



ELECTRICITY COMMISSION

Consultation Paper

**Proposed amendment to Rule 2.1.5.1 of section II
of part F**

25 February 2005

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A. INTRODUCTION

PURPOSE

- 1 The Electricity Commission ("Commission") is considering proposing an amendment to rule 2.1.5.1 of section II of part F of the Electricity Governance Rules 2003 ("the rules"). The objective of amending this rule is to enable the Minister of Energy ("Minister") to allow the Commission Board ("Board") a longer period following submission expiry to complete its consideration of submissions relating to the structure of transmission agreements. Such a change is consistent with rule 2.2.4.1 of the same section, which relates to categories of designated transmission customers, and with other transmission-related decision rules.
- 2 The Commission is also proposing a minor change to the definition of the "Board" and "transmission pricing methodology" in Part A of the rules to reflect the change of the Commission's name as enacted under the Electricity Amendment Act 2004 and to correct a typographical error.
- 3 The purpose of this paper is to consult with the persons that the Commission thinks are representative of the interests of persons likely to be substantially affected by the proposed rule changes.
- 4 This paper is a statement of proposal in accordance with s172F of the Electricity Act 1992 ("the Act").

SUBMISSIONS

- 5 The Commission invites submissions on the proposal by 5pm on 24 March 2005. Please note that submissions received after this date may not be able to be considered.
- 6 The Commission's preference is to receive submissions in electronic format (Microsoft Word and/or pdf). This should be emailed with "Structure of Transmission Agreements Assessment period" in the subject line to info@electricitycommission.govt.nz. In addition, a hard copy of the submission should be posted to the address below:

Jenny Walton
Electricity Commission
Level 7, ASB Bank Tower
2 Hunter Street
P O Box 10041
WELLINGTON
Tel: (04) 460 8860
Fax: (04) 460 8879

- 7 The Commission will acknowledge receipt of all submissions electronically. Please contact Jenny Walton if you do not receive electronic acknowledgement of your submission within 2 business days.
- 8 Submissions should be provided in the format shown in Appendix Four. Your submission is likely to be made available to the general public on the



Commission's website. Submitters should indicate any documents attached in support of the submission in a covering letter, and clearly indicate any information that is provided to the Commission on a confidential basis. All information provided to the Commission is subject to the Official Information Act 1982.

B. PROCESS FOR AMENDING RULES

- 9 The Minister may make a rule for all or any of the purposes for which an electricity governance regulation may be made.¹ A rule may be made by publishing a notice in the Gazette.²
- 10 In recommending a rule to the Minister, the requirements of s172E and s172F of the Act apply. Sections 172X to s172Z of the Act also apply.³
- 11 The Commission must, in formulating recommendations, give effect to its principal objectives and specific outcomes and its GPS⁴ objectives and outcomes.⁵ The Minister must have regard to a recommendation by the Commission in exercising any of his functions or powers in relation to Rules.⁶
- 12 Under s172E(2)(b), before making a recommendation, the Commission must:
- (a) undertake an assessment under s172F, as described in paragraph 13 below; and
 - (b) consult with persons that the Commission thinks are representative of the interests of persons likely to be substantially affected by the proposed rules; and
 - (c) give those persons the opportunity to make submissions; and
 - (d) consider those submissions.
- 13 Under s172F(1), before making a recommendation, the Commission must:
- (a) seek to identify all reasonably practicable options for achieving the objective of the rule; and
 - (b) assess those options by considering the benefits and costs of each option, the extent to which the objective would be promoted or achieved by each option, and any other matters that the Commission considers relevant; and
 - (c) ensure that the objective of the rule is unlikely to be satisfactorily achieved by any reasonably practicable means other than the making of the rule (for example, by education, information or voluntary compliance); and
 - (d) Prepare a statement of proposal for the purpose of consultation under s172E(2)(b)(ii).⁷

¹ Section 172H of the Act.

² Section 172I.

³ Section 172E(2)(a).

⁴ Government Policy Statement on Electricity Governance October 2004

⁵ Section 172X.

⁶ Section 172Z.

⁷ Section 172F(2) provides that the statement of proposal must contain a detailed statement of the proposal, a statement of the reasons for the proposal and an assessment of the reasonably practicable options, including the proposal, and other information that the Commission considers relevant. Under s172E(2)(b)(ii), the Commission must consult with persons that it thinks are representative of the interests of persons likely to be substantially affected by the proposed rule.

- 14 Under s172F(3) of the Act, the Commission is not required to comply with s172F(1) of the Act (which refers to the statement of proposal and assessment) if it is satisfied that the effect of a recommendation is minor and will not adversely affect the interests of any person in a substantial way.

C. PROPOSED CHANGE TO RULE 2.1.5.1 OF SECTION II OF PART F

SUMMARY OF RULE CHANGE PROPOSAL

15 The proposed rule change is as follows:

The following underlined words are inserted into rule 2.1.5.1 of section II of part F:

“Within 20 **business days** of the **submission expiry date** (or such longer period as the **Minister** may allow), the **Board** must complete its consideration of all submissions it receives and determine an appropriate **transmission agreement** structure.”

16 Note that this rule change does not automatically grant the Board the right to additional time for consideration of submissions. Rather, it provides the Minister with the discretion to allow additional time.

ANALYSIS

RATIONALE FOR RULE CHANGE

17 In situations where there are likely to be a large number of submissions, or submissions are likely to involve significant complexity or be conflicting, the Commission believes that there would be benefits from having more than 20 business days for making evaluations and forming recommendations.

18 Rules 4.7 (in relation to grid reliability standards), 6.6 (in relation to the grid investment test) and 9.7 (in relation to the statement of opportunities) of section III of part F and rule 2.2.4 of section II of part F (in relation to the categories of designated transmission customers) permit the Minister to allow the Board a greater period than 20 business days following the submission expiry period in which to complete its consideration and make recommendations or publish. This is achieved by the inclusion of the words “(or such longer period as the Minister may allow)” after “within 20 business days” in each of the relevant rules.

19 The Commission considers that submissions on the structure of transmission agreements (rule 2.1.5.1 of section II of part F) will possibly be significant in number, complex, and conflicting. It notes that contract structure and counterparty issues have been unresolved in the electricity industry for some years, and that 2005 will provide the Commission with the opportunity to address this issue for the first time. It is important that due consideration can be given to the issues before determining an outcome which is likely to influence many aspects of transmission for many years to come.

STATEMENT OF PROPOSAL

- 20 The Commission has prepared a statement of proposal, including the assessment, as required under s172F of the Act. The statement of proposal and assessment are set out in Appendix One of this paper.

CONSIDERATION AGAINST THE RELEVANT OBJECTIVES

- 21 Under s172X of the Act, in formulating recommendations, the Commission must give effect to its principal objectives and specific outcomes and its GPS objectives and outcomes.
- 22 As set out in Appendix Three, the proposed rule amendments give effect to the Commission's relevant objectives and outcomes.

D. MINOR RULE CHANGES

- 23 The Commission is also proposing two minor rule changes.
- 24 The first minor rule change proposal is to amend the definition of “Board” in part A of the rules to reflect the change of name from the “Electricity Governance Board” to the “Electricity Commission”. This change of name was made under the Electricity Amendment Act 2004, and changed the definitions in the Act and in the Electricity Governance Regulations 2003 but did not change the definitions in the rules.
- 25 The definition in part A would be amended to read:
- 26 **“Board”** means the Electricity ~~Governance Board~~ Commission continued established under subpart 1 of part 15 of the Act;”
- 27 The second minor rule change proposal is to amend the definition of “transmission pricing methodology” in part A of the rules to correct a typographical error. At present, the definition incorrectly refers to section V of part F of the rules and should instead refer to section IV of part F of the rules.
- 28 The definition in part A would be amended to read:
- “transmission pricing methodology”** means the pricing methodology developed in accordance with section ~~V~~ IV of part F;”
- 29 Under s172F(3) of the Act, the Commission is not required to comply with s172F(1) of the Act (which refers to the statement of proposal and assessment) if it is satisfied that the effect of a recommendation is minor and will not adversely affect the interests of any person in a substantial way.
- 30 The Commission is satisfied that the effect of the proposed rule changes to the definition of the “Board” and “transmission pricing methodology” are minor and will not adversely affect the interest of any person in a substantial way because the proposed amendments reflect the change of the Commission’s name as enacted under the Electricity Amendment Act 2004 and rectify an incorrect cross reference.
- 31 The proposed rule amendments are set out in Appendix Two of this paper.

APPENDIX ONE: STATEMENT OF PROPOSAL AND ASSESSMENT FOR PROPOSED CHANGE TO RULE 2.1.5.1 OF SECTION II OF PART F

- 32 Sections 172E and 172F of the Act set out the requirements on the Commission regarding consultation on, and assessment of, a rule before recommending to the Minister that a rule be made.
- 33 As the proposal is a rule change, the process set out in the Act must be followed.
- 34 This paper is a statement of proposal under s172F(2) of the Act, for the purposes of consultation under s172E(2)(b)(ii). As such, it is required to set out a detailed statement of the proposed rule change, a statement of the reasons for it, provide an assessment of the reasonably practicable options for achieving the objective of the rule, and any other information that the Commission considers relevant.

STATEMENT OF PROPOSAL

- 35 The objective of the proposed rule change is to:
- provide for the possibility that the Board may require a longer period than 20 business days following submission expiry to complete its consideration of submissions relating to the proposed structure of transmission agreements in order to achieve better decision making; and
 - provide flexibility as to the length of additional time allowed.

Q1 Do submitters agree with the objective of the rule change as outlined in paragraph 35 above?

- 36 Accordingly, the proposal is to amend rule 2.1.5.1 of section II of part F by inserting the following words (as underlined below) into the rule:

“Within 20 **business days** of the **submission expiry date** (or such longer period as the **Minister** may allow), the **Board** must complete its consideration of all submissions it receives and determine an appropriate **transmission agreement** structure.”

*Q2 Do submitters agree with the wording of the Commission’s proposed rule change to rule 2.1.5.1 of section II of part F to insert the words “(or such longer period as the **Minister** may allow)” after the words “**submission expiry date**”?*

STATEMENT OF THE REASONS OF THE PROPOSAL

- 37 The Commission believes that it is possible that there will be a large number of submissions on the structure of transmission agreements, some of which will be complex, and in conflict with one another.

- 38 The Commission notes that contract structure and counterparty issues have been unresolved in the electricity industry for some years. The Commission will address this issue for the first time in 2005, and believes that it is extremely important that due consideration is given to the issues before determining an outcome that is likely to influence many aspects of transmission for many years to come. It is therefore prudent to provide for the possibility that the Board may require a longer consideration period than is currently allowed for under rule 2.1.5.1 of section II of part F. The purpose of this is to accomplish better outcomes where time constraints are considered an obstacle to achieving this.
- 39 Such provisions for flexibility are made in similar ways throughout part F, for example, rules 4.7 (in relation to grid reliability standards), 6.6 (in relation to the grid investment test) and 9.7 (in relation to the statement of opportunities) of section III of part F and rule 2.2.4 of section II of part F (in relation to the categories of designated transmission customers).
- 40 A change such as the one proposed to rule 2.1.5.1 of section II of part F brings it into line with the provisions of rule 2.2.4.1 of section II of part F, which deals with the Board's consideration of submissions on the proposed categories of designated transmission customers. The Board's deliberations about the categories of designated transmission customers and the structure of transmission agreements are inextricably linked. Bringing the provisions of the two rules into line allows the Board to consider the submissions on these two linked issues in the same timeframe.

OPTIONS FOR ACHIEVING THE OBJECTIVE OF THE PROPOSED CHANGE

- 41 The Commission has considered three options to achieve the above objective.
- (i) the proposal, as outlined in paragraphs 43 and 44;
 - (ii) the alternate option, which is to make a similar change (to rule 2.1.5.1 of section II of part F), but provide the Commission with the ability to extend the period at its discretion, rather than needing to request an extension from the Minister; and
 - (iii) a third option to simply increase the length of the time period specified in the clause. For example, amend the 20 business days to 30 business days.
- 42 The third option was discounted because it does not achieve the objective of providing flexibility regarding the length of the time period. In addition, a permanent extension of the time period could result in delays that may be unnecessary on many occasions. This was not therefore considered a valid option, and the Commission did not examine the option further.

Q3 *Do submitters believe that there are any other reasonably practicable options for achieving the objective of the proposal?*

Q4 Do submitters agree with the Commission's decision to discount the third option because it is not a reasonably practicable option as it does not achieve the flexibility that the Commission is seeking in the objective of the proposal?

Proposed Option

- 43 The Commission believes that it is prudent for the Minister to have the power to allow the Board a longer consideration period than is currently provided for in rule 2.1.5.1 of section II of part F, rather than the Board itself having this power.
- 44 This option has the advantage of ensuring that the final decision on any such extension rests with the Minister. It would require the Board to justify the additional time for consideration of submissions and demonstrate that this will facilitate better decision making.

Alternate Option

- 45 The Commission notes that another means does exist to increase the length of time it has to consider submissions and develop solutions.
- 46 The alternate option is a rule change (also to rule 2.1.5.1 of section II of part F) that provides the Commission with the discretion to extend the time period if it believes that this is warranted.
- 47 This option has the advantage that the Commission does not need to ask the Minister to approve additional time, should it require it. The disadvantage of this option is that it may reduce the sense of urgency attached to the process, thereby causing delays, with associated costs.

ASSESSMENT OF THE REASONABLY PRACTICABLE OPTIONS

Costs and Benefits of Proposal

- 48 The benefits arising from the proposal are as follows:
- (i) such a change brings rule 2.1.5.1 into line with the provisions of rule 2.2.4.1 of section II of part F, which deals with the Board's consideration of submissions on the proposed categories of designated transmission customers. As noted above, the Board's deliberations about the categories of designated transmission customers and the structure of transmission agreements are inextricably linked. Bringing the provisions of the two rules into line allows the Board to consider the submissions on these two linked issues in the same timeframe; and
 - (ii) if submissions on the proposed structure of transmission agreements are significant in number, complex and conflicting, the final decision on any such extension rests with the Minister. This means that the Board is required to justify the additional time for consideration of

submissions, should they be, as expected, significant in number, complex and conflicting.

- 49 The Commission notes that the costs of the proposal are limited to:
- the direct administrative costs of proposing and processing the rule change; and
 - any costs arising from additional time taken by Commissioners, Commission staff and advisors to consider submissions on the structure of transmission agreements in the event of a successful rule change recommendation. Note that it is believed that these costs will provide direct benefits (as outlined above).
- 50 The Commission believes that the benefits of the proposal significantly outweigh the relatively minor costs associated with it.

Extent the Objective is Promoted or Achieved by the Proposal

- 51 The proposal achieves the objective of providing for the possibility that the Board may require additional time, whilst maintaining flexibility, by allowing the Minister, at his discretion, to allow the Board additional time to consider submissions and determine an appropriate transmission agreement structure.

<p>Q5 Do submitters agree with the identified costs and benefits of the proposed option?</p>
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Costs and Benefits of the Alternate Option

- 52 The benefit that would arise from the alternate option is that, if submissions on the proposed structure of transmission agreements are significant in number, complex and conflicting, more time will be available to explore the underlying issues, and better ensure that the best possible solution is achieved. In addition, this can be realised without needing to request that the Minister approve the time extension.
- 53 The Commission notes that the costs associated with the alternate option are limited to:
- direct administrative costs of proposing and processing the rule change;
 - any costs that arise as a result of loss of urgency resulting from the Commission having the discretion to allow itself additional time to consider submissions and make recommendations; and
 - any costs arising from additional time taken by Commissioners, Commission staff and advisors to undertake additional work during this lengthened period. Note that, as with the proposed option, it is believed that this last category of costs will provide direct benefits (as described above).

Extent the Objective is Promoted or Achieved by the Alternate Option

- 54 The alternate option achieves the objective of providing for the possibility that the Board may require additional time, whilst maintaining flexibility, by allowing the Board, at its discretion, to allow itself additional time to consider submissions and determine an appropriate transmission agreement structure.

Q6 Do submitters agree with the identified costs and benefits of the alternate option?

Summary and Conclusion

- 55 The Commission believes that it would be more appropriate for the Minister to approve any time extensions. Placing the obligation with the Minister is consistent with existing rules of this type, and avoids the perception (or potential outcome) that it is easy to extend the time period because it is an internal Commission process.

- 56 Based on the assessment of costs and benefits discussed above, the proposal is considered most appropriate.

Q7 Do submitters agree that the proposed option should be progressed in preference to the alternate option?

OTHER MEANS TO ACHIEVE THE OBJECTIVE OTHER THAN AN AMENDMENT TO THE RULES

- 57 The Commission notes that the objective of the proposal (i.e. to increase the length of time the Board has to consider submissions and develop solutions, whilst retaining flexibility) is unlikely to be satisfactorily achieved by any reasonably practicable means other than to amend the rules because the timeframe for consideration of submissions and for the determination of an appropriate structure for transmission agreements is currently set out in the rules.

APPENDIX TWO: PROPOSED RULE CHANGES

58 Amend rule 2.1.5.1 of section II of part F, as follows, by inserting the underlined words into the rule:

“2.1.5.1 Within 20 **business days** of the **submission expiry date** (or such longer period as the Minister may allow), the **Board** must complete its consideration of all submissions it receives and determine an appropriate **transmission agreement** structure.”

59 Amend the definition of “Board” and “transmission pricing methodology” in part A as follows, by inserting the underlined words into the rule and deleting the words that are struck out:

““**Board**” means the Electricity ~~Governance Board~~ Commission ~~established~~ continued under subpart 1 of part 15 of the Act;”

““**transmission pricing methodology**” means the pricing methodology developed in accordance with section ~~IV~~ IV of part F;”

APPENDIX THREE: CONSIDERATION AGAINST OBJECTIVES

Objectives	Response
Objectives: Under s172N of the Act, the principal objectives of the Commission are:	
<ul style="list-style-type: none"> to ensure that electricity is produced and delivered to all classes of consumers in an efficient, fair, reliable, and environmentally sustainable manner; and to promote and facilitate the efficient use of electricity 	<p>This proposed change will allow the Minister to grant the Commission greater time (if required) to consider and determine a transmission agreement structure that supports fair and efficient transmission pricing. Sufficient time needs to be allowed for optimal decision-making – a rushed consideration of submissions could risk sub-optimal decisions being made.</p>
Outcomes Under the s172N of the Act and under the GPS, the Commission’s specific outcomes are as follows:	
<ul style="list-style-type: none"> energy and other resources are used efficiently 	<p>The transmission agreement structure supports the achievement of transmission objectives, including efficient pricing and incentives for long term investment in transmission or transmission alternatives.</p>
<ul style="list-style-type: none"> risks (including price risks) relating to security of supply are properly and efficiently managed 	
<ul style="list-style-type: none"> barriers to competition in the electricity industry are minimised for the long-term benefit of end-users 	
<ul style="list-style-type: none"> incentives for investment in generation, transmission, lines, energy efficiency, and demand-side management are maintained or enhanced and do not discriminate between public and private 	

Objectives	Response
investment	
<ul style="list-style-type: none"> the full costs of producing and transporting each additional unit of electricity are signalled 	
<ul style="list-style-type: none"> delivered electricity costs and prices are subject to sustained downward pressure; 	
<ul style="list-style-type: none"> the electricity sector contributes to achieving the Government's climate change objectives by minimising hydro spill, efficiently managing transmission and distribution losses and constraints, promoting demand-side management and energy efficiency, and removing barriers to investment in new generation technologies, renewables and distributed generation. 	
Transmission Objectives: Under paragraph 80 of the GPS, the Government's objectives for the provision of transmission services are that:	
<ul style="list-style-type: none"> the services are provided in a manner consistent with the Government's policy objectives for electricity 	
<ul style="list-style-type: none"> the services should be provided at the standards of power quality and grid reliability required by grid users and 	

Objectives	Response
<p>consumers as determined by the Electricity Commission</p>	
<ul style="list-style-type: none"> • the efficiency of transmission services should be continuously improved so as to produce the services grid users and consumers want at least cost, and 	<p>This proposed change will allow the Minister to grant the Commission greater time (if required) to consider and determine a transmission agreement structure that supports continuous efficiency improvements in the provision of transmission services. Sufficient time needs to be allowed for optimal decision-making – a rushed consideration of submissions could risk sub-optimal decisions being made.</p>
<ul style="list-style-type: none"> • the services are priced in a manner that: <ul style="list-style-type: none"> ○ is transparent ○ fully reflects their costs including risk ○ facilitates nationally efficient supply, delivery and use of electricity ○ promotes efficient investment in transmission or transmission alternatives ○ promotes nationally efficient use of transmission services by grid users and consumers. 	<p>This proposed change will allow the Minister to grant the Commission greater time (if required) to consider and determine a transmission agreement structure that supports the pricing methodology. Sufficient time needs to be allowed for optimal decision-making – a rushed consideration of submissions could risk sub-optimal decisions being made.</p>
<p>Transmission Outcomes: Under paragraph 96 of the GPS, the Government wants the Commission to achieve the following timetable:</p>	
<ul style="list-style-type: none"> • Development of draft benchmark agreements June 2005 • Publication of transmission pricing 	<p>This proposal allows the Commission to meet the June 2005 target for the draft Benchmark Agreements.</p>

Objectives	Response
<p>guidelines December 2004</p> <ul style="list-style-type: none"> • Approval of initial grid upgrade plan September 2005 (assuming that a public conference is not required) • Progress report on development of FTRs June 2005 	

APPENDIX FOUR: FORM OF SUBMISSION

Question No.	Support/ No support/ conditional	Comment
Q1 Do submitters agree with the objective of the rule change as outlined in paragraph 35?		
Q2 Do submitters agree with the wording of the Commission’s proposed rule change to rule 2.1.5.1 of section II of part F to insert the words “(or such longer period as the Minister may allow)” after the words “ submission expiry date ”?		
Q3 Do submitters believe that there are any other reasonably practicable options for achieving the objective of the proposal?		
Q4 Do submitters agree with the Commission’s decision to discount the third option because it is not a reasonably practicable option as it does not achieve the flexibility that the Commission is seeking in the objective of the proposal?		
Q5 Do submitters agree with the identified costs and benefits of the proposed option?		

Question No.	Support/ No support/ conditional	Comment
Q6 Do submitters agree with the identified costs and benefits of the alternate option?		
Q7 Do submitters agree that the proposed option should be progressed in preference to the alternate option?		