

# Electricity Market Compliance Framework Review - Update

March 2009



## Executive summary

In 2007 the Commission reviewed the Electricity Market Compliance Framework, covering the compliance regime established under the Electricity Governance Regulations 2003 (Regulations) which governs both the Regulations and the Electricity Governance Rules 2003 (Rules).

The Commission consulted with industry on the review and obtained industry feedback on the changes the industry wanted made to the Compliance Framework.

Since that consultation the Commission has implemented a number of initiatives to address the issues participant's raised with the Framework.

In this document the Commission provides participants with an update on the actions it has taken to address the issues raised in consultation on the Framework, and seeks feedback on further steps participants may want the Commission to take.

## Glossary of abbreviations and terms

<b>Commission</b>	Electricity Commission
<b>Minister</b>	Minister of Energy and Resources
<b>Act</b>	Electricity Act 1992
<b>Rules</b>	Electricity Governance Rules 2003
<b>Regulations</b>	Electricity Governance Regulations 2003

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## 1. Introduction and purpose of this paper

### 1.1 Purpose of this paper

1.1.1 The purpose of this paper is to seek the views of participants and interested parties on the initiatives the Commission has implemented following the Commission's Electricity Market Compliance Framework Review.

1.1.2 The Commission invites submissions on this update paper and the questions asked at the end of the paper.

### 1.2 Submissions

The Commission's preference is to receive submissions in electronic format (Microsoft Word). It is not necessary to send hard copies of submissions to the Commission, unless it is not possible to do so electronically. Submissions in electronic form should be emailed to [submissions@electricitycommission.govt.nz](mailto:submissions@electricitycommission.govt.nz) with Electricity Market Compliance Framework Update in the subject line.

If submitters do not wish to send their submission electronically, they should post one hard copy of their submission to the address below.

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Electricity Commission  
Level 7, ASB Bank Tower  
2 Hunter Street  
Wellington

Tel: 0-4-460 8860

Fax: 0-4-460 8879

1.2.1 Submissions should be received by 4pm on 15 May 2009. Please note that late submissions may not be considered.

1.2.2 The Commission will acknowledge receipt of all submissions electronically. Please contact Maree McGregor if you do not receive electronic acknowledgement of your submission within two business days.

1.2.3 If possible, submissions should be provided in the format shown in Appendix 1. 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. However, all

information provided to the Commission is subject to the Official Information Act 1982.

## 2. Background

### 2.1 Electricity Market Compliance Framework Review

2.1.1 In August 2007 the Electricity Commission (Commission) released a consultation paper titled Consultation on Electricity Market Compliance Framework Review, (the consultation paper).

2.1.2 The consultation paper provided market participants with information on the Commission's compliance philosophy and its approach to applying the compliance regime under the Electricity Governance Regulations 2003 (Regulations) and the Electricity Governance Rules 2003 (Rules).

2.1.3 In the consultation paper the Commission sought participants' comments on the regulatory framework and the approach the Commission had taken in implementing the regulatory requirements.

2.1.4 The Commission received submissions from 13 market participants which raised issues and suggested changes to the compliance framework.

2.1.5 In August 2008 the Commission held a compliance conference at which it updated the industry on the outcomes of the consultation and informed participants on what the Commission proposed to do to address the issues raised. The Commission also presented its revised Compliance Philosophy at the conference.

2.1.6 The Commission undertook to review the impact of the initial actions in March 2009 and to provide market participants with a progress report. This report provides an update on actions taken so far.

2.1.7 The Commission's Compliance Philosophy is to encourage continuous improvement in the operation of the electricity market. With this in mind the Commission is seeking feedback on the impact of the initial changes made and the extent to which participants feel that regulatory and other changes are required.

### 2.2 Issues raised during the Compliance Framework Review

2.2.1 In general the view of participants was that the regulatory framework and the Commission's approach to applying the framework was "on track", but a number of desirable improvements were suggested.

2.2.2 The Commission has analysed the issues raised by participants and has identified four main types of improvements that were common to a number of submissions:

- a. greater transparency: participants want the Commission to make it clearer what its philosophy, processes, procedures and criteria are;
- b. more opportunities to learn: participants want to receive from the Commission information that can help them learn how the Commission approaches implementing the compliance framework and how they can expect the Commission to act;
- c. clarity on interpretation of the Rules: participants want more guidance on the Commission's approach to interpreting the Rules; and
- d. improved process and timing: participants want some changes to both the regulatory framework and the way the Commission operates that would improve the processes and reduce the perceived delays arising from current practice.

### 3. Analysis

#### 3.1 Commission's actions so far

- 3.1.1 After analysing all the issues raised by participants the Commission decided on a progressive approach whereby it prioritised and took immediate action on those issues that did not require regulatory change. The Commission also sought to address suggestions that enjoyed a level of consensus between participants.
- 3.1.2 The Commission gave priority to the four broad areas of improvement that were commonly expressed (listed in paragraph 2.2.2).
- 3.1.3 The Commission identified which of those suggestions would, if implemented have the most impact on addressing participants' issues, and prioritised changes that could be implemented quickly.
- 3.1.4 The Commission's intention was to review the impact of its initial actions after six months (March 2009) and consider to what extent regulatory and other change might still be required.

#### 3.2 Desired outcome: Greater transparency

##### The issue

- 3.2.1 Participants asked the Commission to improve the transparency of its compliance function. They wanted more information published on how the Commission's compliance regime works. They considered that greater transparency would provide them with a number of things including more certainty about what to expect from the Commission.
- 3.2.2 Some of the specific requests for improved transparency included publishing the Commission's compliance philosophy and its criteria for assessing notifications.

##### Actions taken

- 3.2.3 The Commission has taken the following actions to improve the transparency of its compliance functions:

Revised Compliance Philosophy published
Breach Assessment Criteria published
Rule and Regulation Breach Operating Procedures revised and

published
Low Fixed Charge Tariff and Security of Supply Regulation Operating Procedures published
Complaints under Distributed Generation Regulations – operating procedures published
Improved the visibility of the Commission and the Market Governance team and its activities through site visits by Investigators and a team visit to selected industry sites

### 3.3 Desired outcome: More opportunities to learn

#### The issue

- 3.3.1 Participants wanted the Commission to expand the work it does educating participants about the compliance framework and how the Commission operates in it.
- 3.3.2 While there was consensus that it would be useful to learn from the Commission’s Rule breach decisions, there was no clear consensus on the extent to which information that the Commission historically hadn’t published should be made available to participants for educational purposes.
- 3.3.3 Participants requested the Commission publish guidance material and examples of its approaches to particular issues and lessons learned from investigations. Some also asked for summary statistics on breach notifications to be released so they could learn from that information.

#### Actions taken

- 3.3.4 The Commission has taken the following actions to increase the opportunities for market participants to learn from the Commission’s decisions:

<p>Published Market Governance updates after each meeting of the Electricity Governance Rules Committee (EGR Committee) which:</p> <ul style="list-style-type: none"> <li>• keep market participants informed of topical issues the Committee want to draw to participants’ attention;</li> <li>• provide statistics on the notifications of rule breaches the Committee considered at its most recent meeting, including numbers of breaches, which rules were alleged to have been breached and whether the breach was self-reported;</li> <li>• update participants on the Commission’s compliance</li> </ul>
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<p>initiatives; and</p> <ul style="list-style-type: none"> <li>• keep participants in touch with developments from the Commission's Market Governance team.</li> </ul>
<p>Published two case studies, targeted at the most commonly breached rule (rule 4.11 of section II of part G) which provided:</p> <ul style="list-style-type: none"> <li>• information on the factors the Commission considers when deciding on notifications of 4.11 breaches;</li> <li>• an analysis of previous breaches that the Commission decided;</li> <li>• a sample case and Commission decision based on a number of real cases; and</li> <li>• tips from Commission staff about how to avoid breaching the rule.</li> </ul>
<p>Conducted "hot topic" sessions at the Commission's compliance conference to provide guidance and discuss lessons learned from topical issues</p>
<p>The Commission plans on making its Compliance Conference an annual event and is planning on holding more compliance sessions at Commission conferences focussing on the issues relevant to specific sectors. e.g. compliance metering.</p>

### 3.4 Desired outcome: Clarity on interpretation of the Rules

#### The issue

- 3.4.1 Participants wanted greater clarity on the Commission's interpretation of the Rules. They considered that if the Commission would confirm its interpretation of the Rules participants would have greater certainty about how the Rules would be applied.
- 3.4.2 The Commission acknowledges that it is not the final decision maker on the definitive interpretation of the rules. This is the function of the Rulings Panel and ultimately the courts and interpretation issues are decided on a case by case basis.
- 3.4.3 The Commission is willing to provide non-binding guidance on how it will approach certain interpretation issues in order to assist participants. However, participants need to seek their own advice and make their own decisions on interpretation issue.

### Actions taken

3.4.4 The Commission has taken the following steps to provide greater clarity on its interpretation of the Rules:

Published case studies targeted at the most commonly breached rule (rule 4.11 of section II of Part G) which provided information on the Commission's approach to interpreting the rule.
Commenced project to provide industry guidance on the meaning of "quality and security breaches" (outcome to be provided within the next few months).
Confirmed the Commission's willingness to provide guidance on the interpretation of particular rules when requested.
Reporting to participants, through the Market Governance updates, on rule breaches and any interpretation issues arising from that.

3.5 Desired outcome: Improve process and timing issues

### The issue

3.5.1 Participants had many suggestions about how to improve the process of assessing rule breach notifications that might save time for both the Commission and the industry. In particular there were comments about the level of involvement that the Regulations require the Commission to have in what amount to relatively minor rule breaches. A number of participants wanted the ability to handle minor breaches in-house.

3.5.2 The issues raise in this area included:

- a. Breaches - minor vs. material;
- b. Breaches - notifications, withdrawals and information;
- c. Investigations – notifications, parties and withdrawals;
- d. Liability limits;
- e. Rulings Panel; and
- f. Settlements.

3.5.3 As stated above (in paragraph 3.1.3) the Commission has chosen to focus its resources on making those changes that can have the most impact on addressing participants' issues, and prioritised changes that could be implemented quickly and without regulatory change.

- 3.5.4 Most of the process and timing issues raised require regulatory change.
- 3.5.5 However, in the interest of transparency the Commission has revised and published its own internal operational procedures which should provide participants with some guidance on how the Commission implements the timing and process requirements under the regulations (as they currently stand).
- 3.5.6 The Commission is seeking feedback on the extent to which participants feel that regulatory change is still required.

#### Actions taken

- 3.5.7 The Commission has taken the following steps to improve the process and timing of its handling of rule breach allegations:

Rule and Regulation Breach Operating Procedures revised and published
Low Fixed Charge Tariff and Security of Supply Regulation Operating Procedures published
Complaints under Distributed Generation Regulations – operating procedures published

### 3.6 Issues still to be progressed

- 3.6.1 The Commission recognises that there are a number of suggestions for change to the compliance framework, particularly those involving changes to the Regulations which have not been implemented in this first round of implementation.
- 3.6.2 That does not mean that they have been disregarded or forgotten. After the Commission receives feedback on this first round of implementation it will look again at the issues that have not been implemented and assess whether and how to progress these issues.

### 3.7 Your feedback/submissions

- 3.7.1 We acknowledge and thank participants for the role you have played in improving the Commission's compliance framework so far. More changes will happen but first, we'd like to see what you think about the changes we've made so far.

- 3.7.2 It may be that changes to the Regulations are considered as part of our review. This document does not represent the commencement of formal consultation on any regulation change. If such changes are proposed, the Commission will consult further on proposed Regulation changes in accordance with the requirements set out in the Electricity Act 1992.
- 3.7.3 Our review is designed as an open end process where the Commission will receive regular feedback from the industry in regard to all compliance matters. This update paper is part of this of this ongoing process.
- 3.7.4 Attached as Appendix 1 is a feedback questionnaire that would help us gather your thoughts.

# Appendices

Appendix 1    Format for submissions

## Appendix 1 Format for submissions

Question No.	General comments in regards to the:	Response
Q1	Has the revision and publication of the Commission's Compliance Philosophy, Operating Procedures, and the Breach Assessment Guidelines improved the transparency?	
Q2	Do you find the Market Governance updates useful for learning about the Commission's compliance functions?	
Q3	<p>Do you find the following topics covered in the Market Governance updates helpful?</p> <ul style="list-style-type: none"> <li>• Rule breach notifications considered at last EGR Committee meeting</li> <li>• Rule breach notification statistics</li> <li>• Update on compliance initiatives</li> <li>• EGR Committee comments on topical issues</li> <li>• Market Governance staff activities</li> </ul>	
Q4	What improvements should be made to the Market Governance updates?	
Q5	Are the case studies helpful?	
Q6	How can they be improved?	

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?	
Q8	Have the case studies and Market Governance updates improved your clarity on how the Commission interprets the Rules?	
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?	
Q10	What other initiatives would help provide clarity on the Commission’s interpretation of the Rules?	
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?	
Q12	What other non-regulatory changes could the Commission make to its procedures to eliminate timing and process issues?	
Q13	Are regulatory changes still needed and if so what aspect of the compliance regulatory framework should be given priority?	