



## **ELECTRICITY COMMISSION**

### **Consultation Paper**

**Rule change No. 10 made in November 2004  
under the urgency provisions contained in  
s172E(3) of the Electricity Act 1992**

**25 February 2005**

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## A. INTRODUCTION

### PURPOSE

- 1 In November 2004, an amendment was made to rule 5.3 of section IV of part F of the Electricity Governance Rules 2003 (“the rules”) using the urgency provisions contained in s172E(3) of the Electricity Act 1992 (“the Act”). Under s172E(3)(a) of the Act, the Electricity Commission (“Commission”) is required to consult on the amendments within 6 months of them being made in accordance with s172E(2)(b) of the Act.
- 2 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 rule change.
- 3 This paper includes a statement of proposal prepared in accordance with s172F of the Act.

### SUBMISSIONS

- 4 The Commission invites submissions on this paper by 5pm on 17 March 2005. Please note that submissions received after this date may not be able to be considered.
- 5 The Commission’s preference is to receive submissions in electronic format (Microsoft Word and/or pdf). This should be emailed with “Transmission Pricing Methodology Issues Paper Assessment Period” in the subject header to [info@electricitycommission.govt.nz](mailto:info@electricitycommission.govt.nz). In addition, a hard copy of the submission should be posted to the address below:

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- 6 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.
- 7 Submissions should be provided in the format shown in Appendix Three. 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**

- 8 The Minister of Energy ("Minister") may make a rule for all or any of the purposes for which an electricity governance regulation may be made.<sup>1</sup> A rule may be made by publishing a notice in the Gazette.<sup>2</sup>
- 9 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.<sup>3</sup>
- 10 The Commission must, in formulating recommendations, give effect to its principal objectives and specific outcomes and its GPS<sup>4</sup> objectives and outcomes.<sup>5</sup> The Minister must have regard to a recommendation by the Commission in exercising any of his functions or powers in relation to rules.<sup>6</sup>
- 11 Under s172E(2)(b), before making a recommendation, the Commission must:
- (a) Undertake an assessment under s172F, as described in paragraph 12 below;
  - (b) Consult with persons that the Commission thinks are representative of the interests of persons likely to be substantially affected by the proposed rules;
  - (c) Give those persons the opportunity to make submissions; and
  - (d) Consider those submissions.
- 12 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;
  - (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;
  - (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

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<sup>1</sup> Section 172H of the Act.

<sup>2</sup> Section 172I.

<sup>3</sup> Section 172E(2)(a).

<sup>4</sup> Government Policy Statement on Electricity Governance October 2004

<sup>5</sup> Section 172X.

<sup>6</sup> Section 172Z.

- (d) Prepare a statement of proposal for the purpose of consultation under s172E(2)(b)(ii).<sup>7</sup>
- 13 Section 172E(3) provides that the obligations under s172E(2)(b) and s172F (which relate to consultation and assessments) do not apply if the Commission considers that it is necessary or desirable in the public interest that the proposed rules be made urgently, and, in this case, the recommendation must state that it is made in reliance on that subsection.
- 14 The amendment to rule 5.3 of section IV of part F of the Rules, promulgated in November 2004, was made using these urgency provisions.
- 15 Within 6 months of the rule being made, consultation and the assessment (in accordance with s172E(2)(b) and s172F) must be carried out, and the Commission must then make a recommendation to the Minister, on whether or not the rule should be revoked, replaced, or amended. Also within that 6 months, the Minister must publish a notice in the Gazette stating whether or not he decides to recommend the revocation, replacement, or amendment of the rule and explaining the reasons for that decision (or stating where copies of that explanation may be obtained).
- 16 This consultation paper (including the assessment detailed in this paper) has been prepared in accordance with s172E(3). Following consultation the Commission must make a recommendation to the Minister and the Minister must gazette his notice stating whether or not he decides to revoke, replace or amend the rule by 1 May 2005.

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<sup>7</sup> 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.

## C. PROPOSED CHANGE TO RULE 5.3 OF SECTION IV OF PART F

### SUMMARY OF RULE CHANGE

- 17 As set out in section B of this paper, s172E(3) of the Act provides that the obligations under s172E(2)(b) and s172F of the Act (which relate to consultation and assessments) do not apply if the Commission considers that it is necessary or desirable in the public interest that the proposed rules be made urgently, and, in this case, the recommendation must state that it is made in reliance on that subsection.
- 18 On 1 November 2004, in reliance on s172E(3) of the Act, the Minister made a rule to permit the Minister to allow the Commission a greater period than 20 business days in which to complete its consideration and make a final recommendation on the transmission pricing methodology process and guidelines.
- 19 The rule change made on 1 November 2004 was to amend rule 5.3 of section IV of part F by inserting a new phrase as underlined below:
- “5.3 Board to consider submissions**
- 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 on the issues paper.”
- 20 Submitters should note that this rule change did not automatically grant the Board the right to additional time for consideration of submissions. Rather, it provided the Minister with the discretion to allow additional time.
- 21 The rule came into force on 2 December 2004. Submitters should note that, consequent on the rule change being made, the Commission requested, and the Minister granted, an extension of time for the Commission to consider submissions on the guidelines issues paper. The guidelines themselves were published by the Commission on 22 December 2004.
- 22 Although the rule change came into force and was utilised by the Board in December 2004, s172E(3)(a) requires the Commission to consult within 6 months of the rule change being made. In addition, should the Commission consider that rule changes to clarify the ability of the Commission to review the guidelines in future are appropriate, this rule change may be a relevant consideration in any subsequent review.
- 23 The requirement under s172E(3) is that the Commission consult and carry out an assessment in accordance with s172E(2)(b) and s172F of the Act. The rationale below details the basis upon which the Board recommended this urgent rule change in November 2004. The proposal outlined in this paper meets the requirement for the Board to consult on urgent rule changes within 6 months of the rule change being made.

## ANALYSIS

### *Rationale for Rule Change*

- 24 The issues paper on the transmission pricing methodology guidelines which was published in September 2004 required submitters to consider, and the Commission to evaluate, significant, varied, and detailed aspects of the transmission pricing methodology process. In addition, the Commission sought and evaluated the views of its Transmission Advisory Group ("TAG") and Transmission Pricing Advisory Group ("TPAG").
- 25 Given the importance, variety and number of issues required to be considered by the Commission during this process, the Commission believed that there would be advantages in having more than 20 business days for making evaluations and forming recommendations.
- 26 Accordingly, the Commission considered it appropriate to seek that the Minister be granted the power to allow the Board a greater period than 20 business days following submission expiry in which to complete its consideration and publish the guidelines and process. This was achieved by the inclusion of the words "(or such longer period as the Minister may allow)" after "within 20 business days" in rule 5.3 of section IV of part F.

## UNDERTAKING CONSULTATION AND ASSESSMENT WITHIN SIX MONTHS

- 27 Under s172E(3) of the Act, within six months of a rule being made under urgency, the Commission is required
- (a) to prepare a statement of proposal and carry out assessment and consultation required under ss172E and 172F of the Act; and
  - (b) to make a recommendation to the Minister on whether or not the rule should be revoked, replaced or amended.

### *Statement of Proposal and Assessment*

- 28 The Commission has prepared a statement of proposal in accordance with s172F(1) of the Act. The statement of proposal and assessment are set out in Appendix One of this paper.

### *Recommendation to Revoke, Replace or Amend*

- 29 The Commission considers that it would be prudent to retain the change made in November 2004 and not to revoke, replace or amend the change made to rule 5.3 of section IV of part F.
- 30 The Commission's reasoning for this is as follows:

- (a) Retaining this provision maintains the alignment with other areas of part F; and
- (b) Should the Commission consider it appropriate to seek rule changes to clarify the Commission's ability to review the guidelines in future, the provision for flexibility in the post consultation period is retained.

Q1	<i>Do submitters agree with the Commission's proposal to retain the change made to rule 5.3 of section IV of part F and not to recommend that it be revoked, replaced or amended?</i>
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### **CONSIDERATION AGAINST THE RELEVANT OBJECTIVES**

- 31 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.
- 32 Appendix Two outlines how the proposed rule amendments give effect to the Commission's relevant objectives and outcomes.

**APPENDIX ONE: STATEMENT OF PROPOSAL FOR PROPOSED CHANGE TO  
RULE 5.3 OF SECTION IV OF PART F**

- 33 Sections 172E and 172F of the Act set out the requirements on the Commission regarding consultation on, and assessment of, a rule before a recommending a rule change to the Minister.
- 34 In reliance on s172E(3) of the Act, a rule change was made under urgency on 1 November 2004. The statement of proposal and assessment outlined in this paper complies with the requirement for the Board to consult retrospectively on such ‘urgently passed’ rule changes within 6 months of the rule change being made.
- 35 This paper is a statement of proposal under s172F(2) of the Act, for the purposes of consultation under s172E(2)(b)(ii) of the Act. 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**

- 36 The objective of the proposed rule change is to:
  - (a) 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 issues paper on the transmission pricing methodology guidelines in order to undertake more robust analysis and achieve better outcomes; and
  - (b) provide flexibility as to the length of additional time allowed.

Q2 *Do submitters agree with the objective of the rule change as outlined in paragraph 36?*

- 37 Accordingly, the proposal is to amend rule 5.3 of section IV of part F by inserting a statement (as underlined below) into the rule:

**“5.3 Board to consider submissions**

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 on the issues paper.”

Q3 *Do submitters agree with the wording of the Commission’s rule change to rule 5.3 of section IV 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

- 38 The issues paper on the transmission pricing methodology guidelines which was published in September 2004 required submitters to consider, and the Commission to evaluate, significant, varied and detailed aspects of the transmission pricing methodology process. In addition the Commission sought and evaluated the views of TAG and TPAG.
- 39 Given the importance, variety and number of issues required to be considered by the Commission during this process the Commission believed that there would be advantages in having more than 20 business days for making evaluations and forming recommendations.
- 40 Accordingly, the Commission considered it appropriate to seek that the Minister be granted the power to allow the Board a greater period than 20 business days following submission expiry in which to complete its consideration and publish the guidelines and process.
- 41 In other places in 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, 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.

## OPTIONS FOR ACHIEVING THE OBJECTIVE OF THE PROPOSED RULE CHANGE

- 42 The Commission identified and considered three options to achieve the above objective:
- (a) the recommended option (“the proposal”), as outlined in paragraph 37 above;
  - (b) the alternate option, which was to make a similar change (to rule 5.3 of section IV 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
  - (c) 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.
- 43 The third option was discounted because it did not achieve the objective of providing flexibility regarding the length of the time period. This was not therefore considered a reasonably practicable option, and the Commission did not examine the option further.

*Q4 Do submitters believe that there are any other reasonably practicable options for achieving the objective of the proposal?*

**Q5** *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?*

*Recommended Option*

- 44 The Commission considered that it would be prudent for the Minister to have the power to allow the Board a longer consideration period than was provided for in rule 5.3 of section IV of part F, rather than the Board itself having this power.
- 45 This option had the advantage of ensuring that the final decision on any such extension rested with the Minister. It would require the Board to justify the additional time for consideration of submissions.

*Alternate Option*

- 46 The Commission considered a second option to meet the objective. The alternate option was a rule change (also to rule 5.3 of section IV of part F) that provided the Commission with the discretion to extend the time period rather than the Minister.
- 47 This option had the advantage that the Commission would not need to ask the Minister to approve additional time, should it require it. The disadvantage of this option was that it may have reduced the sense of urgency attached to the process, thereby causing delays in decision making, with the flow on costs associated with the resulting regulatory uncertainty.

**ASSESSMENT OF THE REASONABLY PRACTICABLE OPTIONS**

*Costs and Benefits of the Proposal*

- 48 The benefits arising from the proposal are as follows:
- (a) such a change brings rule 5.3 of section IV of part F into line with the provisions of other transmission rules, including rule 4.7 (in relation to grid reliability standards), rule 6.6 (in relation to the grid investment test) and rule 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; and
  - (b) subject to the Commission seeking rule changes to clarify its ability to review the guidelines and process in future, if submissions on the transmission pricing methodology process and guidelines issues paper (under any future review) are significant in number and complex, the Commission may apply for an extra period to

evaluate these. 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 and complex.

- 49 The Commission notes that the costs of the proposal are limited to:
- (a) the direct administrative costs of proposing and processing the rule change; and
  - (b) any costs arising from additional time taken by Commissioners, Commission staff and advisors to consider submissions on the transmission pricing methodology process and guidelines issues paper 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 proposed amendment to the rules achieves the objective of the proposal by allowing the Minister to, at his discretion, allow the Board additional time to consider submissions and determine an appropriate transmission pricing methodology process and guidelines.

<b>Q6</b> <i>Do submitters agree with the identified costs and benefits of the proposed option?</i>
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*Costs and Benefits of the Alternate Option*

- 52 The benefit that would arise from the alternate proposal is that, subject to the Commission seeking rule changes to clarify its ability to review the guidelines and process in future, if submissions on the transmission pricing methodology process and guidelines issues paper (under any future review) are significant in number, complex and conflicting, more time will be available to explore the underlying issues, and achieve the best possible solution. In addition, this can be achieved 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:
- (a) direct administrative costs of proposing and processing the rule change;

- (b) 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
- (c) 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 in paragraph 52 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 pricing methodology process and guidelines.

**Q7** *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 have the power to allow the Board a longer consideration period than was previously provided for in rule 5.3 of section IV of part F, rather than the Board itself having this power.
- 56 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.
- 57 Based on the costs and benefits discussed above, the proposed option is considered more appropriate.

**Q8** *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**

- 58 The Commission considers 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 achieved by any reasonably practicable option other than to amend the rules because the timeframe for consideration of submissions and for the determination of

appropriate transmission pricing methodology process and guidelines is currently set out in the rules.

## APPENDIX TWO: CONSIDERATION AGAINST OBJECTIVES

Objectives	Response
<b>Objectives:</b> Under s172N of the Act, the principal objectives of the Commission are:	
<ul style="list-style-type: none"> <li>to ensure that electricity is produced and delivered to all classes of consumers in an efficient, fair, reliable, and environmentally sustainable manner; and</li> <li>to promote and facilitate the efficient use of electricity</li> </ul>	<p>This change allows the Minister to grant the Commission greater time (if required) to consider and publish a transmission pricing methodology process and guidelines that provide for, amongst other things, fair and efficient transmission pricing.</p>
<b>Outcomes</b> Under the s172N of the Act and under the GPS, the Commission’s specific outcomes are as follows:	
<ul style="list-style-type: none"> <li>energy and other resources are used efficiently</li> </ul>	<p>The transmission pricing methodology process and guidelines and the transmission pricing methodology have an important role in supporting this objective to ensure that energy and other resources are used efficiently. 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"> <li>risks (including price risks) relating to security of supply are properly and efficiently managed</li> </ul>	
<ul style="list-style-type: none"> <li>barriers to competition in the electricity industry are minimised for the long-term benefit of end-users</li> </ul>	<p>As decisions on the transmission pricing methodology have long-term implications, additional time to consider submissions (if required) enables the Commission to ensure that a robust solution is achieved that minimises barriers to competition in the electricity industry in the long term.</p>
<ul style="list-style-type: none"> <li>incentives for investment in generation, transmission, lines, energy efficiency, and</li> </ul>	<p>Along with other tools, the transmission pricing methodology is an important mechanism to provide investment signals. The agreed transmission pricing</p>

Objectives	Response
demand-side management are maintained or enhanced and do not discriminate between public and private investment	methodology needs to provide incentives for investment in generation, transmission lines, energy efficiency and demand-side management that are maintained or enhanced on a non-discriminatory basis. It is important that the Commission has sufficient time to consider these important issues and interactions.
<ul style="list-style-type: none"> <li>the full costs of producing and transporting each additional unit of electricity are signalled</li> </ul>	A properly considered transmission pricing methodology process and guidelines has an important role to play in facilitating this objective.
<ul style="list-style-type: none"> <li>delivered electricity costs and prices are subject to sustained downward pressure</li> </ul>	<p>Providing the right incentives through the transmission pricing methodology is likely to contribute to the optimal use of resources and therefore downward pressure on prices.</p> <p>It is important that the Commission has sufficient time to consider submissions on the transmission pricing methodology process and guidelines in order to ascertain which incentives are best placed to provide these incentives.</p>
<ul style="list-style-type: none"> <li>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</li> </ul>	

Objectives	Response
<b>Transmission Objectives:</b> Under paragraph 80 of the GPS, the Government's objectives for the provision of transmission services are that:	
<ul style="list-style-type: none"> <li>• the services are provided in a manner consistent with the Government's policy objectives for electricity</li> </ul>	
<ul style="list-style-type: none"> <li>• the services should be provided at the standards of power quality and grid reliability required by grid users and consumers as determined by the Commission</li> </ul>	
<ul style="list-style-type: none"> <li>• the efficiency of transmission services should be continuously improved so as to produce the services grid users and consumers want at least cost, and</li> </ul>	
<ul style="list-style-type: none"> <li>• the services are priced in a manner that:             <ul style="list-style-type: none"> <li>○ is transparent</li> <li>○ fully reflects their costs including risk</li> <li>○ facilitates nationally efficient supply, delivery and use of electricity</li> <li>○ promotes efficient investment in transmission or transmission alternatives</li> </ul> </li> </ul>	<p>Along with other tools, the transmission pricing methodology is an important mechanism to provide investment signals. The agreed transmission pricing methodology needs to provide incentives for investment in generation, transmission lines, energy efficiency and demand-side management that are maintained or enhanced on a non-discriminatory basis. It is important that the Commission has sufficient time to consider these important issues and interactions.</p>

Objectives	Response
<ul style="list-style-type: none"> <li>○ promotes nationally efficient use of transmission services by grid users and consumers.</li> </ul>	
<b>Transmission Outcomes:</b> Under paragraph 96 of the GPS, the Government wants the Commission to achieve the following timetable:	
<ul style="list-style-type: none"> <li>• Development of draft benchmark agreements June 2005</li> <li>• Publication of transmission pricing guidelines December 2004</li> <li>• Approval of initial grid upgrade plan September 2005 (assuming that a public conference is not required)</li> <li>• Progress report on development of FTRs June 2005</li> </ul>	

### APPENDIX THREE: FORM OF SUBMISSION

Question No.	Support/ No support/ conditional	Comment
Q1 <i>Do submitters agree with the Commission's proposal to retain the change made to rule 5.3 of section IV of part F and not to recommend that it be revoked, replaced or amended?</i>		
Q2 <i>Do submitters agree with the objective of the rule change as outlined in paragraph 36?</i>		
Q3 <i>Do submitters agree with the wording of the Commission's rule change to rule 5.3 of section IV of part F to insert the words "(or such longer period as the <b>Minister</b> may allow)" after the words "<b>submission expiry date</b>"?</i>		
Q4 <i>Do submitters believe that there are any other reasonably practicable options for achieving the objective of the proposal?</i>		

Question No.	Support/ No support/ conditional	Comment
Q5 <i>Do submitters agree with the Commission's decision to discount the third option because it does not achieve the flexibility that the Commission is seeking in the objective of the proposal?</i>		
Q6 <i>Do submitters agree with the identified costs and benefits of the proposed option?</i>		
Q7 <i>Do submitters agree with the identified costs and benefits of the alternate option?</i>		
Q8 <i>Do submitters agree that the proposed option should be progressed in preference to the alternate option?</i>		