



MAJOR ELECTRICITY USERS' GROUP

17 April 2007

Jenny Walton
Electricity Commission
By email to info@electricitycommission.govt.nz

Dear Jenny

Drafting comments on the proposed Benchmark Agreement, Interconnection rules, Outage Protocol rules and various changes to the Rules

1. This is a submission by the Major Electricity Users' Group (MEUG) on:
 - The consultation draft of the Benchmark Agreement;
 - The consultation draft of the proposed new interconnection rules and outage protocol rules;
 - Proposed draft changes to existing Part F rules; and
 - Proposed draft changes to definitions in Part A.
2. All of these consultation drafts were released by the Electricity Commission (the "Commission") under a paper titled, *Benchmark agreement and interconnection rules – cover paper for drafting comments*, published 19 March 2007. On 23 March 2007 the Commission published a further report, *Draft final decision paper for the Benchmark Agreement and Interconnection Rules – Exceptions to the Benchmark Agreement Consultation Paper and Interconnection Rules Consultation Paper*.
3. Comments on the drafting proposals, on the basis that all key policy decisions have been finalised, are set out in the appendix to this submission.
4. For the record MEUG does not agree with several key policy decisions that form the basis of the consultation draft benchmark agreement and rules. MEUG commissioned Dr Brent Layton, Director of the New Zealand Institute of Economic Research (NZIER) to undertake an independent report on the key conceptual and design issues on the draft contracts and rules being consulted on. Attached to this submission is the report by NZIER titled, *Benchmark agreement and interconnection rules*, dated 17th April 2007 (the "NZIER report"). The list of key conceptual issues includes:

- a) The Commission continues to refer to HVDC in terms that could be perceived as it being an interconnection-type asset for pricing purposes¹.

It appears to MEUG that this could be remedied by additional drafting. The cost of that extra step would be minimal compared to the risk of allowing parties to re-open the debate on who pays for the HVDC.

- b) The case for including interconnection assets in the rules rather than remaining part of the benchmark agreement has not, in our view, been proven².
- c) Excluding the option of retailers being counterparties for some transmission services is a missed opportunity by the Commission. MEUG do not accept that distributors will always act in the best interest of end consumers compared to the alternative of retailers being the counterparty to Transpower.
- d) The draft benchmark agreement fails to provide strengthened incentives on Transpower to tailor services to meet the needs of end consumers and to be accountable for failure to meet service levels. The proposed service measures, most of which are for information only, and the liability provisions are little better than the status quo. To get to this point after over 2½ years of consultation on service definitions, levels and measures by the Commission following several years of productive work earlier by the Transmission Working Group is abysmal.

NZIER discuss this issue under four concerns:

- The Commission should introduce a market measure that relates to the economic impact of outages to consumers³.
 - A rejection of the Commission's reasons for considering that it is not reasonably practicable to enforce reliability and availability measures⁴.
 - The proposed compensation and liability measures for inclusion in benchmark agreements are of very limited practical use to Transpower's counterparties⁵.
 - NZIER urge the Commission to adopt the universal service guarantee approach to compensation and liability⁶.
- e) Changes to the existing rules will allow a unanimous decision by Customers of shared connection assets not to invest in new assets to be overruled by the Commission. Similarly for removal or reconfiguration of existing assets Transpower is given the power to override a unanimous decision of affected shared connection service customers. This is a recent change to the draft proposal by the Commission. NZIER argue⁷ that having the Commission or Transpower override a unanimous veto by shared asset Customers is unwarranted and undesirable. MEUG agree. As this is a new policy, comments on the consultation draft of changes to section II of Part F on this point are provided in the appendix.
- f) NZIER reject the Commission's proposals, following the inaugural Benchmark Agreement being gazetted, for changing the rules to cater for new and upgraded connections⁸.

¹ NZIER report to MEUG, Benchmark agreement and interconnection rules, 17 April 2007, p3

² Ibid, p4

³ Ibid, p6

⁴ Ibid, p7

⁵ Ibid, p7

⁶ Ibid, p8

⁷ Ibid, p8

⁸ Ibid, p9

5. It is clear that the Commission has decided to close the book on new ideas with respect to the benchmark agreement in order to have the agreement and various rule changes in place to align with adoption of new transmission prices from 1 April 2008. The Commission acknowledges work on policies such as a universal service guarantee type approach will be undertaken after the inaugural benchmark is in place. In other words the Benchmark Agreement still needs more work. As far as MEUG is aware the Commission has never set out the benefits it sees in implementing the new transmission pricing methodology for commencement 1 April 2008 as outweighing the costs of having a less than optimal set of terms and conditions for the inaugural Benchmark Agreement. It would be prudent for the Commission to test this implicit conclusion.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. Matthes', written over a thin red vertical line.

Ralph Matthes
Executive Director

Appendix: MEUG comments

Benchmark agreement drafting comments

Clause	Comment	Recommendation
4.2	<p>This clause establishes the Benchmark Agreement as paramount over all existing and new contracts between Transpower and transmission Customers unless those arrangements fall within the exceptions provided in clause 4.2 (b). The text of clause 4.2 (b) does not exactly match the text of Part F, Section II, rule 8, Existing agreements not affected. There is a risk of some confusion as to which agreements are bound by the Benchmark Agreement and which are not. The problem may be compounded as parties in the future negotiate Customer specific transmission agreements.</p> <p>To assist all parties know for sure which agreements are excluded in clause 4.2 (b) MEUG suggest a new schedule be added to the Benchmark Agreement listing all such contracts.</p>	<p>After clause 4.2 (d) add a new clause, 4.2 (e), "Schedule XYZ lists all contracts not affected pursuant to clause 4.2 (b)."</p> <p>Add a new Schedule listing all exempted contracts including details of the counterparties, the date the contract was agreed, the date the contract came into effect and the termination date.</p>
5	<p>The definition of "Transpower's Counterparty Exposure" includes (b) a fall back position for Transpower to require a new Customer to provide 12 months prudential cover. This appears excessively onerous and a barrier to new entrants. MEUG suggest the cover for new entrants should be no more than that of existing Customers.</p>	<p>In clauses (b) (1) and (2) change "12 months" to "2 months"</p>
13.1 (a)	<p>The definition of force majeure includes "strikes, lockouts, other industrial disturbances." MEUG suggest where these events are foreseen then action to mitigate the effects on the performance of the Benchmark Agreement is reasonable. The definition should be adjusted accordingly. The suggested text is the same as the second caveat in respect to "any act of God" in the definition.</p>	<p>After "other industrial disturbances" add "(which could not reasonably have been foreseen or, if foreseen, could not reasonably have been resisted)"</p>
35 (d)	<p>Sub clause (d) of the definition of Normal Conditions refers to "core grid voltages." The term "Core Grid" is a defined term in Part F, Section III, Schedule F3 Grid Reliability Standards. It is not clear that the core grid referred to for normal conditions in the Benchmark Agreement should be the same as that for Grid Reliability Standards. To remove the risk of the two being confused the definition should be amended.</p>	<p>Change "core grid voltages" to "voltages on the grid"</p>
37.1	<p>This clause requires Transpower to report to the transmission customer by 31 August on performance in respect of each Customer Point of Supply for the preceding year ended 30 June. That is a lapse of between 2 and 13 months after Transpower provided the service that the Customer pays for monthly in advance. It is unclear why there is such a delay in reporting by Transpower as it would be in the interest of both Transpower and the Customer to identify emerging detrimental trends during the year and therefore activate remedial action. It's likely Transpower has this sort of information immediately following the month already and therefore the incremental cost of having to report to Customers should be negligible. It is therefore proposed the Benchmark Agreement require Transpower to report monthly.</p>	<p>Change "by 31 August each year" to "by the 20th of the month immediately following each month."</p>

43	<p>This is the opening clause for Part D, losses and constraint excess payments. The clause grants Transpower an exclusive property right over loss and constraint rentals and if and how Transpower might share those with transmission customers after giving 3 months notice.</p> <p>Section V of the rules requires the EC to develop FTR pursuant to the GPS. The EC is considering FTR or other transmission hedge type mechanisms. Loss and constraint cash flows are an essential element of FTR and other options the EC is considering. MEUG suggest the rules didn't anticipate granting Transpower an exclusive property right over loss and constraint rental cash flows, rather Transpower were to retain the status quo until the EC implemented changes to meet section V. Part D of the Benchmark Agreement should reflect this caretaker role by Transpower with respect to loss and constraint rentals.</p>	In the last sentence after "different manner" insert, "provided that change is consistent with all regulations and rules developed pursuant to Section V of the Electricity Governance Rules"
46.2	Consequential change following comment on cl.43 above	After "this Part" insert, "provided that change is consistent with all regulations and rules developed pursuant to Section V of the Electricity Governance Rules"
Schedule 6, cl.3.2	Transpower is given unilateral power to set licence charges. This clause should require reasonable commercial charges to be agreed.	Add to the existing clause the following sentence, "Transpower and the Customer will agree the level of Licence Charges."

Draft Interconnection rules (new section VI) and Draft Outage Protocol rules (new section VII)

Rule	Comment	Recommendation
Section VI, rule 2.4.1.1	Transpower is required to propose for each interconnection circuit branch service measures and levels for the overall continuous capacity rating for both summer and winter periods. MEUG suggest in future the large step changes between winter and summer ratings may be replaced with a smoother change over several months. To accommodate this possibility this rule should require ratings to be specified for every month (or part month) as required.	Replace "for both summer and winter periods" with "for each month or part month as applicable"
Section VII, rule 4	The required content of the Outage Protocol is specified in rules 4.1 to 4.5. An important aspect of the current industry wide outage planning process (red spider) is the voluntary agreement by the transmission asset owner and all major connected asset owners to provide a high degree of transparency to the public to track changes and view prior outage timeframes expected by Participants. The proposed rule has no requirement on Transpower in preparing an outage protocol to ensure relevant information is published in as near to real time as that already available through red spider. MEUG suggest the rules should require the outage protocol proposed by Transpower should, to the extent practicable, require publication of the status of planned outages.	Add a new clause 4.6, "The Outage Protocol should make public, to the extent practicable, up to information on the status of planned outages."
Section VII, rule 7	It isn't clear that Transpower must publish, that is make public, a self assessment compliance report. The rule needs to be re-drafted to avoid any ambiguity.	Change the current text from "Transpower to publish and report to designated transmission customers and the Board" to "Transpower to report to

		designated transmission customers and the Board and to publish”
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Changes to sections I, II, III and IV of Part F of the Rules

Rule	Comment	Recommendation
Section II, rule 5.6.3.2 and rule 5.7.1.2 and rule 5.8.2	<p>Rules 5.6, 5.7 and 5.8 cover additional or removal of existing or reconfiguration of existing shared connection assets. Unanimous agreement by Customers of the relevant shared connection assets is needed for Transpower to make changes. When there is not unanimous agreement the Board can break the deadlock for new investments by considering the proposal as a reliability investment under a Grid Upgrade Plan. For removal or reconfiguration of an asset Transpower can in the absence of unanimous agreement decide by applying a Net Benefits test (rule 5.9). Even when all Customers agree they do not want a new asset, or an existing asset removed or reconfigured, the Board and Transpower can act against their wishes. MEUG suggest that giving a regulator or the monopoly provider the right in the Benchmark Agreement to override the wishes of all counterparties that share a particular connection service would in effect say that the regulator and or Transpower know what is best for those counterparties than the counterparties know themselves. This is not consistent with allowing counterparties to define the services they wish from connection services. In the event that all affected counterparties agree, there should be no ability of the Board or Transpower to override that unanimous decision.</p> <p>As noted in the cover letter, NZIER also argue⁹ that having the Commission of Transpower override a unanimous veto by shared asset Customers is unwarranted and undesirable.</p>	For each of the three rules, delete the text “or none of the designated transmission customers agree”

Related changes to the definitions in part A of the Rules Benchmark agreement drafting comments

Clause	Comment	Recommendation
“interconnection asset” definition	<p>NZIER in the report, Benchmark agreement and interconnection rules, 17 April 2007, page 3, noted,</p> <p>“Concern: cautioned against making statements that might be interpreted as suggesting that the HVDC link is an interconnection-type asset.”</p> <p>In the proposed definition it would be useful to make this clear.</p>	Add after “(b) includes the HVDC link” the following text, “For the avoidance of doubt, the HVDC link is not to be treated as an interconnection asset for the purpose of section IV of Part F.”

⁹ Ibid, p8