

UTILITIES COMPLAINTS SERVICES LIMITED

Scheme Rules - Energy Complaints Scheme

- 1 These Scheme Rules supplement the General Rules of the complaints resolution services operated by Utilities Complaints Services Limited.

Together with the General Rules, they set out the rules that apply to the independent external dispute resolution service for gas and electricity sector Providers and known as the **Energy Complaints Scheme**.
- 2 The Energy Complaints Scheme was previously known as the Electricity and Gas Complaints Commissioner Scheme. The General Rules and these Scheme Rules are adopted by way of amendment to the Electricity and Gas Complaints Commissioner Scheme and they replace the Scheme Document for that Scheme in effect on [*date of transition*].
- 3 The Electricity Industry Act 2010 and the Gas Act 1992 (**Acts**) require some gas and electricity sector Providers, unless exempt, to be members of a dispute resolution scheme that is an 'approved scheme' as defined in the Electricity Industry Act 2010. The Energy Complaints Scheme is the approved scheme. General Rule [53] (which allows Providers to be expelled) does not therefore apply to the Energy Complaints Scheme.
- 4 The Electricity Industry Act 2010 requires the relevant Minister, currently the Minister of Commerce and Consumer Affairs, to approve any amendment to the rules of the approved scheme. The Minister's approval will be treated as given if the Minister does not decline approval within 45 days after being notified of the proposed amendment.
- 5 A number of obligations and provisions apply under the Acts to Providers in, and to UCSL as the provider of, the Energy Complaints Scheme. If a General Rule or a Scheme Rule conflicts with any of those obligations and provisions, then the relevant Act will apply.
- 6 UCSL may admit new Providers to the Energy Complaints Scheme from time to time.
- 7 For purposes of General Rule [15], UCSL must not deal with a Complaint under these Scheme Rules where the value of the Complainant's claim exceeds \$50,000. In determining the value of a claim, the Commissioner will take into account the reasonable costs that would be incurred by a Provider in carrying out any actions that may reasonably be required.
- 8 For purposes of General Rule [37], the value of any Determination under the Energy Complaints Scheme must not be greater than \$100,000.
- 9 UCSL must only consider a Complaint if UCSL is satisfied that the act or failure to act that gave rise to the Complaint first occurred:
 - a) in the case of a complaint related to LPG cylinders, on or after 1 October 2014; or
 - b) in any other case, on or after the date that applies to the subject matter of the Complaint under the Limitation Act 2010.
- 10 A Determination under the Energy Complaints Scheme constitutes a binding settlement for the purposes of s 97 of the Electricity Industry Act 2010 and s 43EB of the Gas Act 1992.

- 11 Subject to Appendix Two, an owner or occupier of land can make a Complaint about the unlawful effect on their rights of a Lines Company's actions when exercising, purporting to exercise or failing to exercise rights, powers or obligations claimed by the Lines Company under any applicable gas or electricity legislation or regulation, or under an access agreement granted to the Lines Company by the owner or occupier.
- 12 A Provider in the Energy Complaints Scheme cannot be a Complainant or make a Complaint.
- 13 The General Rules, together with these Scheme Rules, contain all matters UCSL considers might appropriately be included in a code of conduct for the Energy Complaints Scheme and UCSL does not therefore intend to prepare a code of conduct for the Energy Complaints Scheme under General Rule [48].
- 14 While UCSL cannot generally deal with Complaints made by Providers, the Acts require the approved scheme to provide for, or set out, rules and procedures for dealing with indemnity disputes.

Indemnity disputes are disputes between Providers concerning the application of the indemnity in section 46A of the Consumer Guarantees Act 1993. This applies where there has been a failure of the acceptable quality guarantee in the supply of gas or electricity to a consumer that is wholly or partially the result of an event, circumstance or condition associated with a gas pipeline or electricity line as provided for in section 46A of the Consumer Guarantees Act 1993.

A Provider may refer an indemnity dispute up to a value of \$[50,000] (or more with the agreement of the Parties) to UCSL for resolution.

UCSL must deal with an indemnity dispute in accordance with the principles and process set out in the General Rules.

All Parties to the indemnity dispute must participate in the process and are bound by any Determination issued by UCSL.

Each Party to an indemnity dispute must pay:

- a) UCSL's costs and expenses (including any expert costs and expenses) incurred in dealing with the indemnity dispute including GST whether or not the indemnity dispute is withdrawn, resolved by agreement between the Parties or by a Determination.
- b) the part of the costs of the indemnity dispute the Commissioner orders them to pay; and
- c) their own costs and expenses.

The Commissioner must not order a Party to any indemnity dispute to pay the costs and expenses of another Party to an indemnity dispute.

UCSL will decide the mechanism for setting costs payable by the Parties to the indemnity dispute from time to time.

The indemnity dispute will be confidential as between the Commissioner and the Parties and all information about the existence or substance of the dispute and its outcome must be held in confidence and not disclosed to any other Party.

- 15 Providers will pay the fees and charges set out in Appendix One.
- 16 The Energy Complaints Scheme will be free of charge to Complainants.
- 17 Words and phrases defined in the General Rules have the same meaning in these Scheme Rules.

Appendix One

Fees and charges

The fees and charges for the Energy Complaints Scheme are comprised of the fees and charges set out in Part D of the Electricity and Gas Complaints Commissioner Scheme Document which is copied below as a matter of record:

- 1.1 Providers must pay a levy each Financial Year.
- 1.2 The desired outcomes from the Scheme's levy system are that it:
- 1.2.1 Encourages timely and appropriate resolution of complaints.
 - 1.2.2 Supports the achievement of the Scheme's purpose.
 - 1.2.3 Provides certainty and predictability for Providers.
 - 1.2.4 Reliably provides the funds to run the Scheme.
 - 1.2.5 Is easy to understand and administer.
 - 1.2.6 Is equitable among Providers.
 - 1.2.7 Ensures a levy is not disproportionate to the cost of dealing with a complaint.
 - 1.2.8 Is not dependent on the outcome of a particular complaint.
 - 1.2.9 Is sufficiently robust to not need changing for several years.
 - 1.2.10 Complies with the requirements of Schedule 4 of the Electricity Industry Act 2010.

Board to determine levy

- 1.3 The Board will determine the levy and manner of payment annually and notify it to Providers along with each Provider's specific contribution to the levy. In determining the levy for a Financial Year the Board must have regard to:
- 1.3.1 the financial budget to operate the Scheme for that Financial Year;
 - 1.3.2 the retained earnings of the Scheme from previous Financial Years; and
 - 1.3.3 the requirement for the Scheme to operate on a not for profit basis.
- 1.4 Providers in more than one Class will have a levy determined for each Class.

Invoicing and payment

- 1.5 The Board will invoice Providers for the levy.
- 1.6 The Board must give notice to each Provider requesting payment of any fee or levy amount to be raised from that Provider. The notice must state the total amount to be raised and the amount of the Provider's contribution.
- 1.7 All fees and levies are:
- 1.7.1 plus GST payable (if any); and
 - 1.7.2 due and payable by each Provider within 20 Working Days of the Board sending the notice requesting payment (unless otherwise agreed).

Providers' specific contributions to levies based on market share and Deadlocked Complaints

- 1.8 Each Provider's specific contribution to the levy will be determined on the basis of:
- 1.8.1 a Proportionate Basis; and
 - 1.8.2 Deadlocked Complaints;
- subject to the qualifications set out below.
- 1.9 A Proportionate Basis will be determined as follows:
- 1.9.1 The Board will, from time to time, determine what percentage or amount of the total amount to be raised or distributed is to be respectively raised from or distributed to:
 - (a) Retailer Joint Class Providers
 - (b) Lines Company Joint Class Providers,
 - 1.9.2 Of the percentage to be raised from or distributed to Retailer Joint Class Providers, each Retailer Provider's proportion will be determined by its market share of the retail sector based on energised Consumer ICPs mapped to each Retailer, compared with the total number of energised Consumer ICPs mapped to all Retailer Providers.
 - 1.9.3 Of the percentage to be raised from or distributed to Lines Company Joint Class Providers excluding Transpower and any Gas Lines Company that only operates Gas Transmission Pipelines, each Lines Company Provider's proportion will be determined by its market share based on the number of energised Consumer ICPs on its network or Distribution System, compared with the total number of energised Consumer ICPs mapped to all Lines Company Providers.
 - 1.9.4 The Board will determine under clause 1.10:
 - (a) the amount to be paid by Transpower and any Gas Lines Company that only operates Gas Transmission Pipelines ; and

- (b) the amount to be paid by any Gas Lines Company that operates Gas Transmission Pipelines and other Gas Pipelines in respect of its share of the Gas Transmission Pipelines market. This amount is in addition to that payable by those Gas Lines Companies under clause 1.9.3.

1.9.5 Numbers of energised Consumer ICPs will be calculated by the Board based on information available to the Board. Providers authorise the Board or any person authorised by the Board to obtain the relevant information from the Electricity Registry or Gas Registry, or from Providers' records, for this purpose. Providers will provide all information sought within 5 working days of such request.

1.10 In relation to the levy for the Financial Year starting on 1 April 2012 and each Financial Year following:

1.10.1 For each Provider, part of the total amount to be raised will be raised by means of level one, level two and level three Deadlocked Complaint levies as follows:

- (a) Providers will pay a level one Deadlocked Complaint levy for each Deadlocked Complaint relating to that Provider in the previous Financial Year.
- (b) Providers will also pay a level two Deadlocked Complaint levy that is equal to the level one Deadlocked Complaint levy, for each Deadlocked Complaint relating to that Provider in the previous Financial Year where:
 - (i) the Commissioner or a member of the Commissioner's staff worked to resolve the Complaint for more than 8 hours; or
 - (ii) the Complaint was still unresolved after 20 Working Days from receipt by the Commissioner.
- (c) Providers will also pay a level three Deadlocked Complaint levy equal to the sum of the level one Deadlocked Complaint levy and the level two Deadlocked Complaint levy, for each Deadlocked Complaint relating to the Provider in the previous Financial Year where:
 - (i) the Commissioner or a member of the Commissioner's staff worked to resolve the Complaint for more than 16 hours; or
 - (ii) the Complaint was still unresolved after 40 Working Days from receipt by the Commissioner.
- (d) The amounts of the level one, level two and level three Deadlocked Complaint levies will be determined, and invoiced, each Financial Year by the Board after considering the views of the Member Committee, based on the number of Complaints relating to a Provider that reached each of the levels in the previous Financial Year.

1.10.2 Once the amount to be raised under clause 1.10.1 is calculated, each Provider's specific contribution to the balance of the total amount to be raised will then be determined on a Proportionate Basis, except that:

- (a) The specific contributions of Retailer Joint Class Providers will be calculated on the basis that the total amount raised from them is 60% of the total levy on all Providers.
- (b) The specific contributions of Lines Company Joint Class Providers excluding Transpower and any Gas Lines Company that only operates Gas Transmission Pipelines will be calculated on the basis that the total amount raised from them is 40% of the total levy on all Providers less the amount of the contributions calculated under clauses 1.10.2(c) and 1.10.2(d);
- (c) Transpower's specific contribution will be \$65,000 plus an amount adjusted annually to reflect the Board's assessment of any movement in the Consumer Price Index (all groups) published by New Zealand Statistics. The adjustment shall use the December quarter immediately prior to the beginning of the annual review period as a start point and the December quarter immediately prior to the end of the annual review period as an end point;
- (d) Any Gas Lines Company that operates Gas Transmission Pipelines (whether or not it operates other Gas Pipelines) will contribute \$23,000 and if more than one, then the \$23,000 will be apportioned between them according to their share of the Gas Transmission Pipelines market as determined by the Board, plus an amount adjusted annually to reflect the Board's assessment of any movement in the Consumer Price Index (all groups) published by New Zealand Statistics. The adjustment shall use the December quarter immediately prior to the beginning of the annual review period as a start point and the December quarter immediately prior to the end of the annual review period as an end point.

Expert witness costs

- 1.11 In addition to the levy payable under the Scheme, if the Commissioner requires expert witnesses to assist with any investigation or resolution of a Complaint, the costs of any such expert witnesses shall be charged by the Commissioner to the Provider(s) that is or are the subject of the Complaint.

Levy payable by new Providers or Providers joining another Class

- 1.12 Where a person applies to become a new Provider, the Board will set the amount of the levy required to cover the period from the date the person proposes to join the Scheme until the next 31 March.
- 1.13 Where an existing Provider applies to join the Scheme in another Class, the Board's estimate of the levy payable in respect of that application must be based on the Provider's market share in the Class it is applying to join.
- 1.14 Any levies collected from new Providers or existing Providers joining another Class are to be distributed at the end of the Financial Year to Providers existing at the time such Providers joined, or joined another Class, on a Proportionate Basis as a refund on annual

levies paid or off-set against annual levies payable by those existing Providers in the next Financial Year.

Disputing levies and fees

1.15 Providers may only dispute an invoice for levies or fees payable under the Scheme in the 30 Working Days from the date of issue of the invoice. Providers disputing an invoice must notify the Board in writing and provide details as to why the invoice or part of it is disputed. If the Board and the Provider cannot resolve the dispute within 20 Working Days the matter will be referred to the Board chair who will make a final determination. Any amount of the invoice found by the Board chair to be payable will be paid by the Provider within 5 Working Days of the final determination. Except as set out in this clause Providers may not dispute or refuse to pay any invoice for levies or fees payable under the Scheme.

Definitions

Words and phrases defined in the General Rules and Scheme Rules have the same meaning when used in this Appendix unless otherwise defined. In this Appendix, the following definitions apply:

Class means Provider classifications as Retailers or Lines Companies.

Consumer means any person who is supplied, or applies to be supplied, with electricity or gas other than for resupply.

Distribution System has the same meaning as in section 2 of the Gas Act 1992.

Financial Year means a period commencing on 1 April and ending on 31 March of the following year.

Gas Transmission Pipeline means pipelines used in the conveyance of Gas that are operated at a gauge pressure exceeding 2,000 kilopascals.

ICP means Installation Control Point, in the case of:

- a) electricity, the point at which a Consumer's property is supplied with electricity and at which the supply of electricity may flow between the electricity Lines Company's network and that Consumer's property only, subject to any amendments to the term point of supply under the Electricity Act 1992, or
- b) gas, the point on a gas Lines Company's Distribution System at which gas may flow between the Distribution System and the Consumer's premises, which the gas Lines Company nominates as the point at which a gas Retailer is deemed to supply gas to a Consumer.

Joint Class means, in the case of:

- a) Lines Companies, all electricity Lines Companies together with all gas Lines Companies; or
- b) Retailers, all electricity Retailers together with all gas Retailers.

Lines Company means, in the case of:

- a) electricity, a distributor as defined in the Electricity Industry Act 2010 or Transpower; or

- b) gas, a gas distributor as defined in the Gas Act 1992 and any person that operates a Gas Transmission Pipeline.

Proportionate Basis means the formula in clause 1.9.

Retailer means, in the case of:

- a) electricity, a retailer as defined in the Electricity Industry Act 2010; or
- b) gas, a gas retailer as defined in the Gas Act 1992.

Scheme means the Energy Complaints Scheme.

Transpower means Transpower New Zealand Limited.

Working Day means every Monday to Friday, but does not include a public holiday.

Appendix Two

- 1 UCSL must not accept a Complaint for consideration under General Rule 14(b) or Scheme Rule 11 about any dispute:
 - 1.1 as to whether Lines Equipment was lawfully fixed or lawfully installed in terms of section 22 of the Electricity Act 1992 in respect of Electricity Works and section 23 of the Gas Act 1992 in respect of Gas Pipelines;
 - 1.2 as to whether, in respect of Lines Equipment that was constructed or for which construction commenced before 1 October 2006 but to which neither section 22 of the Electricity Act 1992 nor section 23 of the Gas Act 1992 (as the case may be) apply, a Lines Company holds the legal right for that Lines Equipment to be fixed in, over, under or across Land;
 - 1.3 as to whether or not Lines Equipment constructed before 1 October 2006 or for which construction commenced before that date, is owned by a Lines Company;
 - 1.4 involving a local authority or other body or person having jurisdiction over a road or level crossing that relates to or arises from the construction or maintenance of Lines Equipment in, on, along, over or across roads and level crossings under sections 24-33 of the Electricity Act 1992 and sections 25-35 of the Gas Act 1992;
 - 1.5 relating to or arising from the negotiation for, or other process of, obtaining any interest in Land in relation to Lines Equipment, including under the Resource Management Act 1991 or the Public Works Act 1981;
 - 1.6 relating to or arising from a refusal to grant a dispensation under regulation 20 of the Electricity (Hazards from Trees) Regulations 2003 or the terms of a dispensation granted under regulation 20;
 - 1.7 as to whether the maintenance programme carried out by a Lines Company on Lines Equipment is adequate or reasonable;

- 1.8 as to whether or not a replacement or upgrade of an Electricity Work causes Land to be injuriously affected in terms of section 23(3)(b) of the Electricity Act 1992;
- 1.9 as to whether any changes to Lines Equipment carried out in the exercise of powers under the Electricity Act 1992 or the Gas Act 1992 have injuriously affected Land in terms of section 57(1) of the Electricity Act 1992 or section 51(1) of the Gas Act 1992, including disputes about the amount of compensation that may be payable in relation to such injurious affection. This clause does not exclude disputes about whether or not a Lines Company has complied with any obligation it may have to mitigate or repair damage to Land or property in or under any applicable electricity or gas legislation and regulations, or Land Agreement;
- 1.10 relating to the quality of electricity or gas supplied by a Lines Company to a Consumer, or any interruption in the supply of electricity or gas or the provision of Line Function Services; or
- 1.11 relating to a Retailer.
- 2 UCSL must not accept a Complaint, other than a Complaint under General Rule 14(b) or Scheme Rule 11, that:
- 2.1 relates to the Services provided by Transpower; or
- 2.2 relates to the Services provided by any gas Lines Company Provider in the transmission of gas by Gas Transmission Pipelines.

Definitions

Words and phrases defined in the General Rules or Scheme Rules have the same meaning when used in this Appendix unless otherwise defined. In this Appendix, the following definitions apply:

Electricity Works means works as defined in the Electricity Act 1992.

Gas Pipelines means any equipment that is used in connection with the conveyance of gas.

Gas Transmission Pipeline means pipelines used in the conveyance of Gas that are operated at a gauge pressure exceeding 2,000 kilopascals.

Land includes any estate or interest in land.

Land Agreement means any agreement, including an easement or licence, under which a Lines Company is granted rights by a Land Owner or Land Occupier to access or use any Land, other than a Consumer contract.

Lines Company means, in the case of:

- a) electricity, a distributor as defined in the Electricity Industry Act 2010 or Transpower; or
- b) gas, a gas distributor as defined in the Gas Act 1992 and any person that operates a Gas Transmission Pipeline.

Line Function Services in the case of:

- a) electricity, has the meaning set out in section 2 of the Electricity Act 1992 and as further provided for in contracts with Consumers, and includes metering services where an electricity Lines Company provides these services; and
- b) gas, has the meaning set out in section 2 of the Gas Act 1992 and as further provided for in a contracts with Consumers, and includes metering services where a gas Lines Company provides these services.

Lines Equipment means Electricity Works or Gas Pipelines, as the case may be.

Land Occupier means either:

- a) an inhabitant occupier of the Land; or
- b) any person who has a right to occupy the Land under a lease, sub-lease, or licence granted by the Land Owner or another Land Occupier.

Land Owner means, in relation to the Land that is held under:

- c) the Land Transfer Act 1952, the person(s) that own(s) the Land in fee simple;
- d) the Land Act 1948, the Crown; and
- e) any other statute, the legal and beneficial owner of the Land (as appropriate) as specified in that statute.

Retailer means, in the case of:

- a) electricity, a retailer as defined in the Electricity Industry Act 2010; or
- b) gas, a gas retailer as defined in the Gas Act 1992.

Services means goods or services provided by a Retailer, or Line Function Services. References to the provision of services include, where the context requires, references to the non-provision of services.

Transpower means Transpower New Zealand Limited.