an increase in prices of short maturity hedges, if it were to occur, would have no effect on fundamental market outcomes or on market efficiency. The analysis presented by the Authority in the draft decision indicates that the LRMC of a plant running at 1 percent capacity factor is $1,500/MWh. This may be an appropriate benchmark for hedge prices, whereas the draft decision used this as a benchmark for spot market prices. Even in the short run, the relationship between spot price and hedge contract prices is complex. One component of hedge prices is the contract premium: the additional amount above expected spot prices that buyers are prepared to pay for price certainty. More liquid hedge markets that develop as a result of price spikes (such as found in the Australian NEM) may have lower contract premiums. Hedges prices also influence spot prices, creating a problem of two-

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
		way causality. When all parties are well hedged, there are few incentives to increase prices in the spot market. This means that hedging behaviour may depress spot market prices for a period of time. Buyers will then question why they are paying contract premiums when the spot prices are so low, and may reduce their hedge cover. This creates opportunities for generators to increase prices at times of scarcity, and spot prices become higher and more volatile. Consumers then re-evaluate the risks and rewards of contracting and may move to increase contract cover. This cycle of interaction between the spot and hedge markets is a normal and desirable feature of in an efficient electricity market.
LE6	"The signalling of these planned episodes may give a few industrial consumers the opportunity to organize their affairs so that they may profit from such episodes: but there will be associated transactions costs and such firms are likely to be in the minority."	This statement suggests that the "few industrial consumers" that benefit from high prices are being unfairly enriched by such events. We strongly disagree with this suggestion. As in any market, traders in electricity need to make decisions about which products to buy and sell on the basis of the information available to them. As long as market information is freely available (i.e. there is no insider information), then parties need to face the consequences of their market decisions. The Castalia report that accompanied our 13 May submission highlights (at paragraph 80) that Market Participants that adopted a

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
		conservative approach to purchasing their electricity on 26 March 2011 will feel understandably aggrieved by the declaration of a UTS. We note that such parties have made submissions highlighting the truth of this statement (Norske Skog Tasman, Todd Energy and King Country Energy). These submissions show that the parties that benefit from high prices are not being unfairly enriched. Rather, these parties have taken a conservative approach to risk management. If Authority uses the UTS provisions to penalise such behaviour this will weaken future incentives for parties to efficiently manage risks in a way that is consistent with their risk appetite.
LE7	"…prices during [the constraint on March 26] were some 300 times higher than prices would normally be at the relevant time."	Genesis Energy disagrees that a "normal" price exists. At any one time at one node there could be a number of prices including a spot price or a range of hedge prices – none of which could ever be considered to be "normal" or abnormal.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
LE8	"I am informed that it was also unusual in that it has been the practice of generators to not price offers at extreme levels when there is notified transmission network maintenance or upgrades that reduce competitive supplies to regions."	Genesis Energy strongly refutes any suggestions that it should not have departed from "standard practice" in the market when it made its price offers. Genesis Energy is not party to any "standard practice" in the market that influences the level of its price offers. Any such agreement to exercise restraint on pricing would in and of itself be anticompetitive and Genesis Energy would be concerned if other Market Participants were engaging in this conduct.

7. Mighty River Power (MRP)

Claimant	Yes
Market Participant	Yes

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
MRP1	"The draft decision, whilst dealing specifically with the events of 26 March, could also usefully incorporate some provisions that address the future orderly operation of the market."	Genesis Energy does not agree that it is appropriate, from a legal perspective, to use the UTS provisions to establish new market rules. The appropriate path is to amend the Code if necessary using normal Code amendment processes.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
MRP2	"The EA found there were compounding factors in the circumstances surrounding the UTS, namely the demand forecast and TCC's withdrawal from the market. In its draft decision, the EA found that the party undertaking the squeeze did not act in a manipulative manner. The compounding factors may mean that it is perhaps more difficult to prove the components that constitute manipulation. However, if the compounding factors had no existed on 26 March and yet similar outcomes had arisen, in our view the assessment would be that manipulation was the cause of the UTS. In that situation, other than finding there had been a UTS and resetting prices, there would have been no penalty in the Code enforceable on the party causing the UTS."	If there had been no compounding factors, similar outcomes would not have arisen, and there would not have been any claims of a UTS. Such a hypothetical situation is, of course, not before the Authority.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
MRP3	"We agree in part with the draft remedial actions that the EA intends to take to correct the UTS. As noted above, it is critical that predictability is clear for the New Zealand electricity market to maintain confidence for investors, consumers and the economy. In this regard…"	Genesis Energy remains of the view that there was no UTS, therefore we consider that there is no question of remedy to address. We note the considerable disagreement amongst submitters on the Authority's proposed remedy, reinforcing the difficulty of attempting to reset prices *ex post*. We note that if the Authority does find that there is a UTS, it will need to consult with participants on the remedy, as required by clause 5.4(b) of the Code.
Expert Evidence of Sapere (Kieran Murray, Toby Stevenson and Sally Wyatt)		
SAP1	"Genesis chose to introduce a higher unprecedented offer price, and create a situation where that offer price would clear, creating unprecedented wholesale electricity prices in the market whilst engaging in that undesirable practice."	Genesis Energy did not "create a situation" in which its offer price would clear. Genesis Energy was aware of the planned transmission constraint in the North Island that would increase the probability of prices being high. However, Genesis Energy had no control over two critical variables that led to high prices: demand being higher than forecast, and Contact Energy withdrawing generation from the market.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
SAP2	"The approach to the remedy seems to be the same as proposed in paragraphs 17 and 18 of Kieran Murray 6 April report. In that report, we referred to the economic test of interpreting standards as: "Impute terms to the contract that the parties would have agreed to if they had bargained over all the relevant risks…" "The prices proposed by the EA of between $1,500/MWh and $3,000/MWh would be substantially higher (and therefore inefficient and not in the public interest) from prices that would have resulted in the absence of the squeeze and in circumstances where "buyers had had the opportunity to arrange an alternative source of supply or to curtail demand". The prices that would have resulted if all parties "has bargained over all the relevant risks" can be simulated by the EA assuming: • That existing generation, including Contact Energy's Taranaki Combined Cycle Plant and Genesis e3p, offered into the market at prices just sufficient to operate profitably; • That demand responded to known prices…"	This approach implies an intervention that sets prices at a level that spot-exposed parties wish they had hedged at before the event. Such an intervention would distort future hedge negotiations by providing buyers with the knowledge that they will be protected from any unforeseen events that increase spot prices. In fact, parties to hedges know that the seller of the hedge is liable for the risk of unforeseen events in the spot market. Similarly, energy purchasers with spot exposure know that they are liable to pay spot prices, even when spot prices are high. All Market Participants (and parties exposed to spot prices) have bargained over the risks of high spot prices prior to the events of 26 March 2011. Protecting parties from decisions that they regret *ex post* is not consistent with efficient contracting or rule enforcement. The difficulties with such an intervention are clearly highlighted by the remedies proposed by Sapere. This proposal suggests that the re-run of prices include generation plant that was not offered into the market (TCC), and demand-side response that was not technically possible at the time of the high prices.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
SAP3	"The former NZEM rules placed requirements on Market Participants in terms of trading behaviour, such as observing high standards of trading conduct, observing high standards of integrity and fair dealing, etc. These former provisions were similar to other markets (e.g., the Chicago Board of Trade rules state that it is an offence "to corner, or squeeze, or attempt to corner or squeeze …" (for the full quote, see para 32 of Kieran Murray 6 April report). However, we cannot see in the Code any provision that prohibits (either explicitly or implicitly) a Participant from participating in undesirable trading practices."	The report notes that provisions specific to "corners" and "squeezes" were available to and known to the NZEM at the time of drafting the original NZEM rules. However they were not included. This exclusion reflects the difficulty in determining that such an event has taken place for non-storable commodities like electricity.
SAP4	"The pattern of pre dispatch schedules indicating likely dispatch and likely prices relies on participation by Market Participants. It allows Participants to prepare themselves for the most likely outcomes at the point of dispatch. In this case, Genesis was able to surprise the market and the EA's interpretation is that the level of surprise is acceptable. It would be useful for the EA to provide some guidance on what they think is not acceptable or misleading."	Genesis Energy did not "surprise the market", as shown by the evidence that some parties managed their commercial risks without difficulty and the evidence that some parties sought hedges prior to 26 March 2011.

8. New Zealand Refining Company Limited (NZRC)

Claimant	Yes
Market Participant	No

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
NZRC1	Pricing was significantly lower than the proposed remedial action during the similar event that occurred on 2 April 2011.	While some market conditions were similar on 2 April 2011 to those prevailing on 26 March 2011, there were also important differences. These include a greater degree of demand response and, as far as we can observe, more active use of hedge contracts to manage participants' trading risks. We also observe that trading conditions were similar on 14 May 2011.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
NZRC2	Questions whether the upper bound of $3,000, set by South Island demand response pricing, is appropriate for a North Island event.	Genesis Energy remains of the view that there was no UTS, therefore we consider that there is no question of remedy to address. We note the considerable disagreement amongst submitters on the Authority's proposed remedy, reinforcing the difficulty of attempting to reset prices *ex post*. We note that if the Authority does find that there is a UTS, it will need to consult with participants on the remedy, as required by clause 5.4(b) of the Code.

9. New Zealand Steel (NZS)

Claimant	Yes
Market Participant	Yes

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
NZS1	"The Authority points out in its draft decision that exceptionally high offer prices, and exceptionally high market prices, do not necessarily constitute a UTS. As a matter of principle we cannot support that statement."	As a matter of law, the Authority is correct.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
NZS2	"The Authority has expressed a preliminary view that Genesis did not materially breach the law. Whilst the Electricity Industry Participation Code is within the Authority's ultimate jurisdiction and the Authority is required to reach a view on breach of law, we have to point out that there may be divergent views as to whether there might have been any breach of the Commerce Act 1986 or other laws, and that this question would need to be finally resolved by a Court of competent jurisdiction." "The fact that the Authority may have found for now that Genesis' actions were not unlawful can only ever represent the Authority's view. The Authority itself has recognised, both implicitly and explicitly, that the Code needs changing. Whether other unlawful behaviour actually occurred is ultimately a matter for a Court of competent jurisdiction, and that question must remain at large."	We agree that the Authority is required to reach its own view of whether there has been a "material breach of any law", which could potentially constitute a UTS under paragraph (c)(iv) of the definition of UTS (provided that the test in paragraph (a) is also met). Genesis Energy is very confident that it has not acted in breach of the Commerce Act (or any other law).

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
NZS3	"Spot purchasers of electricity can have no confidence that the market mechanisms are working properly, absent clear steps being taken to restrain such a serious abuse of market power."	Purchasers should be confident that "a serious abuse of market power" is restrained under the Commerce Act. However there is no suggestion that this is an issue in this case. Market credibility has not been damaged as a result of the events of 26 March 2011. Market Participants have continued to trade and settle in an orderly manner. In fact, given that risk management appears to have improved overall in light of, for example, the events of 2 April 2011, there is a case to say that market credibility has improved.
NZS4	"As we have explained to the Authority already, NZS was not offered hedging for the 26 March events."	Genesis Energy willingly quotes hedge pricing on request. However, it is not the responsibility of hedge suppliers (or any insurers for that matter) to proactively inform parties about possible commercial risks as they arise, and this suggestion is troubling.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
NZS5	Notes the change in outcomes and the Genesis Energy behaviour between weekends of 26 March 2011 and 2 April 2011.	While some market conditions were similar on 2 April 2011 to those prevailing on 26 March 2011, there were also important differences. These include a greater degree of demand response and, as far as we can observe, more active use of hedge contracts to manage participants' trading risks. We also observe that trading conditions were similar on 14 May 2011.
NZS6	Limited ability of the demand side to manage spot risk.	Demand side participants do have the opportunity to manage spot risk as shown by the Norske Skog Tasman submission.
NZS7	Costs will be extremely high unless a UTS is declared.	There is no clear relationship between high spot prices and overall energy cost. Refer to our response in LE5 for further discussion. Furthermore, high spot prices in of themselves do not constitute a UTS.

10. New Zealand Sugar Company Limited (NZSC)

Claimant	Yes
Market Participant	No

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
NZSC1	"…prices of 26 March were not the result of an underlying supply-demand imbalance resulting from transmission constraints or generation capacity."	Supply was limited – transmission capacity between Whakamaru and Otahuhu was limiting northward flows and generation capacity in Taranaki was not offered into the market. Demand was also higher than forecast.
NZSC2	"….behaviour exhibited by Genesis….did in fact constitute an abuse of market position. We do not know whether Genesis manipulated events to create the situation…."	We support the Authority's finding that there was no manipulative conduct by Genesis Energy. Refer to Section 3.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
NZSC3	"…believe the prices should be reset to a level that more closely reflect the true market conditions with no supply constraint." "…should set final prices based on rerunning the scheduling, pricing and dispatch software with Genesis offer tranches reflecting an estimate of short run marginal costs…."	Genesis Energy remains of the view that there was no UTS, therefore we consider that there is no question of remedy to address. We note the considerable disagreement amongst submitters on the Authority's proposed remedy, reinforcing the difficulty of attempting to reset prices *ex post*. We note that if the Authority does find that there is a UTS, it will need to consult with participants on the remedy, as required by clause 5.4(b) of the Code.

11. Norske Skog Tasman (NST)

Claimant	No
Market Participant	Yes

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
NST1	"Given [Norske Skog Tasman] did respond to price signals on 26 March and reduced production, the draft decision will penalise [Norske Skog Tasman]."	We agree the Authority's draft decision will penalise Market Participants such as Norske Skog Tasman with good risk management practices that responded to high prices signals and reduced demand. We note that King Country Energy and Todd Energy also responded to the high prices on 26 March 2011.
NST2	"We also request that the Authority provide guidance to consumers so that we know when we should respond to price signals in future, and when not to…" "…we imagine that the Authority can expect an increased frequency of claims for UTS now that a precedent has been set, and we expect the Authority to be consistent in future determinations."	We agree that the draft decision, if confirmed, will undermine the confidence of Market Participants in market prices and will encourage increased UTS claims. Increased UTS claims would be caused by increased reliance on UTS provisions as a risk management approach and by the need for Market Participants to develop their understanding of the new boundary between UTS and non-UTS market conditions.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
NST3	"…we do not think that the poor risk management choices of some retailers and consumers should be rewarded by a decision to declare a UTS and administer prices." Parties exposed to the spot market should have strategies in place to deal with unexpected spikes.	Agree.
NST4	"…the Authority should order constrained-off payments be made at the interim prices to parties that reduce demand in response to price signals…." The draft decision is not consistent with scarcity pricing proposals and the decision to retain the Whirinaki capacity offer at $5000/MWh. UTS decision is inconsistent with EA work on scarcity pricing and proposed price ranges are inconsistent with those proposals	Genesis Energy remains of the view that there was no UTS, therefore we consider that there is no question of remedy to address. We note the considerable disagreement amongst submitters on the Authority's proposed remedy, reinforcing the difficulty of attempting to reset prices *ex post*. We note that if the Authority does find that there is a UTS, it will need to consult with participants on the remedy, as required by clause 5.4(b) of the Code.
NST5	"..we expect the Authority to hold the System Operator accountable for the drastically flawed demand forecasts…"	As discussed in our submission of 13 May, there were in fact no demand forecast "errors".

12. NZX Limited (NZX)

Claimant	No
Market Participant	Yes

Comment: NZX does not raise any relevant points or new material in its submission.

13. Powershop (PS)

Claimant	Yes
Market Participant	Yes

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
PS1	"..we are concerned that the draft decision does little to address manipulative behaviour as an undesirable practice and that the remedy may establish "target prices" for all generators in similar circumstances in the future." "…we continue to hold the view that Genesis engaged in manipulative trading"	Genesis Energy supports the Authority's finding that Genesis Energy's conduct was not manipulative or misleading. No evidence has been provided for the Authority to change its draft decision on these points.
PS2	"We find it curious that the Authority has concluded that there was a squeeze in the market while not also concluding that the behaviour of the squeezer (Genesis) was manipulative trading."	In this case, there was no manipulation and therefore there was no squeeze.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
PS3	"The Authority needs to make it clear that during times of transient market power, in particular where there are planned transmission outages, that it is unacceptable to exploit that market power by pricing at a level that is not economically valid. This kind of behaviour is unacceptable because productive and dynamic efficiency will be materially reduced as participants are incentivised to find/ create situations that generate 'super' profits. This behavioural dynamic will make the market extremely risky, volatile and unpredictable. It will cause market prices to increase and there will be inefficient signals affecting the timing and location of generation investment. Ultimately this lack of order and efficiency will undermine confidence in the market, the Authority, and cost consumers."	We disagree with this statement. Such a signal from the Authority would work against its objective of ensuring efficient markets for electricity. In times of scarcity (caused by either high demand, low supply or transmission constraints) generators may have capacity dispatched at high prices, orders of magnitude greater than even long run marginal cost (LRMC). This serves both to signal scarcity and to allow all generators, including the highest-cost generator, to recover fixed costs. Because peaking plants run very infrequently (a few hours each year), commercially viable investments in these plants will need to recover fixed costs across a very few trading periods, which implies very high prices. The ability of generators to offer and receive these high prices arises because at times of scarcity they have transient market power. This highlights that occasional very high prices are both necessary and desirable in wholesale electricity markets to ensure that supply and demand remain in balance under all conditions.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
PS3		High prices do not represent a problem that warrants a policy response until average prices rise to above new entrant levels for a sustained period, and new entry does not occur. In these conditions, sustained high prices might be due to misuse of generator market power if offending generators are able to prevent efficient new entry from taking place. We also note that the UTS regime is not intended to be used as a market development mechanism. If outcomes such as these are sought, they should be addressed through the Code change process.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
PS4	"In *Pirrong, Energy Market Manipulation: Definition, Diagnosis and Deterrence, in the Energy Law Journal, 2010* the criteria for diagnosing market manipulation is identified, below we discuss Genesis' behaviour against this criteria: (1) *The price of the manipulated contract was "artificial" (known as "price artificiality").* An artificial price is one that is created from behaviour rather than underlying demand and supply conditions. Because of the transmission outage Genesis was the net pivotal generator and had the ability to set the price for the upper north island in absence of usual competitive forces. Genesis priced tranches of their load at levels approximating the value of lost load when they had excess capacity available to meet demand – prices did not reflect underlying demand and supply conditions…	The author of this article notes that the legal tests for market manipulation in the United States are confused. He also notes that the application of the standards for market manipulation (recounted by Powershop) is muddled. By relying on these standards in the current case, we believe that the Authority risks introducing similar confusion and uncertainty into the New Zealand electricity market. On artificial pricing, the author concludes that the test of "a price which does not reflect basic forces of supply and demand" is unsatisfactory, as it just raises the question of how to determine whether prices reflect such forces. He also notes that the only credible tests for determining that such an event has taken place are not possible for non-storable commodities like electricity. "It is inherently more difficult to test for uneconomic withholding of production capacity in an electricity market, than for uneconomic delivery demands in the market for a storable commodity".

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
PS4	(3) *The accused caused the price to be artificial*. Genesis was the price setter on 26th March, they chose to price their Huntly generation differently to when they faced competition. Throughout the day of the 26th they could have revised offers to more realistically approximate market conditions on the day but chose not to. (4) *The accused acted with intent to cause the price to be artificial*. It's clear from public statements and comments to the Authority that Genesis deliberately acted with intent to cause the extreme prices during the period of the transmission outage."	The Authority has found that Genesis Energy did not cause the price on 26 March 2011. Other factors that were not within the control of Genesis Energy include higher than forecast demand and the withdrawal of generation capacity from the market by Contact Energy. There is also no basis for claiming that Genesis Energy intended to cause artificial prices. There is no suggestion that Genesis Energy acquired a position through intentional conduct, such as buying hedge contracts (in fact Genesis Energy offered to sell hedge contracts for 26 March 2011). This criteria is not established under the UTS rules.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
PS5	"…some analysis of the loss and constraint rentals during the event may be relevant. We expect this to show that the pain inflicted on Upper NI consumers and retailers will be disproportionate to the gain of Genesis. This is of concern if Genesis intends to use the spot market to recover the cost of Huntly."	The question of how best to allocate loss and constraint rentals is a long-running market development issue and is one of the Authority's top priority work streams following the 2009 Ministerial Review of Electricity Market Review. Genesis Energy has consistently advocated implementation of a comprehensive locational price risk management approach that efficiently allocates rentals nationwide. The status quo arrangement allocates all rentals to Transpower. Transpower then chooses to allocate rentals to its customers, including distributors, South Island generators and directly connected parties. Whether a distributor passes rentals to retailers on its network, retains the rentals, or offsets lines charges is at that distributor's discretion.
PS6	"agrees that the remedial action should involve resetting prices……However, we don't agree with the rational or methodology for resetting them". "We suggest that using average prices in the week prior would be an appropriate proxy, or using Huntly offers from days in close proximity…"	Genesis Energy remains of the view that there was no UTS, therefore we consider that there is no question of remedy to address. We note the considerable disagreement amongst submitters on the Authority's proposed remedy, reinforcing the difficulty of attempting to reset prices *ex post*. We note that if the Authority does find that there is a UTS, it will need to consult with participants on the remedy, as required by clause 5.4(b) of the Code.

14. Smart Power (SP)

Claimant	Yes
Market Participant	No

Comment: Smart Power does not raise any relevant points or new material in its submission.

15. Switch Utilities Limited (SUL)

Claimant	Yes
Market Participant	No

Comment: Switch Utilities Limited does not raise any relevant points or new material in its submission. We note that Switch Utilities Limited appears to view the draft decision as introducing a "regulator approved price cap".

16. Todd Energy Limited (TEL)

Claimant	No
Market Participant	Yes

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
TEL1	"…believe the [Authority] is incorrect in its draft assessment that a [UTS] has occurred and further that that the proposed actions to reset prices at relatively low prices will have a number of negative unintended consequences for the future". "Such a decision we believe will harm the integrity and reputation of the market in the same way that the [Authority] believes that high prices due to a [UTS]…would."	Agree.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
TEL2	"The [Authority's] decision to interfere and modify genuine offers made by a participant is without precedent in the electricity market especially when that participant has not been found to have breached any rules or laws." The proposed remedy would create disincentives for participants who elect to take spot market price risk to manage that risk, investment in peaking generation and participation in future initiatives such as demand side management.	Agree.
TEL3	"It is generally known and accepted that demand forecasts and in particular the day ahead demand forecasts, are notoriously inaccurate and cannot be relied upon." "…information regarding Genesis offers would have been apparent not only from day ahead price forecasts but also from any rudimentary analysis of the market supply curve in formation for 26 March available through WITS from 1300 on 25 March onwards." Consumers exposed to spot prices should make advantage of numerous tools available to them to manage risk.	We support this view. As noted in our submission of 13 May, there was in fact no demand forecast "error" and there are several sources of information publicly available to help Market Participants monitor prices. We note that this view is endorsed by the System Operator.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
TEL4	"Todd Energy does not believe that the March 26 prices resulted from a market squeeze." Genesis Energy was not the only party that could have supplied/controlled price. Todd Energy noted that Mighty River Power sought hedges from Genesis Energy and were offered hedges at a far lower rate than the cap proposed by the Authority.	Agree. In our submission of 13 May we explained why the concept of a price squeeze is not relevant to a UTS, and why in any event a price squeeze has not occurred in this case.
TEL5	Spot exposed participants have faced spot prices significantly lower on average that the prices available on a FPVV basis including 26 March 2011.	Agree. This is consistent with the analysis provided in our submission of 13 May.
TEL6	Protecting those have consciously elected to take spot market price risk is a mistake and penalises those who have been prudent and hedged their risk. The Authority's draft decision sends the signal that there is a reduced or capped financial risk from exposure to spot market prices.	Agree.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
TEL7	"If consumers believe they have been misled with regards to the risks that they have been exposed to….then they should seek redress with their supplier as [there] may well have been breaches of the Fair Trading Act.	Agree. If customers are unhappy with the advice they have received about their exposure to spot prices then the UTS provisions are not the appropriate means for redress against the party that provided advice.
TEL8	Todd Energy does not agree with the price levels proposed for the remedy for a number of reasons: • the Authority's Huntly LRMC model understates capital costs and coal costs, while the OCGT model understates gas costs; • there have been other high price events in recent times that have not attracted UTS claims; • make reference to values stated for the Whirinaki offer strategy and in the scarcity pricing proposals; and • Todd Energy believes a $10,000 price cap should be adopted if Authority believes a price cap must be imposed.	Genesis Energy remains of the view that there was no UTS, therefore we consider that there is no question of remedy to address. We note the considerable disagreement amongst submitters on the Authority's proposed remedy, reinforcing the difficulty of attempting to reset prices *ex post*. We note that if the Authority does find that there is a UTS, it will need to consult with participants on the remedy, as required by clause 5.4(b) of the Code.

17. Transpower NZ (TPNZ)

Claimant	No
Market Participant	Yes

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
TPNZ1	"…the Authority's analysis places an over reliance on the security dispatch schedule (SDS)." "Demand forecasts are inherently challenging. The choice of demand forecasting methodology always involves cost trade-offs."	We agree with Transpower's points regarding over-reliance on demand forecasts. As discussed in our submission of 13 May, there were in fact no demand forecast "errors". Rather, actual demand turned out to be different than forecast demand. This is not unusual or unexpected. We have consistently advocated improvements to schedules and demand forecasting, but this was not a priority for the Electricity Commission and little market development has occurred.
TPNZ2	"Information about constraints is published as part of the schedule information and should have been a flag to trading participants".	Agree.

18. TrustPower Limited (TPL)

Claimant	No
Market Participant	Yes

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
TPL1	"The need for (and use of) intervention creates massive uncertainty for market participants, which only serves to deter long-term commitment to the market and decrease its efficiency". "In principle, TrustPower does not support changes to pricing model *after the event*, especially if the intervention involves arbitrary adjustment of participant's offers."	Agree. As noted in our submission of 13 May, the intervention will serve to reduce efficiency and is inconsistent with the Authority's statutory objective.
TPL2	"…the provision of improved demand forecast (and, importantly, sensitivities around those forecasts) should be prioritised by the Authority." "Market participants should be aware that these forecasts, even if improved, will never be perfect."	We note that there was in fact no demand forecast "errors", rather actual demand turned out to be different than forecast demand.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
TPL3	"TrustPower acknowledges the effort Genesis has made to stimulate interest in alternative risk management products, such as price caps. The market need to understand the value of such products….hopes that in future there may be enough providers…to stimulate a liquid market…."	Agree.
TPL4	"The Authority should be aware that capping offer prices at levels lower than the current Whirinaki offer price may deter investment in projects such as the Marsden Point plant, potentially leading to a sub-optimal level of reliability of supply."	Agree. Any *de facto* price cap will be detrimental to reliability of supply.
TPL5	"…should also be noted that other generators (and loads) in the North Island reduced their output quantities in response to the high prices seen in real time. Any re-solution of spot prices should take that into account."	Genesis Energy remains of the view that there was no UTS, therefore we consider that there is no question of remedy to address. We note the considerable disagreement amongst submitters on the Authority's proposed remedy, reinforcing the difficulty of attempting to reset prices *ex post*. We note that if the Authority does find that there is a UTS, it will need to consult with participants on the remedy, as required by clause 5.4(b) of the Code.

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
TPL6	"For many loads, taking some spot exposure is the most efficient option…..However, this is with the proviso that those customers have a full understanding of the risks involved and are able to monitor (and respond to) spot prices on a real-time basis."	Agree.
TPL8	"TrustPower does have concerns that the Authority is setting precedent in terms of capping offer prices, especially using the long-run marginal cost (LRMC) framework….in the short run this would appear to be largely irrelevant." "TrustPower considers that the Authority may also have considered capping prices at a level that is consistent with market participants' experience and expectations." "Offering prices above plant long-run marginal cost (LRMC) and just below price caps are common in other jurisdictions, and will continue."	Genesis Energy remains of the view that there was no UTS, therefore we consider that there is no question of remedy to address. We note the considerable disagreement amongst submitters on the Authority's proposed remedy, reinforcing the difficulty of attempting to reset prices *ex post*. We note that if the Authority does find that there is a UTS, it will need to consult with participants on the remedy, as required by clause 5.4(b) of the Code.

19. Vodafone New Zealand Limited (VNZ)

Claimant	Yes
Market Participant	No

	SUBMISSION POINT	GENESIS ENERGY CROSS-SUBMISSION
VNZ1	"Consumers who currently buy their electricity on the wholesale market would be likely to withdraw from the wholesale market…"	We note that Vodafone New Zealand Limited is not a Market Participant.