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Proposed clause 13.2A Guidelines

1. Vector welcomes the opportunity to respond to the Electricity Authority's (Authority) consultation paper *Proposed Clause 13.2A Guidelines*, dated 26 March 2013. No part of this submission is confidential and we are happy for it to be publicly released.
2. Vector's contact person for this submission is:
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3. Vector supports the overall objectives of the Authority's proposal. However, Vector is concerned that the proposals and Guidelines do not present a clear and unambiguous disclosure regime, which in practice may not lead to the benefits sought under the re-drafting.
4. Participants will incur significant costs setting up new internal systems and processes to confirm that they do not hold relevant information on an on-going basis. I.e. the regime imposes high costs on all industry participants but will only result in small and uncertain long-term net benefits for the industry. Please see Appendix A for Vector's responses to the Authority's questions.

Yours sincerely,

A handwritten signature in blue ink that reads "B Girdwood".

Bruce Girdwood
Manager Regulatory Affairs

APPENDIX A: Vector's responses to selected questions

Question No.	Question	Response
Q1	What comment do you have on the application of the disclosure obligations to all participants?	<p>Please also see Vector's last submission on Wholesale Market Information Disclosure, paragraphs 5-7, dated 21 December 2012.</p> <p>Vector is still concerned that the benefits of this widened definition are unlikely to outweigh the costs. It includes certain parties who are unlikely to hold much relevant information but will be nonetheless required to incur unnecessary compliance costs by setting up processes and systems to confirm on an ongoing basis that they do not hold relevant information. Further, it is not clear that the compliance costs of participants who do hold relevant information will be matched by the benefits, especially where those participants are relatively small within the industry.</p> <p>It would be helpful if the Authority could set out exactly what new information is expected to be provided by each participant, and for which market.</p>
Q3	Do you think that information a participant holds about associated entities (its wholly owned subsidiaries, incorporated joint ventures, and incorporated special purpose vehicles) should fall within the definition of disclosure information?	<p>Vector considers that information held by associated entities should be required to be disclosed by those entities (i.e. not the parent company) if they are participants and it meets the tests for being disclosed.</p> <p>Requiring the parent company to disclose information about subsidiaries who are not participants is not justifiable. If the subsidiaries were not owned by participants then they would not be required to disclose information about their business.</p>
Q4	What comments do you have on the impact of the disclosure obligations for information a participant holds about itself and another party?	<p>Vector considers this obligation could be made clearer. For instance, would a load control agreement between a distributor and Transpower have to be disclosed? And / or would the disclosure obligation only apply when such an agreement is activated?</p> <p>Vector recommends the Authority provide further clarification regarding information held by a participant about itself and other parties.</p>

<p>Q5</p>	<p>What comments do you have on the factors the Authority suggests should be considered when applying the “material impact on prices” test?</p>	<p>In regards to the list of factors for consideration when applying the materiality test:</p> <p>(a) “...material effect on the day-to-day decision-making of interested parties”</p> <p>This assumes a great degree of prerequisite knowledge and understanding of a wide range of areas and parties, and what they do on an everyday basis in their industry (see “day-to-day decision-making”). This is an unrealistic expectation and an unrealistically high threshold for compliance.</p> <p>Vector recommends the Authority apply a more realistic and reasonable set of criteria for the consideration of “materiality”. It is unreasonable to assume that all participants will be able to adequately apply these considerations – and it would be unreasonable to impose a penalty on a party who fails to understand the day-to-day operations of another industry area.</p> <p>(d) “has a participant disclosed similar information in similar circumstances previously”</p> <p>This consideration seems to override the “materiality” criteria – as it relies solely on what others have disclosed, while disregarding the circumstances of a particular situation or whether the previous disclosure was appropriate. This could create a disincentive as parties may be reluctant to disclose information knowing that what they disclose will set a precedent for continuous disclose of such information.</p> <p>Vector therefore recommends deleting factor (d) from the factors in the Guidelines.</p>
<p>Q6</p>	<p>What other factors could usefully be included?</p>	<p>Vector considers that some quantification would be useful. For example, the NZX Guidance Note on Continuous Disclosure includes some examples that involve a >5% or >10% threshold. It would be helpful if the Authority gave some similar</p>

		examples for certain situations.
Q7	What comments do you have on the list of interested parties the Authority considers the disclosure obligations are targeted at benefitting?	Vector queries whether the Authority has confirmed with these groups whether they would be interested in the disclosed information or if the Authority is just assuming they would be interested.
Q10	What comments do you have on the guidelines for relevant markets?	Vector agrees the markets listed are relevant.
Q11	What comments do you have on the set of factors for a participant to consider when determining how much detail should be disclosed?	Vector considers that clause (f) of paragraph 41 should be deleted. How much information has been disclosed previously is not relevant as the previous participant may have over- or under-disclosed.
Q12	What comment do you have on the examples provided to assist participants to determine whether information they hold is disclosure information?	<p>It is unclear whether the “significant change in the ancillary market” is relative to the disclosing participant or relative to the overall market.</p> <p>In Vector’s view, disclosure should only be required at the start of the season. For instance, during seasons of peak demand / Winter a reasonable person should understand that demand would be high and that withdrawal from the IR market will at times be necessary to manage load. If disclosure of this planned withdrawal is required, it should be a disclosure that is made at the start of the peak demand season, not a separate disclosure for every withdrawal from the IR market.</p>

Q14	What comments do you have on the Authority's view of the exclusions?	<p>The Authority suggests that participants take into account whether similar information has been previously withheld in similar circumstances (paragraph 50 (c), Guidelines). Vector finds it difficult to conceive of a situation where a party could be aware of this, and in this regard recommends this example is deleted.</p> <p>In regards to "excluded Code information", Vector disagrees with the Authority's interpretation of the clause 1.1 words "relate to".</p> <p>Vector considers that the Authority's interpretation of the words "relates to" is particularly narrow and, in Vector's view, does not apply the ordinary and natural meaning of those words. In Vector's opinion, the words "relates to" also include things that affect, or have a connection, or a link, to the subject. We do not agree that information which "relates to" something does not include information that "affects" something. I.e. "relates to" does not only mean information <i>about</i> something whilst <u>excluding</u> information that <i>affects</i> something.</p> <p>Vector recommends the Authority revisit its interpretation of clause 1.1 of the Code.</p>
Q15	What comment do you have on the Authority's view of demonstrating that an exclusion applies?	<p>Vector considers that it is reasonable for the onus of proof to lie on the participant. However, the drafting of the Code is not reasonable. It requires a participant to "demonstrate" that an exclusion applies. If the participant fails then they have by definition not demonstrated that the exclusion applies, and thus breached sub-clause (6). As the participant will already have breached <u>sub-clause (1)</u>, it is unnecessary for the Code to be drafted in such a way that they breach again for what is, in reality, the same action.</p>
Q16	What comments do you have on how to define "becomes aware of"?	<p>Vector agrees that disclosure information be subject to sign-off.</p>
Q17	What comments do you have on whether disclosure should be on a 24/7 basis or only during normal business hours?	<p>Vector considers that the decision of whether disclosure is made on a 24/7 basis should be based on the likelihood of whether disclosure information would come to light <i>after</i> normal business hours.</p> <p>For example, many of the examples provided by the Authority of relevant</p>

		information are decisions to invest in new equipment or develop new offer strategies. It seems improbable that such decisions would be made outside normal business hours.
Q18	What comments do you have on the proposed timeframe for information remaining readily available?	<p>The proposal is that the information remain disclosed for as long as it is disclosure information. Vector considers that this is reasonable in principle but it is difficult to determine how this would work in practice with the Authority's examples.</p> <p>Examples listed in paragraph 44 include changes in fuel supply, generation capacity, or ancillary service capability. Once these changes occur they will become the new status quo. It would be helpful for the Authority to provide guidance on how long information about a change should be published.</p>
Q19	What comments do you have on the draft guidelines for "readily available to the public, free of charge"?	<p>Vector considers sub-clause (a) of "publicly available" appropriate. However, Vector questions the necessity of sub-clauses (b) and (c). If sub-clause (a) is met – the necessity of (b) and (c) is questionable. For instance, the cost of ensuring that a copy of disclosure information is <i>available at all times</i> seems unnecessary if it is also available at all times on the internet. It would be more reasonable to expect participants to make copies available <i>at request</i>.</p> <p>Vector recommends that "publicly available" be redrafted so that if (a) is met, (b) and (c) are not required, or alternatively, delete (b) and (c) and insert a new clause that only requires hard copies to be provided upon request.</p>
Q20	<p>What are your expectations of how you would meet the obligation for making information "readily available to the public, free of charge"?</p> <p>What would you expect of other participants?</p>	Vector agrees with the proposal for a single disclosure platform.