



**2018 Consultation on recommendations from the 5 year independent
review**

Submissions received - Round 1

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Submission

Independent 5-year review of Utilities Disputes Limited - Recommendations from the review and other Board proposed changes - Consultation Paper for Round 1

6 April 2018

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1 Introduction

Aurora Energy welcomes this opportunity to comment on Utilities Disputes Limited's (UDL) consultation paper "*Independent 5-year review of Utilities Disputes Limited - Recommendations from the review and other Board proposed changes - Consultation Paper for Round 1*" (the Consultation Paper).

No part of our submission is confidential and we are happy for it to be publically released.

If UDL has any queries regarding this submission, please do not hesitate to contact:

Alec Findlater
General Manager Network Commercial
Aurora Energy Limited
alec.findlater@auroraenergy.co.nz
027-222-2169

2 Response to specific questions

Aurora Energy's responses to the specific questions posed in the Consultation Paper are set out in Appendix 1 to this submission.

3 Natural justice

The Independent Review of Utilities Disputes Limited – 2017 (the Review) recommended that the UDL board (the Board) considers removing the principle of "natural justice" from the General and Scheme Rules for the Energy Complaints Scheme operated by UDL (the Scheme Rules). The Board's view is that the explicit reference to natural justice in the list of principles is not needed and can be removed because it is encapsulated in the principle of "fairness".

Natural justice is a two-pronged concept. It encompasses:

- procedural fairness; and
- a freedom from bias.

In terms of procedural fairness, it is not that the decision itself needs to be fair, but that a fair and proper procedure was followed in making the decision. By including "natural justice" in the Scheme Rules, a clear and explicit obligation is placed on the Commissioner to ensure that procedural fairness and a freedom from bias are fundamental to the decision making process and that it is not just the decision itself that is fair. The Scheme Rules deny providers any right of appeal after a determination by the Commissioner with the only options available to them the costly and uncertain processes of carrying out a test case (noting that this can only be done before a determination is made and in specific instances) and judicial review. Having rules that are as robust and clear as possible ensures that the Commissioner is clear in her obligations when resolving disputes and provides comfort to providers that the scheme is operating adequately when their rights of appeal are curtailed.

For this reason, Aurora Energy disagrees with both:

- the Review's recommendation that the Board considers removing the principles of natural justice from the Scheme Rules; and
- the Board's view that the explicit reference to natural justice in the list of principles is not needed and can be removed.

4 Levies

Aurora Energy supports the review of the charging of levies under the Scheme Rules.

In respect of the fixed levy payable each year by the providers, Aurora Energy does not oppose the appropriateness of that levy or the method by which that levy is determined.

However, in respect of deadlock complaints, while Aurora Energy agrees with the user pays principle, it does not agree with the current tiered levy structure in relation to the determination of those complaints. The progress of complaints, once in UDL's hands, is in Aurora Energy's opinion often slow, and cases are frequently complex. While Aurora Energy accepts that some cases will genuinely fall into the second or third tier, under the current deadlock complaint levy structure, cases can often be pushed into a higher tier due to no fault of the provider (or little involvement), but largely as a consequence of UDL's processes or complainant-driven delays. Ultimately it is consumers that bear the cost of this through prices, as a consequence of the provider paying higher tier fees.

Aurora Energy would prefer to see the current tier structure replaced with a single deadlocked complaint fee, which applies regardless of the timeframe taken to resolve the case.

5 Land complaint exclusions

Aurora Energy disagrees with the Review's recommendation to remove the land complaint exclusions contained in appendix two of the Scheme Rules (the Land Complaint Exclusions). Aurora Energy is of the view that each of the reasons set out within section 16.3 of the Review given by distributors during the 2016 consultation on the Land Complaint Exclusions, and by Transpower during the Review, remain valid reasons for retaining the Land Complaint Exclusions. In particular:

- the court system is arguably a better forum for the reconciliation of such complaints due to the often complex and technical nature of the complaint;
- there is no right of appeal for a distributor meaning that it is bound by UDL's decisions. Given the complex nature of these types of complaints, then an incorrect binding decision can have significant consequences for a distributor in terms of its business whereas if the matter was being determined within the court system there would be additional avenues of recourse available to it; and
- given the ease with which a consumer can bring a complaint to UDL, there is a real risk that distributors will face increase costs associated with providing resources in relation to complaints which may be meritless or frivolous. The court system more often than not prevents such meritless or frivolous action from being brought.

Provided that the inclusion of the provisions are lawful, the land complaint exclusions should remain.

If the Land Complaint Exclusions are removed despite concerns raised from distributors, then UDL should:

- adopt each of the safeguards recommended in section 16.5 of the Review;
- in respect of lines equipment and a distributor's existing use rights, develop a protocol for dealing with missing information or evidence and should not automatically err in favour of the consumer when determining the matter; and
- alter the Scheme Rules to provide for a right of appeal for a distributor for each of the Land Complaint Exclusions.

Appendix 1 - Questions for submitters and preferred form for responses

Principle/Area of document	#	Question	Board's view (if available)	Submitter's response
Accountability	1	Do you agree with the review's recommendation <i>The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes?</i>	The Board disagreed with this recommendation. For further information on the Board's view, see pt8 (a) of the consultation pack (above)	Aurora Energy disagrees with the review's recommendation that the Board should name the relevant providers in its case notes. Doing so is unlikely to result in a better outcome for customers and may result in skewed public perception of particular providers given that UDL is a consumer driven complaints forum. Further, it is somewhat inappropriate to use the Electricity Authority as a comparator, as the Authority's regulatory context is more objective than that of complaint management.
	2	Do you agree with the Board's proposal for Utilities Disputes to name providers that breach scheme rules and guidelines?	Board proposes naming providers that breach scheme rules and guidelines	Aurora Energy does not oppose this proposed approach.
	3	Do you agree with the Board's proposal for Utilities Disputes not to name providers in its case notes?	Board does not accept recommendation to name providers in its case notes	Aurora Energy agrees with UDL that it should not name providers in its case notes.

	4	If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?	Board seeks views before considering the issue further	Aurora Energy does not agree that providers should be named in case notes.
Natural Justice	5	Do you agree with the review's recommendation to <i>consider removing the principles of natural justice from its scheme document?</i>	Explicit reference to natural justice in the list of principles is not needed and can be removed	Aurora Energy does not agree with the recommendation to remove the principles of natural justice from the Scheme Rules. Please refer to our further detailed response in the body of our submission.
	6	Do you agree with the Board's view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	Explicit reference to natural justice in the list of principles is not needed and can be removed	Aurora Energy does not agree with the view that the explicit reference to natural justice is not needed in the list of principles.
Performance Standards	7	Do you agree with the review's recommendation to remove performance standards relating to providers' self-reporting on compliance?	Board seeks views before considering the issue further	Aurora Energy is of the view that the performance standards should only be removed once new measures which adequately measure UDL's performance have been developed and approved.
	8	Do you agree with the review's recommendation to remove performance standards relating to cost per case?	The Board believes a <i>cost per case</i> measure is not sufficiently linked to Utilities Disputes performance to justify a performance measure. However, the current measures should remain until new measures have been approved	Aurora Energy is of the view that the performance standards should only be removed once new measures which adequately measure UDL's performance have been developed and approved.

	9	Do you have ideas about other measures the Board could consider adopting?	Board seeks views before considering the issue further	
Levies	10	Do you agree with the review's general recommendation that the levy mechanism needs to be changed?	Board seeks views before considering the issue further	Aurora Energy agrees that the current levy mechanism needs to be reviewed. Please refer to our further detailed response in the body of our submission.
	11	What information do you think the Board needs, to help it decide what options are available?	Board seeks views before considering the issue further	
	12	What elements of the current levy mechanism do you think work well and should be retained?	Board seeks views before considering the issue further	
	13	What elements of the current levy mechanism do not work and why?	Board seeks views before considering the issue further	
	14	What levy options can you think of to address provider concerns about 'throwing money at complaints' to avoid the levy?	Board seeks views before considering the issue further	
	15	What levy options can you think of to avoid senior staff spending more	Board seeks views before considering the issue further	

		time on jurisdiction issues		
	16	What levy options can you think of that would avoid delays (beyond the provider's control) triggering levy levels?	Board seeks views before considering the issue further	
	17	Do you agree with the recommendation <i>every organisation which is covered by the Scheme should make a contribution to its running costs?</i>	Board seeks views before considering the issue further	Aurora Energy agrees with the recommendation that every organisation which is covered by the Scheme should make a contribution to its running costs.
	18	Do you agree with the recommendation <i>there should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>	Board seeks views before considering the issue further	Aurora Energy agrees with the recommendation that there should be no cross-subsidisation of providers, nor sweetheart deals. One option may be to determine Transpower and First Gas' contributions based on their total distribution revenue.
	19	Do you agree with the recommendation <i>The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints?</i>	Board seeks views before considering the issue further	Aurora Energy agrees with the recommendation that the fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints, provided that those costs are distributed proportionately to all providers and are justified costs.

	20	Do you agree with the recommendation <i>In keeping with the 'user pays' principle, any case reaching Utilities Disputes at deadlock should incur a fee?</i>	Board seeks views before considering the issue further	Aurora Energy agrees with the recommendation that any case that reaches UDL at deadlock should incur a fee.
	21	Do you agree with the recommendation <i>The current variable fee structure needs to be reconsidered?</i>	Board seeks views before considering the issue further	Aurora Energy agrees with the recommendation that the current variable fee structure needs to be reconsidered. Please refer to our further detailed response in the body of our submission.
Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme's approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a member has access to a Scheme for resolving the complaint)	
	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.	Board seeks views before considering the issue further	
Other proposed	24	Do you agree in principle with the idea of a deemed membership	Board seeks views before considering the	Aurora Energy agrees in principle with the idea of a deemed

changes - <i>Accessibility</i>		mechanism?	issue further	membership mechanism.
	25	If implemented, do you think the deeming mechanism should apply to any scheme with mandatory membership that Utilities Disputes operates?	Board seeks views before considering the issue further	Yes.
	26	To enable fair contribution toward the costs of running the scheme, if implemented, when should the levy obligations for deemed providers start?	Board seeks views before considering the issue further	In the case of the Energy Complaints Scheme, a possible starting point for contributions could be the date on which the provider registers with the Electricity Authority in accordance with Electricity Industry Act 2010.
	27	If implemented, when should other provider obligations (for example those in General Rule 12) start for deemed providers?	Board seeks views before considering the issue further	In the case of the Energy Complaints Scheme, a possible starting point for other provider obligations could also be the date on which the provider registers with the Electricity Authority in accordance with Electricity Industry Act 2010.
	28	Do you have other suggestions to address the problem of non-compliance with membership requirements to join the Energy Complaints Scheme?	Board seeks views before considering the issue further	If UDL becomes aware of instances of non-compliance of membership, these should be referred to: <ul style="list-style-type: none"> • the Minister for Commerce and Consumer Affairs; and • in the case of a provider that is a participant for the purposes of the Electricity Industry Act 2010, the Ministry of Business, Innovation and Employment as an offence is

				committed under the Electricity Industry Act 2010 if a person knowingly refuses or fails to become a member of the dispute resolution scheme.
Accessibility/ Efficiency	29	Do you agree with the proposed change to substitute “ <i>distributor</i> ” for “ <i>lines company</i> ” where they appear in the scheme documents?	Board thinks this will improve consistency in terminology.	Aurora Energy agrees with the proposed substitution to the extent that it is only the term and not the definition that is amended.
	30	If references to lines company were changed to distributor, what other steps, (including other potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?	Board seeks views before considering the issue further	



Chorus Limited
Level 10
1 Willis Street
P O Box 632
Wellington 6140
New Zealand

Submissions
Utilities Disputes
PO Box 5875
Wellington 6140

5 April 2018

Submission re: Independent 5 Year Review of Utilities Disputes Limited

Thank you for the opportunity to provide feedback on the proposed changes under the Five Year Independent Review of Utilities Disputes.

We have reviewed the points raised in the paper provided. The Independent Review primarily addresses issues concerning the Energy Scheme, which Chorus is unable to comment on.

Chorus signed up to the Broadband Shared Property Access Disputes BSPAD Scheme (BSPAD Scheme) in its current state only six months ago. At this stage we are happy with how the BSPAD Scheme is functioning and with only a few months' experience, we're not in a position to provide meaningful feedback on many items in the Independent Review.

We have summarised our feedback below:

(a) Accountability

We are happy with the current approach used in case notes. We don't think the members need to be named. However, we are also aware that as the only BSPAD Scheme member, Chorus is currently easily identifiable.

(b) Natural Justice

We agree that the explicit reference to natural justice in the list of principles is not necessary as it is already covered by the other principle of fairness. We support this being removed.

(c) Performance Standards

We don't believe this is something that Chorus can provide comment on.

(d) Levies

Chorus has only recently signed up to the BSPAD Scheme.

At this stage, we believe the BSPAD Scheme achieves the principles that the Board is trying to achieve through the levy mechanism and we are happy with what we have signed up to.

As we have not had enough time to determine whether the levies are reasonable in practice, we are unable to provide further comment. We would like to consider the

other submissions made regarding levies and be part of the second round of consultation.

(e) Land Complaint Exclusions

We don't believe this applies to the BSPAD Scheme. We don't consider it appropriate that Utilities Disputes considers any issues outside of the current purpose of the BSPAD scheme – i.e. any issues outside of Subpart 3, Part 4 of the Telecommunications Act 2001.

(f) Deemed Membership

This doesn't apply to the BSPAD Scheme as potential members have the choice whether or not to join the scheme.

We would like to consider submissions made to this Review by other parties. We would appreciate the opportunity to provide feedback in the second round of consultation.

Kind regards

Kadia Turner

Senior Consents & Acquisition Specialist

T +64 4 8964157

M +64 27 4682796

E Kadia.Turner@chorus.co.nz

Andrew Calnon

Senior Consents & Acquisition Specialist

T +64 3 9667556

M +64 27 4897938

E Andrew.Calnon@chorus.co.nz

9 April 2018

Utilities Disputes
PO Box 5875
Wellington 6140

By email: submissions@utilitiesdisputes.co.nz

**SUBMISSION on
Consultation Paper for Round 1**

1. Introduction

Thank you for the opportunity to make a submission on the consultation paper on the independent review of Utilities Disputes Limited. This submission is from Consumer NZ, New Zealand's leading consumer organisation. It has an acknowledged and respected reputation for independence and fairness as a provider of impartial and comprehensive consumer information and advice.

Contact: Aneise Gawn
Consumer NZ
Private Bag 6996
Wellington 6141
Phone: 04 384 7963
Email: aneise@consumer.org.nz

2. Comments

At this stage, we only wish to comment on questions 1 and 2.

We support the recommendation that:

The Board should consider following the example of the Electricity Authority and name the relevant providers in case notes.

Publishing the names of providers in case notes would help to promote openness and transparency. Openness and transparency are important aspects of any effective dispute resolution scheme.

In our view, naming providers would increase consumer confidence in the scheme and is also likely to result in better standards for consumers. Publicity about complaints helps raise industry standards and increases consumers' awareness of their rights.

We also support the recommendation that Utilities Disputes name providers that breach scheme rules and guidelines.

Thank you for the opportunity to make a submission on the consultation paper. If you require any further information, please do not hesitate to contact me.

Yours sincerely

Aneise Gawn
Consumer Advocate



PO Box 10742, Wellington
Level 2, Harbour City Tower
29 Brandon Street
Wellington, New Zealand
contactenergy.co.nz

6 April 2018

James Blake-Palmer
Manager, Stakeholder Engagement
Utilities Disputes Limited
PO Box 5875
Wellington, 6140

By email: submissions@utilitiesdisputes.co.nz; J.blake-palmer@utilitiesdisputes.co.nz

Dear James,

Contact Energy Submission on the recommendations from the Independent 5-year Review of Utilities Disputes Limited, and other proposed changes

Thank you for the opportunity to comment on Utilities Disputes Limited's (**Utilities Disputes**) consultation on the recommendations from the 5-year independent review (**Review**), and other proposed changes by the Utilities Disputes Board. Contact's response to the specific areas selected by Utilities Disputes for consultation can be found from page two.

Contact is keen to work constructively with Utilities Disputes and as such considers it would have been valuable to have had the opportunity to provide input into the Review before the report was finalised and issued. There are a number of areas that Contact considers contain inaccuracies or a misunderstanding of the context in particular, the fact that the establishment and membership of Utilities Disputes is mandated in legislation. This fact makes some of the conclusions and recommendations difficult to reconcile with the legislative intent.

Is the Utilities Disputes Board anticipating implementing changes (that the Board considers may not require changes to the scheme rules) other than those specified in the Consultation document? This is something we would appreciate the Board clarifying.

If Utilities Disputes is considering implementing other recommendations from the Review which it considers do not require changes to the scheme or General Rules, then Contact assumes these will be further consulted on. Please confirm this is the case.

In addition to our comments in Appendix 1, two particular areas of the Review which Contact considers would need General Rule, Scheme Rule or legislative changes include:

- The requirements for members in relation for the promotion of Utilities Disputes;
- The requirement for the Commissioner to follow the law (although this aspect of the Commissioner's role will be considered by the High Court).

If you have any questions about our response, please contact me for further clarification.

Yours sincerely,

A handwritten signature in blue ink that reads "Kate Rendall".

Kate Rendall
Senior Legal Counsel

Appendix 1 – Contact’s Response to Questions

Principle/Area of document	#	Question	Board’s view (if available)	Contact’s response
Accountability	1	Do you agree with the review’s recommendation <i>The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes?</i>	The Board disagreed with this recommendation. For further information on the Board’s view, see pt8 (a) of the consultation pack (above)	Contact does not agree with the review’s recommendation that members should be named in case notes, and agrees with the Board’s view that the Electricity Authority naming participants found to be in breach of its code is not analogous to Utilities Disputes naming members in case notes. Contact does not consider that there would be additional value in naming members in case notes.
	2	Do you agree with the Board’s proposal for Utilities Disputes to name providers that breach scheme rules and guidelines?	Board proposes naming providers that breach scheme rules and guidelines	Contact considers it may be appropriate to name members who breach the scheme rules, but does not consider it appropriate to name members who breach any guidelines. As guidelines are in general voluntary, it would be inappropriate to name members who exercise their right not to adopt all or part of a guideline in their processes
	3	Do you agree with the Board’s proposal for Utilities Disputes not to name providers in its case notes?	Board does not accept recommendation to name providers in its case notes	Contact agrees with the Board’s proposal not to name members in case notes.
	4	If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?	Board seeks views before considering the issue further	Contact does not consider it appropriate to name members in case notes.

Natural Justice	5	Do you agree with the review's recommendation to <i>consider removing the principles of natural justice from its scheme document?</i>	Explicit reference to natural justice in the list of principles is not needed and can be removed	<p>Contact disagrees with the review's recommendation.</p> <p>The reviewers noted that "natural justice needs to be understood in the context of alternative dispute resolution: it incorporates a need to balance the individual rights of the parties with a need to fulfil the promise and purpose of alternative dispute resolution as an alternative to costly, formal, and inaccessible court procedures." However, the review overlooks the scheme's design and legislative context.</p> <p>In particular, unlike other alternative dispute resolution processes (such as conciliation or mediation), the scheme is not premised on consensus. Importantly, retailers are required by legislation to belong to the approved dispute resolution scheme and the Commissioner can impose binding settlements on members which may be enforced as if they were District Court judgments (section 97 Electricity Industry Act 2010 refers). In that sense, the Commissioner is carrying out a quasi-judicial role and the principles of natural justice should apply - natural justice involves a duty on every one who decides anything to act in good faith and fairly listen to both sides.</p> <p>The importance of natural justice is reflected by the protection afforded by section 27 of the New Zealand Bill of Rights Act – <i>every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has to power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law.</i></p> <p>In Contact's view, there is no risk of the term being misinterpreted as the requirements of natural justice in an</p>
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				<p>adjudicative setting are clear. The two key principles of natural justice are that the parties are given adequate notice and opportunity to be heard and that the decision-maker be disinterested and unbiased. Natural justice in this context requires that a person:</p> <ul style="list-style-type: none"> • Be told of 'the case to be met'; and • Be given the opportunity to comment in reply. <p>In practice, this would mean that the Commissioner is required to, at a minimum, allow each party full access to the evidence the Commissioner takes into account and provide a reasonable opportunity to respond to that evidence before making a binding determination.</p>
	6	Do you agree with the Board's view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	Explicit reference to natural justice in the list of principles is not needed and can be removed	Contact disagrees with the Board's view, for the reasons stated above. There is no compelling reason to remove reference to the principles of natural justice in circumstances where they inarguably apply. Fairness should not completely substitute as a reference to natural justice in this context (the fairness principle relates to both). As such, express reference to natural justice should remain in the scheme document.
Performance Standards	7	Do you agree with the review's recommendation to remove performance standards relating to providers' self-reporting on compliance?	Board seeks views before considering the issue further	<p>Yes, Contact agrees with the Review that self-reporting of compliance is a poor yardstick of Utilities Disputes' performance, but notes that it can be a useful exercise for members to carry out.</p> <p>However, Contact does not agree with the review's recommendation that Utilities Disputes should be able to audit members' processes to ensure compliance with the minimum requirements. Contact considers that the cost involved of carrying out audits would outweigh any benefits to consumers.</p>

				Particularly where a member's internal complaint numbers are low, and very few are escalated to Utilities Disputes for resolution. Contact also considers that this recommendation would require changes to both the Scheme Rules as well as the Electricity Industry Act 2010 in order to empower the Commissioner to audit members.
	8	Do you agree with the review's recommendation to remove performance standards relating to cost per case?	The Board believes a <i>cost per case</i> measure is not sufficiently linked to Utilities Disputes performance to justify a performance measure. However, the current measures should remain until new measures have been approved	<p>Yes, Contact agrees in principle with the Review that a natural drive to focus on numbers ought not to be at the detriment of the quality of Utilities Disputes' work.</p> <p>Contact considers there is significant benefit in having cases dealt with in a robust, well-reasoned manner, particularly as they relate to binding recommendations.</p> <p>Contact is concerned that quantitative reporting targets influence the efficacy of Utilities Disputes' decisions, which, due to the time, cost, and resources required to address, are not in the long-term interests of consumers.</p>
	9	Do you have ideas about other measures the Board could consider adopting?	Board seeks views before considering the issue further	No.
Levies	10	Do you agree with the review's general recommendation that the levy mechanism needs to be changed?	Board seeks views before considering the issue further	<p>Contact considers that the current levy structure imposes significant cost on members, and ultimately consumers, and doesn't encourage Utilities Disputes to improve its processes given that the majority of the levy is calculated through market share rather than through variable costs of time taken for resolving complaints.</p> <p>However, Contact considers that any proposed changes to the levy structure must take into account any increased costs in</p>

				administration and implementation of a new structure. If the costs of implementation are significant then they may outweigh any benefits.
	11	What information do you think the Board needs, to help it decide what options are available?	Board seeks views before considering the issue further	<p>The Board should consider a review of Utilities Disputes' operational processes in order to identify any opportunities to improve and reduce cost, before looking at how the levy should be structured to ensure productivity gains and cost reduction.</p> <p>Consideration should be given to whether market share is an appropriate base on which to calculate the fixed portion of the levy. Contact's contribution to the levy is significant, but Contact (recently) has had very few complaints proceed through Utilities Disputes.</p>
	12	What elements of the current levy mechanism do you think work well and should be retained?	Board seeks views before considering the issue further	Currently, Contact considers that the levy mechanism is simple and easy to administer and reconcile.
	13	What elements of the current levy mechanism do not work and why?	Board seeks views before considering the issue further	<p>The stepped nature of the levy system does not encourage efficiency as the longer a case takes to resolve, the higher the levy.</p> <p>A simple one-level approach would remove member concerns in regards to cost escalation over time,</p> <p>The short timeframe for member resolution (i.e. 1 business day) is inequitable given that complainant communication can cause delays resulting in deadlock acceptance with Utilities Disputes, which incurs a fee, even where a member and a complainant are still working to resolve, and Utilities Disputes</p>

				<p>has limited involvement.</p> <p>Contact considers that Utilities Disputes' interpretation of "deadlock" on some cases involving disconnection produces perverse results. In order to avoid a levy where a member has followed its processes, a customer is reconnected because it is cheaper than going through the complaints process.</p>
	14	What levy options can you think of to address provider concerns about 'throwing money at complaints' to avoid the levy?	Board seeks views before considering the issue further	Contact does not have any specific options to put forward, but considers that any options need to take into consideration that a significant number of complaints (once they are accepted for resolution by Utilities Disputes) proceed to the highest level of levy before they are resolved, even where there is no fault by the member. This means that there are significant cost savings to be made by resolving complaints earlier, as they can be resolved for less than it costs to take a complaint through Utilities Disputes, regardless of whether the complaint has merit.
	15	What levy options can you think of to avoid senior staff spending more time on jurisdiction issues	Board seeks views before considering the issue further	Contact considers that it would be appropriate to delegate decision making to conciliator level on cases that are not in factual dispute and to provide conciliators with the ability to determine what a reasonable offer would be to avoid deadlock based on facts as they are presented.
	16	What levy options can you think of that would avoid delays (beyond the provider's control) triggering levy levels?	Board seeks views before considering the issue further	A "stand-down" period while a final offer is being considered by a customer prior to a complaint proceeding past the point of deadlock.

	17	Do you agree with the recommendation <i>every organisation which is covered by the Scheme should make a contribution to its running costs?</i>	Board seeks views before considering the issue further	Yes.
	18	Do you agree with the recommendation <i>there should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>	Board seeks views before considering the issue further	Yes.
	19	Do you agree with the recommendation <i>The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints?</i>	Board seeks views before considering the issue further	<p>No. Contact considers that Utilities Disputes needs to be able to demonstrate that they are a scheme that provides value for money. Contact pays a considerable amount in levies based on its market share (more than \$400k per annum), but uses the service very little (~7 cases proceeded through the Utilities Disputes process in the previous 12 months so its variable contribution for each case is comparatively low). Looking at Contact's overall approximate contribution, compared to the number of complaints made about Contact, the cost per case to Contact is in excess of \$57k.</p> <p>If the fixed element covers all the costs incurred by Utilities Disputes other than the individual complaints, then there is little incentive for Utilities Disputes to ensure that it operates a lean, efficient model that provides value for money.</p>
	20	Do you agree with the recommendation <i>In keeping with the 'user pays' principle, any case</i>	Board seeks views before considering the issue further	<p>No.</p> <p>The recommendation highlights that already members end up</p>

		<i>reaching Utilities Disputes at deadlock should incur a fee?</i>		<p>paying significant sums in deadlock avoidance due to the inequitable nature of the process.</p> <p>This appears to capitalise on members already entering a process which appears to be flawed. The recommendation also appears to be based on an incorrect assumption that these complaints could have been resolved earlier, implying that members are not attempting to resolve complaints. There are a significant number of complaints made by customers which are not justifiable but which end up being resolved by members spending money where they are not required to in order to avoid the lengthy and costly process of proceeding through Utilities Disputes.</p>
	21	Do you agree with the recommendation <i>The current variable fee structure needs to be reconsidered?</i>	Board seeks views before considering the issue further	Contact considers that this is something worthwhile being explored, but any change to the variable structure should still be reflective of the actual costs incurred by Utilities Disputes with each complaint, and should take into consideration whether the current fixed levy structure is appropriate.
Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme's approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a provider has access to a Scheme for resolving the complaint)	No. Contact remains concerned that Utilities Disputes does not have the capacity or capability to expand into new and complex areas.
	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information	Board seeks views before considering the issue further	If the exclusions were removed, Contact would be drawn into a much broader, and costly, category of complaints. Instead of resolving issues exclusively relating to our own customers, it is likely we would be implicated in complaints involving other retailers' customers (for example, in the case of land access

		this is based on wherever possible.		rights, and various body corporate structures). Contact would be required to dedicate significant resource to dealing with these issues, including Utilities Disputes' ability to handle a new and complex jurisdiction, the cost of which would ultimately be borne by consumers.
Other proposed changes - Accessibility	24	Do you agree in principle with the idea of a deemed membership mechanism?	Board seeks views before considering the issue further	Contact supports deemed membership where the failure of an organisation to join the scheme has an impact on the costs of operating Utilities Disputes as the fixed costs are spread across all members.
	25	If implemented, do you think the deeming mechanism should apply to any scheme with mandatory membership that Utilities Disputes operates?	Board seeks views before considering the issue further	Contact cannot comment on the appropriateness of deeming membership for schemes it is not a member of. Contact considers it more appropriate to ask this question of members of those schemes.
	26	To enable fair contribution toward the costs of running the scheme, if implemented, when should the levy obligations for deemed providers start?	Board seeks views before considering the issue further	Contact considers it would be appropriate for levy obligations to commence at the point at which a member acquires their first customer, or at which the member commences conveying electricity.
	27	If implemented, when should other provider obligations (for example those in General Rule 12) start for deemed providers?	Board seeks views before considering the issue further	At the same point.
	28	Do you have other suggestions to address the problem of non-compliance with membership requirements to join the Energy	Board seeks views before considering the issue further	No.

		Complaints Scheme?		
Accessibility/ Efficiency	29	Do you agree with the proposed change to substitute " <i>distributor</i> " for " <i>lines company</i> " where they appear in the scheme documents?	Board thinks this will improve consistency in terminology.	Contact does not consider that there is any problem in interpretation with using the terms as they are well understood within the industry. Further Contact does not consider that the costs of implementing the changes to the scheme documents would provide sufficient benefit to justify the cost of doing so.
	30	If references to lines company were changed to distributor, what other steps, (including other potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?	Board seeks views before considering the issue further	

Independent 5-year review of Utilities Disputes Limited

Recommendations from the review and other Board proposed changes

ECOTRICITY

Consultation Paper for Round 1

Appendix 1 – Questions for submitters and preferred form for responses

Principle/Area of document	#	Question	Board's view (if available)	Submitter's response
Accountability	1	Do you agree with the review's recommendation <i>The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes?</i>	The Board disagreed with this recommendation. For further information on the Board's view, see pt8 (a) of the consultation pack (above)	We agree with the board: The Board considers it more appropriate to name providers in breach of scheme rules and guidelines.
	2	Do you agree with the Board's proposal for Utilities Disputes to name providers that breach scheme rules and guidelines?	Board proposes naming providers that breach scheme rules and guidelines	We agree as long as the provider has been initially warned of a breach.
	3	Do you agree with the Board's proposal for Utilities Disputes not to name providers in its case	Board does not accept recommendation to name providers in its case notes	Yes we agree.

		notes?		
	4	If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?	Board seeks views before considering the issue further	N/A
Natural Justice	5	Do you agree with the review's recommendation to <i>consider removing the principles of natural justice from its scheme document</i> ?	Explicit reference to natural justice in the list of principles is not needed and can be removed	We agree with the board.
	6	Do you agree with the Board's view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	Explicit reference to natural justice in the list of principles is not needed and can be removed	We agree with the board.
Performance Standards	7	Do you agree with the review's recommendation to remove performance standards relating to providers' self-reporting on compliance?	Board seeks views before considering the issue further	We agree.
	8	Do you agree with the review's recommendation to remove performance standards relating to cost per case?	The Board believes a <i>cost per case</i> measure is not sufficiently linked to Utilities Disputes performance to justify a performance measure. However, the current measures should remain until	We agree that the current performance standards relating to the self reporting of compliance and cost per case should be removed. We also agree with the board that current measures should

			new measures have been approved	remain until new measures have been approved.
	9	Do you have ideas about other measures the Board could consider adopting?	Board seeks views before considering the issue further	N/A
Levies	10	Do you agree with the review's general recommendation that the levy mechanism needs to be changed?	Board seeks views before considering the issue further	<ul style="list-style-type: none"> We agree that <i>Every organisation which is covered by the Scheme should make a contribution to its running costs.</i> <i>There should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited.</i>
	11	What information do you think the Board needs, to help it decide what options are available?	Board seeks views before considering the issue further	-
	12	What elements of the current levy mechanism do you think work well and should be retained?	Board seeks views before considering the issue further	We agree that The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints.
	13	What elements of the current levy mechanism do not work and why?	Board seeks views before considering the issue further	We agree with that the Board should remove the day element of the three-tier fee structure so that it is only the time spent on the case by Utilities Disputes that indicates the tier into which the case falls.
	14	What levy options can you think of to address provider concerns	Board seeks views before considering the issue further	In regards to the current variable fee structure, we agree that here should be five tiers of 0-4 hours, 4-8 hours, 8-12 hours,

		about 'throwing money at complaints' to avoid the levy?		12-16 hours and over 16 hours in its place.
	15	What levy options can you think of to avoid senior staff spending more time on jurisdiction issues	Board seeks views before considering the issue further	N/A
	16	What levy options can you think of that would avoid delays (beyond the provider's control) triggering levy levels?	Board seeks views before considering the issue further	N/A
	17	Do you agree with the recommendation <i>every organisation which is covered by the Scheme should make a contribution to its running costs?</i>	Board seeks views before considering the issue further	We would require more information as to the running costs before agreeing.
	18	Do you agree with the recommendation <i>there should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>	Board seeks views before considering the issue further	We would require further information.
	19	Do you agree with the recommendation <i>The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to</i>	Board seeks views before considering the issue further	We agree with the review: "The current split between the fixed and variable elements appears about right as it provides sufficient stability of income for Utilities Disputes while, as the evidence indicates, also acts as an incentive for bodies to resolve complaints prior to them reaching Utilities Disputes."

		<i>the handling of individual complaints?</i>		
	20	Do you agree with the recommendation <i>In keeping with the 'user pays' principle, any case reaching Utilities Disputes at deadlock should incur a fee?</i>	Board seeks views before considering the issue further	No we do not agree, however we will await further information.
	21	Do you agree with the recommendation <i>The current variable fee structure needs to be reconsidered?</i>	Board seeks views before considering the issue further	Yes we agree that the fees would be more accurate if they reflected the time frame spent on each case.
Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme's approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a member has access to a Scheme for resolving the complaint)	We require further discussion in this regard.
	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.	Board seeks views before considering the issue further	We require further discussion in this regard.

Other proposed changes - <i>Accessibility</i>	24	Do you agree in principle with the idea of a deemed membership mechanism?	Board seeks views before considering the issue further	We agree that if implemented, a deeming mechanism should be fair for both existing and new providers as stated by the board
	25	If implemented, do you think the deeming mechanism should apply to any scheme with mandatory membership that Utilities Disputes operates?	Board seeks views before considering the issue further	We would require further information in this regard.
	26	To enable fair contribution toward the costs of running the scheme, if implemented, when should the levy obligations for deemed providers start?	Board seeks views before considering the issue further	We would require further information before we are able to determine when the levy obligations should start
	27	If implemented, when should other provider obligations (for example those in General Rule 12) start for deemed providers?	Board seeks views before considering the issue further	We would require further information before we are able to determine when the other provider obligations should start
	28	Do you have other suggestions to address the problem of non-compliance with membership requirements to join the Energy Complaints Scheme?	Board seeks views before considering the issue further	No suggestions from our end.
Accessibility/	29	Do you agree with the proposed	Board thinks this will improve	N/A

Efficiency		change to substitute “ <i>distributor</i> ” for “ <i>lines company</i> ” where they appear in the scheme documents?	consistency in terminology.	
	30	If references to lines company were changed to distributor, what other steps, (including other potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?	Board seeks views before considering the issue further	N/A

Principle/Area of document	#	Question	Board's view (if available)	Submitter's response
Accountability	1	Do you agree with the review's recommendation <i>The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes?</i>	The Board disagreed with this recommendation. For further information on the Board's view, see pt8 (a) of the consultation pack (above)	<i>Electra Limited (Electra) supports the Board's view and notes that this view is consistent with case notes for other complaint schemes; for example, the Insurance and Savings Ombudsman scheme and the Office of the Privacy Commissioner.</i>
	2	Do you agree with the Board's proposal for Utilities Disputes to name providers that breach scheme rules and guidelines?	Board proposes naming providers that breach scheme rules and guidelines	<i>Electra supports the proposal to name providers that breach the scheme rules and guidelines as this promotes accountability, one of the Scheme's founding principles in dealing with complaints.</i>
	3	Do you agree with the Board's proposal for Utilities Disputes not to name providers in its case notes?	Board does not accept recommendation to name providers in its case notes	<i>Electra agrees with the Board's proposal not to name providers in its case notes for the reason in 1 above.</i>
	4	If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?	Board seeks views before considering the issue further	<i>Electra does not support the naming of providers in the case notes.</i>

Natural Justice	5	Do you agree with the review's recommendation to <i>consider removing the principles of natural justice from its scheme document?</i>	Explicit reference to natural justice in the list of principles is not needed and can be removed	<i>Electra agrees that the inclusion of natural justice in the list of principles is not required. The principle of fairness already applies to adequately support administrative decision making under the Scheme whereas the principle of natural justice is associated with courts of law. Electra agrees with the view of the Review Committee that the principle of natural justice is more suited to a court system (which is where it developed) than a complaints scheme.</i>
	6	Do you agree with the Board's view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	Explicit reference to natural justice in the list of principles is not needed and can be removed	<i>Electra agrees that the explicit reference to natural justice in the list of principles is not desirable and should be removed.</i>
Performance Standards	7	Do you agree with the review's recommendation to remove performance standards relating to providers' self-reporting on compliance?	Board seeks views before considering the issue further	<i>Electra agrees with the review's recommendation to re-visit performance standards relating to providers' self-reporting on compliance.</i>
	8	Do you agree with the review's recommendation to remove performance standards relating to cost per case?	The Board believes a <i>cost per case</i> measure is not sufficiently linked to Utilities Disputes performance to justify a performance measure. However, the current measures should remain until new measures have been approved.	<i>Electra agrees with the proposed course of action by the Board. Current measures should remain imposed until replacement measures, if required, are agreed with the industry.</i>

	9	Do you have ideas about other measures the Board could consider adopting?	Board seeks views before considering the issue further	<i>Electra considers it would be worthwhile assessing the suggestion in the review, i.e. that a combination of the number of files closed together with the speed of handling will provide an indication of efficiency especially if linked to the number of whole time equivalent staff.</i>
Levies	10	Do you agree with the review's general recommendation that the levy mechanism needs to be changed?	Board seeks views before considering the issue further	<i>Electra agrees that the levy system requires review due to unintended outcomes such as settlement occurring in order to preclude paying fees.</i>
	11	What information do you think the Board needs, to help it decide what options are available?	Board seeks views before considering the issue further	<i>Electra supports the user pay system and recommends similar schemes be reviewed to establish best practice methods.</i>
	12	What elements of the current levy mechanism do you think work well and should be retained?	Board seeks views before considering the issue further	<i>Electra considers that the current split between fixed and varied fees works at present but agrees with the Board view that it needs to be kept under review.</i>
	13	What elements of the current levy mechanism do not work and why?	Board seeks views before considering the issue further	<i>Electra recommends an administrative fee apply to cases at deadlock irrespective of when they settle to preclude perverse outcomes. An administrative fee should also apply to cases seeking a ruling on whether the Board has jurisdiction from a user pays point of view.</i>
	14	What levy options can you think of to address provider concerns about 'throwing money at complaints' to avoid the levy?	Board seeks views before considering the issue further	<i>Electra recommends an administrative fee apply to cases at deadlock, lodged with the Board irrespective of when they settle.</i>

	15	What levy options can you think of to avoid senior staff spending more time on jurisdiction issues	Board seeks views before considering the issue further	<i>Electra recommends an administrative fee apply to cases seeking a ruling on whether the Board has jurisdiction.</i>
	16	What levy options can you think of that would avoid delays (beyond the provider's control) triggering levy levels?	Board seeks views before considering the issue further	<i>Electra recommends that delays beyond the control of the providers should not be taken into account when assessing the fee band.</i>
	17	Do you agree with the recommendation <i>every organisation which is covered by the Scheme should make a contribution to its running costs?</i>	Board seeks views before considering the issue further	<i>Electra agrees with this recommendation.</i>
	18	Do you agree with the recommendation <i>there should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>	Board seeks views before considering the issue further	<i>Electra agrees with this recommendation.</i>
	19	Do you agree with the recommendation <i>The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints?</i>	Board seeks views before considering the issue further	<i>Electra agrees with this recommendation.</i>

	20	Do you agree with the recommendation <i>In keeping with the 'user pays' principle, any case reaching Utilities Disputes at deadlock should incur a fee?</i>	Board seeks views before considering the issue further	<i>Electra recommends an administrative fee apply to cases at deadlock, lodged with the Board irrespective of when they settle.</i>
	21	Do you agree with the recommendation <i>The current variable fee structure needs to be reconsidered?</i>	Board seeks views before considering the issue further	<i>Electra considers that it is timely for the Board to look at removing the day element of the variable fee structure so that the fee assessment is solely based on the hours spent on the complaint. The 5-tier fee structure recommended by the Review should also be considered if the day element is removed.</i>
Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme's approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a member has access to a Scheme for resolving the complaint)	<i>Being a Lines Company, Electra has obligations under the Scheme rules to deal with complaints about certain land disputes. However, Electra does not support the removal of the land exclusions in Appendix Two of the Scheme Rules. These exclusions, approved by the Minister, ensure more complex land disputes are dealt with in the appropriate court forum. For example; disputes about the statutory interpretation of the term "injuriously affected". As noted by the Review team (Report pg. 26): "While alternative dispute resolution schemes may routinely use and refer to law in their decisions, they are not well placed to settle legal controversies as they are not legal bodies and it is not the place of alternative dispute resolution schemes to make legal precedents. Legal precedents are properly made by courts."</i>

				<p><i>The land exclusions are provided for under clauses 5'1)(c) and 13(1)(c) of Schedule 4 of the Electricity Industry Act 2010, therefore are not ultra vires.</i></p> <p><i>It may be prudent for the Board to seek a legal opinion if it considers that Clause 1(a) of Schedule 4 of the Electricity Industry Act 2010 is in conflict with current Ministerial approval of the land exclusions.</i></p>
	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.	Board seeks views before considering the issue further	<p><i>Electra can envisage circumstances where complaints could be lodged from a vexatious point of view delaying required work and therefore, becoming another risk factor impacting on activities, timely completion and cost.</i></p> <p><i>Any removal of land exclusions would, at a minimum, need to be subject to all of the recommended provisos of the Review Team at pgs. 66-67 of the review report.</i></p>
Other proposed changes - Accessibility	24	Do you agree in principle with the idea of a deemed membership mechanism?	Board seeks views before considering the issue further	<p><i>Should a decision be made to make the scheme mandatory, then Electra supports this proposed membership mechanism as a way to ensure equity.</i></p>
	25	If implemented, do you think the deeming mechanism should apply to any scheme with mandatory membership that Utilities Disputes operates?	Board seeks views before considering the issue further	<p><i>Electra supports this proposed application to any scheme with mandatory membership.</i></p>

	26	To enable fair contribution toward the costs of running the scheme, if implemented, when should the levy obligations for deemed providers start?	Board seeks views before considering the issue further	<i>Electra considers this should come into effect once reasonable notice is given to the deemed providers.</i>
	27	If implemented, when should other provider obligations (for example those in General Rule 12) start for deemed providers?	Board seeks views before considering the issue further	<i>Electra considers these obligations should be effective once reasonable notice given to the deemed providers.</i>
	28	Do you have other suggestions to address the problem of non-compliance with membership requirements to join the Energy Complaints Scheme?	Board seeks views before considering the issue further	<i>No. The deeming provision should resolve the issue.</i>
Accessibility/ Efficiency	29	Do you agree with the proposed change to substitute “ <i>distributor</i> ” for “ <i>lines company</i> ” where they appear in the scheme documents?	Board thinks this will improve consistency in terminology.	<i>Electra agrees with this proposed substitution.</i>
	30	If references to lines company were changed to distributor, what other steps, (including other potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?	Board seeks views before considering the issue further	<i>None apparent at this stage.</i>

27 March 2018

By Email

Heather Roy
Independent Chair of the Utilities Disputes Board
Submissions
Utilities Disputes
PO Box 5875
WELLINGTON 6140

submissions@utilitiesdisputes.co.nz

Dear Heather

Consultation on recommendations from 5-year review of Utilities Disputes Limited and other Board proposed changes

We appreciate the opportunity to submit on Utilities Disputes' consultation paper on the proposed changes arising from its 5-year review.

We echo the overall conclusion from the 5-year review that, in our experience, Utilities Disputes is an effective dispute resolution scheme that gives proper effect to its purpose and functions under the Electricity Industry Act 2010.

Our responses to the questions from the consultation paper are set out in the form at Attachment A.

If you have any queries on our submission, please contact Peter Wakefield on peter.wakefield@ea.govt.nz.

Yours sincerely



Ross Hill
General Manager Legal & Compliance

Attachment A – Electricity Authority responses to consultation questions

Principle/Area of document	#	Question	Submitter's response
Accountability	1	Do you agree with the review's recommendation <i>The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes?</i>	<p>No. We agree with the view of Utilities Disputes' Board.</p> <p>It is concerning that the Electricity Authority does not provide the example referred to, and that this aspect of the review and the consultation paper is based on a misunderstanding.</p> <p>For clarity, regulations 10 and 15 of the Electricity Industry (Enforcement) Regulations 2010 (Regulations) respectively require the Authority, and an investigator it appoints, to keep confidential all information provided or disclosed to them under Part 1 of the Regulations, except to the extent that disclosure is required to enable the Authority or the investigator to carry out their statutory obligations and duties, or as is otherwise required by law.</p> <p>The Authority refers to market operation service providers (eg, the clearing manager, the system operator etc.) involved in breaches of the Electricity Industry Participation Code 2010 in the Authority's regular <i>Compliance Update</i> and <i>Monthly Service Provider Compliance Report</i>. However, these documents do not name participants that are not market operation service providers.</p> <p>The Regulations require investigation reports the Authority publishes to include the name of the participant alleged to have breached the Code (to the extent reasonably practicable and appropriate in the circumstances).</p>

			The obligation under the Regulations to include in an investigation report the name of the participant alleged to have breached the Code is not analogous to the proposal that Utilities Disputes name the relevant providers in its case notes.
	2	Do you agree with the Board's proposal for Utilities Disputes to name providers that breach scheme rules and guidelines?	Yes.
	3	Do you agree with the Board's proposal for Utilities Disputes not to name providers in its case notes?	Yes.
	4	If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?	We agree with the Utilities Disputes' Board that it is not appropriate to name providers in case notes.
Natural Justice	5	Do you agree with the review's recommendation to <i>consider removing the principles of natural justice from its scheme document</i> ?	We agree that principles of administrative law, natural justice and procedural fairness are largely interchangeable terms. However, it may be meaningful to providers and complainants alike to retain the language
	6	Do you agree with the Board's view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	See our response to question 5.
Performance Standards	7	Do you agree with the review's recommendation to remove performance standards relating to providers' self-reporting on	Yes. We agree with the reviewer's assessment that self-reporting of compliance sits uneasily as a performance standard as it is not a

		compliance?	direct measure of Utilities Disputes' performance.
	8	Do you agree with the review's recommendation to remove performance standards relating to cost per case?	Yes.
	9	Do you have ideas about other measures the Board could consider adopting?	No.
Levies	10	Do you agree with the review's general recommendation that the levy mechanism needs to be changed?	Yes. We agree that the issues with the current levy mechanism identified by the reviewer need attention. We also agree with the common view arising from the review interviews that, apart from the issues identified, the current levy system is generally acceptable.
	11	What information do you think the Board needs, to help it decide what options are available?	We agree that before taking any further steps, it is sensible for Utilities Disputes to consult on the reviewer's assessment of the issues with the levy mechanism, as well as the reviewer's proposals for addressing the issues.
	12	What elements of the current levy mechanism do you think work well and should be retained?	See our response to question 10.
	13	What elements of the current levy mechanism do not work and why?	See our response to question 10.
	14	What levy options can you think of to address provider concerns about 'throwing money at complaints' to avoid the levy?	We agree with the reviewer's recommendations for addressing the issues identified.
	15	What levy options can you think of to avoid senior staff spending more time on jurisdiction issues	It may often be appropriate for senior staff to assess well-founded jurisdiction questions. However, it is also appropriate to minimise perverse incentives to raise unfounded jurisdiction arguments to

			avoid variable fees. Ensuring that the levy mechanism is as cost-reflective, broad-base, and aligned to the 'user pays' principle as possible, could assist in this regard.
	16	What levy options can you think of that would avoid delays (beyond the provider's control) triggering levy levels?	See our response to question 15.
	17	Do you agree with the recommendation <i>every organisation which is covered by the Scheme should make a contribution to its running costs?</i>	We agree in principle with the recommendation. We also consider it sensible for Utilities Disputes to consult and take account of submissions on how it would set such a fee.
	18	Do you agree with the recommendation <i>there should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>	Yes. A review appears to be timely.
	19	Do you agree with the recommendation <i>The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints?</i>	Yes.
	20	Do you agree with the recommendation <i>In keeping with the 'user pays' principle, any case reaching Utilities Disputes at deadlock should incur a fee?</i>	See our response to question 17.
	21	Do you agree with the recommendation <i>The current variable fee structure needs to be reconsidered?</i>	See our response to question 10.
Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Authority has no view.

	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.	As above.
Other proposed changes - <i>Accessibility</i>	24	Do you agree in principle with the idea of a deemed membership mechanism?	Yes. It is appropriate that a consumer has access to Utilities Disputes even if the non-member provider has not met its obligation to apply to join the Scheme.
	25	If implemented, do you think the deeming mechanism should apply to any scheme with mandatory membership that Utilities Disputes operates?	Yes.
	26	To enable fair contribution toward the costs of running the scheme, if implemented, when should the levy obligations for deemed providers start?	From the date the deemed provider should have joined the Scheme.
	27	If implemented, when should other provider obligations (for example those in General Rule 12) start for deemed providers?	As above.
	28	Do you have other suggestions to address the problem of non-compliance with membership requirements to join the Energy Complaints Scheme?	No.
Accessibility/ Efficiency	29	Do you agree with the proposed change to substitute " <i>distributor</i> " for " <i>lines company</i> " where they appear in the scheme documents?	Yes.

	30	If references to lines company were changed to distributor, what other steps, (including other potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?	Consultation on proposed legal drafting may assist in avoiding unintended consequences.
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T +64 4 471 1335

Level 5, Legal House
101 Lambton Quay
Wellington 6011

PO Box 1017
Wellington 6140
New Zealand

6 April 2018

Utilities Disputes Ltd
PO Box 5875
Wellington 6140

To: submissions@utilitiesdisputes.co.nz

**ENA submission on the independent 5-year review of Utilities Disputes Limited -
Recommendations from the review and other Board proposed changes**

The Electricity Networks Association (ENA) welcomes the opportunity to provide a submission to Utilities Disputes Ltd (UDL) on its proposed changes to the Energy Complaints Scheme documents arising from the independent 5 year review. ENA makes this submission on behalf of the New Zealand electricity distribution businesses (EDBs) and in support of any submissions individual EDBs may have made.

The ENA represents all of New Zealand's 27 EDBs or lines companies, who provide critical infrastructure to New Zealand residential and business customers. Apart from a small number of major industrial users connected directly to the national grid and embedded networks, electricity consumers are connected to a distribution network operated by an ENA member, distributing power to consumers through regional networks of overhead wires and underground cables. Together, EDB networks total 150,000 km of lines. Some of the largest distribution network companies are at least partially publicly listed or privately owned, or owned by local government, but most are owned by consumer or community trusts.

ENA has reviewed the consultation document and the changes proposed. Of these, three stand out as potentially significant issues for EDBs. These are

- 8 (b) Natural Justice (review part 7.7)
- 8 (d) Levies (review part 14)
- 8 (e) Land Complaint exclusions (review part 16)

Our response to these specific proposals are contained in Appendix A to this letter in the format requested by UDL.

Setting to one side the proposals contained in the consultation, ENA has some more general comments regarding the scheme and UDL's operation that we would like to take the opportunity to pass on.

ENA has both observed and received comments about a general unease within the electricity industry with the way in which UDL resolves some consumer complaints. The broad thrust of this disquiet is a perception that UDL has moved from being an accessible, but neutral, arbiter of complaints to a consumer advocate with a predisposition to adjudicate disputes in the complainant's favour.

This will ultimately lead to poor outcomes for both the industry and consumers for the following reasons:

- Because of the uncertain outcome of complaints referred to the commissioner, providers will go to increasing lengths to avoid a referral to UDL. Even when a consumer complaint is without merit, the provider might nevertheless look to resolve the complaint, leading to increased costs in the business which are not efficiently incurred.
- Related to the above point, any significant downturn in complaints referred to UDL will reduce its collective capability and potentially threaten its sustainability.
- Providers will not be as willing as they would otherwise be to promote the availability of UDL to consumers, thereby reducing use of the scheme and increasing its costs on a per complaint basis.
- Providers will be more likely to seek reviews of commissioner decisions (including through the courts), which will give rise to increased costs and more uncertainty about the reliability of UDL as a complaints resolution service.

ENA is also hearing concerns about UDL's interpretation of the Consumer Guarantees Act tending to find in favour of the complainant, at odds with the facts of the individual case. Though beneficial to consumers and UDL in the short term through higher levels of consumer satisfaction over resolution of questionable complaints, the unfair interpretation will hurt these same parties in the longer term as providers lose confidence for the reasons outlined above.

ENA also has concerns about the looming changes to UDL governance and the method of appointment of the new board. We appreciate that the post October 1, 2018, board structure was decided in 2016, and that UDL will have distributor representative(s) on its electricity sector member committee. While ENA remains disappointed at the removal of a direct electricity industry representative from the UDL board, we look forward to working with Utilities Disputes to support the establishment of an effective advisory committee representing member organisations. In order to retain industry confidence in Utilities Disputes, we would ask that you ensure that your board appointment process is robust and as transparent as it can be.

ENA urges the commissioner and the UDL Board to reflect upon these comments and consider how more certainty, predictability and consistency can be introduced into the complaints resolution process. If successful in doing so, changes along these lines will give rise to greater confidence in

UDL among providers. One possible approach to this might be for UDL to arrange regular meetings or forums with the providers so that they can provide feedback on UDL performance and give UDL a better understanding of their anticipated business activity. This could then be used to inform future decisions by UDL about the operation of the scheme.

Please let me know if ENA can be of any further assistance or if you wish to discuss any of the points we've raised in more detail. In the first instance please contact ENA's Senior Advisor Policy and Innovation, Richard Le Gros, at richard@electricity.org.nz, 04 555 0075.

Yours sincerely

A handwritten signature in black ink, appearing to be 'GP', written in a cursive style.

Graeme Peters
Chief Executive
Electricity Networks Association

Appendix A – ENA response to specific consultation questions

Natural Justice	5	Do you agree with the review’s recommendation to <i>consider removing the principles of natural justice from its scheme document?</i>	Explicit reference to natural justice in the list of principles is not needed and can be removed	ENA considers that the ‘principles of natural justice’ are a distinct concept, more specific than simply ‘fairness’. We suggest that the 3rd principle in rule 5 of the scheme document be amended to refer to “procedural and substantive fairness” which is more in line with the alternative dispute resolution practices but ensures that both the procedure and the outcome are fair.
	6	Do you agree with the Board’s view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	Explicit reference to natural justice in the list of principles is not needed and can be removed	See our response to question 5.
Levies	10	Do you agree with the review’s general recommendation that the levy mechanism needs to be changed?	Board seeks views before considering the issue further	No comment
	11	What information do you think the Board needs, to help it decide what options are available?	Board seeks views before considering the issue further	No comment
	12	What elements of the current levy mechanism do you think work well and should be retained?	Board seeks views before considering the issue further	No comment
	13	What elements of the current levy mechanism do not	Board seeks views before considering the issue further	No comment

		work and why?		
	14	What levy options can you think of to address provider concerns about 'throwing money at complaints' to avoid the levy?	Board seeks views before considering the issue further	As per our comments in the body of this letter, ENA is aware of a sentiment within the industry that confidence in the neutrality of UDL's decision-making is low, and one outcome of this is that providers may 'throw money' at a complaint to avoid it going to UDL. If UDL could demonstrate to industry greater consistency and neutrality within its decision-making, this would become less of a problem.
	15	What levy options can you think of to avoid senior staff spending more time on jurisdiction issues	Board seeks views before considering the issue further	No comment
	16	What levy options can you think of that would avoid delays (beyond the provider's control) triggering levy levels?	Board seeks views before considering the issue further	No comment
	17	Do you agree with the recommendation <i>every organisation which is covered by the Scheme should make a contribution to its running costs?</i>	Board seeks views before considering the issue further	ENA believes that, wherever possible and practical, a principle of 'user pays' should be applied to the levy arrangements for the scheme. Therefore, every organization which is covered by the scheme should make a contribution to its running costs, proportional to that organisation's impact upon those running costs.
	18	Do you agree with the recommendation <i>there should be no cross-subsidisation of providers, nor</i>	Board seeks views before considering the issue further	ENA agrees that there should be no, or as little as possible, cross-subsidisation between providers or sweetheart deals. This is in keeping with the general tenor of our

		<i>sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>		responses to question 17.
	19	Do you agree with the recommendation <i>The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints?</i>	Board seeks views before considering the issue further	No comment
	20	Do you agree with the recommendation <i>In keeping with the 'user pays' principle, any case reaching Utilities Disputes at deadlock should incur a fee?</i>	Board seeks views before considering the issue further	See our response to question 17.
	21	Do you agree with the recommendation <i>The current variable fee structure needs to be reconsidered?</i>	Board seeks views before considering the issue further	No comment

Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme's approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a member has access to a Scheme for resolving the complaint)	As per the comments ENA made in our submission on the incorporation of UDL and the related Scheme document changes in July 2016, we believe the land complaint exclusion should remain. The potential cost implications of the Commissioner ruling on land complaints could be very significant, and these costs would ultimately be borne by consumers as a whole. We believe the existing alternative avenues of recourse available to consumers (e.g. the Environment Court) are satisfactorily meeting the needs of consumers.
	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.	Board seeks views before considering the issue further	No comment.

6 April 2018

First Gas Limited
42 Connett Road West, Bell Block
Private Bag 2020, New Plymouth, 4342
New Zealand

P +64 6 755 0861
F +64 6 759 6509

James Blake-Palmer
Manager – Stakeholder Engagement
Utilities Disputes Limited
PO Box 5875
WELLINGTON 6140

Sent via email: submissions@utilitiesdisputes.co.nz

Dear James

Proposed changes to the Energy Complaints Scheme

First Gas Limited welcomes the opportunity to make a submission to Utility Disputes Limited (“Utility Disputes”) on its consultation paper *“Independent 5-year review of Utilities Disputes Limited: Recommendations from the review and other Board proposed changes.”*

First Gas has answered the consultation questions asked by Utility Disputes in **Attachment 1**. The remainder of this submission focuses on the key points of interest to our business.

About First Gas

First Gas operates 2,500km of gas transmission pipelines (including the Maui pipeline), and more than 4,600 km of gas distribution pipelines across the North Island. These gas infrastructure assets transport gas from Taranaki to major industrial gas users, electricity generators, businesses and homes, and transport around 20 percent of New Zealand’s primary energy supply.

Our distribution network services 62,670 consumers across the regions of Northland, Waikato, Central Plateau, Bay of Plenty, Gisborne and Kapiti. First Gas is a provider in the Energy Complaints Scheme (the Scheme) operated by Utilities Disputes Limited for both our distribution and transmission businesses. For further information on First Gas, please visit our website www.firstgas.co.nz.

The Energy Complaints Scheme is generally working well

We agree with the independent review that the Scheme is generally working well, but there is an opportunity to refine specific areas such as the levies mechanism and performance metrics. We consider these items are linked, as the performance metrics provide assurance to providers that the levy is funding an efficient operation.

We do not support the removal of key funding principles or the proposal to extend the jurisdiction of the Scheme

We do not support the Utility Dispute Board’s (“the Board”) proposals to:

- Remove the principle of natural justice from the founding principles in the Scheme document; and
- Remove the exclusion of certain complaint types from the Scheme.

We consider the principles and exclusions are cornerstones of the Scheme. These two elements determine how, and which, claims will be considered by Utility Disputes.

The **principle of natural justice** underpins how the Commissioner must consider complaints. We do not agree with the independent review conclusion that it is superfluous or capable of misinterpretation.¹ If Utility Disputes considers the complaints process is not well understood or complainants may have incorrect expectations, this can be resolved with training and information. It does not predetermine the need to remove the principle.

We are concerned Utility Disputes is considering removing **exclusions** that have had a long-term role in the disputes scheme (formerly Electricity and Gas Complaints Commissioner Scheme (EGCC) and now Utility Disputes). The exclusions exist because the matters excluded from the Scheme are more appropriately considered in other forums by those with the knowledge and experience to do so. They also reflect matters already covered by other entities or Acts. The exclusions ensure there is no duplication by UDL of work completed by other agencies and processes. We disagree with the recommendations and consider Utility Disputes has not sufficiently made the case for the changes proposed.

Contact person

If you have any questions regarding this submission, please contact me on (06) 215 4046 or via email at lynette.taylor@firstgas.co.nz, or Matt Wilson, Gas Distribution Commercial Manager, on (04) 979 5363 or via email at matt.wilson@firstgas.co.nz.

Yours faithfully



Lynette Taylor
Regulatory Advisor

¹ Page 34, Section 7.7, *Independent review of Utilities Disputes Limited, 2017*, Queen Margaret University Consumer Dispute Resolution Centre.

Attachment 1: Responses to consultation questions

PRINCIPLE/ AREA OF DOCUMENT	#	QUESTION	BOARD'S VIEW (IF AVAILABLE)	FIRST GAS RESPONSE
Accountability	1	Do you agree with the review's recommendation <i>The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes?</i>	The Board disagreed with this recommendation. For further information on the Board's view, see pt8 (a) of the consultation pack (above)	<p>First Gas agrees with the recommendation that providers should be named in the case notes.</p> <p>A key principle of dispute resolution schemes is accountability, as this allows assessment and improvement of the scheme's performance and that of participating providers. The naming of providers in case notes supports this concept as it allows assessment of providers responses to complaints by parties' external to Utility Disputes.</p> <p>We also note that case notes are summaries of disputes handled and resolved by Utilities Disputes. Therefore, the naming of providers will only be undertaken, once it has been confirmed that the complaint is within Utility Disputes' jurisdiction and the provider has had sufficient opportunities to resolve the complaint prior to it reaching deadlock.</p> <p>If providers are named in the case notes, it would be useful to separate First Gas distribution cases from those relating to First Gas transmission. This would assist readers of the case notes.</p>

PRINCIPLE/ AREA OF DOCUMENT	#	QUESTION	BOARD'S VIEW (IF AVAILABLE)	FIRST GAS RESPONSE
	2	Do you agree with the Board's proposal for Utilities Disputes to name providers that breach scheme rules and guidelines?	Board proposes naming providers that breach scheme rules and guidelines	<p>First Gas supports the Boards proposal to name providers that breach the Scheme rules. When providers enter into a provider agreement with Utility Disputes they agree to abide by the Scheme rules. The Scheme rules are also subject to rigorous consultation with stakeholders, including providers, prior to any changes before undertaken. Therefore, we consider that is appropriate that any provider that breaches the Scheme rules should be held to account. This may include naming those providers.</p> <p>We have no comments regarding the proposal to name providers that breach guidelines.</p>
	3	Do you agree with the Board's proposal for Utilities Disputes not to name providers in its case notes?	Board does not accept recommendation to name providers in its case notes	<p>No.</p> <p>As outlined in our response to question one, we agree with the recommendation from the independent review that providers should be named in the case notes.</p>

PRINCIPLE/ AREA OF DOCUMENT	#	QUESTION	BOARD'S VIEW (IF AVAILABLE)	FIRST GAS RESPONSE
	4	If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?	Board seeks views before considering the issue further	<p>We consider the summary of the complaint and outcome as currently portrayed in the case notes is sufficient. The addition of the provider's name does not require further information, except where any provider named has more than one type of utility under the scheme. In these instances, the provider and the utility should be named in the case notes.</p> <p>For example, we recommend that any case notes referencing First Gas, specify whether the case involves our distribution business or our transmission business.</p>
Natural Justice	5	Do you agree with the review's recommendation to <i>consider removing the principles of natural justice from its scheme document?</i>	Explicit reference to natural justice in the list of principles is not needed and can be removed	<p>First Gas does not support the removal of the explicit reference to natural justice from the scheme document.</p> <p>If Utility Disputes believe that the principle is misunderstood, it should be clearly defined in the Scheme document. This would be subject to consultation as natural justice is considered a principle of the Scheme. Further, the Utility Disputes website and brochures should be amended if Utility Disputes believe complainants may have unwarranted expectations of the process.</p> <p>The principle of natural justice comprises two rules – the rule against bias, and the rule of the right to a fair hearing. This is one of the founding principles that providers agreed to when joining the Scheme.</p> <p>The consultation paper and independent review do not point to where its inclusion has caused issues with the</p>

PRINCIPLE/ AREA OF DOCUMENT	#	QUESTION	BOARD'S VIEW (IF AVAILABLE)	FIRST GAS RESPONSE
				<p>performance of the Scheme. Without this evidence, or any underlying change in the industry or operating environment, we cannot support the removal of a key principle.</p> <p>The independent review has indicated that the inclusion of natural justice as a principle is unnecessary. The report concludes that principle of fairness provides the same assurances as the term natural justice and therefore including natural justice as a founding principle is superfluous.</p> <p>First Gas does not agree with this conclusion. When developing the founding principles to the Scheme, it was agreed that both the principle of fairness and natural justice were key cornerstones to the Scheme. There has been no further information come to light that change this position.</p> <p>The independent report further raises a concern that the term of natural justice may be misinterpreted. It states that “alternative dispute resolution schemes deliberately have fewer procedural safeguards than the adversarial court process but the quid pro quo is that they provide quicker, more accessible, more consumer-friendly processes”. The authors are concerned that the “problem with using the term natural justice is that few people have the kind of sophisticated understanding of the way in which it operates’ in dispute resolution schemes.”² The independent review</p>

² Page 35, section 7.7, Independent review of Utilities Disputes Limited, 2017, Queen Margaret University Consumer Dispute Resolution Centre.

PRINCIPLE/ AREA OF DOCUMENT	#	QUESTION	BOARD'S VIEW (IF AVAILABLE)	FIRST GAS RESPONSE
				<p>recommends the term should be removed as it may create unwarranted expectations from complainants.</p> <p>First Gas disagrees that a key principle should be removed simply because it may be misunderstood. We recommend that Utility Disputes:</p> <ul style="list-style-type: none"> • Includes the process, and what complainants may expect in any training materials to avoid confusion; • Update its website and brochures to ensure complainants know what to expect; • Include a definition of natural justice in the Scheme document. The term has an internationally accepted meaning that was understood by providers when joining the scheme. The standard definition could be included in the Scheme document if it is required to ensure a common understanding and expectation.
	6	Do you agree with the Board's view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	Explicit reference to natural justice in the list of principles is not needed and can be removed	First Gas does not agree with the proposal to remove explicit reference to natural justice from the list of principles. Please refer to our response under question 5.

PRINCIPLE/ AREA OF DOCUMENT	#	QUESTION	BOARD'S VIEW (IF AVAILABLE)	FIRST GAS RESPONSE
Performance Standards	7	Do you agree with the review's recommendation to remove performance standards relating to providers' self-reporting on compliance?	Board seeks views before considering the issue further	<p>First Gas supports the removal of performance standards relating to providers' self-reporting on compliance.</p> <p>As providers, we are obligated to uphold compliance with the General Rules and Scheme Rules. Whilst the annual self-reporting compliance is not burdensome, it is also not required. Removing this additional administrative task does not affect providers' obligations or intent to comply with the Scheme.</p>
	8	Do you agree with the review's recommendation to remove performance standards relating to cost per case?	The Board believes a <i>cost per case</i> measure is not sufficiently linked to Utilities Disputes performance to justify a performance measure. However, the current measures should remain until new measures have been approved	<p>In principal, we support the inclusion of performance standards that are meaningful and drive the right behaviour. The current measure of cost per case by itself does not provide much guidance to Utility Disputes performance, as it can be affected by the mix and complexity of complaints and other work Utility Disputes may be undertaking.</p> <p>We agree with the Board's view that. Utility Disputes should maintain this current measure until new measures have been approved.</p>
	9	Do you have ideas about other measures the Board could consider adopting?	Board seeks views before considering the issue further	<p>We consider it would be useful to have a mix of qualitative and quantitative measures.</p> <p>We have not had sufficient time to consider ideas of suitable new performance measures, but would welcome the opportunity to engage on this matter further.</p>

PRINCIPLE/ AREA OF DOCUMENT	#	QUESTION	BOARD'S VIEW (IF AVAILABLE)	FIRST GAS RESPONSE
Levies	10	Do you agree with the review's general recommendation that the levy mechanism needs to be changed?	Board seeks views before considering the issue further	<p>First Gas supports the Board's view to consider the levy mechanism issues further.</p> <p>As a matter of principle, we consider that the levy individual providers are charged should:</p> <ol style="list-style-type: none"> 1. Allow Utility Disputes to recover costs in full and in a timely manner; 2. The levy individual providers are charged should reflect the use and benefits they receive from Utility Disputes; and 3. The levy should reflect costs that are incurred by an efficient organisation. <p>We continue to support the levy be only charged to providers to the Scheme and no fee be charged to complainants.</p>

PRINCIPLE/ AREA OF DOCUMENT	#	QUESTION	BOARD'S VIEW (IF AVAILABLE)	FIRST GAS RESPONSE
	11	What information do you think the Board needs, to help it decide what options are available?	Board seeks views before considering the issue further	<p>Any levy mechanism needs to be equitable and proportionate. The Board should consider what is driving costs that are not being appropriately funded in year. Any levy mechanism should reflect the underlying drivers of the cost and users of the service. This may result in a reapportionment of costs between the fixed and variable components.</p> <p>Utility Disputes is in a position to determine the cost in time for each complaint accepted and separately, the cost of each complaint reaching deadlock. The variable levy could include a charge for all complaints that are accepted by Utility Disputes.</p> <p>The independent review has found that it is difficult to determine the quantum of claims each year, and the average time that will be required. A single event can result in a number of claims.</p> <p>One option Utility Disputes could consider is to invoice for the variable portion of fees that relate entirely to that claim, as soon as the claim is settled.</p>

PRINCIPLE/ AREA OF DOCUMENT	#	QUESTION	BOARD'S VIEW (IF AVAILABLE)	FIRST GAS RESPONSE
	12	What elements of the current levy mechanism do you think work well and should be retained?	Board seeks views before considering the issue further	<p>We consider that the split of the levy between a fixed charge and a variable charge is sensible approach to funding Utility Disputes.</p> <p>A fixed charge is an appropriate mechanism for funding aspects of the Scheme that provide benefit to all providers (i.e. not directly attributable to any on parties) and/or are fixed annual costs. For example, funding for:</p> <ul style="list-style-type: none"> • Funding training of personnel, consumers and providers; • Raising knowledge of the Utility Disputes service; and • A portion of base employee costs. <p>As the scope Utility Disputes broadens to include consumer services such as broadband, we consider it would be appropriate to share the fixed costs with all providers incorporated into the broader scheme.</p> <p>We consider variable charges are suitable for costs that are attributable to specific parties and are volume-related, for example complaint resolution. In the case of each complaint, the provider or providers can be clearly identified. We consider that the variable charge should only be levied once Utility Disputes has accepted the complaint; this indicates it is within their jurisdiction to consider and the provider has had the opportunity to resolve the complaint.</p>
	13	What elements of the current levy mechanism do not work and	Board seeks views before considering	First Gas considers the current levy mechanism generally works well. However, we recommend further consideration

PRINCIPLE/ AREA OF DOCUMENT	#	QUESTION	BOARD'S VIEW (IF AVAILABLE)	FIRST GAS RESPONSE
		why?	the issue further	<p>of the calculation method used for the variable charge.</p> <p>At present, the variable component of the levy is based upon which phase the complaint reaches before being resolved. The phase is determined by the days or hours the complaint is in the process.</p> <p>We recommend a review of this process to ensure it is efficient and complainants are encouraged or incentivised to respond to information requests or meeting requests in a timely manner. We have some concern that a complaint may move from levy phase 1 to phase 2 due to events outside of our control.</p> <p>Currently, providers must supply any information requested by Utility Disputes in a timely manner. We are incentivised to do so to minimise the time the complaint remains unresolved. Complainants do not seem to have the same pressure to respond to requests for information.</p> <p>Complainants should also have a time in which they should respond before the complaint is put on hold and then removed. This would need to be clearly specified on the Utility Disputes website and in any communication to ensure the principle of fairness is maintained.</p> <p>Currently, it appears that it is possible for a complaint to go from phase 1 to phase 2 simply due to the time it takes for a complainant to respond.</p> <p>Providing an incentive for complainants to respond to any requests for information will also minimise the time that</p>

PRINCIPLE/ AREA OF DOCUMENT	#	QUESTION	BOARD'S VIEW (IF AVAILABLE)	FIRST GAS RESPONSE
				Utility Disputes staff may need to invest following up with complainants.
	14	What levy options can you think of to address provider concerns about 'throwing money at complaints' to avoid the levy?	Board seeks views before considering the issue further	One option could be that the variable levy is based on the number of complaints that reach Utility Disputes, rather than on only deadlocked complaints. This incentivises providers to manage the customer experience in house to prevent an escalation of an issue to Utility Disputes.
	15	What levy options can you think of to avoid senior staff spending more time on jurisdiction issues	Board seeks views before considering the issue further	<p>We consider the determination of whether a complaint falls within the Scheme's jurisdiction is an essential function of Utility Disputes' staff. If it cannot be determined by junior staff at the time the complaint is lodged, it is appropriate that senior staff are involved to ensure it is resolved in a timely manner. This upfront effort will minimise time spent unnecessarily on a claim and the claimant can be advised of other alternatives.</p> <p>The Utility Disputes website already specifies which type of claims are outside of its jurisdiction. This should be clearly stated when talking to consumers or consumer groups.</p> <p>Providers are made aware of the complaint once it has been accepted. Timely advice to providers and a time frame in which they can advise if they believe the complaint is not within the jurisdiction of the Scheme may minimise the time spent by senior staff.</p>

PRINCIPLE/ AREA OF DOCUMENT	#	QUESTION	BOARD'S VIEW (IF AVAILABLE)	FIRST GAS RESPONSE
	16	What levy options can you think of that would avoid delays (beyond the provider's control) triggering levy levels?	Board seeks views before considering the issue further	<p>We consider an issue with the current mechanism is that levy levels can be triggered by delays in Utility Disputes receiving information from complainants.</p> <p>We suggest that a mechanism be put in place to ensure that complainants must respond to requests for information or meetings in a timely manner. While waiting for a response from a complainant, the claim should be put on hold and not affect the time calculation that will push the claim to the next levy level.</p>
	17	Do you agree with the recommendation <i>every organisation which is covered by the Scheme should make a contribution to its running costs?</i>	Board seeks views before considering the issue further	We agree that every organisation that is a provider in the Scheme should contribute to its running costs on a basis proportionate to its use of the scheme and benefits from the Scheme.
	18	Do you agree with the recommendation <i>there should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>	Board seeks views before considering the issue further	<p>First Gas agrees there should be no cross-subsidisation of providers, whether this is between classes or between schemes. However, we do not agree that there are any 'sweetheart' deals in place for Transpower or First Gas' transmission business. Rather, a different rate for transmission providers reflects the different situation facing these transmission providers and its customers.</p> <p>First Gas 'transmission business is unlikely to require the services of Utility Disputes due to:</p>

PRINCIPLE/ AREA OF DOCUMENT	#	QUESTION	BOARD'S VIEW (IF AVAILABLE)	FIRST GAS RESPONSE
				<ul style="list-style-type: none"> • The existing commercial arrangements under our connection contracts for use of the gas transmission network; and • The magnitude of claims that can be addressed by the Scheme. <p>First Gas' transmission business has commercial arrangements with its customers (shippers) through the Maui Pipeline Operating Code and the Vector Transmission Code (VTC). Both these codes have provisions for contractual disputes and would be the most likely avenue a shipper would use.</p> <p>We also query how many gas transmission-related complaints could be dealt with via the Scheme. The magnitude of claims that can be addressed by the Scheme is currently limited to complaints under \$50,000. Events occurring on the gas transmission network affecting customers are usually high impact, low probability (HILP) events that would fall outside this range, i.e. a rupture to a section of pipeline.</p> <p>As providers to the Scheme we agree that our transmission business should bear some of the costs of the scheme. However, we consider we already subsidise other providers to the extent we contribute to the fixed levy, although our consumers are unlikely to use Utility Disputes services.</p> <p>We welcome a review of the levy arrangements in place but caution against a solution that may appear easy but leads</p>

PRINCIPLE/ AREA OF DOCUMENT	#	QUESTION	BOARD'S VIEW (IF AVAILABLE)	FIRST GAS RESPONSE
				to an inequitable result.
	19	Do you agree with the recommendation <i>The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints?</i>	Board seeks views before considering the issue further	<p>In principle, we agree that the fixed portion of the levy should cover the fixed costs of Utility Disputes and the variable component should cover those costs relating to the handling of individual complaints.</p> <p>We suggest that a portion of personnel costs should be covered by the variable levy. From our understanding, it is not clear if this is how the levy is currently set.</p> <p>The performance measures previously discussed should work alongside the fixed element of the levy to ensure the levy reflects efficient costs.</p>
	20	Do you agree with the recommendation <i>In keeping with the 'user pays' principle, any case reaching Utilities Disputes at deadlock should incur a fee?</i>	Board seeks views before considering the issue further	In principle, we agree that any case reaching Utilities Disputes at deadlock should incur a fee. We also consider that any complaint being accepted by Utility Disputes (i.e. is within their jurisdiction and providers have had an opportunity to resolve) should incur a fee.
	21	Do you agree with the recommendation <i>The current variable fee structure needs to be reconsidered?</i>	Board seeks views before considering the issue further	First Gas agrees with the recommendation that the current variable fee structure should be reconsidered.

PRINCIPLE/ AREA OF DOCUMENT	#	QUESTION	BOARD'S VIEW (IF AVAILABLE)	FIRST GAS RESPONSE
Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme's approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a member has access to a Scheme for resolving the complaint)	<p>First Gas does not support this recommendation to alter the jurisdiction of claims considered by Utility Disputes.</p> <p>The current land exclusions in Appendix 2 of the Scheme rules reflect issues that are more appropriately considered in other forums. These forms of disputes can be highly technical and likely to be beyond the expertise of the Scheme. We consider that these other forums are more suitable for dealing with any issues covered by the exclusions.</p> <p>We are disappointed that this matter is being considered without a strong evidence-based case. To our knowledge nothing has changed since the decision to retain the exemptions in 2016. With no evidence provided to support the removal of the exclusions, we consider they should remain in place.</p>
	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.	Board seeks views before considering the issue further	<p>First Gas is concerned that complaints will no longer be considered in the most appropriate forum.</p> <p>We understand the exclusions referred to are those that would otherwise be a land complaint. We have focused our comments on the proposal to remove the land exclusions. In principle, we do not consider any of the exclusions should be removed. If the land exclusions were removed, Utility Disputes is likely to incur significant costs for technical experts to support decisions. This will increase costs to providers and ultimately to our consumers.</p>

PRINCIPLE/ AREA OF DOCUMENT	#	QUESTION	BOARD'S VIEW (IF AVAILABLE)	FIRST GAS RESPONSE
				<p>The Scheme specifically states that Utility Disputes, in resolving a complaint:</p> <p><i>‘... must aim to be consistent with the way other complaints have been resolved by UDL but is not bound by any legal rule of evidence. Decisions do not create precedents.’</i></p> <p>This adds a level of uncertainty for providers in an area that has strong legal precedent and is already covered in other forums. This may result in decisions being made that are contrary to those made in other forums and/or under other Acts.</p> <p>For example, exclusion 1.4 refers to matters between local authorities and lines companies around network assets in the road. These are covered with provisions in the National Code of Practice for Utility Operators’ Access to Transport Corridors. It does not seem an efficient or practical use of Utility Disputes’ resources to duplicate this work.</p>
Other proposed changes - <i>Accessibility</i>	24	Do you agree in principle with the idea of a deemed membership mechanism?	Board seeks views before considering the issue further	In principle, we agree with the idea of a deemed membership mechanism. We welcome the opportunity to respond to further consultation on this matter.

PRINCIPLE/ AREA OF DOCUMENT	#	QUESTION	BOARD'S VIEW (IF AVAILABLE)	FIRST GAS RESPONSE
	25	If implemented, do you think the deeming mechanism should apply to any scheme with mandatory membership that Utilities Disputes operates?	Board seeks views before considering the issue further	We cannot comment on the appropriateness of any mechanism for other schemes Utility Disputes operates.
	26	To enable fair contribution toward the costs of running the scheme, if implemented, when should the levy obligations for deemed providers start?	Board seeks views before considering the issue further	As we have commented above, all providers signed up to the Scheme should contribute to the costs of the Scheme. Deemed providers should incur their portion of the fixed charges from the time they join the Scheme. While this could result in Utility Disputes being over-funded for the fixed component of the Scheme in that year, we believe that a wash-up could be undertaken to reduce the levy for all providers in the following year.
	27	If implemented, when should other provider obligations (for example those in General Rule 12) start for deemed providers?	Board seeks views before considering the issue further	We recommend the commencement of provider obligations be considered on a case-by -case basis, but providers be fully compliant within a specified timeframe. While providers should be obligated to abide by all rules immediately, some rules such as General Rule 12, may require changes to their system or processes. We consider that a reasonable timeframe to reach full compliance could be up to 90 days.

PRINCIPLE/ AREA OF DOCUMENT	#	QUESTION	BOARD'S VIEW (IF AVAILABLE)	FIRST GAS RESPONSE
	28	Do you have other suggestions to address the problem of non-compliance with membership requirements to join the Energy Complaints Scheme?	Board seeks views before considering the issue further	<p>We consider that if distributors and retailers have not joined the Scheme, it is likely because they are not aware of the requirement.</p> <p>We suggest Utility Disputes increase its awareness within the industry. Part of this approach could be to ensure the Electricity Authority and Gas Industry Company advise any new retailers or distributors of their required participation in the Scheme.</p>
Accessibility/ Efficiency	29	Do you agree with the proposed change to substitute “ <i>distributor</i> ” for “ <i>lines company</i> ” where they appear in the scheme documents?	Board thinks this will improve consistency in terminology.	<p>First Gas supports the separation of distribution and transmission. The current definition of a lines company groups these classes of provider together.</p> <p>The Scheme document in general references “lines companies excluding Transpower or gas transmission services”. It is appropriate to change the definition to simply refer to distribution services.</p>

PRINCIPLE/ AREA OF DOCUMENT	#	QUESTION	BOARD'S VIEW (IF AVAILABLE)	FIRST GAS RESPONSE
	30	If references to lines company were changed to distributor, what other steps, (including other potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?	Board seeks views before considering the issue further	<p>We believe the exemption clauses in appendix two would need to include reference to both the distribution networks and transmission networks, if the “Lines company” term is removed.</p> <p>We are not aware of any other steps that are needed to avoid changing the meaning of any clause(s). However, we believe future consultation on detail amended wording would provide greater insight into any other necessary changes.</p>

06 April 2018

James Blake-Palmer
Manager - Stakeholder Engagement
Utilities Disputes
Wellington

By Email: submissions@utilitiesdisputes.co.nz; j.blake-palmer@utilitiesdisputes.co.nz.

Flick Electric submission on the independent 5-year review of Utilities Disputes Limited - Recommendations from the review and other Board proposed changes.

Dear James,

We appreciate the opportunity to consult on the proposed changes to the Energy Complaints Scheme documents. We are happy to discuss any of the below with Utilities Disputes and continue to work together to ensure positive outcomes for our customers. In particular, to determine the best ways to raise awareness of the organisation as appropriate to ensure customers are able to access fair outcomes and increase customer satisfaction with the industry.

Please let me know if you have any questions.

Kind regards,

Caitlyn Hart
Complaints Advisor
Flick Electric

1. Appendix 1 – Questions for submitters and preferred form for responses

Principle/Area of document	#	Question	Board's view (if available)	Submitter's response
Accountability	1	Do you agree with the review's recommendation <i>The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes?</i>	The Board disagreed with this recommendation. For further information on the Board's view, see pt8 (a) of the consultation pack (above)	No comment.
	2	Do you agree with the Board's proposal for Utilities Disputes to name providers that breach scheme rules and guidelines?	Board proposes naming providers that breach scheme rules and guidelines	We disagree with this proposal and argue that this is unnecessary. The current process of for providers who breach scheme rules and guideline is sufficient. The reasons why there may have been a breach by a provider are not explained and it is unclear which "guidelines" are being referred to.
	3	Do you agree with the Board's proposal for Utilities Disputes not to name providers in its case notes?	Board does not accept recommendation to name providers in its case notes	No comment.
	4	If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?	Board seeks views before considering the issue further	No comment.

Natural Justice	5	Do you agree with the review's recommendation to <i>consider removing the principles of natural justice from its scheme document</i> ?	Explicit reference to natural justice in the list of principles is not needed and can be removed	We disagree with the review's recommendation. The 'principle of natural justice' is more than simply 'fairness' and applies to each stage of the process, including decision making. It is important that there is both procedural and substantive fairness when arriving at a decision. 'Natural justice' is not necessarily covered by 'fairness' or any of the remaining principles.
	6	Do you agree with the Board's view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	Explicit reference to natural justice in the list of principles is not needed and can be removed	We disagree, see above.
Performance Standards	7	Do you agree with the review's recommendation to remove performance standards relating to providers' self-reporting on compliance?	Board seeks views before considering the issue further	We agree with this recommendation. The provider's self-reporting is not a direct measure of Utilities Disputes' performance. However, we do still consider self-reporting on compliance is important.
	8	Do you agree with the review's recommendation to remove performance standards relating to cost per case?	The Board believes a <i>cost per case</i> measure is not sufficiently linked to Utilities Disputes performance to justify a performance measure. However, the current measures should remain until new measures have been approved	We suggest that this performance measure has the potential to be helpful, if the calculation method is improved and if it is supplemented by other measures.
	9	Do you have ideas about other measures the Board could consider adopting?	Board seeks views before considering the issue further	We suggest that at the completion of each complaint, both providers and complainants should be given the option to complete a satisfaction survey, on the performance of Utilities Disputes'. The results should be analysed and reported on regularly.

Levies	10	Do you agree with the review's general recommendation that the levy mechanism needs to be changed?	Board seeks views before considering the issue further	As it stands, we feel there is an overall satisfaction with the levy mechanism. However, we would welcome consideration of any potential changes which may strengthen the current mechanism and help to drive efficiency in the organisation and reduce levies.
	11	What information do you think the Board needs, to help it decide what options are available?	Board seeks views before considering the issue further	See below.
	12	What elements of the current levy mechanism do you think work well and should be retained?	Board seeks views before considering the issue further	We are reasonably content with the current system of fixed and variable fees. There is motivation for providers to work closely with customers, to resolve the issue in a fair and efficient manner, before reaching the next level.
	13	What elements of the current levy mechanism do not work and why?	Board seeks views before considering the issue further	We agree there should be a review to ensure all providers are contributing fairly and that there is no cross subsidisation. We also suggest there should be a review of rules for cases reaching deadlock and further levels. It is unfair for a provider to be charged when there are delays beyond their control. For example, when a case reaches deadlock, and a providers efforts to contact a complainant have been unsuccessful.
	14	What levy options can you think of to address provider concerns about 'throwing money at complaints' to avoid the levy?	Board seeks views before considering the issue further	This is not a concern for us. We follow our own internal complaints process and work to resolve any complaint within 20 business days. If this is not enough time and the complaint goes to deadlock, we will accept this and continue to try to resolve the complaint, rather than 'throw money at complaints'.
	15	What levy options can you think of	Board seeks views before considering	We suggest that time should be spent working to understand

		to avoid senior staff spending more time on jurisdiction issues	the issue further	the reasons behind the increase in jurisdiction challenges. There should not be a levy for complaints which are outside jurisdiction.
	16	What levy options can you think of that would avoid delays (beyond the provider's control) triggering levy levels?	Board seeks views before considering the issue further	We suggest that there needs to be a review of how providers are charged when circumstances out of a provider's control trigger the levy time frames. Evidence could be provided by the provider and this should be taken into account when determining the appropriate levy. It is however imperative that there are time expectations which are upheld by all parties.
	17	Do you agree with the recommendation <i>every organisation which is covered by the Scheme should make a contribution to its running costs?</i>	Board seeks views before considering the issue further	We agree with this recommendation.
	18	Do you agree with the recommendation <i>there should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>	Board seeks views before considering the issue further	We agree with this recommendation.
	19	Do you agree with the recommendation <i>The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints?</i>	Board seeks views before considering the issue further	We agree. However, the fixed element should not cover areas activities of Utilities Disputes that is not directly related to the resolution of disputes.

	20	Do you agree with the recommendation <i>In keeping with the 'user pays' principle, any case reaching Utilities Disputes at deadlock should incur a fee?</i>	Board seeks views before considering the issue further	We agree with this recommendation.
	21	Do you agree with the recommendation <i>The current variable fee structure needs to be reconsidered?</i>	Board seeks views before considering the issue further	We agree with this recommendation, especially in regards to providers incurring fees (e.g. deadlock fee) when not meeting time obligations for reasons out of the provider's control.
Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme's approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a member has access to a Scheme for resolving the complaint)	No comment
	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.	Board seeks views before considering the issue further	No comment
Other proposed changes - <i>Accessibility</i>	24	Do you agree in principle with the idea of a deemed membership mechanism?	Board seeks views before considering the issue further	More information on such mechanism should be provided. However, we consider that it is important that those who are required to be members of the scheme do so, and have the appropriate levy obligations.
	25	If implemented, do you think the	Board seeks views before considering	See above

		deeming mechanism should apply to any scheme with mandatory membership that Utilities Disputes operates?	the issue further	
	26	To enable fair contribution toward the costs of running the scheme, if implemented, when should the levy obligations for deemed providers start?	Board seeks views before considering the issue further	As soon as possible - backdated to the date that the provider was expected to have registered with Utilities Disputes.
	27	If implemented, when should other provider obligations (for example those in General Rule 12) start for deemed providers?	Board seeks views before considering the issue further	As soon as possible. See above.
	28	Do you have other suggestions to address the problem of non-compliance with membership requirements to join the Energy Complaints Scheme?	Board seeks views before considering the issue further	We suggest there should be strict enforcement to address the issue of non-compliance and the Act should be used against providers who are non-compliant.
Accessibility/ Efficiency	29	Do you agree with the proposed change to substitute “ <i>distributor</i> ” for “ <i>lines company</i> ” where they appear in the scheme documents?	Board thinks this will improve consistency in terminology.	We do not have a strong view on this recommendation. However, we suggest this may not be necessary.
	30	If references to lines company were changed to distributor, what other steps, (including other	Board seeks views before considering the issue further	No comment

		potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?		
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Genesis Energy Limited
The Genesis Energy Building
660 Great South Road
PO Box 17-188
Greenlane
Auckland 1051
New Zealand

T. 09 580 2094

6 April 2018

Utilities Disputes Limited

By email: submissions@utilitiesdisputes.co.nz

Recommendations from the independent 5-year review and other Board proposed changes

Genesis Energy Limited (**Genesis**) welcomes the opportunity to provide comments to Utilities Disputes Limited (**UDL**) on the consultation paper *Recommendations from the review and other Board proposed changes* (**consultation paper**) dated 12 March 2018.

We note for clarity the consultation paper follows the independent review of UDL's scheme document conducted in 2017 by Queen Margaret University (**the review**). We will refer to both documents throughout our submission, which includes:

- Key messages;
- Responses to consultation questions as Appendix A;
- Our views on other review recommendations as Appendix B.

In respect of Appendix B, we are unclear why the consultation paper does not ask for views on all recommendations made by the review. We recommend that for the review to be completed appropriately, it is essential UDL explains what it intends to do with these other recommendations.

Key messages

As long as UDL remains focused on its core remit, Genesis agrees it provides an effective dispute resolution scheme with only minor improvements needed. For this reason, we do not agree the case has been made for change as per some of the recommendations in the consultation paper, or even more so, in the review generally.

At its core, UDL is about providing free and independent access to a dispute resolution service when complaints about providers have reached deadlock. We are of the view that the scheme must remain focused on this core purpose to ensure continued efficiency and effectiveness for the benefit of both consumers and providers.

While we appreciate that UDL wishes to improve access to its services, and encourage it to do so to vulnerable customers in particular, we are concerned that continuing to grow beyond its current reach into additional jurisdictions (as per the review's recommendations) could distract from its core purpose, or confuse consumers and providers about the role UDL plays.

We are also concerned with recommendations regarding the important legal principle of natural justice and interpreting what is fair and reasonable in all circumstances. In our view, UDL must be explicit that it acts consistently with natural justice, and applies any relevant legal rules and precedents in determining what is fair and reasonable.

Further, we appreciate that some changes to the current levy structure may improve the scheme, but consider a separate consultation specific to levies is warranted, rather than making changes as part of the omnibus of recommendations in the consultation paper.

Please note Appendix A and B included below. If you would like to discuss anything further, please contact me by email: margie.mccrone@genesiseenergy.co.nz or by phone: 09 951 9272.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. McCrone'.

Margie McCrone
Regulatory Advisor

Appendix A: Responses to Consultation Questions

Principle/Area of document	#	Question	Board's view (if available)	Submitter's response
Accountability	1	Do you agree with the review's recommendation <i>The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes?</i>	The Board disagreed with this recommendation. For further information on the Board's view, see pt8 (a) of the consultation pack (above)	No. We do not see value in naming relevant providers in the case notes, nor have we seen sufficient justification from the review or UDL Board to do so.
	2	Do you agree with the Board's proposal for Utilities Disputes to name providers that breach scheme rules and guidelines?	Board proposes naming providers that breach scheme rules and guidelines	See response Q1.
	3	Do you agree with the Board's proposal for Utilities Disputes not to name providers in its case notes?	Board does not accept recommendation to name providers in its case notes	See response Q1.
	4	If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?	Board seeks views before considering the issue further	See response Q1.

Natural Justice	5	Do you agree with the review's recommendation to <i>consider removing the principles of natural justice from its scheme document?</i>	Explicit reference to natural justice in the list of principles is not needed and can be removed	No. We do not agree the principle of 'fairness' necessarily covers natural justice such that explicit reference to 'natural justice' should be removed. Natural justice is an important legal principle and complaints must be investigated in a way that is consistent with it as per the scheme's rules (see section 13(1), schedule 4 of the Electricity Industry Act 2010 (the Act)).
	6	Do you agree with the Board's view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	Explicit reference to natural justice in the list of principles is not needed and can be removed	See response Q5.
Performance Standards	7	Do you agree with the review's recommendation to remove performance standards relating to providers' self-reporting on compliance?	Board seeks views before considering the issue further	No. We consider self-reporting on compliance is a good tool to ensure providers are achieving best practise and continuous improvement.
	8	Do you agree with the review's recommendation to remove performance standards relating to cost per case?	The Board believes a <i>cost per case</i> measure is not sufficiently linked to Utilities Disputes performance to justify a performance measure. However, the current measures should remain until new measures have been approved	Yes. We also agree current measures should remain until new measures have been approved.
	9	Do you have ideas about other measures the Board could consider adopting?	Board seeks views before considering the issue further	There are merits in using the survey developed by Kees van den Bos, Lynn van der Velden and Allan Lind, as per Appendix 3 of the review.

Levies	10	Do you agree with the review's general recommendation that the levy mechanism needs to be changed?	Board seeks views before considering the issue further	<p>Not necessarily. In our view, the current structure is operating effectively, but we would welcome other views on how levies could be better targeted to improve the effectiveness of the scheme overall.</p> <p>For now – i.e. for the purposes of this consultation paper – we do not consider a case has been made for change. While we have some views on the questions asked re levies, we would prefer to address these in a separate consultation that specifically relates to the levy structure.</p>
	11	What information do you think the Board needs, to help it decide what options are available?	Board seeks views before considering the issue further	See response Q10.
	12	What elements of the current levy mechanism do you think work well and should be retained?	Board seeks views before considering the issue further	See response Q10.
	13	What elements of the current levy mechanism do not work and why?	Board seeks views before considering the issue further	See response Q10.
	14	What levy options can you think of to address provider concerns about 'throwing money at complaints' to avoid the levy?	Board seeks views before considering the issue further	We do not necessarily consider this is a problem.
	15	What levy options can you think of to avoid senior staff spending more time on jurisdiction issues	Board seeks views before considering the issue further	We do not consider this is a problem. It is an appropriate use of UDL resources.
	16	What levy options can you think of that would avoid delays (beyond the	Board seeks views before considering the issue further	This is an area where a specific consultation on levies could focus.

		provider's control) triggering levy levels?		
	17	Do you agree with the recommendation <i>every organisation which is covered by the Scheme should make a contribution to its running costs?</i>	Board seeks views before considering the issue further	Yes.
	18	Do you agree with the recommendation <i>there should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>	Board seeks views before considering the issue further	Yes.
	19	Do you agree with the recommendation <i>The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints?</i>	Board seeks views before considering the issue further	No comment.
	20	Do you agree with the recommendation <i>In keeping with the 'user pays' principle, any case reaching Utilities Disputes at deadlock should incur a fee?</i>	Board seeks views before considering the issue further	Yes.

	21	Do you agree with the recommendation <i>The current variable fee structure needs to be reconsidered?</i>	Board seeks views before considering the issue further	This is another example of where a specific consultation on levies could focus.
Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme's approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a member has access to a Scheme for resolving the complaint)	No comment.
	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.	Board seeks views before considering the issue further	No comment.
Other proposed changes - <i>Accessibility</i>	24	Do you agree in principle with the idea of a deemed membership mechanism?	Board seeks views before considering the issue further	No, and we are curious why UDL is considering this as an option when it was not a recommendation in the review. We cannot see a need for deemed membership when section 96(1) of the Act is clear that Transpower and every distributor and retailer must be a member of the scheme unless exempt under subsection (3). The scope for exemption is narrow but clearly defined.
	25	If implemented, do you think the deeming mechanism should apply to any scheme with mandatory membership that	Board seeks views before considering the issue further	See response Q24.

		Utilities Disputes operates?		
	26	To enable fair contribution toward the costs of running the scheme, if implemented, when should the levy obligations for deemed providers start?	Board seeks views before considering the issue further	See response Q24.
	27	If implemented, when should other provider obligations (for example those in General Rule 12) start for deemed providers?	Board seeks views before considering the issue further	See response Q24.
	28	Do you have other suggestions to address the problem of non-compliance with membership requirements to join the Energy Complaints Scheme?	Board seeks views before considering the issue further	See response Q24.
Accessibility/ Efficiency	29	Do you agree with the proposed change to substitute “ <i>distributor</i> ” for “ <i>lines company</i> ” where they appear in the scheme documents?	Board thinks this will improve consistency in terminology.	Yes, although we do not consider this to be a priority.
	30	If references to lines company were changed to distributor, what other steps, (including other potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?	Board seeks views before considering the issue further	No comment.

Appendix B: Our views on recommendations made by review excluded from consultation paper

We note the consultation paper poses questions on some, but not all, of the recommendations made by the review panel. As per the cover letter, we would like UDL to please clarify why it is not consulting on all review recommendations and what it intends to do with those recommendations absent from the consultation paper.

Genesis would like to share the following views on some of the review's 'other' recommendations:

- Page 19: recommends the Board agree a Strategic Communications Plan and prioritise its implementation. It should also set out minimum requirements for providers to promote the scheme. It notes additional funding may be needed via the levy system.

Genesis agrees a Strategic Communications Plan might have merit, as could setting out minimum requirements for promotion of the scheme. If this requires additional funding from levies however, we would expect there to be consultation with scheme members to understand what benefits would justify additional costs.

- Page 20: recommends the Board seek more detailed socio-demographic information on its service users.

Genesis does not consider the review sufficiently justifies this recommendation, and is not comfortable with UDL proceeding to collect more socio-demographic information about consumers without further evidence of why it is necessary to do so.

- Page 26: recommends the Commissioner continues to base decisions on what is 'fair and reasonable in all circumstances'.

Genesis agrees the Commissioner should make decisions based on what is fair and reasonable. We are however concerned with the review commentary about how to apply any applicable legal rules when considering what is fair and reasonable in any given circumstances. In our view, UDL must make decisions that are consistent with any relevant legal precedent; the fact that it is an 'alternative' dispute resolution service does not provide an avenue to depart from existing legal guidance on a matter. We trust UDL shares our views on the need to apply the law, but it would be useful to have this clarified.

- Page 39: recommends UDL seeks to gain additional jurisdictions.

As per our cover letter, we are concerned this could distract from the core purpose of the existing scheme, the efficiency and effectiveness of which must be continued. We consider a greater priority is ensuring consumers, particularly vulnerable consumers, can access the current service provided by UDL.

- Page 60: recommends UDL has an audit power to investigate when there are reasonable grounds a member is not complying with the minimum standards it should.

Genesis agrees this might be a useful power for UDL, however, this would require a change to the scheme rules and must be subject to consultation so the audit role could be appropriately considered and designed.

1. Appendix 1 – Questions for submitters and preferred form for responses

Principle/Area of document	#	Question	Board's view (if available)	Submitter's response
Accountability	1	Do you agree with the review's recommendation <i>The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes?</i>	The Board disagreed with this recommendation. For further information on the Board's view, see pt8 (a) of the consultation pack (above)	<p>In the case of ongoing transgressions that are of a similar nature and keep occurring, what other remedies does UDL have? In principle I agree with the EA, who clearly think it could support the process of the Scheme however Consumers need to know and be aware which providers are transgressing.</p> <p>If Providers are not named, then consumers do not have transparency and as a result of this there are "no consequences" for providers. The consequence maybe as simple as being named.</p> <p>I agree with "no names" but to repeatedly be in dispute, perhaps there needs to be a proviso? Consumers need to be aware of ongoing issues.</p> <p>A number of companies repeatedly come to the attention of UDL, with no apparent public consequences, other than an increased levy which they then pass onto the consumer – so it becomes a lose/lose for consumers.</p>
	2	Do you agree with the Board's proposal for Utilities Disputes to name providers that breach scheme rules and guidelines?	Board proposes naming providers that breach scheme rules and guidelines	Agree

	3	Do you agree with the Board's proposal for Utilities Disputes not to name providers in its case notes?	Board does not accept recommendation to name providers in its case notes	No. I do not agree
	4	If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?	Board seeks views before considering the issue further	In order to be effective, detail needs to be provided and not summarised too much. More detail, not less if a provider is named to give fair outline of the case. The consumer is not necessarily correct and therefore this could be positive for the provider.
Natural Justice	5	Do you agree with the review's recommendation to <i>consider removing the principles of natural justice from its scheme document</i> ?	Explicit reference to natural justice in the list of principles is not needed and can be removed	As the Scheme does not necessarily adhere to legal parameters, as is clearly stated, no I don't agree. The letter of the law is not always justice, as we know. Natural Justice needs to stay. It may sometimes be the only real remedy possible. There is always recourse to legal remedies, as stated in the Review.
	6	Do you agree with the Board's view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	Explicit reference to natural justice in the list of principles is not needed and can be removed	No, I do not agree
Performance Standards	7	Do you agree with the review's recommendation to remove performance standards relating to providers' self-reporting on compliance?	Board seeks views before considering the issue further	Self-reporting is always problematic; therefore, I agree with the Review recommendation to remove the performance standards on compliance.
	8	Do you agree with the review's recommendation to remove performance standards relating to	The Board believes a <i>cost per case</i> measure is not sufficiently linked to Utilities Disputes performance to justify	Agree with the Board.

		cost per case?	a performance measure. However, the current measures should remain until new measures have been approved	
	9	Do you have ideas about other measures the Board could consider adopting?	Board seeks views before considering the issue further	I have never seen any public reporting/articles – e.g. Listener, North and South, NBR, Consumer ...is there a place where consumers can access information that could involve a more indepth level of information for consumers/public? As is stated in the Review, the UDL acronym is not widely known.
Levies	10	Do you agree with the review’s general recommendation that the levy mechanism needs to be changed?	Board seeks views before considering the issue further	As stated in the review document “the average cost per case standard also appears flawed and lacks the required credibility.” If all providers of service are required by law to be part of UDL, then all need to contribute on a user pays principle – those who use the service most, pay more but all providers need to contribute. This includes Transpower. There is another view that could be valid – if a consumer is in a region or with a provider who consistently has cases brought to UDL, the consumers in that region suffer. If the cost of cases was spread evenly across 1) power companies 2) lines companies 3) gas providers....then pressure from other providers may provide an incentive for all companies to act responsibly, to the best of their ability. At present, there is no incentive, other than the levy is higher, which doesn’t affect the provider – only the consumer.
	11	What information do you think the Board needs, to help it decide what options are available?	Board seeks views before considering the issue further	I don’t know the arrangements for Transpower and First Gas but as stated, there should be no cross subsidization – they are part of the energy industry; therefore, they need to contribute.

	12	What elements of the current levy mechanism do you think work well and should be retained?	Board seeks views before considering the issue further	UDL currently gathers enough resources to do its work and is extending its services, so the current levy system must be working relatively well. However, not having enough reserves to cover at least 3 months, does appear to be an issue. See above comments.
	13	What elements of the current levy mechanism do not work and why?	Board seeks views before considering the issue further	Overload of one off complaints; a good solution recommended by the Review - <i>'when a surge in complaints is received from a specific provider, Utilities Disputes has the power to invoice that provider an interim charge to cover the increased costs. Thus, the costs associated with a one-off surge in complaints would be funded the same year'</i> .
	14	What levy options can you think of to address provider concerns about 'throwing money at complaints' to avoid the levy?	Board seeks views before considering the issue further	If <i>"throwing money at the complaint"</i> solves the problem for the complainant surely that is their prerogative? How are we aware of this? Who is doing it? Is it a consistent method of resolving issues?
	15	What levy options can you think of to avoid senior staff spending more time on jurisdiction issues	Board seeks views before considering the issue further	No comment – feel this is a matter for the Commissioner to solve internally.
	16	What levy options can you think of that would avoid delays (beyond the provider's control) triggering levy levels?	Board seeks views before considering the issue further	Quarterly invoicing, that could be adjusted on an annual basis, based on actual complaints, solved or not, deadlocked or not.
	17	Do you agree with the recommendation <i>every organisation which is covered by the Scheme should make a contribution to its running costs?</i>	Board seeks views before considering the issue further	Agree – why wouldn't they?

	18	Do you agree with the recommendation <i>there should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>	Board seeks views before considering the issue further	<p>I am not privy to the details of these agreements, maybe they work well? Maybe they don't? The Board is better placed to consider this.</p> <p>Cross subsidization could have an incentive effect, as stated above. Looking at complaints most appear to be power providers because 99% have no dealings with their lines companies.</p>
	19	Do you agree with the recommendation <i>The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints?</i>	Board seeks views before considering the issue further	<p>Yes. Agree. However, it maybe seen as "unfair" by providers – in truth, it is unfair on the consumers of the providers who regularly transgress, because they pay the price of their provider's behaviour.</p>
	20	Do you agree with the recommendation <i>In keeping with the 'user pays' principle, any case reaching Utilities Disputes at deadlock should incur a fee?</i>	Board seeks views before considering the issue further	<p>Credibility is paramount and some companies can be intransigent, because they can...no company is so big that it can't resolve an issue with a customer, if it makes an honest attempt, or accept that there needs to be another way. There should be no deadlocked complaints. There should be a final ruling that all must accept.</p>
	21	Do you agree with the recommendation <i>The current variable fee structure needs to be reconsidered?</i>	Board seeks views before considering the issue further	<p>In light of the comments of the reviewers, it does appear as if it should be. However, it needs to be carefully considered. Consumer's should not bear the brunt of this.</p>

Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme's approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a member has access to a Scheme for resolving the complaint)	The Board has a very valid argument here.
	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.	Board seeks views before considering the issue further	Not applicable – I am a consumer advocate.
Other proposed changes - <i>Accessibility</i>	24	Do you agree in principle with the idea of a deemed membership mechanism?	Board seeks views before considering the issue further	Yes, the principle is sound and gives more credibility to the scheme.
	25	If implemented, do you think the deeming mechanism should apply to any scheme with mandatory membership that Utilities Disputes operates?	Board seeks views before considering the issue further	Yes, for the above reasons.
	26	To enable fair contribution toward the costs of running the scheme, if implemented, when should the levy obligations for deemed providers start?	Board seeks views before considering the issue further	As soon as the parameters are agreed – a reasonable time frame would be two years. One year for consultation and one year for implementation.

	27	If implemented, when should other provider obligations (for example those in General Rule 12) start for deemed providers?	Board seeks views before considering the issue further	After the first scheme has been assessed and evaluated.
	28	Do you have other suggestions to address the problem of non-compliance with membership requirements to join the Energy Complaints Scheme?	Board seeks views before considering the issue further	Do Regulations need to be looked at? The scheme cannot have credibility unless all aspects of it mandatory.
Accessibility/ Efficiency	29	Do you agree with the proposed change to substitute “ <i>distributor</i> ” for “ <i>lines company</i> ” where they appear in the scheme documents?	Board thinks this will improve consistency in terminology.	No - I do not. Lines company is a lines company; a gas distributor is a gas distributor. In the future we may have other forms of distribution therefore using a generic term such as this defeats the purpose. They are invisible enough as it is, to the consumers. Terminology needs to be clear for consumers – and this term is not.
	30	If references to lines company were changed to distributor, what other steps, (including other potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?	Board seeks views before considering the issue further	Since I don’t agree, I hope this issue never arises. Distributor has no meaning to a consumer.

Appendix 1 – Questions for submitters and preferred form for responses

Principle/Area of document	#	Question	Board's view (if available)	Submitter's response
Accountability	1	Do you agree with the review's recommendation <i>The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes?</i>	The Board disagreed with this recommendation. For further information on the Board's view, see pt8 (a) of the consultation pack (above)	The provider should be identified in the case notes
	2	Do you agree with the Board's proposal for Utilities Disputes to name providers that breach scheme rules and guidelines?	Board proposes naming providers that breach scheme rules and guidelines	Yes they should be named
	3	Do you agree with the Board's proposal for Utilities Disputes not to name providers in its case notes?	Board does not accept recommendation to name providers in its case notes	The provider should be identified in the case notes

	4	If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?	Board seeks views before considering the issue further	Location and specific area the problem has occurred
Natural Justice	5	Do you agree with the review's recommendation to <i>consider removing the principles of natural justice from its scheme document</i> ?	Explicit reference to natural justice in the list of principles is not needed and can be removed	Agreed
	6	Do you agree with the Board's view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	Explicit reference to natural justice in the list of principles is not needed and can be removed	Agreed
Performance Standards	7	Do you agree with the review's recommendation to remove performance standards relating to providers' self-reporting on compliance?	Board seeks views before considering the issue further	Agreed
	8	Do you agree with the review's recommendation to remove	The Board believes a <i>cost per case</i> measure is not sufficiently linked to	Agreed

		performance standards relating to cost per case?	Utilities Disputes performance to justify a performance measure. However, the current measures should remain until new measures have been approved	
	9	Do you have ideas about other measures the Board could consider adopting?	Board seeks views before considering the issue further	No
Levies	10	Do you agree with the review's general recommendation that the levy mechanism needs to be changed?	Board seeks views before considering the issue further	Yes
	11	What information do you think the Board needs, to help it decide what options are available?	Board seeks views before considering the issue further	Client size, location and distribution of the supplier
	12	What elements of the current levy mechanism do you think work well and should be retained?	Board seeks views before considering the issue further	All suppliers to be levied
	13	What elements of the current levy	Board seeks views before considering	Not a uniform rate of levy applied to all suppliers

		mechanism do not work and why?	the issue further	
	14	What levy options can you think of to address provider concerns about 'throwing money at complaints' to avoid the levy?	Board seeks views before considering the issue further	Best for consumer to have a settlement, maybe the provider has to take in the cost of taking the complaint further in deciding their actions
	15	What levy options can you think of to avoid senior staff spending more time on jurisdiction issues	Board seeks views before considering the issue further	None
	16	What levy options can you think of that would avoid delays (beyond the provider's control) triggering levy levels?	Board seeks views before considering the issue further	Hours recorded instead of time frame.
	17	Do you agree with the recommendation <i>every organisation which is covered by the Scheme should make a contribution to its running costs?</i>	Board seeks views before considering the issue further	Definitely.
	18	Do you agree with the recommendation <i>there should be</i>	Board seeks views before considering	Definately

		<i>no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>	the issue further	
	19	Do you agree with the recommendation <i>The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints?</i>	Board seeks views before considering the issue further	Definately
	20	Do you agree with the recommendation <i>In keeping with the 'user pays' principle, any case reaching Utilities Disputes at deadlock should incur a fee?</i>	Board seeks views before considering the issue further	This could become a barrier to the consumer complaining if there was a fee to pay, which some would not be able to afford. The provider should be charged on a case basis.
	21	Do you agree with the recommendation <i>The current variable fee structure needs to be</i>	Board seeks views before considering the issue further	Yes, there needs to be more levels for the time involved in a case.

		<i>reconsidered?</i>		
Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme's approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a member has access to a Scheme for resolving the complaint)	Agreed
	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.	Board seeks views before considering the issue further	None
Other proposed changes - <i>Accessibility</i>	24	Do you agree in principle with the idea of a deemed membership mechanism?	Board seeks views before considering the issue further	Yes, they should be a member
	25	If implemented, do you think the deeming mechanism should apply	Board seeks views before considering	Yes

		to any scheme with mandatory membership that Utilities Disputes operates?	the issue further	
	26	To enable fair contribution toward the costs of running the scheme, if implemented, when should the levy obligations for deemed providers start?	Board seeks views before considering the issue further	ON the date they start becoming a provider
	27	If implemented, when should other provider obligations (for example those in General Rule 12) start for deemed providers?	Board seeks views before considering the issue further	ON the date they start becoming a provider
	28	Do you have other suggestions to address the problem of non-compliance with membership requirements to join the Energy Complaints Scheme?	Board seeks views before considering the issue further	No
Accessibility/	29	Do you agree with the proposed change to substitute “ <i>distributor</i> ”	Board thinks this will improve	Yes

Efficiency		for " <i>lines company</i> " where they appear in the scheme documents?	consistency in terminology.	
	30	If references to lines company were changed to distributor, what other steps, (including other potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?	Board seeks views before considering the issue further	Not known



30 March 2018
James Blake-Palmer
Manager – Stakeholder Engagement
Utilities Disputes
Wellington

By email: submissions@utilitiesdisputes.co.nz;

Dear James

Consultation Paper – Independent Review – Round 1

Mercury welcomes the opportunity to comment on the Utilities Disputes Boards consultation relating to the five yearly independent review.

Mercury is an electricity generator and retailer providing energy services to homes, businesses and industrial customers throughout New Zealand. We have a long heritage in renewable energy in New Zealand serving about 1-in-5 homes and businesses under the Mercury brand and other specialty brands. We also have proven capability and technical expertise in smart metering services and solar. Our goal is to be the leading energy brand in New Zealand, inspiring our customers, owners and partners by delivering value, innovation and outstanding experiences.

If you have any questions on the above submission please Andrew Robertson, Regulatory and Compliance Strategist 09 308 8276 or andrew.robertson@mercury.co.nz

Yours sincerely

Andrew Robertson
Regulatory and Compliance Strategist



Principle/Area of document	#	Question	Board's view (if available)	Submitter's response
Accountability	1	Do you agree with the review's recommendation <i>The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes?</i>	The Board disagreed with this recommendation. For further information on the Board's view, see pt8 (a) of the consultation pack (above)	Mercury agrees with the Board view that naming the relevant provider is not necessary. Crucial aspects include the case notes and process and outcome and it is therefore irrelevant who the provider may be. Mercury would however suggest that if a provider is fulfilling a non-traditional role (e.g, a distributor providing retail services) that is explicit in the case notes. It would be difficult for most consumers to fully understand the nuances and reasons for decisions made by the Commissioner without some appreciation of the respective roles played by participants in the industry. This would distort the resulting effect on brands.
	2	Do you agree with the Board's proposal for Utilities Disputes to name providers that breach scheme rules and guidelines?	Board proposes naming providers that breach scheme rules and guidelines	Mercury disagrees. As above it is important to know the process and the outcome, not necessarily the parties concerned. This is also relevant where a perceived breach has occurred.
	3	Do you agree with the Board's proposal for Utilities Disputes not to name providers in its case notes?	Board does not accept recommendation to name providers in its case notes	Mercury agrees that naming the relevant provider is not necessary as the important aspect is the case notes and process and outcome.
	4	If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?	Board seeks views before considering the issue further	Mercury would expect that the case notes provide all other necessary information.
Natural Justice	5	Do you agree with the review's recommendation to <i>consider removing the principles of natural justice from its scheme document?</i>	Explicit reference to natural justice in the list of principles is not needed and can be removed	The utilities disputes process is not the disputes tribunal or a court. It is a consumer-focussed, low cost access to resolution scheme, and so the principles of natural justice need to accommodate that context. From an administrative law perspective, it is tricky trying to apply concepts like "natural justice", which are designed to ensure power and decision makers are held to account, to a consumer-driven complaints resolution forum. "Fairness" and "independence" are appropriate principles, which convey the concepts within natural justice, appropriate to the context.



	6	Do you agree with the Board's view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	Explicit reference to natural justice in the list of principles is not needed and can be removed	See above
Performance Standards	7	Do you agree with the review's recommendation to remove performance standards relating to providers' self-reporting on compliance?	Board seeks views before considering the issue further	Mercury is of the view that self-reporting on compliance ensures there are robust internal compliance processes and practices in place.
	8	Do you agree with the review's recommendation to remove performance standards relating to cost per case?	The Board believes a <i>cost per case</i> measure is not sufficiently linked to Utilities Disputes performance to justify a performance measure. However, the current measures should remain until new measures have been approved	Mercury would seek more clarity on this issue, particularly if a replacement methodology were to be proposed. We would seek a collaborative approach from UDL with clear and broad benefits for participants of the scheme linked to any proposed change
	9	Do you have ideas about other measures the Board could consider adopting?	Board seeks views before considering the issue further	No view
Levies	10	Do you agree with the review's general recommendation that the levy mechanism needs to be changed?	Board seeks views before considering the issue further	Mercury does not believe the levy mechanism be changed unless this drives efficiency in UDL's operations.
	11	What information do you think the Board needs, to help it decide what options are available?	Board seeks views before considering the issue further	No comment
	12	What elements of the current levy mechanism do	Board seeks views before considering	The levy system has been simplified over time to a point where cost is predictable and easily calculated for



		you think work well and should be retained?	the issue further	budgeting purposes. Graduated variable costs provide enough of an incentive in relation to the average quantum of a dispute for scheme members to put in the required effort to resolve disputes themselves. The case number reconciliation process involving monthly reporting from UDL is useful for the settlement of end of year invoices.
	13	What elements of the current levy mechanism do not work and why?	Board seeks views before considering the issue further	Mercury suggests the apportionment of retail versus lines fixed cost from time to time as the industry changes. Current monthly reporting on case numbers is too complex and needs simplifying.
	14	What levy options can you think of to address provider concerns about 'throwing money at complaints' to avoid the levy?	Board seeks views before considering the issue further	Mercury's view is that a change to the variable levy scaling is necessary.
	15	What levy options can you think of to avoid senior staff spending more time on jurisdiction issues	Board seeks views before considering the issue further	Mercury will not raise meritless jurisdiction challenges. UDL should also consider whether it has enough verifiable information before making decisions on jurisdiction that are not contestable. These situations might only apply to certain types of complaint.
	16	What levy options can you think of that would avoid delays (beyond the provider's control) triggering levy levels?	Board seeks views before considering the issue further	Mercury is of the view that were delays to resolving a complaint are caused by a complainant, that these be explicitly removed from the "time taken to resolve" calculation. Mercury's experience has been that some complainants will avoid responding in order to attempt to gain further resolution concessions. This behaviour needs to be discouraged.
	17	Do you agree with the recommendation <i>every organisation which is covered by the Scheme should make a contribution to its running costs?</i>	Board seeks views before considering the issue further	Yes
	18	Do you agree with the recommendation <i>there should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>	Board seeks views before considering the issue further	Yes



	19	Do you agree with the recommendation <i>The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints?</i>	Board seeks views before considering the issue further	Yes. There is an assumption that the existing variable levies cover the handling of individual complaints.
	20	Do you agree with the recommendation <i>In keeping with the 'user pays' principle, any case reaching Utilities Disputes at deadlock should incur a fee?</i>	Board seeks views before considering the issue further	Yes, for undisputed deadlocks.
	21	Do you agree with the recommendation <i>The current variable fee structure needs to be reconsidered?</i>	Board seeks views before considering the issue further	Recommend no change. Simple is best. Mercury would not like to see a level of complexity introduced that would increase fixed costs.
Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme's approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a member has access to a Scheme for resolving the complaint)	We would be happy for the exclusions to be removed, but in our view UDL should specify a mechanism which allows it to deal directly with the Consumer and the Lines Company in relation to these complaints. The retailer, although though the party's whose contractual relationships link the consumer and the lines company, should not be burdened by administering a complaint which is between the consumer and the lines company, but should retain an option to become involved in support or one party or another at the retailer's election.
	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.	Board seeks views before considering the issue further	See above



Other proposed changes - <i>Accessibility</i>	24	Do you agree in principle with the idea of a deemed membership mechanism?	Board seeks views before considering the issue further	Mercury does not agree. Mercury understands a deemed membership mechanism could conflict with the Act.
	25	If implemented, do you think the deeming mechanism should apply to any scheme with mandatory membership that Utilities Disputes operates?	Board seeks views before considering the issue further	As above
	26	To enable fair contribution toward the costs of running the scheme, if implemented, when should the levy obligations for deemed providers start?	Board seeks views before considering the issue further	As above
	27	If implemented, when should other provider obligations (for example those in General Rule 12) start for deemed providers?	Board seeks views before considering the issue further	As above
	28	Do you have other suggestions to address the problem of non-compliance with membership requirements to join the Energy Complaints Scheme?	Board seeks views before considering the issue further	As above
Accessibility/ Efficiency	29	Do you agree with the proposed change to substitute " <i>distributor</i> " for " <i>lines company</i> " where they appear in the scheme documents?	Board thinks this will improve consistency in terminology.	Mercury's view is that the recommendation is for consistency with legislation. The Rules currently states "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. If the word "Lines Company" was simply substituted for "distributor", we don't think there would be any material impact.
	30	If references to lines company were changed to distributor, what other steps, (including other potential changes) do you	Board seeks views before considering the issue further	Mercury has not investigated this aspect of the consultation.



		think are needed to avoid changing the meaning of any clause(s) affected?		
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3 April 2018

James Blake-Palmer
Manager – Stakeholder Engagement
Utilities Disputes
Wellington

By email: submissions@utilitiesdisputes.co.nz; j.blake-palmer@utilitiesdisputes.co.nz

Dear James

12 March 2018 consultation: Recommendations from the independent 5-year review of Utilities Disputes Limited and other Board proposed changes

Thank you for the opportunity to provide comments. This submission is made on behalf of Meridian and Powershop. As requested we have set out our responses in the Utilities Disputes' preferred form which we have reproduced as an appendix to this letter.

We note that the consultation document states:

The Board is seeking views from stakeholders on those recommendations requiring scheme document changes and two of its own proposed changes. These are set out in this paper (using blue headings), along with the Board's view, where available.

The Board's proposed changes are to enhance accessibility and efficient operation of the Energy Complaints Scheme.

At the end of each recommendation or proposal are questions to help the Board consider available options and next steps. Submitters are welcome to give views on other review recommendations.

We understand from this:

- i. Utilities Disputes is only consulting on those recommendations from the review that, in the Board's view, require changes to the Scheme rules (General and Scheme rules).
- ii. The Board considers that other changes proposed by the review can be implemented without changes to the Scheme rules.
- iii. Submitters are welcome to give views on other review recommendations.

Our views on some of the other changes proposed by the review that are not mentioned in the consultation document are:

1. Page 19: *"The Board should agree a Strategic Communications Plan and prioritise its implementation. There should be a focus on working with community outreach groups, particularly those which work with vulnerable groups."*

This recommendation is in a part of the 5-year review document that deals with how Utilities Disputes can better promote itself and raise awareness of the work it does. We support Utilities Disputes working with community outreach groups, particularly those which work with vulnerable groups (and as we understand it Utilities Disputes already does this). We note that the Electricity Industry Act 2010 provides at clause 13(1)(m) of Schedule 4 that one of the matters that the rules of the approved scheme are required to provide for is:

(m) how the provider will promote knowledge about, and accessibility to, the scheme to persons entitled to make a complaint.

This is sensible. As the 5-year review document recognises (at page 19) developing the roles of Utilities Disputes in promoting itself and complaint handling (see point 2 below) “...will necessitate additional funding and the Board should secure this through the levy system.” It is therefore imperative that, to the extent that the Strategic Communications Plan or any other initiative by Utilities Disputes proposes any developments in these areas, these developments are properly consulted on and implemented via changes to the rules as required by the Act. The details of how Utilities Disputes proposes to promote itself in future and the scale of any proposed changes to levies that will result need to be identified and set out in proposed rule changes so that providers have the opportunity to comment.

2. Page 19: *“The Board should revise the requirements of providers to promote the scheme. If need be, it should set out minimum requirements which should not be restricted to promoting awareness of Utilities Disputes at the time of a complaint and also set standards on complaint handling which providers will be expected to meet.”*

The current requirements of providers to promote the scheme are set out at 12(a), 12(c), 12(f) and 12(g) of the General Rules. If the Board intends to impose additional or more detailed obligations on providers to promote the scheme it will need to amend the General Rules and / or Scheme Rules.

Further, and in relation to complaint handling rule 48(g) of the General Rules provides that Utilities Disputes’ activities may include:

(g) preparing a code of conduct Providers must follow when handling Complaints...

However Rule 13 of the Special Rules provides:

13 The General Rules, together with these Scheme Rules, contain all matters UDL considers might appropriately be included in a code of conduct for the Energy Complaints Scheme and UDL does not therefore intend to prepare a code of conduct for the Energy Complaints Scheme under General Rule [48].

Accordingly if the Board intends to impose additional standards on complaint handling it will need to amend the rules.

3. Pages 19 and 20: *“The Board should review the formats by which individuals with particular disadvantages are able to access information about its service.”*

We strongly support this and related initiatives to identify groups who are under-represented in getting access to Utilities Disputes’ services. All individuals should be able to access Utilities Disputes’ services. To the extent Utilities Disputes is not reaching a particular sector of the community we support its efforts to remedy this.

4. Page 26: *“The Board should continue to ensure the Commissioner bases decisions on what is fair and reasonable in all the circumstances. However, it should produce guidance, and / or host a webinar for members, on the fair and reasonable test and how it is applied in decisions.”*

This recommendation follows a discussion in which the review team seems to consider that Utilities Disputes is free to make decisions that are not in accordance with the law but rather are in accordance with Utilities Disputes own view of what is ‘fair and reasonable in the circumstances’. The review team make pejorative reference to ‘technocratic legal decisions’ and ‘narrow legal technicalities’ as if applying the law is simply one (rather poor) option available to Utilities Disputes rather than something it must do as of course in reaching a decision that is fair and reasonable in all the circumstances.

To the extent the review team's view is shared by Utilities Disputes we ask that Utilities Disputes makes this clear to providers. Our view is that Utilities Disputes is not free to ignore the law simply because it considers another outcome is more fair and reasonable.

Further we don't agree that the Commissioner should attempt to issue guidance or run a webinar on what is 'fair and reasonable'. We suspect this is a hopeless task outside of a specific set of facts. This makes it all the more important that Utilities Disputes is subject to the law, like any other dispute resolution body in this country.

5. Page 60; "...where Utilities Disputes has reasonable grounds to believe that a body in jurisdiction is not complying with the minimum standards it should have the ability to audit the body concerned."

We anticipate that an audit power would require a change to the Utilities Disputes rules and possibly to the Act.

Please contact me if you have any questions.

Yours sincerely



Jason Woolley
Regulatory Affairs Manager
Meridian Energy Limited



meridian

Appendix – Questions for submitters and preferred form for responses

Principle/Area of document	#	Question	Board's view (if available)	Submitter's response
Accountability	1	Do you agree with the review's recommendation <i>The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes?</i>	The Board disagreed with this recommendation. For further information on the Board's view, see pt8 (a) of the consultation pack (above)	We agree with the review's recommendation. We think it can be useful for providers and consumers to know the identity of a provider mentioned in a case note. To the extent it doesn't already happen we suggest both providers and complainants should be given the opportunity to comment on and ask for corrections to any case notes before they are published.
	2	Do you agree with the Board's proposal for Utilities Disputes to name providers that breach scheme rules and guidelines?	Board proposes naming providers that breach scheme rules and guidelines	We disagree with this proposal. No background to this recommendation has been provided either in the Consultation Document or in the 'Independent Review of Utilities Disputes Limited – 2017'. The circumstances in which a provider might be found to be in breach of the scheme rules are not explained. Similarly the process by which a provider might be found to be in breach of the scheme rules is not explained. A review of the 'General and Scheme rules for the Energy Complaints Scheme' does not shed light on these questions. Under section 97 of the Electricity Industry Act 2010 ('the Act') members are required to comply with the rules of an approved dispute resolution scheme and in the event of non-compliance the person responsible for the dispute resolution scheme may apply to the District Court for an order requiring

				<p>compliance. That would in the ordinary course lead to the member or provider not in compliance being named. It is not clear whether what the Board proposes is something different or whether the Board's proposal is intended to replace the process in the Act.</p> <p>It is also not clear what the Board is referring to when it mentions 'guidelines' that providers might be named to be in breach of. As far as we are aware Utilities Disputes has not issued any guidelines. It is also not clear by what process Utilities Disputes would issue guidelines. There is no provision for the issuance of guidelines in the General and Scheme rules. Even if Utilities Disputes could, and did, issue guidelines it is not typically compulsory to follow guidelines and therefore the purpose of identifying providers 'in breach' of such guidelines (whatever that means) is not clear.</p>
	3	Do you agree with the Board's proposal for Utilities Disputes not to name providers in its case notes?	Board does not accept recommendation to name providers in its case notes	See above. We disagree with the Board and support the review's recommendation.
	4	If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?	Board seeks views before considering the issue further	The case note should provide all other information that is necessary.
Natural Justice	5	Do you agree with the review's recommendation to <i>consider removing the principles of natural justice from its scheme document?</i>	Explicit reference to natural justice in the list of principles is not needed and can be removed	We disagree with this recommendation. The review team recommends that the Commissioner, in dealing with Complaints, be relieved of the obligation to act in accordance with the principles of the rules of natural justice. They do so

				<p>because:</p> <ol style="list-style-type: none"> 1. No Australian scheme has this principle 2. The Commissioner might misinterpret what it requires in the context of resolving complaints submitted to Utilities Disputes 3. It may create unwarranted expectations from complainants 4. The requirement on the Commissioner to observe the principle of 'fairness' provides sufficient procedural safeguards <p>These reasons are either weak or unconvincing (1, 2 and 3) or arguably wrong (4). Now that it has been included in the rules the requirement to observe the principles of natural justice is arguably an important procedural safeguard for both complainants and providers. The Commissioner is perfectly capable of applying that requirement in the context of the decisions she makes and of explaining it to complainants in such a way as to prevent the creation of unwarranted expectations. The concept of 'fairness' is not necessarily the same as 'natural justice' and there is nothing in either the Consultation Document or the 5 yearly Review that makes the case to the contrary. A result can arguably be 'fair' even if the process followed to achieve that result isn't. The requirement to observe 'natural justice' means the Commissioner needs to follow a fair process as well as arriving at a fair result. This does not mean the Commissioner needs to adopt a complex or time-consuming set of procedures. She just needs to be even-handed as between the parties to the complaint.</p> <p>No decision maker should be lightly relieved of an express obligation to follow the principles of natural justice. We do</p>
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				<p>not support this recommendation.</p> <p>Finally we note that rule 13(1)(e) of Schedule 4 of the Act provides that the rules of Utilities Disputes, as the approved scheme, must provide for, or set out, that complaints about members must be investigated in a way that is consistent with the rules of natural justice. The review team's proposal would therefore appear to breach the Act.</p>
	6	Do you agree with the Board's view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	Explicit reference to natural justice in the list of principles is not needed and can be removed	No. See above.
Performance Standards	7	Do you agree with the review's recommendation to remove performance standards relating to providers' self-reporting on compliance?	Board seeks views before considering the issue further	No. We believe self-reporting on compliance provides a useful discipline. See comments below re performance standards generally.
	8	Do you agree with the review's recommendation to remove performance standards relating to cost per case?	The Board believes a <i>cost per case</i> measure is not sufficiently linked to Utilities Disputes performance to justify a performance measure. However, the current measures should remain until new measures have been approved	We note that as far as we are aware there is no obligation on Utilities Disputes to use this or any other performance standard. The Governance Charter lists a series of performance standards that Utilities Disputes 'may include' when reporting on its performance. Utilities Disputes is not required to use any of those standards and as we understand it the Governance Charter is itself non-binding on Utilities Disputes. It is a merely a statement of intent as of 1 November 2016 (and is incomplete – the review date for the Charter in paragraph 2 was never inserted). While we see ongoing value in a cost per case measure (if necessary, it should be supplemented by other measures) it is clearly up to

				Utilities Disputes whether it continues to use any particular measure.
	9	Do you have ideas about other measures the Board could consider adopting?	Board seeks views before considering the issue further	We suggest that all parties to a complaint should, at the conclusion of any complaint, be asked to rate Utilities Disputes' performance on a simple 5 point scale or similar (eg. Poor, Below Average, Average, Good, Excellent or similar) and provide comments. These results should be collected and analysed each year.
Levies	10	Do you agree with the review's general recommendation that the levy mechanism needs to be changed?	Board seeks views before considering the issue further	We don't agree that the levy mechanism 'needs to be changed.' We do however welcome consideration of any appropriate alternatives or changes to the current levy system if these would ensure that Utilities Disputes operates more efficiently and effectively. Against a history of Utilities Disputes and before that the Electricity and Gas Complaints Commissioner scheme having six different levy systems over its history there should be caution in jumping to conclusions about need for change from the current system. Any consideration of whether the levy mechanism should be changed needs to focus in detail on what the alternatives or changes might be and their strengths and weaknesses compared to the current system.
	11	What information do you think the Board needs, to help it decide what options are available?	Board seeks views before considering the issue further	We suggest that the Board should consider any specific expressions of dissatisfaction with the current system and focus on the areas causing dissatisfaction. Given the most common view expressed to the review team was that the current levy system was generally acceptable we suggest any changes should be incremental rather than wholesale.
	12	What elements of the current levy mechanism do you think work well	Board seeks views before considering the issue further	In general terms we think that the shape of the current system is about right with its split between fixed and variable fees and

		and should be retained?		a graduated scale of variable fees. Another feature that works well is that providers generally know, at any particular time, how much they are 'up for' in terms of costs incurred. This is important in assisting providers to keep trying to settle cases themselves.
	13	What elements of the current levy mechanism do not work and why?	Board seeks views before considering the issue further	We agree that the levy mechanism should seek to avoid cross-subsidisation or sweetheart deals. Elements of the current system that are potentially worthy of review are the costs allocated to Transpower and First Gas. This is not to say that all aspects of those cost allocations need to change. They are however worthy of review.
	14	What levy options can you think of to address provider concerns about 'throwing money at complaints' to avoid the levy?	Board seeks views before considering the issue further	We do not think this is necessarily a problem. Under any dispute resolution system where one or other of the parties must inevitably pay the costs of the dispute resolution system those costs will be a factor in deciding what is an appropriate figure to settle at. Providers are not obligated to throw money at complaints to avoid levies. That is their choice. They could decide that in a truly meritless case they would rather pay Utilities Disputes to return a finding to that effect than pay the complainant. It is however possible that a more graduated scale of variable levies would help in part to address this concern.
	15	What levy options can you think of to avoid senior staff spending more time on jurisdiction issues	Board seeks views before considering the issue further	We think it is important to preserve the principle that complaints falling outside the jurisdiction of Utilities Disputes should not attract a levy. We suggest Utilities Disputes needs to analyse carefully why "...the number of jurisdiction issues needing consideration by senior members of staff from Utilities Disputes has noticeably risen" and in particular whether the jurisdiction issues being raised have merit. It is possible that the number of complaints reaching Utilities

				Disputes in respect of which Utilities Disputes has no jurisdiction has increased. It is also possible that providers are raising meritless jurisdictional arguments. The levy and other options for addressing this issue may be quite different depending on which it is.
	16	What levy options can you think of that would avoid delays (beyond the provider's control) triggering levy levels?	Board seeks views before considering the issue further	We suggest the levy rules be clarified to provide that delays beyond a provider's reasonable control (eg where time elapses because a complainant takes time to respond to a request for information) should not be taken into account in determining the amount of time spent on a particular case by Utilities Disputes for the purposes of the variable levy.
	17	Do you agree with the recommendation <i>every organisation which is covered by the Scheme should make a contribution to its running costs?</i>	Board seeks views before considering the issue further	Yes.
	18	Do you agree with the recommendation <i>there should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>	Board seeks views before considering the issue further	Yes.
	19	Do you agree with the recommendation <i>The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints?</i>	Board seeks views before considering the issue further	Yes. However we don't agree that it follows that the fixed element should rise to cover activities of Utilities Disputes beyond its core competency of resolving disputes. See comments in our covering letter.

	20	Do you agree with the recommendation <i>In keeping with the 'user pays' principle, any case reaching Utilities Disputes at deadlock should incur a fee?</i>	Board seeks views before considering the issue further	Yes.
	21	Do you agree with the recommendation <i>The current variable fee structure needs to be reconsidered?</i>	Board seeks views before considering the issue further	Yes. In particular a more graduated scale should be considered. We suggest a variable levy scale along the following lines might be appropriate: <ul style="list-style-type: none"> - First 4 hours or 10 days \$250 - Second 4 hours or 10 days \$250 (i.e. the all up cost to the provider is \$500) - Third 4 hours or 10 days \$250 (i.e. the all up cost to the provider is \$750) - Fourth 4 hours or 10 days an additional \$250 (i.e. the all up cost to the provider is \$1,000) - After than an additional \$1,000 (i.e. the all up cost to the provider is \$2,000).
Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme's approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a member has access to a Scheme for resolving the complaint)	We have no views on this although query how the Land Complaint exclusions may impact on the Scheme's approval when the Scheme has already been approved.
	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information	Board seeks views before considering the issue further	We have no views.

		this is based on wherever possible.		
Other proposed changes - <i>Accessibility</i>	24	Do you agree in principle with the idea of a deemed membership mechanism?	Board seeks views before considering the issue further	No. Section 96 of the Act makes it a criminal offence for any entity that should be a member of the dispute resolution scheme to knowingly refuse or fail to become a member. The maximum fine payable on conviction is \$100,000. A 'deemed membership mechanism' would appear to conflict with this provision. The appropriate course is for the Act to be enforced against entities refusing to become members or failing to act promptly to become a member once they are made aware that they need to be. We would be concerned if this enforcement process was not happening.
	25	If implemented, do you think the deeming mechanism should apply to any scheme with mandatory membership that Utilities Disputes operates?	Board seeks views before considering the issue further	See above.
	26	To enable fair contribution toward the costs of running the scheme, if implemented, when should the levy obligations for deemed providers start?	Board seeks views before considering the issue further	See above.
	27	If implemented, when should other provider obligations (for example those in General Rule 12) start for deemed providers?	Board seeks views before considering the issue further	See above.
	28	Do you have other suggestions to	Board seeks views before considering	See above.

		address the problem of non-compliance with membership requirements to join the Energy Complaints Scheme?	the issue further	
Accessibility/ Efficiency	29	Do you agree with the proposed change to substitute “ <i>distributor</i> ” for “ <i>lines company</i> ” where they appear in the scheme documents?	Board thinks this will improve consistency in terminology.	We don’t see any value in this. It seems a waste of time and resources to exchange one term for another when both are used interchangeably within the electricity industry. And even if ‘lines company’ doesn’t quite ‘fit’ in the case of gas this anomaly doesn’t seem to be causing any problems that would justify the work involved in fixing it now.
	30	If references to lines company were changed to distributor, what other steps, (including other potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?	Board seeks views before considering the issue further	See above.

1. Appendix 1 – Questions for submitters and preferred form for responses

Principle/Area of document	#	Question	Board's view (if available)	Submitter's response
Accountability	1	Do you agree with the review's recommendation <i>The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes?</i>	The Board disagreed with this recommendation. For further information on the Board's view, see pt8 (a) of the consultation pack (above)	Yes
	2	Do you agree with the Board's proposal for Utilities Disputes to name providers that breach scheme rules and guidelines?	Board proposes naming providers that breach scheme rules and guidelines	Yes
	3	Do you agree with the Board's proposal for Utilities Disputes not to name providers in its case notes?	Board does not accept recommendation to name providers in its case notes	No

	4	If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?	Board seeks views before considering the issue further	What remedial action they took and contact information for provider feedback
Natural Justice	5	Do you agree with the review's recommendation to <i>consider removing the principles of natural justice from its scheme document</i> ?	Explicit reference to natural justice in the list of principles is not needed and can be removed	No
	6	Do you agree with the Board's view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	Explicit reference to natural justice in the list of principles is not needed and can be removed	No
Performance Standards	7	Do you agree with the review's recommendation to remove performance standards relating to providers' self-reporting on compliance?	Board seeks views before considering the issue further	No
	8	Do you agree with the review's recommendation to remove performance standards relating to cost per case?	The Board believes a <i>cost per case</i> measure is not sufficiently linked to Utilities Disputes performance to justify a performance measure. However, the current measures should remain until new measures have been approved	No position

	9	Do you have ideas about other measures the Board could consider adopting?	Board seeks views before considering the issue further	Yes; the complainants perspective on how they felt their complaint was dealt with
Levies	10	Do you agree with the review's general recommendation that the levy mechanism needs to be changed?	Board seeks views before considering the issue further	Yes
	11	What information do you think the Board needs, to help it decide what options are available?	Board seeks views before considering the issue further	International best practice/similar levy structure
	12	What elements of the current levy mechanism do you think work well and should be retained?	Board seeks views before considering the issue further	No position
	13	What elements of the current levy mechanism do not work and why?	Board seeks views before considering the issue further	No position
	14	What levy options can you think of to address provider concerns about 'throwing money at complaints' to avoid the levy?	Board seeks views before considering the issue further	No position
	15	What levy options can you think of to avoid senior staff spending more time on jurisdiction issues	Board seeks views before considering the issue further	No position
	16	What levy options can you think of that would avoid delays (beyond	Board seeks views before considering the issue further	No position

		the provider's control) triggering levy levels?		
	17	Do you agree with the recommendation <i>every organisation which is covered by the Scheme should make a contribution to its running costs?</i>	Board seeks views before considering the issue further	Yes
	18	Do you agree with the recommendation <i>there should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>	Board seeks views before considering the issue further	Yes
	19	Do you agree with the recommendation <i>The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints?</i>	Board seeks views before considering the issue further	Yes
	20	Do you agree with the recommendation <i>In keeping with the 'user pays' principle, any case reaching Utilities Disputes at deadlock should incur a fee?</i>	Board seeks views before considering the issue further	Yes

	21	Do you agree with the recommendation <i>The current variable fee structure needs to be reconsidered?</i>	Board seeks views before considering the issue further	Yes
Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme's approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a member has access to a Scheme for resolving the complaint)	No position
	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.	Board seeks views before considering the issue further	No position
Other proposed changes - <i>Accessibility</i>	24	Do you agree in principle with the idea of a deemed membership mechanism?	Board seeks views before considering the issue further	Yes
	25	If implemented, do you think the deeming mechanism should apply to any scheme with mandatory membership that Utilities Disputes	Board seeks views before considering the issue further	Yes

		operates?		
	26	To enable fair contribution toward the costs of running the scheme, if implemented, when should the levy obligations for deemed providers start?	Board seeks views before considering the issue further	From inception (backdate if necessary)
	27	If implemented, when should other provider obligations (for example those in General Rule 12) start for deemed providers?	Board seeks views before considering the issue further	3 months
	28	Do you have other suggestions to address the problem of non-compliance with membership requirements to join the Energy Complaints Scheme?	Board seeks views before considering the issue further	Financial penalties and reporting
Accessibility/ Efficiency	29	Do you agree with the proposed change to substitute “ <i>distributor</i> ” for “ <i>lines company</i> ” where they appear in the scheme documents?	Board thinks this will improve consistency in terminology.	Yes
	30	If references to lines company were changed to distributor, what other steps, (including other	Board seeks views before considering the issue further	No position

		potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?		
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Whangarei

Northpower Limited
28 Mt Pleasant Road Raumanga
Whangarei 0110
Private Bag 9018
Whangarei Mail Centre
Whangarei 0148
New Zealand
Ph 09 430 1803
Fax 09 430 1804
Faults 0800 10 40 40

Utilities Disputes Ltd
PO Box 5875
Wellington 6140

To: submissions@utilitiesdisputes.co.nz

Northpower Limited submission on the independent 5-year review of Utilities Disputes Limited - Recommendations from the review and other Board proposed changes

Thank you for the opportunity to provide a submission on the 5-year review of Utilities Disputes Limited (UDL).

Northpower enjoys a positive working relationship with Utilities Disputes Limited and appreciates their input into the continued improvement in our service to our customers.

We provide commentary against some of the proposed recommendations and changes at Appendix 1. We also note and support the ENA's submission on the independent review.

In addition to the points in Appendix 1, we note that UDL staff, while all having excellent credentials as conciliators, sometimes seem to lack the industry knowledge to appreciate the context giving rise to the complaints. This can lead to a perception that UDL is not independent and will often appear to be acting more as a customer advocate than neutral resolution service. We would recommend UDL engage more staff with relevant industry experience.

We are happy to discuss any of the points we have raised in more detail.

Yours sincerely



Josje Boyd
GM Network

Appendix 1 – Northpower response to specific consultation questions

Principle/Area of document	#	Question	Board's view (if available)	Submitter's response
Accountability	1	Do you agree with the review's recommendation <i>The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes?</i>	The Board disagreed with this recommendation. For further information on the Board's view, see pt8 (a) of the consultation pack (above)	We do not agree with the review's recommendations that relevant providers should be noted in case notes. We agree with the Board that this is not necessary to achieve the objectives of informing parties about the issues raised in the complaint.
	2	Do you agree with the Board's proposal for Utilities Disputes to name providers that breach scheme rules and guidelines?	Board proposes naming providers that breach scheme rules and guidelines	Not opposed to naming providers who breach rules, but do not support naming providers who breach guidelines (which by their definition are not rules, and there may be other methods to achieve the desired outcome).
	3	Do you agree with the Board's proposal for Utilities Disputes not to name providers in its case notes?	Board does not accept recommendation to name providers in its case notes	Yes we agree with the Board's proposal not to name providers in case notes.
	4	If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?	Board seeks views before considering the issue further	No comment
Natural Justice	5	Do you agree with the review's recommendation to <i>consider removing the principles of natural justice from its scheme document?</i>	Explicit reference to natural justice in the list of principles is not needed and can be removed	Northpower does not agree with this recommendation. While there may be a degree of overlap in the concepts, there are specific aspects to each. Natural justice includes the right to a fair hearing and the absence of bias and these principles should be explicitly preserved in the scheme document.
	6	Do you agree with the Board's view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	Explicit reference to natural justice in the list of principles is not needed and can be removed	As per 5 above
Performance Standards	7	Do you agree with the review's recommendation to remove	Board seeks views before considering the issue further	Yes.

		performance standards relating to providers' self-reporting on compliance?		
	8	Do you agree with the review's recommendation to remove performance standards relating to cost per case?	The Board believes a <i>cost per case</i> measure is not sufficiently linked to Utilities Disputes performance to justify a performance measure. However, the current measures should remain until new measures have been approved	We agree new, meaningful measures are required and should be prioritised.
	9	Do you have ideas about other measures the Board could consider adopting?	Board seeks views before considering the issue further	
Levies	10	Do you agree with the review's general recommendation that the levy mechanism needs to be changed?	Board seeks views before considering the issue further	
	11	What information do you think the Board needs, to help it decide what options are available?	Board seeks views before considering the issue further	
	12	What elements of the current levy mechanism do you think work well and should be retained?	Board seeks views before considering the issue further	
	13	What elements of the current levy mechanism do not work and why?	Board seeks views before considering the issue further	
	14	What levy options can you think of to address provider concerns about 'throwing money at complaints' to avoid the levy?	Board seeks views before considering the issue further	
	15	What levy options can you think of to avoid senior staff spending more time on jurisdiction issues	Board seeks views before considering the issue further	
	16	What levy options can you think of that would avoid delays (beyond the	Board seeks views before considering the issue further	

		provider's control) triggering levy levels?		
	17	Do you agree with the recommendation <i>every organisation which is covered by the Scheme should make a contribution to its running costs?</i>	Board seeks views before considering the issue further	We agree that to the extent practicable the principal of 'user pays' should be applied to the levy arrangements for the scheme. Every organization which is covered by the scheme should make a contribution to its running costs, proportional to that organisation's impact upon those running costs.
	18	Do you agree with the recommendation <i>there should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>	Board seeks views before considering the issue further	Consistent with the principle of user pays, we agree that there should be no cross-subsidisation of providers or "sweetheart" deals.
	19	Do you agree with the recommendation <i>The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints?</i>	Board seeks views before considering the issue further	
	20	Do you agree with the recommendation <i>In keeping with the 'user pays' principle, any case reaching Utilities Disputes at deadlock should incur a fee?</i>	Board seeks views before considering the issue further	To the extent actual costs are incurred in handling that complaint, a fee would be appropriate, consistent with a "user pays" approach.
	21	Do you agree with the recommendation <i>The current variable fee structure needs to be reconsidered?</i>	Board seeks views before considering the issue further	
Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme's approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a member has access to a Scheme for resolving the complaint)	We agree with the ENA that the land exclusion should remain. Land complaints may be complex, involve detailed legal questions and fact analysis, and may have significant wider legal implications for the network and its assets. Current avenues for legal redress are satisfactorily meeting the needs of consumers. If this exclusion was removed, there would inevitably be an increase in legal challenges to decisions involving

				land complaints, because of the implications for the network.
	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.	Board seeks views before considering the issue further	As per above.
Other proposed changes - Accessibility	24	Do you agree in principle with the idea of a deemed membership mechanism?	Board seeks views before considering the issue further	
	25	If implemented, do you think the deeming mechanism should apply to any scheme with mandatory membership that Utilities Disputes operates?	Board seeks views before considering the issue further	
	26	To enable fair contribution toward the costs of running the scheme, if implemented, when should the levy obligations for deemed providers start?	Board seeks views before considering the issue further	
	27	If implemented, when should other provider obligations (for example those in General Rule 12) start for deemed providers?	Board seeks views before considering the issue further	
	28	Do you have other suggestions to address the problem of non-compliance with membership requirements to join the Energy Complaints Scheme?	Board seeks views before considering the issue further	
Accessibility/ Efficiency	29	Do you agree with the proposed change to substitute “ <i>distributor</i> ” for “ <i>lines company</i> ” where they appear in the scheme documents?	Board thinks this will improve consistency in terminology.	

	30	If references to lines company were changed to distributor, what other steps, (including other potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?	Board seeks views before considering the issue further	
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28 March 2018

Submissions

Utilities Disputes Limited
PO Box 5875
Wellington 6140

by email: submissions@utilitiesdisputes.co.nz

Submission on consultation paper round 1—

Independent 5-year review of UDL, recommendations from the review and other Board proposed changes

- Orion New Zealand Limited (Orion) welcomes the opportunity to comment on Utilities Disputes (UDL) consultation paper (the paper) on the recommendations from the 5-yearly review.
 - a. Our submission covers our response to the specific questions detailed in the consultation material.
- Our submission is made from the perspective of an electricity distribution business.

Concluding remarks

- Thank you for the opportunity to make this submission. We do not consider that any part of this submission is confidential. If you have any questions please contact Dayle Parris (Regulatory Manager), DDI 03 363 9874, email dayle.parris@oriongroup.co.nz.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'DP', is positioned above the typed name.

Dayle Parris
Regulatory Manager



Principle/Area of document	#	Question	Board's view (if available)	Submitter's response
Accountability	1	Do you agree with the review's recommendation <i>The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes?</i>	The Board disagreed with this recommendation. For further information on the Board's view, see pt8 (a) of the consultation pack (above)	We disagree with the review recommendation. We feel that naming providers will deter from the purpose of case notes; that is for scheme members to learn from complaint findings and implement continual improvement, in company, for complaint handling. Naming the provider or the complainant, for that matter, provides no benefit to this objective.
	2	Do you agree with the Board's proposal for Utilities Disputes to name providers that breach scheme rules and guidelines?	Board proposes naming providers that breach scheme rules and guidelines	We agree with this recommendation. Members are familiar with this process under regulation. This approach will provide an incentive for members to maintain a standard within complaints management and will hold members to account.
	3	Do you agree with the Board's proposal for Utilities Disputes not to name providers in its case notes?	Board does not accept recommendation to name providers in its case notes	We agree. See answer to Q1. Naming providers in case notes provides no benefit towards enhancing accessibility and efficient operation of the Energy Complaints Scheme.

	4	If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?	Board seeks views before considering the issue further	Consideration would need to be made to naming both trader, distributor and other relevant service providers (i.e. future participant types) and highlighting which provider was the primary provider for the particular complaint.
Natural Justice	5	Do you agree with the review’s recommendation to <i>consider removing the principles of natural justice from its scheme document?</i>	Explicit reference to natural justice in the list of principles is not needed and can be removed	<p>We strongly disagree with removing ‘natural justice’ from the Scheme document/rules because;</p> <ul style="list-style-type: none"> • Section 13(1)(e) of the Electricity Industry Act 2010 requires UDL to comply with the rules of natural justice. Specifically <i>“that complaints about members must be investigated in a way that is consistent with the rules of natural justice:”</i> • The rules of natural justice prescribe what is necessary for issues to be fairly heard and determined, and is a fundamental aspect of the legal system in New Zealand and has application to organisations like UDL. • The concept of natural justice is wider than that of “fairness”. • Importantly, the concept of natural justice goes both ways i.e. it is for the benefit and applies to both Provider and complainant.

	6	Do you agree with the Board’s view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	Explicit reference to natural justice in the list of principles is not needed and can be removed	We strongly disagree- see our answer to Q 5 above.
Performance Standards	7	Do you agree with the review’s recommendation to remove performance standards relating to providers’ self-reporting on compliance?	Board seeks views before considering the issue further	Yes we agree.
	8	Do you agree with the review’s recommendation to remove performance standards relating to cost per case?	The Board believes a <i>cost per case</i> measure is not sufficiently linked to Utilities Disputes performance to justify a performance measure. However, the current measures should remain until new measures have been approved	We agree
	9	Do you have ideas about other measures the Board could consider adopting?	Board seeks views before considering the issue further	No comment

<p>Levies</p>	<p>10</p>	<p>Do you agree with the review’s general recommendation that the levy mechanism needs to be changed?</p>	<p>Board seeks views before considering the issue further</p>	<p>We agree that a review of the levy mechanism seems appropriate.</p> <p>Our general understanding of the current fee structure is that;</p> <ul style="list-style-type: none"> • Providers are charged a fixed market share factor (ICP based) and a variable deadlock factor using a three level tiered system • Level 1 (reaches deadlock)- \$500, Level 2 (unresolved after 8 hrs UDL time or 20 working days (whichever first)- \$500, Level 3 (unresolved after 16hrs UDL time or 40 working days (whichever is first)-\$1000. <p>The independent report highlights that around half of all deadlocked complaints are settled within the first 24 hour period. Also cases reaching deadlock but ruled out of jurisdiction have no variable fee applied.</p> <p>We also note the following;</p> <ul style="list-style-type: none"> • that around 70-75% of UDL’s expenses are salary and wage based • that new service providers will be entering the electricity market in the coming years • that UDL’s expenses have exceeded income in the last few years
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	11	What information do you think the Board needs, to help it decide what options are available?	Board seeks views before considering the issue further	An understanding of the use of the service by various member groupings and individual companies to understand the fairness of a higher weighting of fixed charges over ‘user pays’ charges. Members who have a low historical use of or involvement with the service (i.e. having complaints reach Utility Disputes) may feel it is unfair to carry a greater proportion of the fixed costs.
	12	What elements of the current levy mechanism do you think work well and should be retained?	Board seeks views before considering the issue further	The market share by ICP does provide certainty for Providers about the bulk of the levy they will be subject to. We would not like to see a move to a system that incorporates wash-ups as this impacts budgeting for regulated entities and creates uncertainty in meeting revenue caps.
	13	What elements of the current levy mechanism do not work and why?	Board seeks views before considering the issue further	Complaints that are ‘sat on’ or resurrected by customers and brought to Utility Disputes at some later date (sometimes years) may automatically be considered in deadlock increasing the cost of processing the complaint to members. Provided the Provider has taken the steps to ensure awareness of the dispute resolution scheme by the customer there should not be immediate deadlock of the complaint due to a customer taking a long time to decide whether to lodge a complaint and lodging it without going back to the Provider.

				<p>The deadlock tiers do not take account of the slow or delayed response of complainants to information requests. This is outside the control of Providers. Also, it seems that Providers are required to provide information and have this shared with complainants however information provided by complainants is not always shared with Providers. This creates a lack of transparency between the parties which has the potential to delay the process of resolution.</p>
	14	<p>What levy options can you think of to address provider concerns about 'throwing money at complaints' to avoid the levy?</p>	<p>Board seeks views before considering the issue further</p>	<p>Presumably a member company would 'throw money at complaints' for a number of reasons; firstly they believe they are doing the 'right thing' by the customer or secondly they believe that they can resolve the complaint in a more timely and cost effective way than by using the Utility Disputes process or thirdly they would prefer to minimise complaints statistics with Utility Disputes. As a counter a member company might choose to take a complaint to Utility Disputes to gain benefit from an independent review and finding as against other avenues such as the small claims court or other legal system. We suggest that Utility Disputes explore through survey at what level of cost member companies would be incentivised to follow a complaint through internally rather than take it through the complaints scheme. What is the price/service trade off?</p>

	15	What levy options can you think of to avoid senior staff spending more time on jurisdiction issues	Board seeks views before considering the issue further	<p>The Scheme documents detail the jurisdiction of UDL and there should be a fundamental internal understanding about this.</p> <p>We recommend internal training on UDL jurisdiction to support staff in easily and quickly identifying out of jurisdiction issues.</p> <p>If out of jurisdiction cases are increasing and UDL time is taken to determine this status then perhaps there should be a set fee to cover the processing of an 'out of jurisdiction' complaint.</p>
	16	What levy options can you think of that would avoid delays (beyond the provider's control) triggering levy levels?	Board seeks views before considering the issue further	The 'clock' should be stopped while waiting for complainants to respond to information requests and restarted once the information is provided i.e. the level timeframes should only apply to Provider information requests.
	17	Do you agree with the recommendation <i>every organisation which is covered by the Scheme should make a contribution to its running costs?</i>	Board seeks views before considering the issue further	Yes

	18	Do you agree with the recommendation <i>there should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>	Board seeks views before considering the issue further	Yes we agree
	19	Do you agree with the recommendation <i>The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints?</i>	Board seeks views before considering the issue further	Yes provided Utility Disputes demonstrates operational efficiency and financial accountability in its operation.
	20	Do you agree with the recommendation <i>In keeping with the 'user pays' principle, any case reaching Utilities Disputes at deadlock should incur a fee?</i>	Board seeks views before considering the issue further	We agree in principle but the Board would need to carefully consider if this would reinforce “the ‘bizarre behaviour’ of settling to avoid a fee” as indicated on page 54 of the independent report. While Providers may make every effort to resolve complaints in-house the independent voice of UDL can often be the last step in reaching a resolution. The payment of a market share factor (ICP fixed levy) should be able to cover this scenario.

	21	Do you agree with the recommendation <i>The current variable fee structure needs to be reconsidered?</i>	Board seeks views before considering the issue further	We agree with the idea of developing additional deadlock levels and reviewing the level of fees per tier. Refer to our answer to Questions 13, 15 and 16.
Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme's approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a member has access to a Scheme for resolving the complaint)	Yes we agree subject to the relevant safeguards detailed in the review recommendation being put in place. Specifically those safeguards detailed in point 1 to 5 on page 66 and page 67 of the independent review report.
	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.	Board seeks views before considering the issue further	We have no further comment.
Other proposed changes - <i>Accessibility</i>	24	Do you agree in principle with the idea of a deemed membership mechanism?	Board seeks views before considering the issue further	Yes

	25	If implemented, do you think the deeming mechanism should apply to any scheme with mandatory membership that Utilities Disputes operates?	Board seeks views before considering the issue further	Yes
	26	To enable fair contribution toward the costs of running the scheme, if implemented, when should the levy obligations for deemed providers start?	Board seeks views before considering the issue further	To ensure that barriers to entry are not created for new industry participants, consideration should be given to participants meeting a critical mass of ICPs before being required to contribute to the market share factor. The critical mass referred to could align with the Electricity Authority Code requirements under section 16 and Schedule 15.1 2(A) of greater than 100 ICPs. However the deadlock user pays structure should apply from the first complaint.
	27	If implemented, when should other provider obligations (for example those in General Rule 12) start for deemed providers?	Board seeks views before considering the issue further	The requirements under General Rule 12 should apply per Schedule 15.1 clause 2(A) of The Code within 12 months of functioning as a trader for those with <100 ICPs and within 6 months for all others.

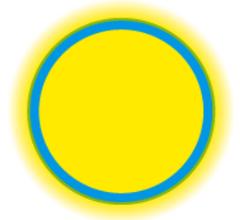
	28	Do you have other suggestions to address the problem of non-compliance with membership requirements to join the Energy Complaints Scheme?	Board seeks views before considering the issue further	We suggest that UDL seek regular updates from the Electricity Authority on newly registered participants or alternatively regularly review the participant register (published on their website) to identify new participants. Once identified UDL could be more proactive in directly communicating with participants about their obligations and the service provided by UDL.
Accessibility/ Efficiency	29	Do you agree with the proposed change to substitute “ <i>distributor</i> ” for “ <i>lines company</i> ” where they appear in the scheme documents?	Board thinks this will improve consistency in terminology.	We agree.
	30	If references to lines company were changed to distributor, what other steps, (including other potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?	Board seeks views before considering the issue further	To maintain readability another synonym for the word ‘distributed’ may need to be used where ‘lines company’ is changed to ‘distributor’ and these are close together in a sentence i.e. Scheme Rule 1.9.3. We did not identify any other issues with this suggested change.

6 April 2018

Utilities Disputes Ltd
PO Box 5875
Wellington 6140

By email: submissions@utilitiesdisputes.co.nz

POWERCO



Powerco submission on the independent 5-year review of Utilities Disputes Limited - Recommendations from the review and other Board proposed changes

Powerco welcomes the opportunity to comment on the Utilities Disputes Ltd (UDL) consultation on its proposed changes to the Energy Complaints Scheme (Scheme) documents arising from the independent 5 year review.

Powerco supports the Electricity Networks Association (ENA) submission to the UDL. Rather than repeat the material from the ENA submission, there are several points we want to emphasise:

1. The need to retain Land Complaint exclusions, and
2. Concerns about UDL's interpretation of the Consumer Guarantees Act.

Powerco supports the review of the Energy Complaints Scheme as it ensures that it remains 'fit-for-purpose' and achieves the objectives that it sets out to. While many of the proposed amendments advance the scheme, we are concerned that the two items noted above would become a barrier to practical and efficient application of the scheme.

Land Complaint exclusions

The UDL Board recognised the potential negative effect that including land complaints could have when the Scheme was approved in 2017. We consider that this was the right decision at the time and remains so now.

No changes in the operating environment of energy distributors or the UDL have occurred that would challenge this decision. These disputes remain highly technical (in terms of engineering, legal and valuation matters) and are likely to be beyond the current resources and expertise of the Scheme. We recommend that they continue to be dealt with through alternative forums that already deal with such disputes. This has proved to be successful and is an efficient way of

ensuring no new costs are imposed on energy distributors that will ultimately be borne by consumers.

Consumer Guarantees Act

Powerco shares ENA's concerns around UDL's interpretation of the Consumer Guarantees Act (CGA). Recognition of the complexities between CGA liability and what is reasonable under Part 4 of the Commerce Act 1986 needs to be reasonable and pragmatic in the application of the CGA. This would ensure that the CGA delivers the desired outcomes while retaining the confidence of both consumers and energy distributors. The UDL needs to be cautious that the resolutions of questionable complaints related to the CGA are considered fair in order to achieve the long term success of the scheme.

Appendix A includes our responses to the UDL's consultation questions. If you wish to discuss our submission, please contact Oliver Vincent (oliver.vincent@powerco.co.nz).

Yours sincerely

Stuart Marshall

General Manager Regulation and Commercial

Appendix 1 – Questions for submitters and preferred form for responses

Principle/Area of document	#	Question	Board's view (if available)	Submitter's response
Accountability	1	Do you agree with the review's recommendation <i>The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes?</i>	The Board disagreed with this recommendation. For further information on the Board's view, see pt8 (a) of the consultation pack (above)	No, Powerco does not agree that relevant providers should be named in case notes. Given that case notes are only available for a small proportion of cases, we are not sure that this information is helpful or representative. The higher level statistics on number of complaints accepted against each provider is more representative and useful as provides information on trends and themes.
	2	Do you agree with the Board's proposal for Utilities Disputes to name providers that breach scheme rules and guidelines?	Board proposes naming providers that breach scheme rules and guidelines	Yes, we agree that this is appropriate but should be limited to material breaches and only where there is a wider benefit in doing so.
	3	Do you agree with the Board's proposal for Utilities Disputes not to name providers in its case notes?	Board does not accept recommendation to name providers in its case notes	Yes, we do agree with the Board's proposal for Utilities Disputes not to name providers in its case notes.

	4	If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?	Board seeks views before considering the issue further	To be representative and fair the member companies, case notes would need to be available about all complaints or at least on some proportional basis.
Natural Justice	5	Do you agree with the review's recommendation to <i>consider removing the principles of natural justice from its scheme document?</i>	Explicit reference to natural justice in the list of principles is not needed and can be removed	<p>We agree that reference to natural justice could be removed, if amendments to the 3rd principle in rule 5 of the scheme document were expanded.</p> <p>While broadly speaking we believe natural justice and procedural fairness are similar concepts and applying the concept of "fairness" would lead to the same result. We would also like to see a clearer focus on correctly applying the law.</p> <p>We support the proposed amendment by ENA to refer to "procedural and substantive fairness".</p>
	6	Do you agree with the Board's view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	Explicit reference to natural justice in the list of principles is not needed and can be removed	Agree.
Levies	10	Do you agree with the review's general recommendation that the	Board seeks views before	Powerco supports the principle of 'user pays' for the levy arrangements and supports the Board undertaking further work to

		levy mechanism needs to be changed?	considering the issue further	<p>determine a levy system that is fair, low in administration and complexity and does not distort incentives (e.g., if the cost of dealing with each complaints becomes too high, members may decide it makes more economic sense to just settle the complaint, regardless of its merits).</p> <p>Given the number of changes to levy arrangements over the years, we would rather the Board took its time to find the ‘right’ mechanism rather than rush anything through.</p>
Land Complaint exclusions	22	Do you agree with the review’s recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme’s approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a member has access to a Scheme for resolving the complaint)	<p>We strongly disagree with the recommendation to remove the land complaint exclusions. Retaining these exclusions has not impacted on the approval of the Scheme, given that the exclusions are in the current Scheme document and the Scheme is currently approved. We are also not aware of any directive the Board has received from the Minister regarding removal of the land complaint exclusions.</p> <p>As the Independent Review pointed out (refer page 26), alternative dispute resolution schemes “are not well placed to settle legal controversies as they are not legal bodies and it is not the place of alternative dispute resolution schemes to make legal precedents. Legal precedents are properly made by courts.”</p> <p>These disputes can be highly technical (in terms of engineering, legal and valuation matters) and are likely to be beyond the current</p>

				<p>resources and expertise of the Scheme. Given the Board’s assertion that there are very few land complaints, it would seem the cost of Utilities Disputes resourcing to deal with such complex disputes when alternative forums already deal with such disputes negates any efficiency argument. As the Board will be aware, new costs imposed on lines companies will ultimately be borne by consumers.</p> <p>Our key concerns remain:</p> <ol style="list-style-type: none"> 1. Road or level crossings: We do not believe that it is consistent with the spirit of the Scheme to attempt to deal with matters between local authorities and lines companies around network assets in the road. Any attempt to do so would also seem to either duplicate or compete with the provisions in the National Code of Practice for Utility Operators’ Access to Transport Corridors; which does not seem to be an efficient use of Utilities Disputes’ time and resources. 2. Land agreements: While we can understand Utilities Disputes having a role to play in “customer service” type complaints, we would not like to see this impacting on members’ freedom to negotiate contract terms with landowners. By their nature, any negotiations for easement rights involve landowners having legal (and often valuation) advice – there is no need to duplicate that role. 3. Injurious affect: We reiterate our previous comments that
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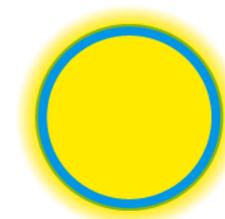
				<p>the Electricity Act already provides a mechanism for assessment of injurious affect and a dispute mechanism. We believe the removal of this exclusion will be very detrimental to lines companies and is not mitigated by being limited to injurious affect claims of less than \$50,000, as this amount bears little relation to the cost impact on the lines company. An injurious affect ruling of any value could invalidate the lines company's replacement or upgrade, causing the lines company to lose its existing works protection and having to relocate the entire portion of line (if that was even possible) and jeopardising our ability to supply end consumers reliant on that line. Such decisions are incredibly complex (as developing case law has demonstrated) and can have wide reaching impacts on other similar activities; for this reason they should be reserved for the Land Valuation Tribunal and Environment Court, as specifically contemplated by the legislation.</p>
	23	<p>If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.</p>	<p>Board seeks views before considering the issue further</p>	<p>While the number of land complaints is low, they are usually high impact on lines companies and there is a significant precedent setting aspect to all such cases.</p>
Accessibility/ Efficiency	29	<p>Do you agree with the proposed change to substitute "<i>distributor</i>"</p>	<p>Board thinks this will improve consistency in terminology.</p>	<p>See below</p>

		for “ <i>lines company</i> ” where they appear in the scheme documents?		
	30	If references to lines company were changed to distributor, what other steps, (including other potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?	Board seeks views before considering the issue further	To avoid confusion for consumers, terminology should be consistent with that used in legislation, retailer terms and conditions and other industry materials.

6 April 2018

Utilities Disputes Ltd
PO Box 5875
Wellington 6140

By email: submissions@utilitiesdisputes.co.nz

The logo for Powerco, featuring the word "POWERCO" in a bold, purple, sans-serif font. The letter "O" is stylized with a white dot in the center.

Powerco submission on the independent 5-year review of Utilities Disputes Limited - Recommendations from the review and other Board proposed changes

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2. Concerns about UDL's interpretation of the Consumer Guarantees Act

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both consumers and energy distributors. The UDL needs to be cautious that the resolutions of questionable complaints related to the CGA are considered fair in order to achieve the long term success of the scheme.

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Yours sincerely

Stuart Marshall

General Manager Commercial and Regulatory

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	3	Do you agree with the Board's proposal for Utilities Disputes not to name providers in its case notes?	Board does not accept recommendation to name providers in its case notes	Yes, we do agree with the Board's proposal for Utilities Disputes not to name providers in its case notes.

		notes?		
	4	If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?	Board seeks views before considering the issue further	To be representative and fair the member companies, case notes would need to be available about all complaints or at least on some proportional basis.
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	6	Do you agree with the Board's view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	Explicit reference to natural justice in the list of principles is not needed and can be removed	Agree.

Levies	10	Do you agree with the review's general recommendation that the levy mechanism needs to be changed?	Board seeks views before considering the issue further	<p>Powerco supports the principle of 'user pays' for the levy arrangements and supports the Board undertaking further work to determine a levy system that is fair, low in administration and complexity and does not distort incentives (e.g., if the cost of dealing with each complaints becomes too high, members may decide it makes more economic sense to just settle the complaint, regardless of its merits).</p> <p>Given the number of changes to levy arrangements over the years, we would rather the Board took its time to find the 'right' mechanism rather than rush anything through.</p>
Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme's approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a member has access to a Scheme for resolving the complaint)	<p>We strongly disagree with the recommendation to remove the land complaint exclusions. Retaining these exclusions has not impacted on the approval of the Scheme, given that the exclusions are in the current Scheme document and the Scheme is currently approved. We are also not aware of any directive the Board has received from the Minister regarding removal of the land complaint exclusions.</p> <p>As the Independent Review pointed out (refer page 26), alternative dispute resolution schemes "are not well placed to settle legal controversies as they are not legal bodies and it is not the place of alternative dispute resolution schemes to make legal precedents. Legal precedents are properly made by courts."</p>

				<p>These disputes can be highly technical (in terms of engineering, legal and valuation matters) and are likely to be beyond the current resources and expertise of the Scheme. Given the Board's assertion that there are very few land complaints, it would seem the cost of Utilities Disputes resourcing to deal with such complex disputes when alternative forums already deal with such disputes negates any efficiency argument. As the Board will be aware, new costs imposed on lines companies will ultimately be borne by consumers.</p> <p>Our key concerns remain:</p> <ol style="list-style-type: none"> 1. Road or level crossings: We do not believe that it is consistent with the spirit of the Scheme to attempt to deal with matters between local authorities and lines companies around network assets in the road. Any attempt to do so would also seem to either duplicate or compete with the provisions in the National Code of Practice for Utility Operators' Access to Transport Corridors; which does not seem to be an efficient use of Utilities Disputes' time and resources. 2. Land agreements: While we can understand Utilities Disputes having a role to play in "customer service" type complaints, we would not like to see this impacting on members' freedom to negotiate contract terms with landowners. By their nature, any negotiations for easement rights involve landowners having legal (and often
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				<p>valuation) advice – there is no need to duplicate that role.</p> <p>3. Injurious affect: We reiterate our previous comments that the Electricity Act already provides a mechanism for assessment of injurious affect and a dispute mechanism. We believe the removal of this exclusion will be very detrimental to lines companies and is not mitigated by being limited to injurious affect claims of less than \$50,000, as this amount bears little relation to the cost impact on the lines company. An injurious affect ruling of any value could invalidate the lines company’s replacement or upgrade, causing the lines company to lose its existing works protection and having to relocate the entire portion of line (if that was even possible) and jeopardising our ability to supply end consumers reliant on that line. Such decisions are incredibly complex (as developing case law has demonstrated) and can have wide reaching impacts on other similar activities; for this reason they should be reserved for the Land Valuation Tribunal and Environment Court, as specifically contemplated by the legislation.</p>
	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.	Board seeks views before considering the issue further	While the number of land complaints is low, they are usually high impact on lines companies and there is a significant precedent setting aspect to all such cases.

Accessibility/ Efficiency	29	Do you agree with the proposed change to substitute “ <i>distributor</i> ” for “ <i>lines company</i> ” where they appear in the scheme documents?	Board thinks this will improve consistency in terminology.	See below
	30	If references to lines company were changed to distributor, what other steps, (including other potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?	Board seeks views before considering the issue further	To avoid confusion for consumers, terminology should be consistent with that used in legislation, retailer terms and conditions and other industry materials.

**Independent 5-year review of Utilities Disputes Limited
Recommendations from the review and other Board proposed changes**

The Salvation Army New Zealand Fiji, Tonga and Samoa Territory Submission

EXECUTIVE SUMMARY

1. The Salvation Army is an international Christian and social services organisation that has worked in New Zealand for over one hundred and thirty years. The Army provides a wide range of practical social, community and faith-based services, particularly for those who are suffering, facing injustice or those who have been forgotten and marginalised by mainstream society. We have over 90 Community Ministry centres and Churches (Corps) across the nation, serving local families and communities. We are passionately committed to our communities as we aim to fulfil our mission of caring for people, transforming lives and reforming society through God in Christ by the Holy Spirit's power.
2. Our responses to this Consultation Paper are based primarily on our engagement with the Energy Complaints Scheme (ECS), administered by Utilities Disputes Ltd (UDL), through our frontline staff as they work with vulnerable clients. Therefore, our feedback is written from the perspective of marginalised consumers of electricity, gas, water or broadband services.
3. Not all the questions are relevant to our work in New Zealand. Therefore, we will limit our answers to specific questions.
4. This submission has been prepared by the Social Policy and Parliamentary Unit of The Salvation Army. For further contact regarding this submission, please contact:
 - Lt Colonel Ian Hutson, Director, Social Policy and Parliamentary Unit, The Salvation Army
 - ian_hutson@nzf.salvationarmy.org | +64 274 713 645

Appendix 1 – Questions for submitters and preferred form for responses

Principle/Area of document	#	Question	Board's view (if available)	Submitter's response
Accountability	1	Do you agree with the review's recommendation <i>The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes?</i>	The Board disagreed with this recommendation. For further information on the Board's view, see pt8 (a) of the consultation pack (above)	From a vulnerable consumer's perspective, it is helpful if providers are named in the case notes. We completely understand that the case note is only a summary of the complaint and the subsequent investigation. The complaint has not been confirmed at this stage. For our clients, the first point of contact with The Salvation Army (TSA) is usually through the budgeters, social workers, welfare workers and counsellors located in our Community Ministry service hubs around the country. It is primarily these workers that inform clients, where appropriate, of the UDL and the ECS if they are aware of the scheme. If providers were named in the case notes and these case notes are available for public use, then our workers, particularly our budgeters, are able to build institutional knowledge and develop patterns of potentially poor practice by the providers. A relevant example are predatory finance companies, pay-day lenders and mobile traders who prey on vulnerable consumers. Our budgeters build a pattern of practice by these companies and use this information to share with both clients and other frontline workers. If the complaint is then proven valid later, then this reinforces the pattern and information that our staff and organisation has already potentially built through the case notes. It is crucial to note here that our frontline workers are

				extremely busy and swamped with complex and massive amounts of client cases. One possible alternative is that the case notes pertaining to each provider UDL partners with are filed under that specific provider on the UDL website. That way frontline workers and general members of the public can quickly and easily access information and case notes relating to that specific provider.
	2	Do you agree with the Board's proposal for Utilities Disputes to name providers that breach scheme rules and guidelines?	Board proposes naming providers that breach scheme rules and guidelines	Yes. Having this information easily accessible and understandable, as mentioned in Point 1 above, is vital for our staff members as they engage with vulnerable consumers.
	3	Do you agree with the Board's proposal for Utilities Disputes not to name providers in its case notes?	Board does not accept recommendation to name providers in its case notes	No we do not agree. We recommend providers are named in these case notes and this information be made accessible to the public as per Point 1 above. (What is the difference between questions 1 and 3?)
	4	If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?	Board seeks views before considering the issue further	The information set out in Paragraph 8(a) of the Consultation Paper as to the contents of the case notes are sufficient for our needs. But, as mentioned above, access to information as they concern specific providers is the key issue for our staff. If one of our budgeters had a client facing electricity issues and wanted to know more about that provider, they could theoretically go to the UDL website, click onto a provider's name and see the history of case notes, verifications of complaints, resolutions etc. This will aid our service to these susceptible consumers.

Natural Justice	5	Do you agree with the review's recommendation to <i>consider removing the principles of natural justice from its scheme document</i> ?	Explicit reference to natural justice in the list of principles is not needed and can be removed	We submit that explicit reference is kept to natural justice. The State Services Commission has developed some helpful guidelines to define natural justice (www.ssc.govt.nz/node/7839). Fairness is clearly an important principle. But we believe natural justice has a wider reach and definition in both the public sector and the law.
	6	Do you agree with the Board's view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	Explicit reference to natural justice in the list of principles is not needed and can be removed	See answer to Point 5.
Performance Standards	7	Do you agree with the review's recommendation to remove performance standards relating to providers' self-reporting on compliance?	Board seeks views before considering the issue further	Yes.
	8	Do you agree with the review's recommendation to remove performance standards relating to cost per case?	The Board believes a <i>cost per case</i> measure is not sufficiently linked to Utilities Disputes performance to justify a performance measure. However, the current measures should remain until new measures have been approved	Yes.
	9	Do you have ideas about other measures the Board could consider adopting?	Board seeks views before considering the issue further	We submit that, if not already reported on, the UDL could report back to the Board as a performance standard the measures they have taken to reach priority groups for the ECS. For example, if UDL has identified Maori, Pacific and other

				ethnic minority groups as a target audience, UDL should report on the milestones achieved to achieve these targets.
Levies	10	Do you agree with the review's general recommendation that the levy mechanism needs to be changed?	Board seeks views before considering the issue further	Yes. We support the recommendations set out in Paragraph 8(d) of the Consultation Paper.
	11	What information do you think the Board needs, to help it decide what options are available?	Board seeks views before considering the issue further	N/A
	12	What elements of the current levy mechanism do you think work well and should be retained?	Board seeks views before considering the issue further	- Ensuring each scheme contributes to its share of UDL costs.
	13	What elements of the current levy mechanism do not work and why?	Board seeks views before considering the issue further	- As per page 54 of the Review Document, <i>all providers are required to be part of Utilities Disputes not all make a financial contribution to the costs of the Scheme.</i> We contend this is not fair and should be addressed.
	14	What levy options can you think of to address provider concerns about 'throwing money at complaints' to avoid the levy?	Board seeks views before considering the issue further	N/A
	15	What levy options can you think of to avoid senior staff spending more time on jurisdiction issues	Board seeks views before considering the issue further	N/A
	16	What levy options can you think of	Board seeks views before considering	N/A

		that would avoid delays (beyond the provider's control) triggering levy levels?	the issue further	
	17	Do you agree with the recommendation <i>every organisation which is covered by the Scheme should make a contribution to its running costs?</i>	Board seeks views before considering the issue further	Yes.
	18	Do you agree with the recommendation <i>there should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>	Board seeks views before considering the issue further	Yes. See our response to Point 13 above.
	19	Do you agree with the recommendation <i>The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints?</i>	Board seeks views before considering the issue further	Yes.
	20	Do you agree with the recommendation <i>In keeping with the 'user pays' principle, any case reaching Utilities Disputes at</i>	Board seeks views before considering the issue further	Yes. Again, our focus at TSA is vulnerable consumers. There is already a huge power imbalance between the providers and members of the public. Cases that reach a deadlock should incur a fee for the providers because of this power

		<i>deadlock should incur a fee?</i>		relationship. However, it is essential that any costs or fees incurred by the providers because of the UDL and ECS processes are not passed onto customers, in particular those clients who made the original complaint.
	21	Do you agree with the recommendation <i>The current variable fee structure needs to be reconsidered?</i>	Board seeks views before considering the issue further	N/A
Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme's approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a member has access to a Scheme for resolving the complaint)	N/A
	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.	Board seeks views before considering the issue further	N/A
Other proposed changes - <i>Accessibility</i>	24	Do you agree in principle with the idea of a deemed membership mechanism?	Board seeks views before considering the issue further	Yes. We submit it is not beneficial for vulnerable consumers and the general public for these providers to not join the UDL. If these providers are in breach of legislation, then they should be sanctioned. Again, we highlight the inherent power imbalance between providers and vulnerable consumers.

				Providers must be held to account, especially if they are required by law to join the UDL .
	25	If implemented, do you think the deeming mechanism should apply to any scheme with mandatory membership that Utilities Disputes operates?	Board seeks views before considering the issue further	Yes.
	26	To enable fair contribution toward the costs of running the scheme, if implemented, when should the levy obligations for deemed providers start?	Board seeks views before considering the issue further	N/A
	27	If implemented, when should other provider obligations (for example those in General Rule 12) start for deemed providers?	Board seeks views before considering the issue further	N/A
	28	Do you have other suggestions to address the problem of non-compliance with membership requirements to join the Energy Complaints Scheme?	Board seeks views before considering the issue further	<ul style="list-style-type: none"> - Seek remedies in the legislation these non-compliant providers operate under. - Publically name them.
Accessibility/ Efficiency	29	Do you agree with the proposed change to substitute “ <i>distributor</i> ” for “ <i>lines company</i> ” where they	Board thinks this will improve consistency in terminology.	N/A

		appear in the scheme documents?		
	30	If references to lines company were changed to distributor, what other steps, (including other potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?	Board seeks views before considering the issue further	N/A



Transpower House
95 The Terrace
PO Box 1021
Wellington 6140
New Zealand
P 64 4 495 7000
F 64 4 495 7100
www.transpower.co.nz

John Clarke
Tel: 04 590 7074
DX mail code: SR56006
John.Clarke@transpower.co.nz

14 July 2016

Heather Roy
Chair
Electricity and Gas Complaints Commissioner Scheme

Via email: chair@egcomplaints.co.nz

Dear Heather

Lines company jurisdiction exclusions

Thank you for your letter of 6 July responding to Alison Andrew's of 14 June. Alison is on leave and I am replying on her behalf as Acting Chief Executive.

We were very disappointed to learn that the EGCC Board resolved at its 27 June meeting to remove the lines company jurisdiction exclusions from the rules. However, we are pleased that further stakeholder feedback about that decision is being sought, and we take from that that the Board remains open to changing its view.

The attachment to this letter contains our responses to the EGCC Board's justifications for removing the exclusions. In summary, the Board's justifications are not convincing, and in some cases suggest the Board may have received incorrect advice about the scope and effect of the exclusions. We were, however, pleased that it is now accepted that the existing exclusions are not contrary to the Electricity Industry Act.

Your letter states that we have misinterpreted the 2011 Baljurda Consulting report. With respect, there is no misinterpretation. The passage from the report quoted in your letter was addressing a submission Transpower made at the time that an *additional* exclusion for environmental complaints be added to the rules. Although Baljurda Consulting disagreed with that, it certainly did not recommend that any of the exclusions already in the rules should be removed. In fact, as emphasised in your letter, Baljurda Consulting described the Scheme as "accessible" even with all of those exclusions in place.

Neither Baljurda Consulting nor any other independent reviewer of the Scheme we are aware of has ever recommended the removal of the exclusions that the Board has now resolved to remove.

We noted with interest, in the justifications appendix to your letter, reference to a further independent review of the Scheme scheduled for later in 2016. In our view the appropriateness of the exclusions is something that should be considered as part of that review. The exclusions should not be taken out of the rules now, as an adjunct to a process that has as its main focus the reconstitution of the Scheme so that it can accommodate disputes about access to shared properties for ultra-fast broadband connections. It is, in our view, premature to be making substantive changes to the rules beyond what is necessary to achieve that, particularly with the next independent review imminent.

As has been said in our previous correspondence, we consider the exclusions to be fundamental to the efficient operation of our business. We urge you and the other Board members to reconsider your decision to remove them.

Yours sincerely



John Clarke
Acting Chief Executive Officer

CC: Vena Crawley
Paul Goodeve
Linda Cooper
Nicky Darlow
Hon Simon Bridges, Minister of Energy and Resources
Hon Paul Goldsmith, Minister of Commerce and Consumer Affairs

EGCC Board justification	Transpower response
<i>General justifications</i>	
Prior Ministerial approval does not negate future changes	We have never suggested the Scheme rules cannot or should not be reviewed merely because they have previously been approved by the Minister. The point we made about Ministerial approval was directed at the (now abandoned) allegation that the exclusions are contrary to the Electricity Industry Act.
Historical reasons for exclusions to remain are not justified	<p>This justification does not touch on the substantive reasons for the exclusions, which have not changed since the exclusions first came into the Scheme rules and are set out in Alison Andrew's letter to the Board of 14 June.</p> <p>In particular, neither of the following is relevant to the substantive reasons for the exclusions:</p> <ul style="list-style-type: none"> • The constitution of the Scheme at the time the exclusions were added and who was and was not a member of the Scheme. • The presence or otherwise of the Land Code or Consumer Codes in the rules, and whether anything replaced them when they came out of the rules. <p>The suggestion that the Electricity Commission originally approved the exclusions by accident because it was "focused on the higher level" is unsubstantiated. In any event, the exclusions were re-approved by the Minister in 2010.</p>
There is a discretion to refer complaints to a more appropriate forum	<p>The Commissioner's discretion is not a sufficient substitute for the automatic exclusion of complaints that are not appropriate for the Commissioner to consider. If discretionary exclusions were sufficient then, in the interests of "accessibility", the Scheme rules would contain no automatic exclusions at all.</p> <p>It is significant that even if the Commissioner decides there is a more appropriate forum for a complaint the Commissioner may still choose to consider the complaint. We have experience</p>

	<p>with the Commissioner choosing to accept jurisdiction over an environmental noise complaint that was clearly more appropriate for the local council to consider (and that the local council was considering).</p> <p>The rules should not be designed in a way that encourages the taking of test cases or judicial review against the Commissioner. In any event:</p> <ul style="list-style-type: none"> • The rules give the Commissioner the discretion to refuse to allow a complaint to be progressed as a test case if the Commissioner does not agree with the Provider’s reason for doing so. If the reason is that there is a more appropriate forum for the complaint and the Commissioner has already decided there is not, or has decided to consider the complaint regardless, then presumably the Commissioner would refuse to allow the test case to proceed. • It is not certain that the Commissioner’s decisions are able to be judicially reviewed, given that the Scheme is an industry-led initiative.
Impact on member activities likely to be marginal	<p>The Scheme rules do not say that the Commissioner does not have an injunctive function. The Commissioner has made injunctive determinations in the past, such as ordering a retailer to remove an advanced meter (Scheme Annual Report 2015/16, page 18).</p> <p>As it stands the Commissioner may make any recommendation or determination she wishes, subject only to the financial limit. A complainant can avoid the financial limit by couching its claim for relief in declaratory or otherwise unvalued terms. For example, a complainant could seek a determination:</p> <ul style="list-style-type: none"> • that land is injuriously affected by a Transpower project, but not a determination of the extent of the injurious affect; or • that a Transpower project is not authorised under the Electricity Act and must be stopped.

	<p>The historical data about the number of land complaints received by members and considered by the Commissioner are irrelevant because the exclusions are currently in place. The types of land complaint at issue are simply not captured by the historical data, and that data is no indication of the volume of land complaints likely to come to the Commissioner if the exclusions are removed. In any event, even a small number of land complaints could have a highly significant impact on our operations depending on their subject matter and the Commissioner's decisions about them.</p>
<p><i>Clause-by-clause justifications</i></p>	
<p>B.9.8(a) (lawful establishment under section 22 Electricity Act)</p>	<p>The limitation period in the Scheme rules will not necessarily exclude these complaints.</p> <p>A complainant challenging lawful establishment will be alleging an ongoing trespass that has been committed every day since the relevant line was built, including every day in the immediately preceding six years. The alleged trespass over that period will be within the limitation period, and for the Commissioner to adjudicate on the complaint she may need to consider the circumstances under which the line was originally built.</p>
<p>B.9.8(b) (lawful establishment other than under section 22 Electricity Act)</p>	<p>This exclusion is misquoted in the justifications document. The exclusion applies to lines to which section 22 <i>does not</i> apply.</p> <p>This exclusion should be retained because land complaints did not become subject to the Commissioner's jurisdiction until October 2006. For the reason set out above, it is not the case that the limitation period will exclude complaints of this kind.</p>
<p>B.9.8(c) (ownership of lines)</p>	<p>We have not submitted that this exclusion should be retained. We are content for it to be removed.</p>
<p>B.9.8(d) (local authority disputes involving roads and level crossings)</p>	<p>We have not submitted that this exclusion should be retained. We are content for it to be removed.</p>

B.9.8(e) (negotiation and other acquisition of property rights)	<p>We agree that the Environment Court is the appropriate forum for disputes arising under the Resource Management Act and Public Works Act. However, for the reasons set out above, it is not appropriate to leave the exclusion of such complaints to the Commissioner's discretion.</p> <p>This exclusion also relates to negotiations for obtaining interests in land. It would be inappropriate for the Commissioner to intervene in negotiations between lines companies and land owners, for example by forcing the lines company to accept an easement term it is unwilling to accept. The Commissioner's role should be limited to ensuring lines companies comply with their contractual obligations after they are agreed.</p>
B.9.8(f) (dispensations under Tree Trimming Regulations)	<p>We have not submitted that this exclusion should be retained. We are content for it to be removed.</p>
B.9.8(g) (adequacy of lines company maintenance programmes)	<p>Decisions about lines maintenance are operational in nature and involve the prioritisation of scarce resources across the lines company's entire network. Overall system security is often a consideration. It is therefore inappropriate for individual land owners to be able to call maintenance decisions into question or for the Commissioner to be able to impose maintenance requirements on lines companies.</p> <p>To the extent a maintenance decision is alleged to have created a safety issue then Worksafe is the most appropriate body to consider that. For the reasons set out above, it is not appropriate to leave the exclusion of such complaints to the Commissioner's discretion.</p> <p>This exclusion will not need to be reinstated following the upcoming independent review of the Scheme if it is not removed in the first place. If the Board believes there is "some justification" for retaining the exclusion then we suggest that is what the Board should do, and only remove it later if a clear reason for doing so comes out of the review.</p>
B.9.8(h) (injurious affect in section 23(3)(b) Electricity Act)	<p>This exclusion is misconstrued in the justifications document. The significance of injurious affect in section 23(3)(b) of the Electricity Act is different to its significance in section 57(1). In section 23(3)(b) the existence or otherwise of injurious affect is a gateway question for a lines company's right to upgrade a line without purchasing an easement or other property right from</p>

	<p>the land owner. Section 57(1), on the other hand, is about compensation if it is shown that injurious affect has been caused by anything the lines company has done under Part 3 of the Electricity Act.</p> <p>Section 23F of the Electricity Act says that disputes about injurious affect in the context of section 23(3)(b) may be referred to the Environment Court. That is clearly the most appropriate forum for such disputes, particularly given that injurious affect is a gateway question under section 23(3)(b). For the reasons set out above, it is not appropriate to leave the exclusion of these complaints to the Commissioner's discretion.</p> <p>If the Commissioner determines that a lines company upgrade project will cause injurious affect then the effect of that will be to enjoin the project on the land in question until such time as the land owner consents to the project. The land owner's consent need not be linked to the amount of injurious affect the Commissioner determines will be caused (assuming the Commissioner is even called upon to determine that). In our experience it is more common than not for land owners to have highly inflated expectations about the amount of compensation they should be paid. For purely pragmatic reasons (i.e. to avoid project delays and consequential costs), Transpower is sometimes required to purchase property rights from land owners at prices that are disproportionate to the amount of injurious affect to the land.</p>
B.9.8(i) (injurious affect in section 57(1) Electricity Act)	<p>As explained above, this exclusion relates to a different part of the Electricity Act than the exclusion in clause B.9.8(i) (namely, section 57(1)). It is not the case that the exclusions overlap.</p> <p>Although disputes about injurious affect in clause 57(1) are not gateway issues for Transpower's powers under the Electricity Act, they are nonetheless technical valuation issues that should be considered in a forum where the law and rules of evidence are required to be observed, cross-examination of witnesses is available, and there are rights of appeal. The Land Valuation Tribunal has those attributes and is clearly the most appropriate forum. For the reasons set out above, it is not appropriate to leave the exclusion of these complaints to the Commissioner's discretion.</p>

B.9.8(j) (interruptions to and quality of supplied electricity)	These clauses relate to the same subject matter, namely the exclusion of complaints about electricity supply by consumers directly against Transpower (including in the guise of land complaints).
B.9.9(a) (electricity supply complaints against Transpower)	<p>The Board's justification for removing this exclusion does not make sense. The justification draws no distinction between Transpower (a transmission provider) and local distributors, and on that basis concludes it would be "unfair" for Transpower to have the benefit of the exclusion when distributors do not. There are in fact fundamental differences between Transpower and distributors:</p> <p>Transpower does not provide services to consumers, other than a handful of very large industrial consumers such as the aluminium smelter in Bluff. Transpower's lines do not reach people's houses or the vast majority of businesses. Distributors, on the other hand, have a direct supplier-customer relationship with consumers and a direct physical connection with them.</p> <p>Unlike distributors, Transpower does not have contracts, or any other interaction as a supplier, with the vast majority of consumers. Transpower cannot therefore negotiate limitations or exclusions of liability with consumers that might otherwise be available (for example, with business consumers).</p> <p>Transpower does not have the systems or personnel necessary to deal with large volumes of consumer complaints. Distributors do.</p> <p>Also, as noted in Alison Andrew's 14 June letter, giving consumers direct recourse against Transpower through the Scheme is inconsistent with the regime in the Consumer Guarantees Act, under which consumers' recourse is only against their electricity retailers. That was a clear (and correct) policy decision by the Government when it reviewed the Act in 2013.</p>
B.9.10 (land complaints against retailers)	We have not submitted that this exclusion should be retained. We are content for it to be removed.

14 June 2016

Heather Roy, Vena Crawley, Paul Goodeve, Linda Cooper, Nicky Darlow
Electricity and Gas Complaints Commissioner Scheme

By email: chair@egcomplaints.co.nz
vena.crawley@contactenergy.co.nz
paul.goodeve@powerco.co.nz
linda.cooper@aucklandcouncil.govt.nz
nicky@darlow.co.nz

Dear EGCC Scheme Board members

Lines company jurisdiction exclusions

As the Board will be aware, there is currently a proposal to remove from the rules governing the Scheme the long-standing jurisdictional exclusions relating to land complaints and to “retail” complaints against transmission operators. These exclusions are currently in clauses B.9.8 and B.9.9 of the Scheme Document.

We understand Scheme staff intend to discuss the exclusions with the Minister of Energy and Resources, Hon Simon Bridges, and the Minister of Commerce and Consumer Affairs, Hon Paul Goldsmith, prior to the Board voting on the changes to the Scheme in late June.

Transpower is strongly opposed to the removal of the exclusions due to the significant adverse effects this will have on our operations, the increased costs that will be borne by electricity and gas consumers, and the unintended consequences of changing a settled and well understood regime for consumer complaints. Accordingly, we encourage you to retain the existing jurisdictional exclusions.

The Government has already considered the extent of the Scheme and has approved the reasonable jurisdictional exclusions that Transpower is seeking to retain. Nothing has occurred since the Scheme was approved, and no evidence has been produced through the recent consultation processes, that suggests the existing exclusions are faulty in any respect or warrants their eradication from the Scheme.

Land complaints

We oppose the removal of the exclusions for land complaints relating to lawful establishment, injurious affect, negotiation or acquisition of property rights, and adequacy of maintenance programmes for the following reasons:

- The outcome of these complaints can have extremely significant implications for lines companies’ operations across their entire network, the consequential costs of which could far exceed the value of an individual complaint. For example, a decision that a project injuriously affected a landowner’s property could lead to a requirement for the lines company to buy expensive easements over the properties of all landowners in a similar position. These costs would ultimately be borne by electricity and gas consumers.

Given the potential consequences, these disputes should be considered in the courts, with full application of the law and the rules of evidence, cross-examination of witnesses and rights of appeal. None of those important safeguards exist under the Scheme.

- Opening up the Scheme to disputes of this nature creates an incentive for landowners to bring meritless or speculative complaints to the Commissioner in an attempt to hold up time-sensitive projects and induce lines companies to offer commercial settlements. There are no practical barriers to landowners doing this as the Scheme is free for complainants. Again, the additional costs would ultimately be borne by electricity and gas consumers.
- Importantly, there are other more appropriate and tested forums for disputes of this nature, in particular the Environment Court (which is stipulated in the Electricity Act and Public Works Act as the place for access and property right acquisition disputes) and the Land Valuation Tribunal. We do not think it is appropriate to leave the exclusion of these disputes to the Commissioner's discretion, as is proposed. Furthermore, there is nothing in the Scheme rules to say the Commissioner cannot consider a complaint even if she agrees there is a more appropriate forum.

Retail complaints

We oppose the removal of the exclusion for retail complaints against transmission operators for the following reasons:

- Transmission operators have no supplier-customer relationship with electricity or gas consumers (other than a few very large ones who are directly connected to the transmission network) and accordingly have no ability to manage their potential liabilities to them. Transmission operators do not have the systems or personnel to deal with large volumes of consumer complaints.
- Consumers already have remedies against their electricity and gas suppliers (retailers) under the Consumer Guarantees Act (CGA) through the guarantee of acceptable quality. Exposing transmission operators to consumer complaints would be inconsistent with the regime in the CGA whereby any liability passed to a transmission operator happens through the retailer indemnity, and not directly between the operator and the consumer. Disputes between retailers and transmission operators about the indemnity are already covered by the Scheme.

We are aware that some officials have suggested that the land and retail complaint exclusions are inconsistent with the Scheme requirements in the Electricity Industry Act, and in particular the requirement in section 95 and Schedule 4 that "any person" be able to make a complaint to the Scheme.

Transpower does not agree:

- "Any person" can make a complaint to the Scheme, but a person cannot make any type of complaint.
- Clause 5(1)(c) of Schedule 4 requires the Scheme to be able to deal with a "wide range" of complaints, not all complaints. Clause 13(1)(c) contemplates restrictions in the rules on "the kinds of complaints that the scheme will deal with".
- The Scheme already has Ministerial approval with the exclusions in place.

- The Scheme contains a number of other jurisdictional exclusions (including the financial limit of \$50,000 and the “deadlock” requirement) that are not mentioned anywhere in the Act and which are not the subject of removal proposals.

The Scheme was always intended to have reasonable jurisdictional exclusions. Parliament confirmed this when the Electricity Industry Bill was reported from the committee of the whole House and the following significant change was made to clause 12 of Schedule 4 (now clause 13):¹

12 Rules of approved scheme

(1) The rules of the approved scheme must provide for, or set out, the following:

...

~~(c) the kinds of complaints that the scheme will deal with, which must include—~~

~~(i) breaches of contract; and~~

~~(ii) breaches of statutory obligation; and~~

~~(iii) in the case of a complaint relating to electricity, breaches of the Act, the regulations, the Code, or the Electricity Act 1992; and~~

~~(iv) in the case of a complaint relating to gas, the Gas Act 1992 and regulations and rules made under that Act; and~~

~~(v) breaches of industry codes; and~~

~~(vi) breaches of the dispute resolution scheme’s rules:~~

(c) the kinds of complaints that the scheme will deal with:

...

In our view, the deletion of the directive language as to the kinds of complaints the Scheme must cover and its replacement with generic language indicates Parliament’s clear intention that reasonable jurisdictional exclusions, including for certain complaints about breaches of electricity and gas legislation, should be allowed.

Finally, we note that removal of the exclusions was not recommended in the independent review of the Scheme in 2011 by Baljurda Consulting. Baljurda Consulting was asked to consider the specific question “are the exclusions from jurisdiction still appropriate?” Evidently Baljurda Consulting thought they were, and under the same legislation that applies today.

We cannot over-emphasise how important these exclusions are to Transpower. We consider them to be fundamental to the efficient operation of our business, which directly benefits New Zealand electricity (and gas) consumers as a whole. We urge you not to vote to remove them.

Yours faithfully



Alison Andrew
Chief Executive Officer

CC Nanette Moreau, Electricity and Gas Complaints Commissioner
Hon Simon Bridges, Minister of Energy and Resources
Hon Paul Goldsmith, Minister of Commerce and Consumer Affairs

¹ Change made by Supplementary Order Paper 154, 7 September 2010.

6 April 2018

The Board of Utilities Disputes Limited

By email: submissions@utilitiesdisputes.co.nz

Dear Directors

Independent 5-year review of Energy Complaints Scheme

This is Transpower's response to the Board's first round of consultation on the recommendations from the most recent independent 5-year review of the Energy Complaints Scheme (**Scheme**). We are grateful for the opportunity to comment on the review.

We agree with the review's overall assessment that the Scheme is an effective dispute resolution scheme. However, we are disappointed with the review's lack of careful analysis around some issues and failure to acknowledge, or perhaps grasp at all, the important differences between transmission and distribution/retail.

Our responses to some of the questions in the consultation paper are enclosed in the form requested.

Yours sincerely



Chris Browne
Deputy General Counsel

Questions for submitters and Transpower responses

Principle/Area of document	#	Question	Board's view (if available)	Submitter's response
Levies	10	Do you agree with the review's general recommendation that the levy mechanism needs to be changed?	Board seeks views before considering the issue further	Contrary to what this question implies, the review does not recommend a major overhaul of the levy system. A major overhaul was not supported by member feedback and is not required.
	12	What elements of the current levy mechanism do you think work well and should be retained?	Board seeks views before considering the issue further	<p>We agree with the current arrangement whereby the Scheme's costs are funded by fixed and variable levies, with the variable levy being linked to deadlock complaints. A significant part of the Scheme's costs should continue to be funded through the variable levy to incentivise early resolution of complaints through Scheme members' internal processes.</p> <p>See also our answer to question 19.</p>
	13	What elements of the current levy mechanism do not work and why?	Board seeks views before considering the issue further	The overall funding split between retailers and lines companies (60/40) is somewhat favourable to retailers given their greater use of the Scheme. Based on the deadlock complaint data in the attached table, a fairer split would be closer to 75/25.

Questions for submitters and Transpower responses

	17	Do you agree with the recommendation <i>every organisation which is covered by the Scheme should make a contribution to its running costs?</i>	Board seeks views before considering the issue further	Yes. We understand this is already the case.
	18	Do you agree with the recommendation <i>there should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>	Board seeks views before considering the issue further	<p>Yes. However, we strongly disagree with the review’s conclusion that Transpower’s fixed contribution constitutes cross-subsidisation and/or a sweetheart deal. That conclusion appears to be based on feedback from other Scheme members (possibly just one of them) and there is no analysis to support it.</p> <p>Transpower’s contribution is fixed because there is no obvious metric that could be applied to both Transpower and distributors to produce a fair result:</p> <ul style="list-style-type: none"> • The review’s suggestion that Transpower’s fixed contribution “should be [set] on the same basis as every other provider organisation” is untenable. Distributor and retailer fixed contributions are determined on the basis of ICPs (installation control points). Transpower does not have any of those. If a parallel is drawn with GXPs and GIPs (grid exit and injection points), of which Transpower has around 300, then Transpower’s fixed contribution to the part of the Scheme’s budget apportioned to lines companies would be around 0.01% (there being more than 2.3 million distributor ICPs). That would be an annual contribution of around \$300, which is clearly too low. • If relative network size or value were used to determine fixed

Questions for submitters and Transpower responses

				<p>contributions then Transpower’s contribution would be disproportionately high.</p> <p>As for cross-subsidisation of Transpower by other Scheme members, the deadlock complaint statistics demonstrate quite the opposite. See the attached table created from data in the Scheme’s annual reports. We are surprised the review did not take members’ relative use of the Scheme into account, especially as the data is publicly available and the review supports a user pays approach to funding.</p> <p>Transpower’s fixed contribution to the Scheme’s costs was set a long time ago. The annual CPI adjustments may not have kept up with increases in the Scheme’s budget. There may therefore be a case for a step increase in Transpower’s (and First Gas’) fixed contribution. However, any increase would need to be supported by more than anecdotal feedback from other Scheme members.</p>
	19	Do you agree with the recommendation <i>The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints?</i>	Board seeks views before considering the issue further	<p>The review states that “the current split between the fixed and variable elements appears about right”. We agree with that.</p> <p>Given that most UDL staff are presumably on salaries, it is possible that the costs “solely related to the handling of individual complaints” are limited to disbursements. If all other costs were recovered through fixed levies then it is likely the fixed element would be disproportionately large and remove an incentive on Scheme members to resolve complaints before they reach deadlock.</p>

Questions for submitters and Transpower responses

Land Complaint exclusions	22	Do you agree with the review’s recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme’s approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a member has access to a Scheme for resolving the complaint)	<p>No.</p> <p>The key land complaint exclusions are part of the Scheme rules for good reasons, as outlined in Transpower’s correspondence with the EGCC Board and Chair in 2016 (see attached letters).</p> <p>The review notes that the equivalent UK and Australian schemes do not contain the land complaint exclusions. This is not surprising for the UK scheme, which:</p> <ul style="list-style-type: none"> • does not apply to transmission providers;¹ and • in general, does not apply to land complaints.² <p>We have not had time to review the rules for the Australian schemes in detail, but it appears they do not apply to transmission providers either.³ Also, the review contradicts itself in relation to the exclusions that apply under the Australian</p>
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¹ The terms of reference for the energy sector under the approved UK scheme are here: <https://www.ombudsman-services.org/docs/default-source/miscellaneous-links/energy-sector-tor-annex.pdf?sfvrsn=2>. Transmission providers do not fall within the definition of “Energy Network Operator” (clause 1.1). Transmission providers are not obliged to become a “Participating Company” (i.e. join the scheme) (clauses 1.1 and 2.1). The services within the scheme’s jurisdiction are limited to services “provided by Participating Companies” (clause 3.1). Transmission providers are not “regulated providers” under section 42 of the UK Consumers, Estate Agents and Redress Act 2007 and therefore the scheme approved under the Act need not apply to transmission providers (section 49) and transmission providers cannot be compelled to join it (section 47).

² The services listed in clause 3.1 do not include services in respect of which a land complaint would arise, except perhaps a small subset of land complaints through clause 3.1(d). This would need to be a land complaint against a distributor by a complainant who is the distributor’s direct customer.

³ The Australian Energy Retailer publishes information about the State schemes here: <https://www.aer.gov.au/consumers/making-a-complaint>. The information available there only refers to complaints against retailers and distributors. Complaints against transmission providers are not referred to.

Questions for submitters and Transpower responses

				<p>schemes, which it describes as “broadly similar” to the New Zealand exclusions.</p> <p>Furthermore, the review does not analyse the legislative context in either the UK or Australia to determine whether it is comparable to New Zealand. For example, there would be no need for an injurious affect exclusion in the UK or Australia if injurious affect is not relevant under UK or Australian law.</p> <p>The land complaint exclusions do not impact on the Scheme’s approval for the reasons set out in our letter of 14 June 2016 (attached). We understand that by mid-2016 the EGCC Board had accepted that the presence of the exclusions did not put the Scheme’s approval in jeopardy, as that was not raised as a justification for removing any of them in the EGCC Board’s consultation paper released on 6 July 2016. We are therefore surprised the UDL Board has raised this unfounded concern again.</p> <p>The land complaint exclusions were approved by the Minister for a third time in September 2016. We wonder how many more times the Minister needs to approve them before this issue will be considered closed.</p>
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Questions for submitters and Transpower responses

	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.	Board seeks views before considering the issue further	See attached letters.
Accessibility/ Efficiency	29	Do you agree with the proposed change to substitute “ <i>distributor</i> ” for “ <i>lines company</i> ” where they appear in the scheme documents?	Board thinks this will improve consistency in terminology.	No. “Distributor” is commonly understood in the electricity industry to mean local lines companies only (i.e. excluding transmission providers). That is how the term is defined in both the Electricity Industry Act 2010 and Electricity Industry Participation Code 2010. ⁴

⁴ Under the Electricity Act 1992, “electricity distributor” is defined to include transmission providers. However, as noted above, that is not how the term “distributor” is commonly understood.

Attachment – Deadlock complaint volumes

Period	Total retail complaints	Total lines complaints	Transpower complaints
6 months to 30/9/17	37	37	0
FY 16/17	148	77	0
FY 15/16	275	73	0
FY 14/15	403	94	0
FY 13/14	132	57	0
FY 12/13	86	31	0
Total	1,081 (74.6%)	369 (25.4%)	0

Questions for submitters and Transpower responses

Attachment – 2016 correspondence

Appendix: Trustpower's submission on UDL's scheme review consultation



Principle/ Area of document	#	Question	Board's view (if available)	Submitter's response
Accountability	1	Do you agree with the review's recommendation <i>The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes?</i>	The Board disagreed with this recommendation. For further information on the Board's view, see pt8 (a) of the consultation pack (above)	Trustpower agrees with the Board that providers of cases should not be named in case notes as it is not necessary to do this to achieve their purpose i.e. to inform providers and consumers of the issue raised in the complaint, the approach taken to resolve the complaint and the outcome.
	2	Do you agree with the Board's proposal for Utilities Disputes to name providers that breach scheme rules and guidelines?	Board proposes naming providers that breach scheme rules and guidelines	Trustpower does not agree with this proposal. Members have a statutory obligation to comply with the scheme rules and UDL has not explained why additional sanctions to those in the Act for rule breaches are required. We note Consultation Paper does not provide any examples of the <ul style="list-style-type: none"> • "guidelines" might be issued; nor of • process that might be followed before there is a "naming and shaming" of any alleged breach of any such "guidelines".
	3	Do you agree with the Board's proposal for Utilities Disputes not to name providers in its case notes?	Board does not accept recommendation to name providers in its case notes	See response to Q1



	4	If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?	Board seeks views before considering the issue further	See response to Q1
Natural Justice	5	Do you agree with the review's recommendation to <i>consider removing the principles of natural justice from its scheme document</i> ?	Explicit reference to natural justice in the list of principles is not needed and can be removed	<p>We disagree with this recommendation. The rules of natural justice have relevance to the process by which a decision is made as well as the outcome.</p> <p>We further note the removal of a reference to these principles after having been included in the scheme, is likely to be interpreted as a positive decision that the rules of natural justice were intended to be superseded by the application of a, somewhat subjective, fairness doctrine.</p>
	6	Do you agree with the Board's view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	Explicit reference to natural justice in the list of principles is not needed and can be removed	See Q5
Performance Standards	7	Do you agree with the review's recommendation to remove performance standards relating to providers' self-reporting on compliance?	Board seeks views before considering the issue further	The obligation to self-report compliance with the Scheme rules is a low cost way of ensuring providers are focussed on their scheme obligations. We do not think a case has been made to withdraw this obligation.
	8	Do you agree with the review's recommendation to remove performance standards relating to cost per case?	The Board believes a <i>cost per case</i> measure is not sufficiently linked to Utilities Disputes performance to justify a performance measure. However, the current measures should remain until	Agree



			new measures have been approved	
	9	Do you have ideas about other measures the Board could consider adopting?	Board seeks views before considering the issue further	The Board could consider surveys of complaints and providers about their complaints experience at the end of each case.
Levies	10	Do you agree with the review’s general recommendation that the levy mechanism needs to be changed?	Board seeks views before considering the issue further	We do not agree the levy mechanism “ needs to be changed ” and note it has been reviewed a number of times already. However we are happy to consider other options, provided those included maintaining the status quo.
	11	What information do you think the Board needs, to help it decide what options are available?	Board seeks views before considering the issue further	We have not had sufficient time to consider alternative approaches in this consultation. We would urge caution against significant change as there is a system cost for all providers in making any changes.
	12	What elements of the current levy mechanism do you think work well and should be retained?	Board seeks views before considering the issue further	We agree with having a split between fixed and variable fees. It may be possible to take a more graduated approach to the variable fees.
	13	What elements of the current levy mechanism do not work and why?	Board seeks views before considering the issue further	The levy fee structure does trigger payments in situations where the provider may not be at fault, by design.
	14	What levy options can you think of to address provider concerns about ‘throwing money at complaints’ to avoid the levy?	Board seeks views before considering the issue further	This is certainly not an ideal scenario. It is possible that a more graduated scale of variable levies would help address this concern.
	15	What levy options can you think of to avoid senior staff spending more time on	Board seeks views before considering the issue further	It is difficult to respond to this question with the information provided. Is the issue with the providers

Appendix: Trustpower's submission on UDL's scheme review consultation



		jurisdiction issues		or UDL overreaching its mandate?
	16	What levy options can you think of that would avoid delays (beyond the provider's control) triggering levy levels?	Board seeks views before considering the issue further	The levy rules could be amended to provide that delays outside the provider's control, e.g. because of complainant's slow response times, are not taken into account in determining the level of the variable levy.
	17	Do you agree with the recommendation <i>every organisation which is covered by the Scheme should make a contribution to its running costs?</i>	Board seeks views before considering the issue further	Agree
	18	Do you agree with the recommendation <i>there should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>	Board seeks views before considering the issue further	Agree
	19	Do you agree with the recommendation <i>The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints?</i>	Board seeks views before considering the issue further	The fixed element should cover core dispute resolution costs. In relation to other discretionary items such as scheme promotion we would like to look at alternatives, before deciding.
	20	Do you agree with the recommendation <i>In keeping with the 'user pays' principle, any case reaching Utilities Disputes at deadlock should incur a fee?</i>	Board seeks views before considering the issue further	Generally agree.
	21	Do you agree with the recommendation <i>The current variable fee structure needs</i>	Board seeks views before considering the issue further	Agree it needs to be reconsidered but not necessarily changed.



		<i>to be reconsidered?</i>		
Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme's approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a member has access to a Scheme for resolving the complaint)	No comment
	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.	Board seeks views before considering the issue further	No comment
Other proposed changes - Accessibility	24	Do you agree in principle with the idea of a deemed membership mechanism?	Board seeks views before considering the issue further	No, the membership requirements are in the Act. There is not requirement for any additional regulation.
	25	If implemented, do you think the deeming mechanism should apply to any scheme with mandatory membership that Utilities Disputes operates?	Board seeks views before considering the issue further	See Q24
	26	To enable fair contribution toward the costs of running the scheme, if implemented, when should the levy obligations for deemed providers start?	Board seeks views before considering the issue further	See Q24

Appendix: Trustpower’s submission on UDL’s scheme review consultation



	27	If implemented, when should other provider obligations (for example those in General Rule 12) start for deemed providers?	Board seeks views before considering the issue further	See Q24
	28	Do you have other suggestions to address the problem of non-compliance with membership requirements to join the Energy Complaints Scheme?	Board seeks views before considering the issue further	See Q24
Accessibility/ Efficiency	29	Do you agree with the proposed change to substitute “ <i>distributor</i> ” for “ <i>lines company</i> ” where they appear in the scheme documents?	Board thinks this will improve consistency in terminology.	Agree, but see the response to Q30
	30	If references to lines company were changed to distributor, what other steps, (including other potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?	Board seeks views before considering the issue further	We have not had sufficient time to consider this issue



27 March 2018

James Blake-Palmer
Manager-Stakeholder Engagement
Utilities Disputes Limited
WELLINGTON

Trustpower Limited
Head Office
108 Durham Street
Tauranga
Postal Address:
Private Bag 12023
Tauranga Mail Centre
Tauranga 3143
F 0800 32 93 02
Offices in
Auckland
Wellington
Christchurch
Oamaru
Freephone
0800 87 87 87
trustpower.co.nz

Dear James

**UTILITIES DISPUTES LIMITED (UDL) CONSULTATION ON CERTAIN RECOMMENDATIONS FROM
THE FIVE YEAR REVIEW OF THE ENERGY COMPLAINTS SCHEME BY QUEEN MARGARET
UNIVERSITY CONSUMER DISPUTE RESOLUTION CENTRE (QMUCDRC)**

Trustpower thanks UDL for the opportunity to provide feedback on the consultation paper on the above topic.

QMUCDRC completed its review of UDL's energy complaints scheme in July 2017 (**Review**). The consultation is limited to those Review recommendations which UDL considers require scheme rule changes and does not extend to other aspects of the Review's recommendations.

We would have appreciated a more fulsome response from UDL as to its intentions on all aspects of the Review.

We also note that we have seen Meridian's proposed response to this consultation and would like to express our support for certain views in the cover letter to its submission.

Those views are:

- The details of how UDL proposes to further promote itself in the light of the Review's recommendations will need to be set out in proposed rule changes so providers have the opportunity to comment;
- Any additional standards to be imposed on providers in relation to scheme promotion and/or complaint handling will need to be introduced by way of rule change;
- It will be necessary to review both the scheme rules and the Electricity Industry Act 2010 (the **Act**) before a power to audit is added to UDL's existing powers.

Our specific response to the questions asked in the Consultation paper is set out in the Appendix to this letter.

If you have any questions about these responses, please do not hesitate to contact either of the signatories to this letter.

Regards,

A handwritten signature in blue ink, appearing to read 'C Southey', written in a cursive style.

CHRISTINE SOUTHEY
POLICY AND REGULATORY COUNSEL

A handwritten signature in blue ink, appearing to read 'S Merchant', written in a cursive style.

STEVEN MERCHANT
MANAGER CUSTOMER EXPERIENCE

6 April 2018

Hon Heather Roy
Independent Chair
Utilities Disputes Limited
Wellington

VECTOR LIMITED
101 CARLTON GORE ROAD
PO BOX 99882
AUCKLAND 1149
NEW ZEALAND
+64 9 978 7788 / VECTOR.CO.NZ

By email: submissions@utilitiesdisputes.co.nz

Dear Madame Chair

Submission on the Independent Five-Year Review of Utilities Disputes Limited

This is Vector Limited's (Vector) submission on the consultation paper released by Utilities Disputes Limited (Utilities Disputes) on 12 March 2018 on the independent five-year review of Utilities Disputes, focusing on its Energy Complaints Scheme.

We set out in the Appendix our responses to consultation questions that are of relevance or interest to Vector businesses that are providers under Utilities Disputes using the submission template for this consultation.

No part of this submission is confidential.

We are happy to discuss any aspects of our submission with managers or staff of Utilities Disputes. Vector's contact person for this submission is:

Ross Malcolm
Manager Customer Experience
Ross.Malcolm@vector.co.nz
09 978 7648

Yours sincerely
For and on behalf of Vector Limited



Richard Sharp
Head of Regulatory and Pricing

Appendix – Questions for submitters and preferred form for responses

Principle/Area of document	#	Question	Board's view (if available)	Vector's response
Accountability	1	Do you agree with the review's recommendation <i>The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes?</i>	The Board disagreed with this recommendation. For further information on the Board's view, see pt8 (a) of the consultation pack (above)	<p>Vector strongly disagrees with the review's recommendation of naming the relevant providers in case notes for the reasons noted by the Board of Utilities Disputes.</p> <p>The naming of parties would unnecessarily focus attention on the named parties and not on the purpose of the case notes which is to highlight relevant cases.</p> <p>Naming the relevant providers may also undermine the confidentiality of settlements.</p>
	2	Do you agree with the Board's proposal for Utilities Disputes to name providers that breach scheme rules and guidelines?	Board proposes naming providers that breach scheme rules and guidelines	We strongly disagree with the naming of the relevant providers in breach scheme rules and guidelines for the same reason stated in our response to Question 1.
	3	Do you agree with the Board's proposal for Utilities Disputes not to name providers in its case notes?	Board does not accept recommendation to name providers in its case notes	We agree with the Board's position not to accept the review's recommendation to name providers in Utilities Disputes' case notes for the reason stated in our response to Question 1.

Principle/Area of document	#	Question	Board's view (if available)	Vector's response
	4	If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?	Board seeks views before considering the issue further	As stated in our response to Question 1, we do not support the naming of providers in case notes. Care would need to be taken to consider whether naming providers would lead to privacy concerns.
Natural Justice	5	Do you agree with the review's recommendation to <i>consider removing the principles of natural justice from its scheme document</i> ?	Explicit reference to natural justice in the list of principles is not needed and can be removed	<p>Vector strongly disagrees with the review's recommendation to consider removing the principles of natural justice from the scheme document. We believe that the High Court judgment (Vector v Utilities Disputes) is likely to provide further guidance on this issue. If the judgment is silent on this issue, we will provide further details.</p> <p>As a starting point, we are concerned that the removal of explicit reference may, in time, mean that natural justice principles are ignored and the removal is seen as evidence that decisions are no longer amenable to judicial review.</p>
	6	Do you agree with the Board's view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	Explicit reference to natural justice in the list of principles is not needed and can be removed	We do not agree with the Board's view that the explicit reference to natural justice in the list of principles is not needed and can be removed for the same reason stated in our response to Question 5.
Performance	7	Do you agree with the review's	Board seeks views before considering	We agree with the review's recommendation to remove

Principle/Area of document	#	Question	Board's view (if available)	Vector's response
Standards		recommendation to remove performance standards relating to providers' self-reporting on compliance?	the issue further	<p>performance standards relating to providers' self-reporting on compliance.</p> <p>We agree with the review's observation (page 48 of the report on the review) that it is inefficient to request the same information from providers several times because of changes in caseworkers.</p> <p>We would support measures to ensure that multiple requests for the same information from providers is minimised, if not avoided.</p>
	8	Do you agree with the review's recommendation to remove performance standards relating to cost per case?	The Board believes a <i>cost per case</i> measure is not sufficiently linked to Utilities Disputes performance to justify a performance measure. However, the current measures should remain until new measures have been approved	<p>We agree with the review's recommendation, which is supported by the Board, to remove performance standards relating to cost per case.</p> <p>We also agree with the Board that current measures should remain until new measures have been approved.</p>
	9	Do you have ideas about other measures the Board could consider adopting?	Board seeks views before considering the issue further	We believe the primary responsibility of raising consumer awareness of Utilities Disputes' services rests with Utilities Disputes. We therefore support low-cost/practical initiatives that are proven or show promise (in New Zealand and other jurisdictions) in effectively raising consumer awareness of the scheme.

Principle/Area of document	#	Question	Board's view (if available)	Vector's response
Levies	10	Do you agree with the review's general recommendation that the levy mechanism needs to be changed?	Board seeks views before considering the issue further	<p>In our view, changes can be made to the levy mechanism to improve the efficiency and fairness of how the levy is allocated. We make some suggestions for improvement in our responses to the levy-related questions below.</p> <p>We do not agree with the review's recommendation of removing the 24-hour period following deadlock before a complaint accrues a fee (variable levy). This 24-hour period provides:</p> <ul style="list-style-type: none"> • a strong incentive for providers to make an offer for settlement (as a business decision); and • greater choice for the customer - whether to settle or not at that point. <p>From a provider's perspective, it can be hard to determine which complaints are likely to go to deadlock. The 24-hour period serves as a signalling mechanism that the relevant parties can 'still do something about the complaint'. The settlement of disputes earlier is often preferable to settlement at a later time, saving distress, frustration and costs for the customer, the provider, and Utilities Disputes.</p> <p>We suggest that Utilities Disputes seek independent advice on whether the allocation of the total scheme levy to different</p>

Principle/Area of document	#	Question	Board's view (if available)	Vector's response
				<p>types of providers is generally proportionate and fair. For example, bottled LPG consumers have multiple options for resolving their complaint, such as going to another petrol station to get an alternative bottle (i.e. voting with their feet), or the provider could simply replace the LPG bottle that is the subject of the complaint for free. The presence of multiple, alternative bottled LPG providers and the likely smaller value of bottled LPG complaints (relative to other complaints) imply that the likelihood of LPG consumers using the scheme could be lower than consumers of other energy products/services.</p> <p>In relation to special levies - we do not support special levies to fund the defence of Utilities Disputes' actions against the scheme's providers. As evidenced in the Vector v Utilities Disputes process and the special levy, we do not consider the latter to be necessary to fund a defence. Utilities Disputes should be required to operate within its means and not see the ability to raise a special levy as a way to expand its role.</p>
	11	What information do you think the Board needs, to help it decide what options are available?	Board seeks views before considering the issue further	We suggest that the Board consider implementing the option recommended in the review of having 5 fee bands instead of the existing 3 fee bands. This would reduce the gaps between fee bands, i.e. more accurately reflect the time and resources spent on a complaint.

Principle/Area of document	#	Question	Board's view (if available)	Vector's response
	12	What elements of the current levy mechanism do you think work well and should be retained?	Board seeks views before considering the issue further	<p>The principle of 'user pays' should be retained/upheld in the allocation of the levy, i.e. the share of a provider's variable pay should reflect the intensity of their use of Utilities Disputes' services.</p> <p>We support the avoidance or removal of any existing cross-subsidies across providers and across schemes.</p>
	13	What elements of the current levy mechanism do not work and why?	Board seeks views before considering the issue further	<p>The existing levy structure could provide more incentives for providers that very rarely or never used Utilities Disputes' services because no consumer complaints to these providers were referred to Utilities Disputes.</p> <p>For example, a provider that does not have any complaints for the past 2-3 years could be given some discount in their levy allocation the following year, and/or learnings from how they are able to resolve complaints effectively could be acknowledged and shared more widely.</p>
	14	What levy options can you think of to address provider concerns about 'throwing money at complaints' to avoid the levy?	Board seeks views before considering the issue further	We will wait for the Board's view before commenting.

Principle/Area of document	#	Question	Board's view (if available)	Vector's response
	15	What levy options can you think of to avoid senior staff spending more time on jurisdiction issues	Board seeks views before considering the issue further	We will wait for the Board's view before commenting.
	16	What levy options can you think of that would avoid delays (beyond the provider's control) triggering levy levels?	Board seeks views before considering the issue further	We will wait for the Board's view before commenting.
	17	Do you agree with the recommendation <i>every organisation which is covered by the Scheme should make a contribution to its running costs?</i>	Board seeks views before considering the issue further	We agree with the review's recommendation that every organisation covered by the Energy Complaints Scheme should make a contribution to its running costs.
	18	Do you agree with the recommendation <i>there should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>	Board seeks views before considering the issue further	We agree that there should be no cross-subsidisation between providers. And for that matter, between schemes operated by Utilities Disputes.

Principle/Area of document	#	Question	Board's view (if available)	Vector's response
	19	Do you agree with the recommendation <i>The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints?</i>	Board seeks views before considering the issue further	<p>We agree with the review's recommendation that the fixed element should cover all costs incurred by Utilities Disputes, excluding those solely related to the handling of individual complaints.</p> <p>There should be incentives to ensure that, as the service grows, fixed cost efficiency is achieved to the benefit of all providers.</p>
	20	Do you agree with the recommendation <i>In keeping with the 'user pays' principle, any case reaching Utilities Disputes at deadlock should incur a fee?</i>	Board seeks views before considering the issue further	See our response to Question 10 - second and third paragraphs.
	21	Do you agree with the recommendation <i>The current variable fee structure needs to be reconsidered?</i>	Board seeks views before considering the issue further	<p>We agree with the review's recommendation that the current variable fee structure needs to be reconsidered.</p> <p>We agree with the review's recommendation of having more fee bands than the existing three-tiered structure.</p>
Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme's approval (scheme rules must provide for or set out that <i>any person</i>	<p>Vector does not share the Board's concern relating to Land Complaint exclusions.</p> <p>We believe that Land Complaints are best dealt with under the</p>

Principle/Area of document	#	Question	Board's view (if available)	Vector's response
			<p>who has a complaint about a member has access to a Scheme for resolving the complaint)</p>	<p><i>Resource Management Act 1991, Electricity Act 1992</i>, and various local body legislation. Our recent experience in a land complaint which Utilities Disputes was made aware of in Auckland's Mission Bay area highlighted the complexities with health & safety issues, neighbourhood disputes about property development, and the location of electricity assets in the road corridor. We await to see Utilities Disputes' approach to that complaint and will provide further comments, if required.</p> <p>We support the existing arrangements which allow providers to refer a land matter to Utilities Disputes as a path to resolution where urgent factors like health & safety issues are not involved.</p>
	23	<p>If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.</p>	<p>Board seeks views before considering the issue further</p>	<p>We are concerned that the removal of these exclusions could lead to health & safety implications as well as delays in our operations and processes.</p>
<p>Other proposed changes -</p>	24	<p>Do you agree in principle with the idea of a deemed membership mechanism?</p>	<p>Board seeks views before considering the issue further</p>	<p>We do not tend to agree with the idea of a deemed membership mechanism.</p>

Principle/Area of document	#	Question	Board's view (if available)	Vector's response
<i>Accessibility</i>				<p>We believe that the process of integrating additional/potential providers to any Utilities Disputes scheme should undergo a proper consultation process similar to that undertaken for LPG providers. This would ensure that:</p> <ul style="list-style-type: none"> • the right types of service providers are identified; • those providers' membership can commence at the same time, i.e. some will not be levied earlier or later; and • there is a proper notification and transition period for the incoming providers and their customers. <p>In addition, there may be sectors where there are alternative dispute resolution mechanisms. We prefer to see consumers retain the right to choose where and how their complaints are resolved.</p>
	25	If implemented, do you think the deeming mechanism should apply to any scheme with mandatory membership that Utilities Disputes operates?	Board seeks views before considering the issue further	We do not tend to think that a deeming mechanism should apply to any scheme with mandatory membership for the reasons stated in our response to Question 24.
	26	To enable fair contribution toward the costs of running the scheme, if	Board seeks views before considering the issue further	See our response to Question 24.

Principle/Area of document	#	Question	Board's view (if available)	Vector's response
		implemented, when should the levy obligations for deemed providers start?		
	27	If implemented, when should other provider obligations (for example those in General Rule 12) start for deemed providers?	Board seeks views before considering the issue further	See our response to Question 24.
	28	Do you have other suggestions to address the problem of non-compliance with membership requirements to join the Energy Complaints Scheme?	Board seeks views before considering the issue further	We will wait for the Board's view before commenting.
Accessibility/ Efficiency	29	Do you agree with the proposed change to substitute " <i>distributor</i> " for " <i>lines company</i> " where they appear in the scheme documents?	Board thinks this will improve consistency in terminology.	We do not have any objection to changing references to "lines company" to "distributor" in the scheme documents. In our view, what is important is consistency in the use of terms in these documents to avoid confusion and enable consumers and providers to use the scheme more easily.
	30	If references to lines company were changed to distributor, what other steps, (including other	Board seeks views before considering the issue further	Unless examples are provided, it is hard to see how the meaning of any clause referring to the same type of provider but called by a new name could change the meaning of that

Principle/Area of document	#	Question	Board's view (if available)	Vector's response
		potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?		<p>clause.</p> <p>As indicated in our response to Question 29, consistency in the use of terms should be given importance.</p>

Submission by WEL Networks Limited – April 2018

Principle/Area of document	#	Question	Board's view (if available)	Submitter's response
Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme's approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a member has access to a Scheme for resolving the complaint)	<i>No, WEL Networks does not agree that the exclusions be removed. However, if the exclusions are removed there must be appropriate safeguards in place (and, as a minimum, the five recommendations proposed as part of the review).</i>
	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.	Board seeks views before considering the issue further	<p><i>Removal of the exclusions would likely have considerable impact on WEL Networks' business, in terms of costs and resourcing requirements to deal with Land Complaints to the UDL, as well as potential delays to works and projects while a Complaint is being investigated and pending a UDL Recommendation or Determination. Further, potential uncertainty regarding WEL Networks' legal rights as a result of a UDL Recommendation (which is not, in fact, a legal decision but can nonetheless be binding) will impact the business, as detailed below:</i></p> <ol style="list-style-type: none"> <i>1. "[A]ny legal rule or judicial authority that applies" is only one of a number of matters that the UDL is to have regard to, in reaching a fair and reasonable outcome to a Complaint: General Rule [24]. This consideration is afforded no greater weight than the other stated considerations. If the UDL is (for example) to determine whether lines</i>

				<p><i>equipment has been lawfully fixed or installed, or if land has been ‘injuriously affected’ by the replacement or upgrade of existing works, there is risk of the strict legal position (and therefore legal rights) being ‘watered down’ as part of the overall balancing exercise to reach a fair and reasonable outcome. In addition, the UDL is not bound by precedent nor any legal rule of evidence: General Rule [31]. This is undesirable and creates uncertainty for WEL Networks.</i></p> <p><i>2. Further, as a Provider WEL Networks does not have a right of appeal from a Determination: General Rule [40]. In circumstances where the UDL Determination is binding but may not reflect the strict legal position, the result could be particularly harsh and unsatisfactory to WEL Networks.</i></p> <p><i>3. There is risk of Land Complaints without merit being lodged against WEL Networks as a Complaint can be lodged at no cost and with little effort; an investigation is conducted by the UDL at no cost to the Complainant; there is no risk in the outcome as a Determination is not binding on the Complainant unless accepted and, if not, the Complainant is free to pursue any remedy in any other forum (General Rule [36]).</i></p> <p><i>4. General Rule [15] stipulates that the UDL must not accept a Complaint for consideration if the value of the claim exceeds \$50,000. Many Land Complaints would exceed the \$50,000 limit, however, it is expected that so as to assess the value of a particular claim (and therefore determine whether the UDL can accept or not), the UDL would delve into the substantive Land Complaint, causing</i></p>
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				<p><i>inconvenience, delay and cost to WEL Networks.</i></p> <p><i>5. Land Complaints often deal with complex legal issues which ought to be determined by a Court of Law which will carry out an analysis of the legal framework and apply relevant legal principles and precedents in the circumstances. Unlike the UDL, the Court does not have the overarching objective of reaching a fair and reasonable outcome and, as such, there is no risk of ‘diluting’ the legal framework (including rights and interests) as part of the overall balancing exercise to reach a fair and reasonable outcome.</i></p> <p><i>6. The UDL should not investigate “the negotiations” related to obtaining any interest in Land. The potential to revisit and undermine a negotiated position creates uncertainty and could inappropriately scrutinise business and commercial decisions after the fact.</i></p> <p><i>7. The question of whether a Lines Company has adequately or reasonably carried out a maintenance programme should not, in itself, be the subject of a Complaint. In any event, the Electricity Authority and/or Commerce Commission are better placed to consider such question.</i></p>
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Memorandum

TO: Greg Skelton
FROM: Jules Darwin
DATE: 4 April 2018
SUBJECT: Consultation on UDL Scheme Review 2018

Purpose

The purpose of this memo is to seek approval to respond to Utility Dispute Limited's (UDL) consultation on proposed changes to the Scheme documents.

Background

The Utilities Disputes Board (the Board) is seeking submissions on its proposals to amend the Energy Complaints Scheme documents to implement recommendations from the Five Year Independent Review.

This document provides our proposed responses to the first round of consultation and is due to be submitted by 5 pm on Friday 6 April 2018.

Executive Summary

Of the 30 questions asked, 16 are proposed changes; we agree with 12 of the recommendations and disagree with 4. We have provided comment and or feedback to the remaining questions. In general, our views align with those of the Board. Our rationale and proposed responses are included in the following table and our response letter accompanies this document.

Questions and Proposed Responses

This section breaks down the 30 questions asked, 16 proposed changes, detailing both our proposed responses and our rationale for each one. The 'our view' column is for your information only and will not be provided to UDL.

Table 1: Proposed Changes and Responses

Principle/Area of document	#	Question	Board's view (if available)	Our View	Proposed Response
Accountability	1	Do you agree with the review's recommendation <i>The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes?</i>	The Board disagreed with this recommendation. For further information on the Board's view, see pt8 (a) of the consultation pack (above)	We do not believe that adding the provider names adds any value to the provision case notes and if anything has the potential to cause potential embarrassment for individuals involved in these cases.	Wellington Electricity agrees with the board.
	2	Do you agree with the Board's proposal for Utilities Disputes to name providers that breach scheme rules and guidelines?	Board proposes naming providers that breach scheme rules and guidelines	As per proposed response	Wellington Electricity does not agree that providers who breach scheme rules and guidelines should be named. Naming providers would not change the resolution of a complaint for a customer.
	3	Do you agree with the Board's proposal for Utilities Disputes not to name providers in its case notes?	Board does not accept recommendation to name providers in its case notes	We do not agree that UDL should name providers in its case notes as per comments above.	Wellington Electricity agrees with the board.
	4	If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?	Board seeks views before considering the issue further	As per proposed response	Wellington Electricity suggests that clear information and context is provided and what information was given to the provider to notify that the scheme was breached.
Natural Justice	5	Do you agree with the review's recommendation to <i>consider removing the principles of natural</i>	Explicit reference to natural justice in the list of principles is not needed and can be removed	We do not believe reference to natural justice is needed.	Wellington Electricity agrees with both reviewer and the Board.

Principle/Area of document	#	Question	Board's view (if available)	Our View	Proposed Response
		<i>justice from its scheme document?</i>			
	6	Do you agree with the Board's view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	Explicit reference to natural justice in the list of principles is not needed and can be removed	As per proposed response	Wellington Electricity agrees with the Board.
Performance Standards	7	Do you agree with the review's recommendation to remove performance standards relating to providers' self-reporting on compliance?	Board seeks views before considering the issue further	We do not agree with removing self-reporting on compliance. Although responses can be selective information we gather will be useful to the business and improving the customer experience.	Wellington Electricity disagrees with the reviewer recommendation on the basis that self-reporting adds value to improving the customer experience.
	8	Do you agree with the review's recommendation to remove performance standards relating to cost per case?	The Board believes a <i>cost per case</i> measure is not sufficiently linked to Utilities Disputes performance to justify a performance measure. However, the current measures should remain until new measures have been approved	If both reviewer and the board agree the costs per case is not sufficient we would support this being reviewed and replaced with a more appropriate measure.	Wellington Electricity supports the reviewer's recommendation to review the performance standards but not remove them until that review has taken place.
	9	Do you have ideas about other measures the Board could consider adopting?	Board seeks views before considering the issue further		Wellington Electricity does not have any further suggestions at this time but would welcome the opportunity to be involved in face-to-face consultation on this item.
Levies	10	Do you agree with the review's general recommendation that the levy mechanism needs to be changed?	Board seeks views before considering the issue further	We would support a review of the levy mechanism, though have no particular view on whether there are any issues with its current format but are open to its review.	Wellington Electricity supports the recommendation to review the Levy mechanism.

Principle/Area of document	#	Question	Board's view (if available)	Our View	Proposed Response
	11	What information do you think the Board needs, to help it decide what options are available?	Board seeks views before considering the issue further	As per proposed response	Wellington Electricity suggests reviewing an overview of payments made by scheme members to help determine if a 'member fee' is more appropriate than the current method.
	12	What elements of the current levy mechanism do you think work well and should be retained?	Board seeks views before considering the issue further	As per proposed response	Wellington Electricity does not have a view on what of the levy mechanism should be retained but is open to a review
	13	What elements of the current levy mechanism do not work and why?	Board seeks views before considering the issue further	As per proposed response	Wellington Electricity suggests the current tier payment system following a complaint reaching deadlock could be improved to better match the time spent by both scheme member and UDL.
	14	What levy options can you think of to address provider concerns about 'throwing money at complaints' to avoid the levy?	Board seeks views before considering the issue further	As per proposed response	Wellington Electricity suggests that the fee structures be modified to better reflect the time and complexity involved in resolving a complaint. This would result in reduced fees for complaints resolved within the first business day of reaching deadlock.
	15	What levy options can you think of to avoid senior staff spending more time on jurisdiction issues	Board seeks views before considering the issue further	As per proposed response	Wellington Electricity suggests that jurisdiction guidelines need to be better communicated through all channels, including scheme participants as well as via the scheme document, the UDL website and via

Principle/Area of document	#	Question	Board's view (if available)	Our View	Proposed Response
					junior staff. This will reduce unnecessary time taken by all parties in handling complaints which are ultimately determined to be outside jurisdiction.
	16	What levy options can you think of that would avoid delays (beyond the provider's control) triggering levy levels?	Board seeks views before considering the issue further	As per proposed response	Wellington Electricity suggests that firm response timeframes are provided to complainants for the provision of information. Complaints will often move to the next tier when the customer has not provided enough information to allow the scheme participant to resolve the complaint. Or, UDL may apply a 'grace' period when the complainant has not provided information by the suggested time.
	17	Do you agree with the recommendation <i>every organisation which is covered by the Scheme should make a contribution to its running costs?</i>	Board seeks views before considering the issue further	We agree every organisation covered by the scheme should contribute to running costs	Wellington Electricity agrees with the reviewer.
	18	Do you agree with the recommendation <i>there should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>	Board seeks views before considering the issue further	As above	Wellington Electricity agrees with the reviewer.
	19	Do you agree with the recommendation <i>The fixed element</i>	Board seeks views before considering the issue further	As above	Wellington Electricity agrees with the reviewer.

Principle/Area of document	#	Question	Board's view (if available)	Our View	Proposed Response
		<i>should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints?</i>			
	20	Do you agree with the recommendation <i>In keeping with the 'user pays' principle, any case reaching Utilities Disputes at deadlock should incur a fee?</i>	Board seeks views before considering the issue further	We agree that a fee should be charged when a complaint reaches deadlock, as this fairly reflects a fixed resource cost that we would have to support ourselves.	Wellington Electricity agrees with the reviewer.
	21	Do you agree with the recommendation <i>The current variable fee structure needs to be reconsidered?</i>	Board seeks views before considering the issue further	We support the recommendation to review all fee structures.	Wellington Electricity agrees with the reviewer.
Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme's approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a member has access to a Scheme for resolving the complaint)	We support reviewing this matter without necessarily having a fixed view on what impact this may have.	Wellington Electricity supports further investigation to be completed into the removal of land exclusions.
	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.	Board seeks views before considering the issue further	As proposed response	Wellington Electricity do not support this proposed change. We are concerned that the inclusion of complaints on these matters will not significantly improve outcome but instead serve to increase costs for all parties.

Principle/Area of document	#	Question	Board's view (if available)	Our View	Proposed Response
Other proposed changes - <i>Accessibility</i>	24	Do you agree in principle with the idea of a deemed membership mechanism?	Board seeks views before considering the issue further	As per proposed response	Wellington Electricity agrees with the idea of a deemed membership mechanism. Though distributors may include a referral to UDL as part of the new retailer induction process, we would suggest that the EA's creation of new retailer codes may be a better trigger point for new retailers' inclusion within the scheme.
	25	If implemented, do you think the deeming mechanism should apply to any scheme with mandatory membership that Utilities Disputes operates?	Board seeks views before considering the issue further	As per proposed response	Wellington Electricity agrees the deeming mechanisms should apply to all members moving forward or from a specific date.
	26	To enable fair contribution toward the costs of running the scheme, if implemented, when should the levy obligations for deemed providers start?	Board seeks views before considering the issue further	As per proposed response	Wellington Electricity suggests from the point that the Retailer gains its first customer.
	27	If implemented, when should other provider obligations (for example those in General Rule 12) start for deemed providers?	Board seeks views before considering the issue further	As per proposed response	Wellington Electricity suggests the date for all changes moving forward should be the same.
	28	Do you have other suggestions to address the problem of non-compliance with membership requirements to join the Energy	Board seeks views before considering the issue further	As per proposed response	Wellington Electricity suggests that Utilities Disputes liaise with the EA on appropriate measures.

Principle/Area of document	#	Question	Board's view (if available)	Our View	Proposed Response
		Complaints Scheme?			
Accessibility/ Efficiency	29	Do you agree with the proposed change to substitute “ <i>distributor</i> ” for “ <i>lines company</i> ” where they appear in the scheme documents?	Board thinks this will improve consistency in terminology.	As per proposed response	Wellington Electricity agrees with this change.
	30	If references to lines company were changed to distributor, what other steps, (including other potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?	Board seeks views before considering the issue further	As per proposed response	Wellington Electricity suggests that all documentation is updated with this change and accompanied by appropriate communication to participants and the public. If the reference is changed will a ‘lines charge’ need to be changed to a ‘distributors charge’?

Recommendation

The CEO approves our proposed responses to the consultation.

4 April 2018



Wellington Electricity
Lines Limited

85 The Esplanade
Petone, PO Box 31049
Lower Hutt 5040
New Zealand

Tel: +64 4 915 6100
Fax: +64 4 915 6130
www.welectricity.co.nz

Utilities Disputes Limited
PO Box 5875
Wellington 6140

Dear UDL

IISC is a service provider to we*

Wellington Electricity's Submission on Proposed Scheme Document Changes 2018

Wellington Electricity Lines Limited (WELL) welcomes the opportunity to respond to Utilities Disputes Ltd's (UDL) proposed changes to the scheme document.

In general WELL agrees with the recommendations and suggestions by both the Board and the reviewers.

Yours sincerely

A handwritten signature in blue ink that reads 'Howard Smith'.

Howard Smith - IISC

Customer Service Manager

Wellington Electricity

M +64 21 1145155 **D** +64 4 915 6162 **T** +64 4 915 6100 **F** +64 4 915 6130 **W** www.welectricity.co.nz

Email hsmith@welectricity.co.nz

Questions and Responses

We thank all energy retailers who provided feedback on the consultation we performed throughout December 2017 and January 2018 in relation to planned changes to our line charges. Feedback was received from eight energy retailers with a summary of that feedback and our responses provided in the table below.

Your feedback is an important component of our pricing development process and while we cannot accommodate all your feedback, we have taken it seriously and will feed it into our current and ongoing pricing development. We look forward to engaging with you further on our future pricing development.

Principle/Area of document	Qn #	Question	Board's view (if available)	Submitter's response
Accountability	1	Do you agree with the review's recommendation <i>The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes?</i>	The Board disagreed with this recommendation. For further information on the Board's view, see pt8 (a) of the consultation pack (above)	Wellington Electricity agrees with the board.
	2	Do you agree with the Board's proposal for Utilities Disputes to name providers that breach scheme rules and guidelines?	Board proposes naming providers that breach scheme rules and guidelines	Wellington Electricity does not agree that providers who breach scheme rules and guidelines should be named. Naming providers would not change the resolution of a complaint for a customer.
	3	Do you agree with the Board's proposal for Utilities Disputes not to name providers in its case notes?	Board does not accept recommendation to name providers in its case notes	Wellington Electricity agrees with the board.

Principle/Area of document	Qn #	Question	Board's view (if available)	Submitter's response
	4	If Utilities Disputes were to name providers in case notes, what other information do you think needs to be included?	Board seeks views before considering the issue further	Wellington Electricity suggests that clear information and context is provided and what information was given to the provider to notify that the scheme was breached.
Natural Justice	5	Do you agree with the review's recommendation to <i>consider removing the principles of natural justice from its scheme document</i> ?	Explicit reference to natural justice in the list of principles is not needed and can be removed	Wellington Electricity agrees with both reviewer and the Board.
	6	Do you agree with the Board's view that the explicit reference to natural justice in the list of principles is not needed and can be removed?	Explicit reference to natural justice in the list of principles is not needed and can be removed	Wellington Electricity agrees with the Board.
Performance Standards	7	Do you agree with the review's recommendation to remove performance standards relating to providers' self-reporting on compliance?	Board seeks views before considering the issue further	Wellington Electricity disagrees with the reviewer recommendation on the basis that self-reporting adds value to improving the customer experience.
	8	Do you agree with the review's recommendation to remove performance standards relating to cost per case?	The Board believes a <i>cost per case</i> measure is not sufficiently linked to Utilities Disputes performance to justify a performance measure. However, the current measures should remain until new measures have been approved	Wellington Electricity supports the reviewer's recommendation to review the performance standards but not remove them until that review has taken place.
	9	Do you have ideas about other measures	Board seeks views before considering the	Wellington Electricity does not have any

Principle/Area of document	Qn #	Question	Board's view (if available)	Submitter's response
		the Board could consider adopting?	issue further	further suggestions at this time but would welcome the opportunity to be involved in face-to-face consultation on this item.
Levies	10	Do you agree with the review's general recommendation that the levy mechanism needs to be changed?	Board seeks views before considering the issue further	Wellington Electricity supports the recommendation to review the Levy mechanism.
	11	What information do you think the Board needs, to help it decide what options are available?	Board seeks views before considering the issue further	Wellington Electricity suggests reviewing an overview of payments made by scheme members to help determine if a 'member fee' is more appropriate than the current method.
	12	What elements of the current levy mechanism do you think work well and should be retained?	Board seeks views before considering the issue further	Wellington Electricity does not have a view on what of the levy mechanism should be retained but is open to a review
	13	What elements of the current levy mechanism do not work and why?	Board seeks views before considering the issue further	Wellington Electricity suggest the current tier payment system following a complaint reaching deadlock could be improved to better match the time spent by both scheme member and UDL.
	14	What levy options can you think of to address provider concerns about 'throwing money at complaints' to avoid the levy?	Board seeks views before considering the issue further	Wellington Electricity suggests that the fee structures be modified to better reflect the time and complexity involved in resolving a complaint. This would result in reduced fees for complaints resolved within the first business day of reaching deadlock.

Principle/Area of document	Qn #	Question	Board's view (if available)	Submitter's response
	15	What levy options can you think of to avoid senior staff spending more time on jurisdiction issues	Board seeks views before considering the issue further	Wellington Electricity suggests that jurisdiction guidelines need to be better communicated through all channels, including scheme participants as well as via the scheme document, the UDL website and via junior staff. This will reduce unnecessary time taken by all parties in handling complaints which are ultimately determined to be outside jurisdiction.
	16	What levy options can you think of that would avoid delays (beyond the provider's control) triggering levy levels?	Board seeks views before considering the issue further	Wellington Electricity suggests that firm response timeframes are provided to complainants for the provision of information. Complaints will often move to the next tier when the customer has not provided enough information to allow the scheme participant to resolve the complaint. Or, UDL may apply a 'grace' period when the complainant has not provided information by the suggested time.
	17	Do you agree with the recommendation <i>every organisation which is covered by the Scheme should make a contribution to its running costs?</i>	Board seeks views before considering the issue further	Wellington Electricity agrees with the reviewer.
	18	Do you agree with the recommendation	Board seeks views before considering the	Wellington Electricity agrees with the

Principle/Area of document	Qn #	Question	Board's view (if available)	Submitter's response
		<i>there should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited?</i>	issue further	reviewer.
	19	Do you agree with the recommendation <i>The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints?</i>	Board seeks views before considering the issue further	Wellington Electricity agrees with the reviewer.
	20	Do you agree with the recommendation <i>In keeping with the 'user pays' principle, any case reaching Utilities Disputes at deadlock should incur a fee?</i>	Board seeks views before considering the issue further	Wellington Electricity agrees with the reviewer.
	21	Do you agree with the recommendation <i>The current variable fee structure needs to be reconsidered?</i>	Board seeks views before considering the issue further	Wellington Electricity agrees with the reviewer.
Land Complaint exclusions	22	Do you agree with the review's recommendations to remove the exclusions?	The Board is concerned the Land Complaint exclusions may impact on the Scheme's approval (scheme rules must provide for or set out that <i>any person</i> who has a complaint about a member has access to a Scheme for resolving the complaint)	Wellington Electricity supports further investigation to be completed into the removal of land exclusions.

Principle/Area of document	Qn #	Question	Board's view (if available)	Submitter's response
	23	If the exclusions were removed, what impact would this have on your business? Please provide examples and what information this is based on wherever possible.	Board seeks views before considering the issue further	Wellington Electricity do not support this proposed change. We are concerned that the inclusion of complaints on these matters will not significantly improve outcome but instead serve to increase costs for all parties.
Other proposed changes - <i>Accessibility</i>	24	Do you agree in principle with the idea of a deemed membership mechanism?	Board seeks views before considering the issue further	Wellington Electricity agrees with the idea of a deemed membership mechanism. Though distributors may include a referral to UDL as part of the new retailer induction process, we would suggest that the EA's creation of new retailer codes may be a better trigger point for new retailers' inclusion within the scheme.
	25	If implemented, do you think the deeming mechanism should apply to any scheme with mandatory membership that Utilities Disputes operates?	Board seeks views before considering the issue further	Wellington Electricity agrees the deeming mechanisms should apply to all members moving forward or from a specific date.
	26	To enable fair contribution toward the costs of running the scheme, if implemented, when should the levy obligations for deemed providers start?	Board seeks views before considering the issue further	Wellington Electricity suggests from the point that the Retailer gains its first customer.

Principle/Area of document	Qn #	Question	Board's view (if available)	Submitter's response
	27	If implemented, when should other provider obligations (for example those in General Rule 12) start for deemed providers?	Board seeks views before considering the issue further	Wellington Electricity suggests the date for all changes moving forward should be the same.
	28	Do you have other suggestions to address the problem of non-compliance with membership requirements to join the Energy Complaints Scheme?	Board seeks views before considering the issue further	Wellington Electricity suggests that Utilities Disputes liaise with the EA on appropriate measures.
Accessibility/ Efficiency	29	Do you agree with the proposed change to substitute " <i>distributor</i> " for " <i>lines company</i> " where they appear in the scheme documents?	Board thinks this will improve consistency in terminology.	Wellington Electricity agrees with this change.
	30	If references to lines company were changed to distributor, what other steps, (including other potential changes) do you think are needed to avoid changing the meaning of any clause(s) affected?	Board seeks views before considering the issue further	Wellington Electricity suggests that all documentation is updated with this change and accompanied by appropriate communication to participants and the public. If the reference is changed will a 'lines charge' need to be changed to a 'distributors charge'?