

*Chris Browne
Level 7,
Transpower House,
96 The Terrace,
Wellington,
New Zealand
Tel:(04) 498 2648
Fax:(04) 495 7078*

9 March 2007

Electricity Commission
PO Box 10041
Wellington
Attn: Jenny Walton

Dear Jenny

Approval method for consumer complaints resolution schemes – second consultation response

I refer to the above consultation paper dated December 2006 and Transpower's response to it on 27 January 2007.

Since our response Lisa White from the Commission has confirmed that the benchmark criteria and achievement standards put forward in the paper are proposed to be applied to the approval of land owner/occupier complaints resolution schemes as well as consumer complaints resolution schemes. As a result, Transpower has prepared this further response, which provides detailed comments on the proposed criteria and standards.

Transpower's response is in the format requested by the Commission and is attached to this letter.

As a general point we note that any changes to the constitution of the EGCC Scheme, of which Transpower and most other electricity and gas lines and retail companies are members, need to be approved by the membership. There will therefore need to be a degree of industry "buy in" to any changes required by the Commission after applying its approval criteria if the Scheme is to retain the broad membership that has made it so successful. To achieve this Transpower considers there should be a further period of consultation with Scheme members once the Commission has formed a preliminary view on what, if any, changes are required to the Scheme.

Nothing in this response is confidential.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Chris Browne', with a long horizontal flourish extending to the right.

Chris Browne
Corporate Counsel

Enclosed: Feedback forms 1 and 2

Feedback Form 1: Questions and answers

Question	Response
<p>1 Do you see any problems with the Commission using the Australian Benchmarks [for] consumer complaints resolution schemes? If so what valuation method should the Commission use?</p>	<p>Subject to the comments on the benchmark criteria and achievement standards below and in Feedback Form 2, Transpower supports the use of the Australian Benchmarks.</p>
<p>2 The suggested level of achievement is to indicate the level at which the Commission believes the benchmark criteria would be met. Is it useful to have a suggested level of achievement for each of the benchmark criteria?</p>	<p>The higher-level benchmark criteria should be the only standards against which schemes are assessed for approval.</p> <p>The achievement standards provide some useful insight into the features the EC will be looking for, but cannot possibly anticipate all the ways in which a scheme might satisfy a benchmark criterion. This is reflected in the fact that many of the achievement standards are expressed as examples or non-exhaustive lists. The achievement standards should not be part of the criteria for approving a scheme.</p> <p>For completeness only, some comments on the proposed achievement standards are provided in Feedback Form 2.</p>
<p>3 The Commission is seeking comments on the individual benchmark criteria and achievement standards detailed in the table attached as Appendix one:</p> <p>a) Identify <u>benchmark criteria</u> that are not suitable for the evaluation of an electricity consumer complaints resolution scheme. If possible, suggest an alternative;</p> <p>b) Identify <u>achievement standards</u> that are not</p>	<p>See Transpower's response in Feedback Form 2.</p>

Question	Response
<p>suitable for the evaluation of an electricity complaints resolution scheme. If possible, identify an alternative; and</p> <p>c). Should any additional benchmark criteria be inserted? If so, what should the additional benchmark criteria specify, and what would the achievement standard be?</p>	
<p>4 Should the Commission approve more than one scheme?</p>	<p>The consultation paper says that the EC is not minded to approve another scheme (in addition to the EGCC Scheme) for handling landowner/occupier complaints. In view of that, Transpower does not respond to this question.</p>
<p>5 If the Commission were to approve more than one scheme, what should be required of each scheme to ensure that consumer confusion is avoided? Are the achievement standards under criteria 6.2(a) sufficient?</p>	<p>The consultation paper says that the EC is not minded to approve another scheme (in addition to the EGCC Scheme) for handling landowner/occupier complaints. In view of that, Transpower does not respond to this question.</p>
<p>6 Is it appropriate that the Commission is able to consider applications that do not meet the level of achievement for each benchmark criterion? That is, should the Commission be able to accept alternative evidence that a benchmark principle is met to an acceptable standard even though individual benchmark criteria are not satisfied as specified by the achievement standards?</p>	<p>Yes. See Transpower's answer to question 2 above.</p>
<p>7 Do you have any comments on the performance monitoring process?</p>	<p>Performance monitoring is clearly necessary to ensure approved schemes continue to meet the benchmark criteria.</p> <p>However:</p>

Question	Response
	<ul style="list-style-type: none"><li data-bbox="1133 312 1962 512">• there should be a threshold on the EC's right to call for a potentially disruptive audit. There should be clear evidence that the scheme is not complying with the criteria that were applied to approve it or the specific conditions on its approval, rather than merely "concern that consumer needs are not being met";<li data-bbox="1133 552 1973 647">• there should be a limit on the number of times the EC can call for an audit. No more than once in any 12 month period would be appropriate;<li data-bbox="1133 687 1962 887">• the EC should not be able to revoke its approval of a scheme unless the EC has first conducted an audit that reveals shortcomings, and given the scheme a reasonable opportunity to address those shortcomings, or the underlying legislative or GPS requirements for the scheme change; and<li data-bbox="1133 927 1704 951">• audit costs should be met by the EC.

Feedback form 2: Submissions relating to specific benchmark criteria and achievement standards (question 3)

Benchmark/benchmark criteria reference	Feedback on benchmark criteria	Feedback on achievement standard
<p>1.1 - The scheme seeks to ensure that all customers of the industry are aware of the scheme's existence.</p>		<p>It is unclear whether the enumerated standards apply to the scheme, the members of the scheme or both. Standards (a), (d) and (e) should apply to the scheme only. Standards (b) and (c) are clearly aimed towards scheme members.</p> <p>In relation to standard (b) (notices - about the scheme, presumably – to be included on invoices), Transpower’s customers are generators, distribution companies and large direct connect consumers, none of whom are likely to ever have a complaint against Transpower within the jurisdiction of the EGCC Scheme. Accordingly, Transpower should not be required to include notices on its invoices.</p>
<p>1.4 - The scheme requires scheme members to inform their customers about the scheme.</p>		<p>Standard (c) should only apply to complaints that are within the jurisdiction of the scheme, not “any expression of dissatisfaction or concern”.</p>
<p>1.20 - The scheme discourages the use of legal representatives before the decision-maker except in special circumstances.</p>	<p>If the aim is for the decision-maker to reach the correct decision, it is unclear to Transpower how allowing legal representation would be harmful. This is particularly true of land complaints, which are arguably more likely than consumer complaints to have a legal flavour as they are</p>	

Benchmark/benchmark criteria reference	Feedback on benchmark criteria	Feedback on achievement standard
	<p>more likely to be concerned with the correct interpretation of easements and other land agreements or statutes such as the Electricity Act. In the case of the latter, case law may be relevant.</p> <p>Furthermore, bearing in mind the informal nature of the proceedings required under benchmark criteria 1.18 and 1.19, there is little or no opportunity for a legally represented party to obtain an advantage through superior presentation skills or familiarity with procedure.</p> <p>Another point to bear in mind is that responsibility for dealing with scheme complaints may well lie wholly or partly with the scheme member's in-house legal team (that is certainly the case at Transpower). That means that disallowing legal representation may positively disadvantage scheme members instead of "levelling the playing field".</p> <p>At a minimum, a "special circumstance" in which legal representation should be allowed is the consideration of jurisdictional issues (as opposed to the substance of a complaint once it has been determined to be within the scheme's jurisdiction).</p> <p>Transpower notes that the EGCC Scheme includes a process where, subject to certain</p>	

Benchmark/benchmark criteria reference	Feedback on benchmark criteria	Feedback on achievement standard
	<p>conditions, scheme members can remove complaints to the courts as “test cases” (clause B4). As these complaints are not heard before the Scheme’s decision-maker, the test case process under the EGCC Scheme is not subject to assessment against this criterion.</p>	
<p>1.22 - The scheme provides for the scheme member to pay the legal costs of complainants where the scheme member is the first party to request to be legally represented and the decision-maker agrees to that request.</p>	<p>The assumption underlying this criterion is that legal representation for the scheme member will lead to a lower quality decision and/or allow the scheme member to obtain an advocacy advantage. Transpower does not consider either of those effects to be likely (see comment on criterion 1.20).</p> <p>If this criterion is to be applied, the decision-maker should retain a general discretion to waive costs. Waiving costs would be appropriate in at least the following situations:</p> <ul style="list-style-type: none"> • where the complaint is found to be frivolous or vexatious, or otherwise outside the jurisdiction of the scheme in circumstances where the complainant knew or ought to have known that the complaint was excluded; • where the complainant is a well-resourced entity; 	

Benchmark/benchmark criteria reference	Feedback on benchmark criteria	Feedback on achievement standard
	<ul style="list-style-type: none"> • where the complaint is dismissed on its merits, or upheld but the issue is finely balanced; or • where the decision-maker considers that the scheme member's legal representative has contributed significantly to the correct resolution of the complaint. <p>Transpower notes that the achievement standards proposed for this criterion do not relate to the satisfaction of the criterion. If that means a scheme need not comply with this criterion to be approved, the criterion should be removed.</p>	
<p>2.2 - The decision-maker is appointed to the scheme for a fixed term.</p>	<p>If the achievement standard is "the scheme does not need to comply with this criterion", the criterion should be removed.</p>	
<p>3.1 - The decision-maker bases determinations on what is fair and reasonable, having regard to good industry practice, relevant industry codes of practice and the law.</p>	<p>The decision-maker should be required to apply relevant laws rather than merely "have regard" to them. Otherwise the decision-maker runs the risk of crossing the line between adjudicating on a scheme member's compliance with legal obligations and creating new ones.</p> <p>Relevant agreements between complainants and scheme members should also be applied by the decision-maker.</p>	

Benchmark/benchmark criteria reference	Feedback on benchmark criteria	Feedback on achievement standard
<p>5.1 - The scheme deals only with complaints which are within its terms of reference and have not been dealt with, or are not being dealt with, by another dispute resolution forum, and:</p> <p>a. Which have been considered, and not resolved to the customer's satisfaction, by a scheme member's internal complaints resolution mechanism; or</p> <p>b. Where a scheme member has refused, or failed within a reasonable time, to deal with a complaint under its internal complaints resolution mechanism.</p>		<p>It is not appropriate to require agreed resolutions "to eventuate within two months of [the] agreement". An agreed resolution may, by its nature, take longer than two months to implement. The parties to a complaint should at least be able to contract out of this standard (i.e. agree that the resolution may be implemented within a longer period).</p>
<p>6.2 - The scope of the scheme (including the decision-maker's powers) is sufficient to deal with:</p> <p>a. The vast majority of</p>	<p>There needs to be an acknowledgement that a scheme may exclude certain types of complaint for principled reasons unrelated to the value of the complaint. The effect of such exclusions may be that many complaints sought to be brought before the scheme are excluded from its</p>	

Benchmark/benchmark criteria reference	Feedback on benchmark criteria	Feedback on achievement standard
<p>customer complaints in the relevant industry and the whole of each complaint; and</p> <p>b. Customer complaints involving monetary amounts up to a specified maximum that is consistent with the nature, extent and value of customer transactions in the relevant industry.</p>	<p>jurisdiction.</p> <p>There are several land complaint exclusions in the EGCC Scheme constitution. Clause B1.9(d)(iii) excludes land complaints relating to acts or omissions that occurred before the expansion of the Scheme for land complaints (1 October 2006), clause 1.3 excludes ten specific types of land complaint and the definition of "land complaint" in clause 1.1 itself has the effect of excluding some types of complaint.</p> <p>In Transpower's view there are very good principled reasons for all of these exclusions (of which the EC is aware having approved the exclusions at the drafting stage). If the EC forms a preliminary view that any of them need to be removed or changed to ensure the EGCC Scheme complies with this criterion, Transpower asks that it and its fellow lines company members of the Scheme be consulted before the EC forms a final view.</p>	