

**CONSUMER COALITION ON ENERGY (CC93)**

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**The Coalition:** Business New Zealand  
Consumers' Institute  
Federated Farmers of NZ Inc  
Major Electricity Users' Group

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**SUBMISSION TO**

**ELECTRICITY GOVERNANCE ESTABLISHMENT COMMITTEE**

**RESPONSE TO THE**

**CONSULTATION PACKAGE OF 5 JUNE 2001**

**Prepared by CC93  
16<sup>th</sup> July 2001**

## **1. Executive Summary**

- 1.1. The Consumer Coalition on Energy (CC93) comprises representatives of small, large, urban and rural consumers. The Coalition has a long history of seeking better market and regulatory solutions to meet the needs of consumers for secure and lowest sustainable priced power (section 2 of this submission provides further background)
- 1.2. CC93 has worked actively in the Electricity Governance Establishment Project process. Its objective has been to see the establishment of a negotiated self-regulating set of arrangements governed by a Board which is tasked with being the guardian of achieving the best economic welfare for mandatory aspects of the industry thus reflecting the Government's objectives as set out in the Government Policy Statement December 2000 (GPS).
- 1.3. The governance aspects of the consultation package must be significantly revised in order to meet the needs of consumers (see section 4 of this submission). In particular:
  - (a) The Guiding Principles of the new arrangements should accurately reflect the principles and objectives espoused in the GPS;
  - (b) The Board must have a mandate, and the ability, to make final decisions, subject only to a "call-through" by members;
  - (c) Consumers must be invited to nominate at least two representatives to sit on every working group constituted by the Board; and
  - (d) There must be an over-arching requirement to recognise the mandatory, self-regulating and public good aspects of the rules through transparent and effective access to information.
- 1.4. CC93's alternative governance arrangements are described in section 5. A comparison of the consultation package and CC93's governance proposal against the Government Policy Statement and other factors is made in section 6. This shows that CC93's proposal will lead to better economic efficiency outcomes than the consultation package.
- 1.5. In section 7 is CC93's response to the 14 particular issues for feedback listed in section A4 of the consultation package.
- 1.6. In section 8 are our conclusions which briefly are:
  - (a) There are some significant gaps in how the overall package will fit together that have yet to be considered;
  - (b) The consultation proposal does not appear to be welfare enhancing against either the status quo, MACQS operational or CC93's proposal. Therefore we do not support the package as drafted; and
  - (c) There needs to be a second round of consultation.

## **2. Background to CC93**

2.1. The Consumer Coalition on Energy (CC93) was formed in 1993, the year after the passage of the Electricity Act 1992 and the Electricity Companies Act 1992. At present the following organisations make up the coalition:

- (a) Business New Zealand;
- (b) Consumers' Institute;
- (c) Federated Farmers of NZ Inc.; and
- (d) Major Electricity Users' Group Inc.

CC93 is in regular dialogue with other consumer and/or business organisations and trade associations and will continue to try and involve such organisations in the process.

2.2. Since its establishment the Coalition has participated in the Wholesale Electricity Market Development Group in 1993, supported separation of Transpower from the Electricity Corporation in 1994, removal of the incentive to cross-subsidise businesses facilitated by the separation of line and energy in 1998, the break-up of ECNZ in 1999 and the commencement of the MACQS process in 1999.

2.3. CC93 has had representatives on the Interim Grid Security Committee (the precursor to the Grid Security Committee) and currently has representatives on the Grid Security Committee and two representatives on most MACQS working groups. There are no consumer representatives on any current MARIA or NZEM working groups, despite the best efforts of CC93 and its members to have representation.

2.4. In terms of the electricity industry generally, CC93's primary concerns are; a lack of effective regulation of line monopolies, thin competition by energy suppliers at the wholesale and retail level and the high risk that the EGEP consultation package rulebook will, if accepted substantially unchanged, effectively disenfranchise consumers.

2.5. At the outset of the EGEP process consumers were not included, however following a request by CC93 we were invited to have two representatives on EGEC. And we have also had two representatives on the Governance and Rationalisation Working Groups and three representatives on the Transport Working Group.

### **3. Definitions**

3.1. This submission contains references to the supply side, the demand side, stakeholders and members. For the purposes of this submission CC93 has defined these terms as follows:

“supply side” means generators, retailers, distributors, Transpower and any other suppliers of electricity services who are bound by the new arrangements

“demand side” means all consumers including those who are directly connected to the grid.

“stakeholders” are all parties affected by the new arrangements and the term is used in the context of electing the Board, voting on governance issues and approving the financial affairs of the Board including the annual budget.

“members” are all generators, retailers, distributors, Transpower and consumers directly connected to the grid who must comply with the mandatory rules as prescribed in the Government Policy Statement. CC93 is still considering how these “members” are allocated votes while preserving the principle in the Government Policy Statement that the rules should not be dominated by the supply side. One of the options CC93 is considering for ensuring compliance by members of the mandatory rules is licencing. This is discussed further in paragraph 5.4.

### **4. Primary issues of concern to CC93 with the consultation package**

4.1. Some members of CC93 may make separate submissions regarding operational rules. This submission focuses on aspects of the proposed governance arrangements that must be improved. In particular:

- (a) The Government Policy Statement places considerable emphasis on ensuring that electricity is delivered in an efficient, fair, reliable and environmentally sustainable manner to all classes of consumers. However neither the Foreword to the Rules or the Guiding Principles themselves reflect these specific objectives. CC93 believes that it is important for the new arrangements to contain the objective specified by the Government.
- (b) In the proposal the Board cannot make changes to the rules that it considers are welfare improving without the consent of those with voting rights in that particular chapter.

This constrained decision making power is not what we believe was intended in the Government Policy Statement and can be contrasted with CC93’s own governance proposal (see section 5) which gives the Board the primary decision making power. This primary decision-making power is also referred to by CC93 as “executive authority” or “real decision making power”.

This makes the governance design consistent with the guiding principle in the new arrangements whereby ‘those persons affected’ have decision

rights. This is contrasted with the statement made by the Project Team to CC93 that the principle underlying the decision rights was that those who had legal or property rights were the only ones to have decision rights.

- (c) Consumer representation on working groups should, in our view, occur as of right and not at the discretion of the Board. In this context, CC93 expects that it will be invited to nominate at least two members to every working group. It would of course be open to CC93 to decline this invitation in any instance where it considered that it was not necessary for consumer representatives to be involved in that specific work stream.
- 4.2. Other industry self-regulation schemes such as those of the Advertising Standards Authority, and the recently inaugurated Direct Marketing Standards Authority, give high prominence to the involvement of consumers in the decision-making processes. This is seen as the quid pro quo for industry to regulate itself where government is not participating and so representing the wider public interest. CC93 sees its involvement in the decision-making in this proposed industry scheme in a similar light.
- 4.3. The general approach to the involvement of consumers is of concern. An example is the exclusion of consumer representatives from the future Grid Security Committee Working Group notwithstanding that the current composition of the GSC was authorised by the Commerce Commission (this exclusion occurs in Part I Transition Issues, Section II, rule 3.2). Other areas where consumer rights lack clarity occur in the voting rights, decision rights and “definitions” where the meaning of consumers, direct consumers, customers, voting customers and asset owners require attention.
- 4.4. Until these issues are satisfactorily resolved, CC93 will not support an application to the Commerce Commission. While failure to achieve stake-holder agreement may trigger the establishment of a Crown Entity EGB, the Coalition believes that consumers, and the economy more generally, will be placed at considerable risk, if it agrees to a governance arrangement that gives most decision rights and a power of veto to the supply side. This involves greater risk than accepting an independent Crown Entity.

## **5. CC93s governance proposal**

- 5.1. On 6<sup>th</sup> April 2001 CC93 tabled with the Governance Working Group a proposed alternative governance arrangement. That proposal has been modified taking into account consideration of feedback from the industry since that date.
- 5.2. CC93 starts with the fundamental premise that the Electricity Governance Establishment Project is not about merging the codes of NZEM, MARIA and MACQS per se but is to establish new arrangements which will meet the Government's primary objective of ensuring electricity is provided to all classes of consumers in a fair, reliable, efficient and sustainable manner. It should be in the interest of those participants on the demand and supply side who are affected by mandatory rules on common quality, a mandatory dispatch pool and a mandatory transmission pricing and investment regime to agree a set of self-regulating arrangements rather than have Government impose a solution. This is a difficult task and CC93 recognises that the arrangement must suit both the supply and demand sides, if not then either will prefer the evolution of the status quo or a regulated solution.
- 5.3. CC93's governance proposal is:
  - (a) As every electricity consumer and every company in the electricity industry supply chain will be affected by these mandatory rules, then they are all as of right stakeholders in the self-regulating arrangement.
  - (b) The self-regulating rules will contain a set of Guiding Principles consistent with those contained in the Government Policy Statement of December 2000. The Government Policy Statement prescribes in its Guiding Principles for the Electricity Industry that "the Government's overall objective is to ensure that electricity is delivered in an efficient, fair, reliable and environmentally sustainable manner to all classes of consumer. These four key elements of Government Policy must be included in the Guiding Principles.
  - (c) CC93 believes the self-regulating set of arrangements should be relatively brief and outline the broad policy and structural aspects rather than detailed codes. In our view the consultation draft rules are too prescriptive and could be significantly simplified and enhanced by shifting prescriptive rules, codes and standards into the service provider negotiated contracts.
  - (d) The new simplified arrangements are deemed to be the rulebook and all members (see definition of members in section 3) are bound by the rules. While the rules shall still be contained in chapters the subdivision of the new arrangements has no other purpose and voting on a chapter-by-chapter basis is eliminated.
  - (e) A corporate entity, named for the purposes of this submission the Electricity Governance Board, is appointed at each Annual General Meeting by 50% by the demand side and 50% by the supply side.
    - (i) CC93 is still considering how effective representation of all consumers in a cost-effective manner can be achieved. Several options are being considered including the electoral college option

per CC93's 6<sup>th</sup> April 2001 proposal, the proposal in the EGEP 5<sup>th</sup> June consultation package and the precedent set in MACQS whereby the Commerce Commission authorised representatives of three consumer organisations (ie Consumers Institute, Chambers of Commerce and MEUG) as a reasonable proxy for representing all classes of consumers.

Another option would be for CC93 to act as an umbrella organisation to facilitate consumer representation. CC93 has a broad range of consumer constituents as set out in appendix 1. Any consumer or consumer group who consider CC93's facilitation and allocation of consumer voting rights has been inadequate should have a right of appeal to the Rulings Panel.

- (ii) Supply side votes will be allocated 50% energy (generation and retail proportional to kWh injected and sold respectively) and 50% transport (allocated proportional to ODV).
- (f) Changes to the governance rules shall be voted on at Annual or Special General Meetings. The parties involved in voting on governance issues/rule changes etc shall be the same as those involved in the election of the Board, ie supply with 50% of the vote and demand with 50% of the vote. A majority of 75% of shall be required for governance rules to be amended.
- (g) The Electricity Governance Board will have decision-making powers. It shall be accountable for the non-governance self-regulating rules and any necessary contracts with service providers to give effect to the Government Policy Statement of December 2000. As the Board will manage a corporate entity, Board members will have fiduciary duties in terms of the Companies Act.
- (h) Changes to non-governance rules will be made as follows:
  - (i) Anybody can propose a rule change.
  - (ii) Other than vexatious or trivial proposals that the Board can accept or reject, the Board must refer a rule change to a working group.
  - (iii) Working groups must have defined terms of reference, timetable and budget. All working group members must be reimbursed reasonable time and disbursement costs. All working groups must have at least 2 consumer representatives.
  - (iv) The Board on receipt of a recommendation from a working group to accept a rule change can decide to accept, reject or return that proposal to that working group or another. The Board on receipt of a recommendation from a working group to decline a rule change can either accept that recommendation, or return the proposal to that working group or another or accept the rule change contrary to the working group recommendation.

Where a working group cannot reach a unanimous decision a substantial majority may make a recommendation to the Board. The view of the dissenting parties of the working group must be also forwarded to the Board.

- (v) Recommendations for all rule changes including new rules will be made available, i.e. on the EGB web site to members for a specified number of days before the Board will consider and adopt or reject the recommendations.
  - (i) All Board decisions are by a 75% majority.
  - (j) The management of the self-regulating set of arrangements and proposed rule changes must be fully transparent and accessible for all members and stakeholders to monitor.
  - (k) The Electricity Governance Board will be accountable for its decisions by:
    - (i) Reports to Parliament by the Parliamentary Commissioner for the Environment and the Controller and Auditor General as set out in the Government Policy Statement of December 2000.
    - (ii) A right of review to the Rulings Panel for any decision by anybody on the grounds of breach of the Guiding Principles.
    - (iii) Decisions on rule changes or new rules can be over-turned by a majority of 75% of members of the new arrangements if “called through” by a vote of more than 25% of members.
    - (iv) Members can with a 75% majority censure or dismiss the Board at a Special General Meeting or Annual General Meeting.
    - (v) Annual reports shall be provided to stakeholders at each Annual General Meeting.
    - (vi) Budgets, Financial Reports, Annual Accounts and Performance reports on Service Providers shall be subject to approval and adoption at Annual General Meetings.
  - (l) There will be a Rulings Panel and an Appeals Board
- 5.4. CC93 does not believe the exclusionary provision in the consultation package will be sufficient to ensure compliance with the proposed rules. For example if a large, or even small, lines company decides not to comply with the rules, it is simply not realistic to expect that the company will be disconnected. Nevertheless there must be an effective sanction if the proposed industry arrangements are to work. In this context, CC93 believes a regulatory – rather than voluntary - solution is required. It is currently contemplating whether some form of licencing regime would offer the best solution in the circumstances. For example, all directly connected or other organisations wanting to buy, sell or transport electricity across the grid would require a licence. It would be a condition of granting a licence that:
- (a) The applicant comply with the proposed rules; and



(b) Where relevant, belong to the proposed industry complaints scheme.

5.5. Organisations that attempted to trade without a licence would be subject to significant financial penalties. Such a licencing regime would be consistent with those operating elsewhere in the world and broadly comparable with those already existing in New Zealand, albeit in other industries (for example, the motor trade)

5.6. Some of CC93's proposal should be considered work in progress as work on the concept of licensing is at an early stage. As solutions to these issues and feedback from other parties on CC93's proposal are received, so too will our proposal evolve.

## 6. Comparing the EGEP and CC93 governance proposals

6.1. This section compares the CC93 and consultation package governance proposals. First, the overall governance structure. Second, how the rule change processes compare. Third, the overall impact on economic welfare.

### Comparing the governance structures

6.2. The table below compares the consultation and CC93s 13 July proposals:

Governance arrangement	Consultation package	CC93 proposal
Parties to the self-regulating arrangement	Members as defined by Chapter decision rights who elect to join	All demand and supply side parties affected by the rules are stakeholders
Sanction on parties not complying to the self-regulating arrangements	Authorised exclusionary provision	The concept of licensing to be examined
Guiding principles	"Market" bias	More aligned with Government Policy Statement
Election by parties to the self-regulating arrangement of the Board	Either 50% each demand and supply or one third each demand, supply and transport "members"	50% each demand and supply stakeholders. Consumer vote cast by CC93
Other rights of parties to the arrangements	Members can change governance rules. Members can overturn Board decisions and removal of the Board Both require a substantial majority	Stakeholders can change governance rules. Members can overturn Board decisions and removal of the Board Both require a substantial majority
Legal status of the Board	Corporate entity	Corporate entity
Accountability of the Board	<ul style="list-style-type: none"> <li>• To voting members as defined by Chapter decision rights</li> <li>• To Parliament</li> </ul>	<ul style="list-style-type: none"> <li>• To all stakeholders</li> <li>• To Parliament</li> </ul>
Rulings Panel	Yes	Yes
Appeals Board	No	Yes, based on proposed NZEX model.

## Comparing the rule change process

6.3. The table below compares the rule change processes for non-governance rules:

Governance arrangement	Consultation package	CC93 proposal
Who can propose a rule change	Anybody. Non-member proposals must be processed as if they are a proposal of the Board.	Anybody – in CC93's proposal these are stakeholders
Can the Board accept or reject a proposal initially	Minor changes (eg typos) can be accepted. Vexatious or trivial proposals can be rejected	Minor changes (eg typos) can be accepted. Vexatious or trivial proposals can be rejected
Must the Board refer valid proposals to a working group?	Yes	Yes
What decisions can the Board make on receipt of a recommendation to <u>accept</u> a rule proposal by a working group?	<ul style="list-style-type: none"> <li>• Agree</li> <li>• Reject</li> <li>• Refer back</li> </ul>	<ul style="list-style-type: none"> <li>• Agree</li> <li>• Reject</li> <li>• Refer back</li> </ul>
What decisions can the Board make on receipt of a recommendation to <u>decline</u> a rule proposal by a working group?	<ul style="list-style-type: none"> <li>• Agree to decline</li> <li>• Refer back</li> </ul>	<ul style="list-style-type: none"> <li>• Agree to decline</li> <li>• Refer back</li> <li>• Disagree and decide that the proposal should be made</li> </ul>
Can the Board make decisions on proposed rule changes	<ul style="list-style-type: none"> <li>• Only in limited circumstances</li> </ul>	<ul style="list-style-type: none"> <li>• Yes</li> </ul>
Can a Board decision be vetoed through a call through?	Yes on a chapter by chapter basis by members of the relevant chapter	Yes, by members with a 75% majority
Can an appeal on a Board decision be made to the Rulings Panel for an alleged breach of the Guiding Principles	Yes	Yes

## Economic benefit-cost comparison

- 6.4. The consultation package forecasts annual operating costs of the Board and its service providers will be \$41 million per annum. CC93's proposal eliminates the chapter voting process and must therefore result in lower operating costs.
- 6.5. As CC93's proposal better aligns the needs of consumers with the management and evolution of the mandatory rules, the economic benefits of CC93's proposal must be greater than that of the consultation package.
- 6.6. With costs lower and benefits higher, CC93's proposal will yield greater net benefits than that of the consultation package.

## 7. Particular Issues for Feedback

7.1. Comments on each of the particular issues for feedback set out in section A4 of the consultation package follow:

1. The approach to using Guiding Principles and an independent board to provide a strategic focus for developing the rules	The Board should not just manage the process, the Board should be responsible and accountable for decision-making.
2. The process for electing the Board	50% both demand and supply side.
3. The rule -making process and the balance between the executive powers of the Board and the decision rights of members	Decision rights on a chapter basis abrogates the decision making power that the Board should have. The rulebook chapter-voting proposal is not supported.
4. The structure and organisation of the rulebook	No comment except that the rule-book is viewed as one document and the separate chapters have no particular status
5. Membership and decision rights in each chapter	Refer comments on question 3 and 4 above.
6. The fee structure	No comment. Total costs seem excessive
7. Whether there should be a general right to appeal any decision of the Rulings Panel to an Appeal Board appointed under the rules	There should be an appeal right.
8. The manner in which the mandatory nature of the rules is enforced	The current proposals are unlikely to work and a licencing system should be examined.
9. Implications of mandatory dispatch arrangements including the treatment of embedded generation and distributed generation and demand side participation	The arrangements appear to have an inherent bias against embedded generation and the demand side
10. The manner in which the elements of the dispatch objective have been incorporated in Part C and Part G of the rulebook	Concerns exist in respect of the dispatch objective
11. The prudential management regime proposed as part of the wholesale trading clearing and settlement arrangements	No comment.
12. The approach to decision rules on transmission pricing methodology and, in particular, whether the process ensures that stakeholders have an adequate opportunity to make their views known	The transport arrangements have yet to be considered in their entirety and therefore CC93 has withheld comment until this work stream is completed.
13. The approach to decision rules on transmission replacement and enhancement	Refer comments on issue 12 above.
14. The approach to transition arrangements in particular, whether the rules assist in transitioning, into the new regime, contracts held by participants	The transition arrangements seem complicated. In Section 11-para 3.1 it is unacceptable that the three existing members of the GSC will be specifically excluded from the working group

## **The Peer Review**

- 7.2. CC93 is disappointed with the “Peer Review of Conceptual Design and Guiding Principles”. The peer review appears to adopt an overly theoretical or academic approach to the draft governance arrangements and does not recognise the valid interests of Government and the wider community in “self-regulation”. CC93 does not consider the peer review as providing it with any assurances that the EGEN project to date has got the design correct or the checks and balances contribute to achieving the primary objectives of the GPS.

## **The Costs of the New Arrangements**

- 7.3. The paper outlining the costs of the new arrangements has been briefly considered by CC93. It is extremely disappointed that the costs of the new arrangements appear to be significantly higher than first expected and are estimated to be higher than the status quo. CC93 is giving further consideration to the costs as ultimately consumers “pick up the tab” for all processes involved in delivering electricity to them.

## **8. Concluding comments**

- 8.1. CC93 has concluded that:

- (a) There are some significant gaps in how the overall package will fit together that have yet to be considered, ie.
- (i) Whether the consumer complaints resolution scheme can be effectively incorporated into the rule book with an appropriate input from consumers in the rule-making and rule changing processes
  - (ii) The need to ensure that the primary objectives of the GPS are delivered within the new arrangements.
  - (iii) The rules need to be restructured to move detailed rules, codes and standards into service provider contracts, leaving the self-regulating set of arrangements to cover policy only.
  - (iv) An appropriate means of membership and compliance with the rule-book and in this respect the concept of “licensing” warrants further attention
- (b) The consultation proposal does not appear to be welfare enhancing against either the status quo, evolution of MACQS or CC93’s proposal. Therefore we do not support the package as drafted.
- (c) There needs to be a second round of consultation.

## **Appendix 1: Register of CC93 member constituents and parties consulted**

CC93 comprises Business New Zealand, Consumers Institute, Federated Farmers of New Zealand Incorporated and Major Electricity Users Group Incorporated. Details on the constituents of each are set out in the following paragraphs.

### **Business New Zealand**

As from the 30 April 2001 Business New Zealand emerged from what was the New Zealand Manufacturers Federation and the New Zealand Employers Federation. Founding members of Business New Zealand are:

- Employers and Manufacturers Association (Northern) Incorporated
- Employers and Manufacturers Association (Central) Incorporated
- Canterbury Employers' Chamber of Commerce
- Canterbury Manufacturers Association Incorporated
- Otago-Southland Employers' Association Incorporated

### **Consumers Institute**

The Consumers' Institute of the New Zealand is an incorporated society that seeks to represent the interests of its approximately 80,000 subscribing members and consumers more generally. The Institute has in the past consulted with:

- Ministry of Consumer Affairs
- New Zealand Association of Citizens Advice Bureau
- Family Budget Services
- Grey Power

### **Federated Farmers of New Zealand Incorporated**

There are 17,000 farmers who belong to Federated Farmers. The Federation has a long-standing process of consultation with the following organisations on energy issues:

- NZ Vegetable and Potato Growers Federation
- NZ Fruitgrowers Federation
- Federation of Maori Authorities
- National Beekeepers Association
- Rural Butchers Association
- Rural Women of New Zealand
- Florafed
- NZ Association of Small Farms
- NZ Berryfruit Growers
- NZ Deer Farms Association
- NZ Grape Growers Board
- NZ Ostrich Association
- NZ Pork Industry Board
- Nursery Garden Industries Association
- Young Farmers Clubs
- Mohair Association
- Farm Forestry Association
- Forest Owners Association
- Meat NZ
- Wool Producers Board
- NZ Primary Industry Council
- NZ Landcare Trust

## **Major Electricity Users' Group Incorporated**

As at 31 March 2001 the Ordinary member companies of MEUG were:

- Auckland International Airport Limited
- BHP New Zealand Steel Limited
- Carter Holt Harvey Limited
- Comalco New Zealand Limited
- Fletcher Challenge Steel & Wire Limited
- Fletcher Wood Panels Limited
- Gold and Resource Developments NZ Limited
- Golden Bay Cement Co. Limited
- Heinz Wattie's (New Zealand) Limited
- Juken Nissho Limited
- Kiwi Co-op Dairies Limited
- Lion Breweries Limited
- Methanex New Zealand Limited
- Milburn New Zealand Limited
- Norske Skog Tasman Limited
- Pan Pacific Forest Products Limited
- Winstone Pulp International Limited

The only Industry Group member of MEUG is Business New Zealand. MEUG also maintains contact with the following large users of power:

- AFFCO Holdings Limited
- Coeur Gold New Zealand Ltd
- New Zealand Dairy Group
- New Zealand Refining Company Ltd
- Rayonier MDF NZ