



TRANSPOWER

Transpower House, 96 The Terrace,
PO Box 1021, Wellington,
New Zealand
Telephone +64-4-495 7000
Facsimile: +64-4-495 7100
www.transpower.co.nz

Richard Fletcher
richard.fletcher@transpower.co.nz

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Kate Hudson
Electricity Commission
PO Box 10041
Wellington 6143

Dear Kate

Re: Guidelines for reporting breaches of the Electricity Governance Rules

This is Transpower New Zealand Limited's submission on the Electricity Commission's consultation paper *Guidelines for reporting breaches of the Electricity Governance Rules*. Our detailed comments are appended to this letter.

Yours sincerely

Dr Richard Fletcher
Regulatory Strategy Manager

DETAILED COMMENTS ON THE CONSULTATION PAPER

Paragraph	Issue	Transpower comment
8	Breaches which have the potential to significantly affect other participants and the operation of the market	<ul style="list-style-type: none">The Commission has not provided guidelines on its approach to regulation 67 of the EGRs, which allows the Commission to decline to pursue a notification of an alleged breach where the breach relates to a matter that has been or is more properly dealt with by another person, or a prima facie case has not been established, or the allegation does not otherwise warrant any further action. Guidelines which address the factors the Commission takes into account in such cases and, in particular, what it takes into account in determining whether a “prima facie” case exists would be useful.
9	Definition of “minor” breaches	<ul style="list-style-type: none">The guidelines do not define what constitutes a “minor” breach, nor what is a “more serious” breach, nor what might constitute the “most serious and complex” breaches. While a prescriptive set of criteria may not be that helpful, it may be useful to provide some guiding principles so that participants have a better feel for the types of breaches the Commission considers to fall into these categories.

Paragraph	Issue	Transpower comment
10	Approach to compliance	<ul style="list-style-type: none">• Transpower has raised concerns previously about the apparent mismatch between the Commission’s objectives in terms of compliance, and the tools that it uses to achieve these objectives. In particular, the Commission’s objective is to improve overall compliance with the Rules, but the lack of negative consequences means that in many cases there is little incentive on participants to change their behaviour.• While Transpower accepts that encouraging settlement agreements between the parties is an appropriate role for the Commission (given that regulation 82 of the EGRs requires the investigator to effect a settlement), an outline of the Commission’s expectations in relation to effecting settlements would be useful. It appears to Transpower that, frequently, settlements/settlement requirements have no apparent “link” to the breach that is the subject of an investigation, nor are they consequential on a breach allegation being established. It is therefore difficult to see how such settlements can correct and avoid the recurrence of problems or, in fact, encourage compliance with the rules.• While Transpower agrees with the Commission’s philosophy of taking a pragmatic approach to compliance, it is essential that the principles of certainty, consistency and fairness in the Commission’s interpretation and application of the Rules are not sacrificed as a result. As these principles are important to the integrity of the process, the Commission needs to ensure that it strikes an even balance between them and its desire for pragmatism.• Paragraph 10(d) does not define what a “good” process is. We believe that a “good” process is one that transparently upholds all of the above principles.

Paragraph	Issue	Transpower comment
20/21	Gathering of evidence prior to reporting a breach	<ul style="list-style-type: none">• Transpower believes that, in order to understand the facts sufficiently to form a reasonable belief that a rule has been breached, a participant must gather sufficient evidence on which to base that belief. Evidence sufficient to establish at least a “prima facie” case must be provided, so that the actions (or inactions) of a participant can clearly be shown to relate to the rules alleged to have been breached, with all the circumstances of the alleged breach outlined.• It is unrealistic to expect that participants will not carry out detailed investigations prior to reporting a breach, particularly in light of the fact that there is no provision in the Rules for a participant to withdraw a breach once it has been submitted. Further, it is unreasonable and contrary to natural justice, to proceed with an investigation of an alleged breach when there are no circumstances relating to the alleged breach identified and no evidence provided in support of the allegation.
35	Distinction between long term and short term focused rules	<ul style="list-style-type: none">• Transpower does not think that the distinction between short term and long term focus is useful, and, in fact, the distinction may lead to the inadvertent exclusion of some Rules that would otherwise have been considered to relate to quality and security. For example, outage notification requirements in Part C are up to 12 months ahead. System Security Forecasts are for the ensuing period of not less than three years. Both of these Rules relate to the orderly operation of the power system in real time (i.e. planning to achieve this), but would probably not be considered “immediate” or short term in the usual sense.

Paragraph	Issue	Transpower comment
41(b)	Application of Part F Rules	<ul style="list-style-type: none"> • Transpower disagrees with some of the part F provisions identified by the Commission as relating to quality and security, in the context of “self-reporting” rule breaches. In particular: <ul style="list-style-type: none"> ○ Rule 4.3 concerning the requirements for Benchmark Agreements, being the template contract contained in schedule F2. It is difficult to see who would self-report non-compliance with this rule, given that these are matters upon which the Commission bases the template contract, with any changes to the template contract effectively being deemed a Transmission Agreement, which would require compliance with rules 5.1 to 5.4 (depending on the change). ○ The reference to rule 9 of section VI does not seem appropriate here. It is difficult to see how an annual report has any actual impact upon the maintenance of quality – it is simply a mechanism for providing information on quality.
41(c)	Application of Part G Rules	<ul style="list-style-type: none"> • Transpower agrees that Rules that have an impact on orderly trading (such as those outlined in paragraph 41(c)) should be included within the definition of quality and security, even though some of those Rules have a stronger link to the System Operator’s ability to meet its performance obligations than others. Participants should therefore be required to self-report these types of breaches. • However, the reference to real time prices does not seem appropriate here, given that these prices are provided for market information shortly after real time, rather than being a mechanism for meeting the System Operator’s performance obligations. Having said this, the Transpower acknowledges that, as a service provider, it would be required to self-report breaches relating to these in any case.

Paragraph	Issue	Transpower comment
57/60/61	Timing of reporting breaches	<ul style="list-style-type: none">• Transpower believes that the proposed timeframes for reporting breaches are unreasonable, given the earlier comments regarding the need for participants to carry out information gathering prior to reporting a breach.• We believe that these reporting times are only realistic if the view is taken that there is a distinction between “becoming aware of an event” (which is likely to be within hours or days of the event occurring) and “becoming aware of a rule breach” (which may not occur until several weeks after an event). We agree that it would be reasonable for a participant to report a breach within hours or days of becoming aware of a “breach” (as opposed to an event leading to the breach).• Transpower considers that it becomes aware of the breach once it forms the reasonable belief that a rule breach has occurred. This can only occur after a proper internal investigation has occurred.• A typical investigation by Transpower as System Operator would include initially being alerted to the occurrence of an event via its event logging system; the collation of facts relating to the event (including reviewing relevant logs and voice tapes and carrying out enquiries with the coordinators and other relevant staff); analysis of the Rules as applied to the facts; and finally an internal group review. The amount of time such an investigation would take would depend on a number of factors, including the complexity of the facts, the availability of the staff involved in the event to address any enquiries and the resources available to conduct the investigation.• For Transpower as System Operator, these timeframes are also affected by the fact that, at any one time, there will be several ongoing investigations. In addition, those investigations are not limited to events involving Transpower, but also include other participants.

Paragraph	Issue	Transpower comment
64	Commission guidance on rule interpretation	<ul style="list-style-type: none">• Transpower welcomes the Commission's offer to give participants guidance on interpreting the Rules. Is there an intention to set timeframes for the provision of this information?