

# Guidelines on preparing and submitting Rule change proposals

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## Executive summary

1. The Electricity Commission (Commission) administers the Electricity Governance Rules 2003 (Rules). The Rules regulate the behaviour of market participants in New Zealand's electricity market. Rule development and maintenance is a core function of the Commission.
2. The purpose of these guidelines is to provide practical guidance to people wanting to propose changes to the Rules. The document provides guidance on:
  - (a) who can propose a rule change;
  - (b) how to submit a rule change proposal;
  - (c) the information that needs to be included in a rule change proposal; and
  - (d) how to check on progress of a rule change proposal.
3. The guidelines also inform people about what to expect from the Commission when they propose a rule change. They can expect their proposal to be acknowledged within 1 week of the Commission receiving it and for an initial decision on how it will be categorised in the Commission's workplan within a maximum of 3 months.
4. The initial prioritisation and categorisation of each proposal will be based on the proposal's merits as assessed against the Commission's statutory objectives and the following non-exhaustive criteria:
  - (a) Importance to the industry;
  - (b) Impact on security;
  - (c) Market impact;
  - (d) Size;
  - (e) Relative priority with reference to other proposals and projects;
  - (f) Interrelation with other proposals and projects;
  - (g) Resources; and
  - (h) Timing.
5. Through publishing these guidelines, the Commission aims to make the progress and status of rule change proposals more transparent.

## Background

6. Amendments to the Rules can only be made by the Minister of Energy and Resources (Minister) on the recommendation of the Commission, and the Rules must comply with the requirements of the Electricity Act 1992 (Act)<sup>1</sup>. The Act establishes the purposes for which rules can be made, and the process that the Commission must follow when recommending changes to the Rules.<sup>2</sup>
7. The statutory purposes and processes are structured in such a way that a reasonably demanding merit, value and consultation threshold must be met before a rule change proposal may be recommended to the Minister.
8. It is the Commission's philosophy to promote the continuous improvement and development of the Rules. Rule development takes place in the context of the Commission's obligations under the Act, the Electricity Governance Regulations, and the Government Policy Statement on Electricity Governance (GPS).
9. Under the GPS the Commission is required, wherever possible, to use its powers of persuasion and promotion, and provision of information, guidelines and model arrangements to achieve its statutory objectives rather than recommending a rule or regulation change to the Minister.
10. In addition, under the Act the Commission must, as part of the process for assessing a proposed rule or regulation change, seek to identify all reasonably practicable options and ensure that the objective of any proposed change is unlikely to be satisfactorily achieved by any reasonably practicable means other than the making of the rule or regulation.
11. The GPS also expects the Commission to prioritize work on objectives and outcomes. The Commission does this through its workplan process and allocates resources accordingly. The Commission confirms its Workplan priorities through the appropriation consultation process.
12. All this means that not all rule change proposals will be able to be progressed in the year they are submitted. In some cases a proposal will not be progressed at all.

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<sup>1</sup> Available at [www.legislation.govt.nz](http://www.legislation.govt.nz)

<sup>2</sup> Sections 172H, 172H(3)

## Who can propose a rule change?

13. Rule change proposals can be submitted to the Commission by any person, regardless of whether they are a market participant or not. The person can be an individual, a company, or any other type of legal entity.

## How to submit a rule change proposal

14. The Commission prefers, but it is not compulsory, that rule change proposals are submitted using the electronic form available on the Commission's website. The advantage of using this form is that it reduces the time taken to assess proposals because it:
  - (a) clearly identifies proposals as rule change proposals requiring assessment; and
  - (b) prompts proposers to provide information which is required for assessment.
15. Proposers who want to submit rule change proposals but do not wish to use the electronic form on the Commission's website should provide written proposals, but should clearly identify the proposal as a rule change proposal to ensure it is treated as such.
16. The Commission's policy is to acknowledge receipt by writing to the proposer, within one week of receiving a rule change proposal. If you do not receive an acknowledgement within one week of submitting your proposal, please contact the General Manager.

## Information to include in a rule change proposal

### ***Subject matter of the proposal***

17. The Act provides that Rules can only be made for a purpose for which an electricity governance regulation can be made.
18. Electricity governance regulations can only be made for a purpose authorised by the Act.
19. A rule change proposal must, therefore, relate to one of the purposes for which Rules can be made, and which the Commission is authorised to consider, as recorded in section 172D of the Act.

20. Where a proposal relates to an existing rule, a reference to the existing rule number should be included in the proposal.
21. Where a proposal proposes a new rule, the subject matter of the new rule should be stated in the proposal.

### ***Content of the proposal***

22. Any information that a proposer includes in their proposal that is relevant to these requirements will aid the Commission's consideration of the proposal, and may reduce the time the Commission needs to spend gathering information. To this end the Commission recommends that proposals include the following information:
  - a description of the changes that are proposed to be made to the Rules<sup>3</sup>;
  - identify whether, in your opinion the proposed change is urgent, non-urgent, minor<sup>4</sup> or non-minor and provide reasons;
  - a statement of the objective of the proposal;
  - comment on reasonably practicable options for achieving that objective<sup>5</sup>;
  - a consideration of the costs and benefits of the reasonably practicable options (both regulatory and non-regulatory options)<sup>6</sup>;
  - comment on the extent to which the objective would be promoted or achieved by each of the reasonably practicable options<sup>7</sup>;
  - if a preferred option is identified, give reasons why that option is preferred over any other options;

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<sup>3</sup> The Commission in completing its assessment under s172F is required to prepare a statement of the proposal for consultation that includes a statement of the proposal, reasons for it, an assessment of the options, and any other relevant information (see s172F(2) of the Act).

<sup>4</sup> The Act contains an alternative process for urgent rule changes. The alternative process applies if the Commission considers it necessary or desirable in the public interest that the proposed change be made urgently (section 172E(3) of the Act). A rule change is minor if the Commission considers that the effect of the proposal is minor and will not adversely affect the interests of any person in a substantial way (section 172F(3) of the Act).

<sup>5</sup> Section 172F(1)(a) of the Act.

<sup>6</sup> Section 172F(1)(b)(i) of the Act.

<sup>7</sup> Section 172F(1)(b)(ii) of the Act.

- identify anyone who is likely to be substantially affected by the proposal<sup>8</sup>;
- any other relevant information<sup>9</sup>.

### ***Draft of the rule change***

23. Providing a draft of the proposed rule change is optional. Drafts can help the Commission understand the problem a proposer seeks to address, or the extent to which the proposer considers the Rules need to change. The Commission emphasises that any drafts provided will be considered but may not necessarily be reflected in Commission recommendations.
24. The Commission has prepared a [Rulebook Drafting Manual](#) which sets out guidelines for drafting rules in accordance with accepted legislative drafting conventions which proposers should refer to if submitting proposed drafting changes.

## The rule change process

25. The Commission will process all proposals in accordance with the provisions of the Act, and the Commission's policies. Broadly the Commission's role in the rule change process involves seven steps:
  - (a) initial assessment of the proposal;
  - (b) substantive analysis<sup>10</sup>;
  - (c) pre-consultation;
  - (d) consulting on the proposals<sup>11</sup>;
  - (e) making recommendations to the Minister<sup>12</sup>;
  - (f) effecting the Minister's decision; and

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<sup>8</sup> Section 172E(2)(b)(ii) of the Act.

<sup>9</sup> Section 172F(1)(b)(iii) of the Act.

<sup>10</sup> Section 172E(2)(b)(i) of the Act requires the Commission to undertake an assessment under section 172F of the Act.

<sup>11</sup> Section 172E(2)(b)(ii),(iii), and (iv) of the Act.

<sup>12</sup> In formulating recommendations the Commission is required to give effect to its principal objectives and specific outcomes and its GPS objectives and outcomes (section 172X). Under section 172E(2)(c) the Commission is required to publicise the recommendation it made to the Minister and the assessment it made under section 172F.

(g) if appropriate notifying the rule change<sup>13</sup>.

26. The Commission has operating procedures covering the steps that staff follow to progress rule change proposals. The operating procedures are available on the Commission's website [www.electricitycommission.govt.nz](http://www.electricitycommission.govt.nz).
27. Not all proposals will proceed to consultation or be the subject of recommendations to the Minister. This will depend on (among other things) how the proposal is prioritised following the Commission's Workplan appropriation consultation.
28. The Commission exercises its discretion, within legal and regulatory requirements, to decide which proposals will be the subject of recommendations to the Minister and which proposals will not. The Commission will advise proposers of whether or not their proposal will be the subject of recommendations to the Minister.
29. The table below summarises the rule change process:

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<sup>13</sup> Under section 172I of the Act, amendments to the Rules are made by the Minister publishing a notice in the *Gazette*.

<p>Step 1</p>	<p><u>Receipt and initial assessment</u></p> <p>The Commission receives and acknowledges proposals then completes a two part assessment:</p> <ul style="list-style-type: none"> <li>• Part 1: the proposal is assessed to determine whether it is for a purpose authorised by section 172D of the Act; and</li> <li>• Part 2: the proposal is categorized to identify when the Commission can progress the proposal.</li> </ul> <p>If the proposal is not for a purpose authorised by section 172D, the proposer is advised that the proposal will not proceed and given reasons.</p> <p>If the proposal is for a purpose authorised by section 172D, the proposer is advised that the proposal has been categorised as:</p> <ul style="list-style-type: none"> <li>• <b>Current:</b> it has been included within the Commission’s current financial year workplan; or</li> <li>• <b>Future:</b> it is under consideration for next financial year’s workplan, or for a workplan beyond the next financial year; or</li> <li>• <b>Declined:</b> the Commission has decided the proposal will not proceed.</li> </ul> <p>Decisions on the categorisations will take into account the priority of the proposal with reference to the Commission’s statutory and GPS objectives, as weighed against the Commission’s resources and workload. It will take a maximum of 3 months to complete this categorisation and proposers will be advised of the outcome.</p>
<p>Step 2</p>	<p><u>Substantive analysis</u></p> <p>If the proposal is for a purpose authorised by s172D, and fits within the Commission’s current financial year workplan, it is assessed under section 172F of the Act. How long this assessment will take will depend on the complexity and impact of the change and on how the proposal has been prioritised within the Commission’s Workplan. The Commission will keep proposers informed of progress via its Workplan Updates.</p>

Step 3	<p><u>Pre-consultation</u></p> <p>The proposal may be referred to an advisory group for advice prior to the Commission finalising a consultation paper and a Board paper. Both papers are sent to the Commission Board which decides whether to release publicly the consultation paper.</p>
Step 4	<p><u>Consulting on the proposal</u></p> <p>The Commission invites submissions on the consultation paper. Four weeks are usually allocated for consultation. The Commission carries out consultation in accordance with its <a href="#">Consultation Protocol</a>.</p> <p>Once submissions have been received and analysed, the Commission liaises with the Ministry of Economic Development on recommendations that are likely to be made to the Minister<sup>14</sup>. The submissions and a summary of submissions are published on the Commission's website.</p> <p>A second consultation round may occur if issues identified during consultation or before consultation mean additional consultation is desirable.</p>
Step 5	<p><u>Making recommendations to the Minister</u></p> <p>A recommendation to the Minister is prepared for approval by the Commission Board. For minor rule changes and urgent rule changes a Board paper will not usually be prepared – the Chair acting under delegated authority writes to the Minister (having received a concise memorandum on the minor/urgent rule change).</p> <p>The Commission publishes its recommendation to the Minister in the New Zealand Gazette and on its website within 10 working days of making the recommendation to the Minister.</p>

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<sup>14</sup> The Commission also consults with the Ministry of Consumer Affairs when rules relate to sections 172D(1)(18) to (27) (see section 172E(5) of the Act).

Step 6	<p><u>Effecting the Minister's decision / Making the rule change</u></p> <p>The Minister considers the Commission recommendation. If approved the changes are published in the Gazette.</p>
Step 7	<p>Rule changes take effect at least 28 days after they are published in the Gazette, usually on a date decided in consultation with industry.</p>

## Timing

30. The Commission will acknowledge receipt of your rule change proposal within one week of receiving the proposal.
31. The Commission allows a maximum of 3 months for Step 1 to occur, and will advise proposers of the outcome of that step when it is completed.
32. Depending on the outcome of Step 1, Steps 2 -7 may not commence immediately after the completion of Step1 and in some cases the proposal may not progress any further than Step 1.
33. Steps 3 to 7 are expected to take a minimum of 23 weeks to complete, once the substantive analysis under step 2 has been done. The time required to complete step 2 can vary significantly. More complex proposals will take longer to complete than those that are less complex.
34. Urgent rule changes usually take approximately 9 weeks to progress, after which at least 28 days need to be allowed before the rule change takes effect. Within 6 months of an urgent rule change being made, the Commission must consult on the rule and recommend to the Minister whether the rule should be revoked, replaced or amended<sup>15</sup>.

## Rule Change Proposal Register

35. The Commission maintains a register of rule change proposals which includes proposals made by participants (Rule Change Proposal Register). The Rule Change Proposal Register is updated and published after every EGR Committee meeting (which is approximately every six weeks).

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<sup>15</sup> Section 172E(3) of the Act.

36. The Rule Change Proposal Register has two main purposes:
- (a) it provides a mechanism for the Commission to centrally record and monitor proposals for rule changes; and
  - (b) it provides transparency to participants as to the status of their proposals.
37. Rule development work results from (among other things) compliance work, rule exemption considerations, Commission consultation, and policy reviews. The Rule Change Proposal Register does not record all Rulebook development being undertaken by the Commission. The Commission's Workplan Register records this wider rule development work.
38. To check on the progress of a rule change proposal, either:
- (a) view the register of rule and regulation change proposals which is updated for every meeting of the Electricity Governance Rules Committee (which meets approximately every 6 weeks). The register records the progress of every proposal and is available on the [Commission's website](#); or
  - (b) contact a Commission staff member.

## Additional information

39. If you have questions about preparing and submitting a rule change proposal that are not answered by these guidelines, Commission staff will be able to help you. In the first instance please email questions to [info@electricitycommission.govt.nz](mailto:info@electricitycommission.govt.nz).