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Submissions
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ERGANZ SUBMISSION ON NON-DISCRIMINATION OBLIGATIONS

The Electricity Retailers' and Generators' Association of New Zealand ('ERGANZ') welcomes the opportunity to provide feedback on the Electricity Authority's consultation paper, 'Non-discrimination obligations: Retail Price Consistency Assessment, uncommitted capacity and other matters' from February 2026.

ERGANZ is the industry association representing companies that generate and sell electricity to Kiwi households and businesses. Collectively, our members supply almost 90 per cent of New Zealand's electricity. We work for a competitive, fair, and sustainable electricity market that benefits consumers.

Summary

The proposals in this consultation paper risk increasing costs to consumers rather than reducing them. The RPCA framework, in particular, introduces a significant new compliance burden. The reporting, audit, and governance infrastructure required to operationalise the RPCA across multiple segments, brands, and network reporting regions is substantial. These are costs that will ultimately be reflected in the prices consumers pay for electricity.

More fundamentally, the RPCA framework creates incentives for gentailers to price conservatively. Where the consequences of a negative or narrowly positive RPCA result are uncertain, and where the Authority has explicitly declined to provide safe harbours or clearly define what constitutes an acceptable margin, the rational response for any gentailer is to build a buffer into its retail pricing. The effect is that retail prices are more likely to rise than fall as a consequence of these measures. This is a perverse outcome for a regime whose stated objective is to promote competition for the long-term benefit of consumers.

ERGANZ submits that the Authority should be transparent with consumers and with the Government about this risk. If the RPCA proceeds, the Authority should actively monitor for evidence that the

regime is contributing to higher retail prices and should be prepared to adjust its approach accordingly.

ERGANZ acknowledges that the Authority has made the strategic decision to proceed with principle-based non-discrimination obligations for the gentailers, and that this consultation is directed at the design and implementation of specific elements of that regime. Our members have engaged constructively throughout this process, including at the December 2025 workshop, and will continue to do so.

We note that the February 2026 proposals represent a genuine evolution from the October 2025 consultation paper and reflect a number of points that industry raised. In particular, the Authority's recognition that the RPCA should function as a diagnostic tool rather than a bright-line compliance test, the acknowledgement that price smoothing is legitimate competitive conduct valued by consumers, and the Authority's willingness to revisit the uncommitted capacity concept are all welcome developments.

This submission is therefore directed at refining these proposals to ensure they are workable, proportionate, and do not produce outcomes that undermine the Authority's own objectives.

The proposed implementation timeline is unrealistic. If the Code is finalised in May 2026, the Authority proposes that the first RPCA would be due by approximately 2 September 2026, giving gentailers roughly three months to design, build and operationalise the required systems and processes from scratch.

This is insufficient. The RPCA is not a simple calculation. Each gentailer must construct an as-if hedge portfolio methodology, build reporting infrastructure covering multiple segments and network reporting regions, establish governance and assurance processes (including board-level oversight and external audit readiness), align the RPCA methodology with existing internal systems, and train staff on the new obligations. Several key design issues remain unresolved, as this very consultation demonstrates. It is unreasonable to expect gentailers to build durable compliance systems while the design of the regime is still being decided.

ERGANZ submits that the first RPCA should not be required before 31 March 2027. This would still deliver the first RPCA within the first year of the NDO regime and is consistent with the Authority's objective of increasing transparency as soon as practicable. Critically, it would allow gentailers to produce a first RPCA that is more robust. A rushed first disclosure that is incomplete or poorly constructed would undermine confidence in the regime.

Submission points

The RPCA risks driving higher prices

ERGANZ's principal concern with the RPCA is that it creates incentives that work against the Authority's objective of promoting competition for the benefit of consumers. The mechanism is straightforward: the Authority has stated that a negative or "narrow positive" RPCA margin will attract scrutiny, and potentially referral to the compliance function. It has declined to define what

"narrow positive" means, or to provide any safe harbours. In this environment, a prudent gentailer will err on the side of ensuring its RPCA margins are comfortably positive. That means pricing retail offers higher than it otherwise would, particularly in competitive segments such as offers to new customers.

This is not a theoretical risk. It follows directly from the design of the regime. Where ambiguity exists about the consequences of a particular RPCA outcome, gentailers will be conservative. The consumer benefit of this framework is therefore difficult to identify: the RPCA is more likely to put upward pressure on retail prices than downward pressure. The Authority should address this directly and explain, on the basis of the regime as designed, how it expects the RPCA to deliver lower prices or better outcomes for consumers.

The assessment framework needs greater clarity

While ERGANZ supports the Authority's position that the RPCA should not be a bright-line pass/fail test, this creates a corresponding obligation on the Authority to provide much greater clarity on how RPCA results will be assessed and what outcomes will trigger further action.

At present, the guidance leaves critical questions unanswered. The concept of a "narrow positive" margin is undefined, yet it carries potentially significant consequences. ERGANZ recommends that the undefined "narrow positive" trigger should be removed from the framework. The obligation to explain RPCA results should be limited to circumstances where the margin is negative. If the Authority is unwilling to define the threshold, it should not use it as a trigger for scrutiny.

Similarly, the Authority's approach to price smoothing requires a more structured framework. ERGANZ supports the Authority's recognition that price smoothing is a legitimate competitive practice valued by consumers. However, the refusal to provide any safe harbours or structured assessment criteria means that gentailers face significant uncertainty about how their smoothing decisions will be evaluated after the fact. ERGANZ supports the proposal that where a gentailer has a documented price smoothing policy disclosed in its non-discrimination policy and RPCA methodology, negative margins consistent with that policy should carry a presumption of being objectively justifiable. This does not create automatic immunity but it provides a structured framework that gives greater certainty.

Compliance costs are significant

The RPCA involves gentailers performing a large number of calculations across multiple dimensions: by segment, by brand, by network reporting region, each requiring load profile analysis, as-if portfolio construction, retail price calculation, cost allocation across multiple categories, and detailed narrative explanation. This is repeated every six months.

These are not calculations that can be produced from existing systems. They require new data extraction processes, new analytical frameworks, new governance and assurance processes, and the involvement of senior commercial and risk management personnel. The compliance cost is substantial, and the Authority's cost-benefit analysis should reflect this reality. We address the audit

cost dimension separately below, but note here that the total cost of the RPCA regime, including internal resourcing, is likely to be material for each gentailer.

Materiality threshold for methodology changes

The proposed 5% materiality threshold for changes in the methodology used to calculate the expected cost of electricity is too narrow. The RPCA's expected cost of electricity is a complex assessment. A calculation with so many variables will naturally produce larger variations when any single input is updated. At 5%, routine recalibration of inputs could trigger dual-reporting obligations that were designed for genuine methodology changes.

ERGANZ supports a 10% materiality threshold, subject to a post-implementation review to determine whether that threshold is appropriately calibrated in practice.

Uncommitted capacity: Qualified support for Option 2

ERGANZ supports Option 2 on a qualified basis. Option 2 removes the concept of uncommitted capacity, which attracted near-unanimous opposition in the October 2025 consultation round, and replaces it with a principles-based obligation requiring non-discriminatory supply of risk management contracts. This is a lower-risk approach than either Option 1 or the original proposal, and it aligns with the conceptual framework of the OTC Code of Conduct.

The principal advantages of Option 2 are that it removes the formulaic methodology for calculating uncommitted capacity (which involved arbitrary assumptions that did not reflect how dynamic risk management actually works), it allows compliance to be demonstrated through documented policies and engagement rather than through a prescriptive capacity formula, and it builds on the established "intolerable risk position" concept already embedded in the OTC Code.

Key concerns with Option 2

While supporting the direction of Option 2, ERGANZ identifies several areas where refinement is needed.

First, the question of what "capacity" is measured against requires clarification. We support the proposition that gentailers should not be required to on-sell the benefits of risk management contracts they have purchased for their own requirements. Therefore, gentailers should only be required to construct a generation-only view of "capacity" to sell risk management contracts. It should be noted that while this is a burden and an artificial construct, it does allow more flexibility which is welcomed.

Second, the concept of a "comparable" product requires definition. The symmetry obligation provides that where a gentailer invokes intolerable risk to decline a third-party request, it must also refuse to supply "actual or implied risk management contracts of comparable duration, volume and shape" to its own internal business units. What constitutes "comparable" in this context is unclear. A difference in any one dimension (duration, volume, shape) could take a product outside the scope of "comparable," yet the symmetry obligation turns on this question.

Third, the concept of "intolerable risk" needs significantly more definition than the guidance currently provides. The OTC Code operates as a voluntary framework with no enforcement consequences. Option 2 imports the concept into a mandatory Code obligation with compliance and enforcement implications. ERGANZ supports this conceptual approach, but the shift from voluntary to enforceable context requires commensurate clarity about how the threshold will be assessed. The guidance should specify the factors the Authority will consider when evaluating whether a gentailer's invocation of intolerable risk was reasonable, and should confirm that documented operational and risk management considerations in a gentailer's non-discrimination policy are relevant factors.

Fourth, and critically, Option 2 risks constraining gentailers' retail growth strategies. The guidance provides that existing commitments "do not include supply for anticipated new customers." This is a blanket exclusion that does not distinguish between speculative aspiration and documented, evidence-based retail growth. If a gentailer cannot factor documented growth plans into its capacity assessment, the symmetry obligation effectively forces it to choose between pursuing retail growth (accepting it cannot invoke intolerable risk for capacity earmarked for that growth) and limiting retail ambitions (to preserve its ability to invoke intolerable risk for third-party requests). The Authority cannot simultaneously expect gentailers to compete vigorously in retail markets and prohibit them from reserving any capacity to support that competition. This outcome would dampen retail competition, which is directly contrary to the Authority's stated objectives.

ERGANZ notes that the Authority's October 2025 consultation paper explicitly treated organic growth as committed capacity, with worked examples illustrating how capacity to support organic customer growth consistent with historic trends would be considered committed. The February 2026 proposal has reversed this position without explanation. At minimum, the existing commitments carve-out should be expanded to include: customers in active discussion (where the gentailer has commenced negotiations, issued offers, or commenced credit assessment), and capacity supporting documented retail growth plans that are recorded in the gentailer's business plans and disclosed in its non-discrimination policy.

Scope and purpose of external audits

ERGANZ does not oppose the principle of external audit. However, the Authority needs to provide significantly more guidance on what an external audit of compliance with the NDOs would actually involve. Given the Authority's own position that the RPCA is not a bright-line pass/fail test, and that the assessment of compliance involves the exercise of regulatory discretion, it is not clear what an external auditor would be certifying. Is the audit limited to verifying that the gentailer has performed the RPCA calculations correctly and in accordance with its disclosed methodology? Or does it extend to assessing whether the gentailer's methodology is itself reasonable, or whether its RPCA outcomes are consistent with the NDOs?

Without clarity on the scope and purpose of the audit, it is not possible to assess whether the proposed requirement is proportionate. The Authority should publish audit standards or terms of reference before the audit obligation takes effect.

Cost of audits

The Authority's estimate of $10,000 per gentailer per year for the audit is significantly understated. The RPCA alone involves complex calculations across multiple segments, brands, and network reporting regions, supported by detailed methodology disclosures and narrative explanations. An external auditor would need to understand the gentailer's as-if portfolio methodology, verify the data inputs, assess the cost allocation approach, and form a view on whether the calculations have been performed in accordance with the disclosed methodology.

This is a bespoke regulatory audit, not a routine compliance check. ERGANZ members estimate that the cost is likely to be in the range of $50,000 per gentailer, and potentially higher for the initial audit, which will require establishing the audit framework from scratch.

Interaction with existing reporting obligations

The Authority already imposes high-frequency reporting requirements on market participants. Gentailers currently report on retail gross margins, wholesale contract positions, and a range of other market data. The RPCA and associated NDO reporting requirements sit on top of these existing obligations. The Authority should consider the cumulative compliance burden and, where possible, align NDO reporting requirements with existing reporting cycles and data collections to avoid unnecessary duplication.

Definition of "discriminate"

ERGANZ supports the position that the Code should include a definition of "discriminate." The proposed Code amendments impose significant obligations and potential enforcement consequences for discrimination, yet the central concept is undefined. The Code should make clear that the objectively justifiable reason test functions as a threshold test, therefore, a difference in treatment is not discrimination if it has an objectively justifiable reason. This is consistent with how non-discrimination obligations have been implemented in telecommunications regulation and avoids the alternative construction, where discrimination is presumed and the gentailer bears the burden of justifying it.

Change from "prevented from" to "unduly deterred from"

ERGANZ notes that clause 13.236P(4) has been amended from requiring that pricing ensure a buyer is "not prevented from operating profitably" to "not unduly deterred from operating profitably." This is a material change that lowers the threshold for a finding of discrimination. "Prevented from" requires demonstrable inability to compete; "unduly deterred from" introduces a subjective assessment of competitive discouragement. The Authority should explain the rationale for this change and, if it is retained, provide guidance on what "unduly deterred" means in practice.

Consultation questions

Questions	Comments
Q1. Do you agree with the Authority taking a forward-looking approach to the RPCA? If not, why not?	Yes. A forward-looking approach better reflects how gentailers make pricing decisions and avoids hindsight bias. It also avoids the difficulty of separating the effects of demand or supply shocks from any actual discrimination when analysing historical data.
Q2. Do you agree with the Authority applying an as-efficient standard, including an allocation of common costs, to the retail cost component of the RPCA? If not, what standard should be applied and why?	Yes. The AEC standard, including a contribution to shared and common costs, is the appropriate benchmark. The NDOs are not intended to shelter less efficient entrants from normal competitive pressure.
Q3. Do you agree that the Authority should not be publishing benchmarks for the cost of electricity, the as-if portfolio of hedges and retail costs, and should instead provide higher level guidance to gentailers?	Yes. Prescribing benchmarks reduce competitive diversity in business models and risk preferences, and is not aligned with the purpose of the RPCA, which is to detect discrimination rather than to set prices or efficiency standards.
Q4. Do you have any comments on our proposed approach to geographic and customer segmentation?	NRR segmentation means a 40 fold increase in the number of RPCA assessments required, and the problem definition is weak since none of the concerns the Authority has identified to-date are regarding regional competition. A negative RPCA in a single NRR should not be treated as an indicator of discrimination absent credible evidence of broader anti-competitive effect.
Q5. Do you have any comments on our proposed approach to price smoothing?	The Authority's approach creates excessive uncertainty. Where a gentailer has a documented price smoothing policy in its ND policy and RPCA methodology, negative margins consistent with that policy should carry a presumption of being objectively justifiable. The undefined "narrow positive" trigger should be removed. Price smoothing is valued by consumers and is expected in competitive markets. The framework should recognise this explicitly rather than treating every negative margin as requiring justification.

Q6. Do you have any comments on the proposed date for the first RPCA disclosures?	The proposed September 2026 date is unrealistic. Gentailers need time to design as-if portfolio methodologies, build reporting infrastructure across multiple segments and NRRs, establish governance and assurance processes, and train staff. The first RPCA should be due by 31 March 2027.
Q7. Do you prefer Option 1, Option 2 or our previous proposal on uncommitted capacity?	ERGANZ has qualified support for Option 2. It removes the unworkable formulaic capacity calculation and aligns with the OTC Code framework. However, refinements are needed: the existing commitments carve-out should cover customers in active discussion and documented retail growth plans; and "intolerable risk" needs clearer definition for a mandatory Code context; "comparable" product requires definition.
Q8. Do you have any feedback on the interplay between OTC monitoring requirements and the appropriate reporting where gentailers rely on "intolerable risk position"?	Reporting should be aligned with existing OTC monitoring to avoid duplication. Where a gentailer invokes intolerable risk, it should be required to document this in its ND policy records and make it available to the Authority. However, requiring real-time or transaction-level reporting would be disproportionate.
Q9. Is it useful and/or helpful to provide greater specification in the Code of the requirements for a non-discrimination policy?	Yes. Under Option 2, the ND policy becomes the primary compliance mechanism and greater specification provides clarity about Authority expectations. We seek confirmation that commercial decisions made consistently with a published ND policy satisfy the good faith obligation under Principle 2.
Q10. Do you support the requirement for external audit of compliance with the NDOs? Why or why not?	It is not clear what the benefits of an external audit would be. If it proceeds with this, the Authority must define the scope and purpose of the audit. Given the RPCA is not a bright-line test, it is unclear what the auditor is certifying.
Q11. Is an annual audit of these requirements appropriate, or would a different timeframe be better?	Annual audit is acceptable. More frequent audits would impose disproportionate cost without commensurate benefit. Timing should align with existing financial audit cycles to leverage existing assurance processes and minimise incremental cost.
Q12. Would the codification of the audit requirement impose significant additional costs? What would you estimate these costs to be?	Yes. The Authority's estimate of $10,000 per gentailer is significantly understated. This is a bespoke regulatory audit, not a routine compliance check. Realistic costs are at least $50,000 per gentailer, with the initial audit potentially higher as the framework must be established from scratch.
Q13. Do you have any comments on the impact of	The regulatory statement underestimates compliance costs. Audit costs alone are likely five times the Authority's estimate.

the proposals in this paper on the regulatory statement set out in the October consultation paper?	The cumulative RPCA compliance burden (systems, governance, reporting, assurance) is material and has not been adequately costed. The Authority should also address the risk that the RPCA incentivises higher retail prices, which would reduce the net benefits claimed in the regulatory statement.
Q14. Do you agree with the proposed general approach to the RPCA, including the approach to implementation and potential evolution of guidance?	Yes, in principle. An iterative approach is sensible for a new regulatory tool. However, the Authority should commit to consulting before making material changes to the guidance, and should recognise that the first round of RPCA disclosures will involve a learning curve for all parties.
Q15. Do you agree with the proposed overall calculation approach to the RPCA?	Broadly yes. Our concerns relate to the volume and complexity of the calculations required across multiple segments, brands, and NRRs, and the need for much greater clarity on how results will be assessed.
Q16. Do you agree on the draft guidance with respect to customer coverage, and the approach and criteria for identifying and reviewing RPCA segments? Do you agree that RPCAs should be reported by NRR?	The proposed segmentation (new customers, existing customers, by brand) is reasonable. A single negative NRR-level result should not be treated as indicative of discrimination absent broader evidence.
Q17. Do you agree with the proposed approach to calculating average retail prices per MWh?	Yes. Flexibility on the method for calculating average retail prices is appropriate provided the method is documented and consistent with load profile assumptions. Gentailers should be able to explain, rather than adjust for, timing differences between when prices were set and the RPCA assessment date.
Q18. Do you agree with the proposed approach to calculating non-energy costs?	Yes. The approach to shared and common cost allocation is appropriate. Gentailers should be able to use existing accounting approaches where these comply with GAAP. Attribution of bundled service costs proportional to expected revenue is workable.
Q19. Do you agree with the proposed approach to expected cost of electricity?	Broadly yes. ERGANZ supports a 10% threshold, subject to post-implementation review. Legitimate divergence between the as-if portfolio and actual trades should be acknowledged in the guidance.
Q20. Do you agree with the proposed guidance on the assessment of results?	The guidance needs more structure. The undefined "narrow positive" trigger should be removed. Documented price

	smoothing policies should carry a presumption of objective justifiability.
Q21. Do you agree with the proposed approach to RPCA disclosure and reporting?	The approach is broadly workable with changes. Public reporting should be at the aggregated national level, with NRR detail disclosed confidentially to the Authority. It is important to note the risk that publication of forward looking RPCA results reveals intentions regarding price changes and distorts competition. The requirement to publish within five working days of providing the RPCA to the Authority is tight and should be extended to ten working days to allow proper preparation of the public version.
Q22. Do you have any comments on the drafting of this Code amendment?	Three specific concerns. First, "discriminate" should be defined in the Code, making clear that the objectively justifiable reason test is a threshold test, not a defence. Second, the change in clause 13.236P(4) from "not prevented from" to "not unduly deterred from" materially lowers the discrimination threshold without explanation. Third, the Code should define "intolerable risk position" with sufficient precision for a mandatory obligation with enforcement consequences.

Conclusion

ERGANZ would like to thank the Authority for considering our submission.

If there are any outstanding questions or a need for further comments, please let me know.

Yours sincerely,

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