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Maree McGregor
Electricity Commission
PO Box 10041
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Dear Maree

Re: Electricity Market Compliance Framework Review – Update

This is Transpower New Zealand Limited's submission on the Electricity Commission's March 2009 consultation paper *Electricity Market Compliance Framework Review – Update*.

Yours sincerely

Richard Fletcher
Regulatory Strategy Manager

Responses to the questions in the consultation paper

Q1	Has the revision and publication of the Commission's Compliance Philosophy, Operating Procedures, and the Breach Assessment Guidelines improved the transparency?	<p>The publication of such documents has made the industry aware of the process used by the Market Governance Team. However, in the System Operator's view, it does not go far enough to enable participants to learn about:</p> <ul style="list-style-type: none">▪ how the EGR Committee operates; and▪ how their own and other participants' similar breaches are treated in practice. <p>In Transpower's view, such learning is important for understanding how the regulator interprets the rules and applies its judgement in a variety of circumstances. Participants are likely to gain more understanding about the rules and the compliance process from having unfettered access to uncensored individual reports on the wide variety of reported breaches and the circumstances in which they occur. One of the benefits of such transparency is that participants learn just as much from other participant breaches as from their own.</p> <p>It follows that details of the facts (inevitably including the parties involved) need to be available.</p> <p>Further, an effective compliance regime ought to result in equity and consistency among participants. Transparent provision to the industry of compliance commentary and decisions will be a more effective way of facilitating equity than by simply publishing procedures and two case studies over a year (which represents a very small percentage of the overall number of reported breaches).</p> <p>Publication should therefore extend to:</p> <ul style="list-style-type: none">▪ the investigator's report and any relevant correspondence once a decision has been made (and provided there are no commercial sensitivities);▪ the EGR Committee minutes; these should be available to all participants. <p>In Transpower's view, publication of all documentation pertaining to all breaches is particularly important for industry learning, given the absence of any precedent history on breaches that would otherwise have been realised through the Rulings Panel process.</p>
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<p>Q2</p>	<p>Do you find the Market Governance updates useful for learning about the Commission’s compliance functions?</p>	<p>The information published so far is of little real use. The updates provide detail of the number and types of breaches being considered and some detail of any action the EGR Committee chooses to take. However, each report appears to be produced in isolation from the last, so the overall picture of industry compliance with the rules is not evident.</p> <p>Transpower believes the reports would be improved by:</p> <ul style="list-style-type: none"> ▪ providing comparison graphs; ▪ commenting about progress on previous “hot topics” (for example, in April, further comment on the MRDA issue and whether any improvements had been noted); ▪ providing a section on any strategic or tactical initiatives the EGR Committee intends to implement to improve overall compliance; ▪ expressing the Commission’s view of when warnings are going to cease to be enough and what the next steps should be (e.g. reference to the Rulings Panel), i.e. what constitutes “enough” bad behaviour to advance beyond the warning notice.
<p>Q3</p>	<p>Do you find the following topics covered in the Market Governance updates helpful?</p> <ul style="list-style-type: none"> ▪ Rule breach notifications considered at last EGR Committee meeting ▪ Rule breach notification statistics ▪ Update on compliance initiatives ▪ EGR Committee comments on topical issues ▪ Market Governance staff activities 	<p>See comments above.</p>
<p>Q4</p>	<p>What improvements should be made to the Market Governance updates?</p>	<p>See comments above. The Commission needs to be more determined when exposing the behaviour of participants. The System Operator is open</p>

		<p>about its breaches and the circumstances, which helps create the appropriate incentives for process and performance improvement. Transpower believes that other participants should have their actions scrutinised in the same manner.</p> <p>In Transpower's view, Market Governance Updates should contain the following:</p> <ul style="list-style-type: none"> ▪ a summary of every event reported, including the rule alleged to have been breached, circumstances surrounding the potential breach and the participant alleged to be in breach; ▪ the action taken by the Commission and the reasoning for that decision; ▪ any immediate actions taken by the participant alleged to be in breach.
Q5	Are the case studies helpful?	<p>No. There have only been two published about the same rule. These represent a very small percentage of the total number of breaches and are likely to benefit only a handful of participants. As previously mentioned, Transpower believes publication of the investigator's report to the EGR Committee and relevant correspondence will be far more useful for participants than a case study selected by the Electricity Commission from hundreds of possible alternatives. Without that detail, the current approach lacks much value.</p>
Q6	How can they be improved?	See above
Q7	We intend to run compliance sessions at Commission conferences focussing on the compliance issues relevant to specific sectors, e.g. compliance issues and metering. Do you support this initiative as a useful learning opportunity?	<p>Transpower supports this initiative but cautions that this session will need to be very targeted so as not to lose focus and participant attention (given the number of participant groups that may be represented at the conference).</p>
Q8	Have the case studies and Market Governance updates improved your clarity on how the Commission interprets the Rules?	<p>For Transpower, we have found face to face contact and dialogue with the Market Governance staff with respect to specific self reported breaches has improved clarity; the Market Governance Updates have added no value in that regard.</p> <p>Greater transparency of information on individual breaches will, in our view, contribute more towards rule interpretation clarity for participants.</p>

Q9	The Commission has initiated a project to provide guidance on the meaning of “quality and security” breaches. Do you think this is a good initiative?	This is a long overdue action. Transpower believes this is a necessary initiative given that the Regulations require these breaches to be specifically reported (as distinct from “other” breaches).
Q10	What other initiatives would help provide clarity on the Commission’s interpretation of the Rules?	Refer to Q1 above.
Q11	The Commission has reviewed and published its breach assessment guidelines and its Rule breach operating procedures to improve timing and process issues. Is this an improvement?	Publication of such procedures is an improvement from the previous situation, where procedures were not published.
Q12	What other non-regulatory changes could the Commission make to its procedures to eliminate timing and process issues?	<p>Transpower is of the view that regulatory changes are needed to improve the compliance process. Transpower regrets the reluctance of the Commission to seek regulatory changes to improve the industry’s compliance arrangements.</p> <p>Transpower’s previous submissions on this matter and our paper on compliance matters have already commented extensively on the excessive number of what would appear to be minor breaches considered by the EGR Committee at every meeting, and that this is likely to leave insufficient time and resources available to focus on those breaches that raise important industry issues. As long as the regulations continue to require each and every breach, no matter how minor, to be reported (sometimes by two or more participants in respect of the same breach) and reviewed in the same way as major breaches, the regulator will continue to encounter bottle-necks when attempting to close out breaches.</p> <p>Without changes to the current process requirements, it is unlikely that sufficient time and resources will be available to be applied to the matters of greatest importance to the industry, particularly the development of rules and regulations to establish a compliance framework that correctly reflects the needs of the industry.</p>

Q13	Are regulatory changes still needed and if so what aspect of the compliance regulatory framework should be given priority?	<p>Transpower believes that regulatory changes are needed if there is to be any meaningful improvement to the effectiveness of the compliance regime (combined also with the transparency matters raised above). In particular, changes are required to:</p> <ul style="list-style-type: none">▪ remove minor infractions from the Electricity Commission reporting process and require internal reporting of such breaches instead (similar to the existing health and safety legislative requirements) – as previously suggested, an audit regime could replace the reporting requirements for minor breaches;▪ remove the requirement for a service provider to report a breach by a participant where it is aware that the same breach has already been reported;▪ allow the regulator and participants to withdraw a breach allegation once made;▪ permit settlements to be achieved by majority rather than unanimity;▪ allow participants (and the Electricity Commission) direct access to the Rulings Panel (as an independent party) to request binding interpretations. As well as increasing the industry’s understanding of the rules, this would provide the Rulings Panel with greater current industry knowledge, which should help to improve the consistency of its decision-making.
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