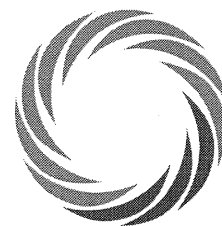


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14 November 2003

Mr Gareth Wilson
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Submission on
Development of Information Disclosure Regime
Commerce Commission
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Dear Sir,

SUBMISSION TO THE PROCESS PAPER: DEVELOPMENT OF INFORMATION DISCLOSURE REGIME

Unison Networks Limited ("Unison") is pleased to respond to the Process Paper *Development of Information Disclosure Regime* (the "Process Paper") released by the Commerce Commission (the "Commission") for comment on 16 October 2003.

Current Information Disclosure Regime

This submission takes into account the current Electricity (Information Disclosure) Regulations 1999 ("the Regulations") and the associated handbooks issued by the Ministry of Economic Development (MED) – *Handbook for Complying with the Electricity (Information Disclosure) Regulations 1999*, June 2000 and *Handbook for Optimised Deprival Valuation of System Fixed Assets of Electricity Lines Businesses*, Fourth Edition, October 2000 (the "MED ODV Handbook").

Unison believes that although the information disclosure regime has had some degree of success in providing incentives for lines businesses to become more efficient, there are deficiencies which need to be addressed. These include:

- the disclosed information does not appear to have been used to develop a framework for assessing lines businesses' performance – much of the information appears to have been considered of indirect use only;
- the MED ODV Handbook has not been able to ensure the accuracy and consistency of information disclosed by lines businesses; and
- the MED ODV Handbook has not been regularly updated with the consequence that the ODVs calculated are of limited value when used in the context of the current Disclosure regime.

Information Disclosure under the Commerce Act

The current information disclosure regime under the Regulations will be replaced with new information disclosure requirements to be determined by the Commerce Commission under subpart 3 of Part 4A of the Commerce Act, the purpose of which is:

“... to promote the efficient operation of markets directly related to electricity distribution and transmission services by ensuring that lines businesses make publicly available reliable and timely information about their operation and behaviour so that a wide range of people are informed about such factors as the profits, costs, asset values, price (including terms and conditions of supply), quality, security, and reliability of supply of those businesses.” (para 5 of the Process Paper).

Unison agrees with the Commission's observation (in para 5 of the Process Paper) that subpart 3 refers to the same general classes of information as those required to be disclosed currently under the Regulations and notes that subpart 3 has the same general intention as the Regulations of promoting greater efficiency through the information disclosure. Therefore any future development of information disclosure should address the deficiencies of the current regime by:

- ensuring that the disclosed information is relevant and is actually used for assessing lines businesses' performance, for example, when setting the parameters of the regulatory regime under subpart 1 of Part 4A of the Commerce Act and for determining whether or not to investigate and possibly control a lines business;
- ensuring that the disclosed information is accurate and consistent across lines businesses; and
- to the extent that ODV will form a part of the new regulatory regime, ensuring the proper application of the ODV methodology.

Unison supports in principle the public disclosure of information such as *“profits, costs, asset values, price (including terms and conditions of supply), quality, security, and reliability of supply”* as being both relevant and useful. However Unison questions the usefulness of the disclosed information if it is disregarded by the Commission when deciding which lines businesses should be subject to investigation and possible control.

Unison does not support disclosing spurious information that has no apparent use, as this simply adds to the cost of regulatory compliance and undermines the credibility of the information disclosure regime. Therefore in specifying the information to be disclosed under the Commerce Act, the Commission should specify along with the information the use to which the information will be put.

ODV Handbook

Unison notes that it is the Commission's intention to require all lines businesses to revalue their system fixed assets as at 31 March 2004 using the methodology contained in the new ODV handbook. The Commission will receive submissions¹ on its Issues Paper *Development of a Handbook for Optimised Deprival Valuation of Electricity Lines Business System Fixed Assets* by 14 November 2003 and proposes to issue the draft new handbook in December 2003 and the final handbook in March 2004.

This timetable may be somewhat optimistic given the industry's near-unanimous concerns over the asset values in the current MED ODV Handbook and the fact that the new handbook will not be available even in draft form for another month.

The initial valuation using the new handbook will be a major issue for the Industry, as the completion of such a valuation requires considerable internal and external input to complete. Depending on the extent to which the methodology in the new handbook differs from that in the current MED handbook, the first application of the methodology in

¹ A separate response has been provided by Unison on this Issues Paper

the new handbook may require considerable time to ensure the proper application of the methodology.

Process and Timetable

In addition to the timing for information to be disclosed under the Commerce Act, the timetable set out on page 4 of the Process Paper includes the Commission's finalising the Assessment and Inquiry Guidelines and lines businesses being required to issue their first quality threshold compliance statement and second price path threshold compliance statement.

In Unison's view, the timetable for information disclosed under the Commerce Act needs to be considered in conjunction with the timetable for other parts of the regulatory regime for electricity lines businesses. The two regulatory streams – of setting thresholds and assessing lines businesses against the thresholds on the one hand, and requiring the disclosure of information on the other – appear to progress in parallel and be largely unrelated to one another. As noted previously, the thresholds will be set without regard for disclosed profitability and the Commission has not indicated how it will use the disclosed information during a post-breach investigation.

The following table sets out key events of both regulatory streams (the thresholds regime's "milestones" are in bold italics).

Indicative dates	Milestones
? some time after 6 September 2003	Assessment against initial price path threshold and possible commencement of post-breach investigation
14 November 2003	Comments due on the process and timetable for developing the information disclosure requirements and on the ODV Handbook Issues Paper
End December 2003	The Commission issues draft information disclosure requirements, based on the Regulations and the associated MED Information Disclosure Handbook, inviting submissions to ensure they have the intended effect. The Commission issues the draft new ODV Handbook, and invites submissions
March 2004	The Commission issues information disclosure requirements, which will come into force before the end of March 2004 and will include references to the new ODV Handbook to be issued by the Commission. The Commission issues the new ODV Handbook. The Commission finalises the Assessment and Inquiry Guidelines.
End May 2004	Distribution businesses disclose their first quality threshold compliance statements, and their second price path threshold compliance statements.
? some time after May 2004	Assessment against quality and price path thresholds and possible commencement of post-breach investigation
End June 2004	Lines businesses (other than Transpower) disclose asset management plans.
End August 2004	Transpower discloses first quality threshold compliance statement and second price path compliance statement. Lines businesses (other than Transpower) disclose information disclosure requirements, including annual financial statements, ODV valuation reports (as at 31 March 2004), and relevant performance measures using ODV

Indicative dates	Milestones
	information prepared under the new ODV Handbook.
End November	Transpower discloses information disclosure requirements, including annual financial statement, ODV valuation report (as at 30 June 2004), and related performance measures.
During 2004	The Commission seeks and considers the views of interested parties on refinements to the information disclosure regime.
After September 2004	The Commission publishes summary and analysis of disclosed information relevant to 2003/04 disclosure year.
Before March 2005	The Commission issues revised information disclosure requirements.

Unison wrote² to the Commission on 2 October 2003 expressing its concern that the Commission's timetable showed that the Commission could be undertaking some assessments prior to the Assessment and Inquiry Guidelines being finalised. The Commission in its Draft Assessment and Inquiry Guidelines³ signalled its intention:

"After considering submissions from interested parties on these guidelines, the Commission will release final guidelines."

In its latest timetable contained in the Information Disclosure Process Paper, final assessment and inquiry guidelines will not be released until March 2004. Thus they will not be in place in time for the first price path threshold compliance assessment, unless the assessments are delayed until after March 2004.

Unison believes that, in the absence of final assessment and inquiry guidelines being in place prior to March 2004, the Commission should consider using the most recently disclosed information to determine whether to investigate lines businesses, rather than the initial price path threshold and the yet-to-be-finalised process and analytical framework described in the Draft Assessment and Inquiry Guidelines.

Distribution businesses will be required to issue their first quality threshold compliance statements and their second price path threshold compliance statements at the end of May 2004. They will also be required to disclose information disclosure requirements at the end of August 2004.

In its submission to the Commission on the draft assessment and inquiry guidelines, Unison expressed its concern that comparative benchmarking approaches had not been developed to the point where a single comparison could adequately act as a mechanism for comparing the efficiency and profitability of lines businesses. Unison proposed⁴:

"Using a range of comparative benchmarking models and finding consistent rankings of lines businesses would improve the validity of a comparative benchmarking approach."

The Commission has released one comparative benchmarking model⁵ developed for it by Meyrick and Associates. In the absence of any other comparative benchmarking models at this stage, Unison believes that the Commission should use disclosed information in addition to the rankings produced by the Meyrick analysis (and the thresholds produced from the Meyrick rankings). At the very least, the Commission

² Unison letter of 2 October 2003 *Timetable for Targeted Control Regime*

³ Commerce Commission *Draft Assessment and Inquiry Guidelines (Process and Analytical Framework)* 7 August 2003

⁴ Unison submission dated 26 September 2003 on *Draft Assessment and Inquiry Guidelines (Process and Analytical Framework)*

⁵ This model is described in Meyrick and Associates *Regulation of Electricity Lines Businesses Resetting the Price Path Threshold – Comparative Option* 3 September 2003

should examine the reasons for discrepancies between rankings calculated by Meyrick and those given by the disclosed information before embarking on an investigation on the strength of a threshold breach alone.

In conclusion, Unison believes that the disclosed information should serve a useful purpose. That purpose is, in Unison's view, to provide the Commission with an alternative perspective on the efficiency and profitability of lines businesses so that the Commission is not completely reliant on threshold breaches to decide whether or not an investigation of a lines business is warranted. This would enable the Commission to better avoid potentially time-consuming and costly investigations of "false positives" that might otherwise arise if it relied solely on the thresholds.

Yours sincerely

A handwritten signature in black ink, appearing to read "Ken Sutherland". The signature is fluid and cursive, with a large initial "K" and "S".

Ken Sutherland
CHIEF EXECUTIVE