



ENERGY TRUSTS OF NEW ZEALAND INC.

Guidelines for Access to Information by Beneficiaries of Electricity Community and Customer Trusts

EXPLANATORY STATEMENT

The "*Guidelines*" referred to in this statement have been endorsed by the Minister of Energy and are recommended for adoption by all trusts who are members of the Energy Trusts of New Zealand Inc. [ETNZ]. There is no need for an individual trust to personalise the Guidelines, such as inserting the name of the trust, or to alter the Guidelines in any way whatsoever. Any such change will only create inconsistency and confusion to other parties who will be involved on an ongoing basis, such as the Reviewer, the Minister, and ETNZ itself.

Reason for the Guidelines

On 3 October 2000 the Government announced a comprehensive policy package designed to deliver fairness and transparency for electricity consumers. One of the measures was to provide access to information by beneficiaries of electricity trusts, and the intent of these Guidelines is to ensure that clear and transparent protocols are in place to promote accountability to beneficiaries.

Access to Information

The Guidelines provide for trust beneficiaries to have access to trust information, to attend annual meetings of the trust, and to have access to a complaints process for dealing with refusals to supply trust information. Most information about a trust's activities, financial affairs and performance will be readily available to beneficiaries through annual reports and meetings. Additional information would also be publicly available through a website or other means. However, there will be occasions where a trust withholds trust information or declines to provide such information and examples of this are contained in the Guidelines.

Request for Review

If a request for trust information is declined, the trust is to inform the beneficiary of the right to seek a review of the refusal by the trust to provide trust information. Where a review is requested, a "Reviewer" will be appointed by the Arbitrators' and Mediators' Institute of New Zealand Inc. ("AMINZ"). The Reviewer will investigate the complaint and may act as a conciliator in relation to the complaint. At the conclusion of the investigation the Reviewer will issue a written opinion on the complaint. Options available to the Reviewer are contained in the guidelines.

Role of ETNZ

ETNZ was asked to co-ordinate the work on developing these Guidelines so that individual trusts did not have to duplicate the process. Also, in order to ensure that individual trusts' codes or guidelines meet its requirements, the Government has urged trusts to work with

ETNZ, rather than develop their own guidelines. (Refer to the Associate Minister of Energy's address to ETNZ May 2006 Conference.)

The Guidelines state that ETNZ will take an active part in consulting and encouraging trusts to adopt these Guidelines. ETNZ is to receive the opinions from the Reviewer and circulate those opinions to all member trusts. ETNZ is also to produce and publish an annual report on the opinions of the Reviewers, a copy of which is to be provided to the Minister of Energy and to the Chief Executive Officer of AMINZ.

Procedures and Processes

A summary of the Guidelines, and the main changes to some of the earlier versions of the Guidelines, is set out below. Full details of the procedures, processes and arrangements with AMINZ are contained in the following documents that are available with this Explanatory Statement:

1. *Guidelines for Access to Information by Beneficiaries of Electricity Community and Customer Trusts.*
2. *AMINZ Protocol for Reviewers under Guidelines for Access to Information by Beneficiaries of Electricity Community and Customer Trusts.*
3. *Memorandum of Agreement Between Arbitrators' and Mediators' Institute of New Zealand Inc. and Energy Trusts of New Zealand Inc.*

SUMMARY OF THE GUIDELINES AND MAIN CHANGES TO EARLIER VERSIONS

Standard wording

The wording has been prepared on the basis the Guidelines can be adopted "as is", without the need for a trust to customise it for their own needs. As already stated, this was done to ensure consistency and to avoid confusion for Reviewers, ETNZ (in its monitoring and reporting role) and the Government. This is the expressed wish of the Government, as the Associate Minister also stated,

"We would also ask those trusts that have adopted an earlier version of the guidelines to ensure that they are now adhering to the final version."

Clause 1 Definitions

Changes: It has been necessary to insert a definition to cover word "Beneficiary", where it appears in the document. Another new definition is for "Trust Information", to avoid any confusion with general information, not being related to or property of a trust.

Clause 2 Purpose

Describes the purpose of the Guidelines – accountability of trusts to their Beneficiaries and the process for dealing with access to Trust Information.

Clause 3 Status

This clause states the trustees are obliged to comply with their obligations under the Deed, certain legislation and common law.

Clause 4 Commencement Date

Provides that the Guidelines will apply from the date on which they are adopted by a particular trust.

Clause 5 Meetings of Beneficiaries

Requires the trust to hold an annual meeting of Beneficiaries at which the auditor is to be appointed, Beneficiaries can question, discuss, or comment on the management of the Trust. Prior public notice of the meeting is to be given.

Clause 6 Disclosure of Trust Information

This is a fundamental clause that requires the trust to make Trust Information available to Beneficiaries. The trust must make available to Beneficiaries upon request all Trust Information which is publicly available. A Beneficiary can also request disclosure of other information, but the trust can withhold that information under certain circumstances. Those circumstances are essentially for privacy, commercial sensitivity, improper use, and where the request is vexatious or frivolous. The Trust can also notify the Beneficiary that it neither confirms nor denies the existence or non existence of certain information.

Changes: There are three new sub-clauses. New 6.1 requires the trust to make Trust Information available to Beneficiaries in accordance with their obligations under the law and pursuant to the Guidelines. The rest of the clause is re-numbered and new sub-clause 6.2 (f) makes it clear that the trust is obliged to make available to beneficiaries upon request any other information which a trust makes publicly available, whether through its website or any other means.

Also inserted is new sub-clause 6.4 (k), which adds another situation in which a trust can withhold information that is not Trust Information.

Clause 7 Procedure

This clause enables a Beneficiary to request Trust Information. As a first step, the Beneficiary must provide evidence to the trust's satisfaction that the person is a Beneficiary. Once satisfied, and no longer than 15 working days after receipt of the request for Trust Information, decide whether the request is to be granted. The clause then prescribes how the request is to be dealt with, if it is approved for release or if the request is declined and notification to the Beneficiary of the decision.

The Trust may fix reasonable charges for supply of the information, which may be prepaid if the trust so decides. If the request is declined, the trust must notify the Beneficiary in writing of their right to request a review of the refusal by the trust to provide any Trust Information requested. The Beneficiary must also notify the trust in writing of a request for a review of the trust's decision.

Changes: Old clauses 7.4, 7.5 and 7.6 have been combined for better presentation. New clause 7.5 allows the trust to fix reasonable charges in respect of the collection and provision of Trust Information and to be paid for those charges before any information is provided to the Beneficiary. Under clause 7.6 the Trust is required to advise the Beneficiary in writing of their right to seek a review of the trust's refusal to supply Trust Information.

Clause 8 Reviewer

Clause 8 is substantially rewritten into three parts, to provide for AMINZ as the reviewer, and requiring the trust to initiate the appointment process when a review of a trust decision is requested by a Beneficiary. Although not stated in the Guidelines the trust would, in practice, advise AMINZ of the request for a review and AMINZ will then appoint

the Reviewer. The trust is to advise the Beneficiary of the identity and contact details of the Reviewer, once appointed.

Clause 9 Review Process

Changes: Clause 9 is reworded and presented in a changed format. There is some renumbering, but the intent of the original clause remains, with some additions.

This clause says the Reviewer will conduct and conclude the investigation no later than 60 working days after receipt of the complaint. Within that time the Beneficiary and the trust are to be given the opportunity to provide written submissions. As before, the Reviewer has a number of options – to recommend the information be provided, that the trust’s refusal be upheld, and that the information not be disclosed.

Clause 9.1 now gives the Reviewer the power to act as a “conciliator” in relation to the complaint. New sub-clause 9.3 (d) states the Reviewer will deliver a copy of the opinion to the Beneficiary, to the trust, to ETNZ and to AMINZ.

Trusts should note the provisions of clause 9.4, which state that the trust is not required to carry out any recommendations made by the Reviewer to supply information.

Under clause 9.5, the Reviewer is entitled to charge the trust the reasonable costs incurred in respect of the investigation and the opinion. Change: previously the trust could seek costs from the Beneficiary if the Reviewer upheld the trust’s decision to refuse making information available. This provision has been removed.

Reviewer fee: The Reviewer’s fee will be charged on an hourly basis in accordance with the range set from time to time by AMINZ in consultation with ETNZ.

Clause 10 Monitoring of Compliance with Guidelines

In its annual report a trust shall report on the operation of the Guidelines, including the number of requests for information, (*not being information which is normally publicly available*), the costs incurred to process those requests, the number of trust decisions which were subject to review, a summary of the outcome of those reviews and the costs of those reviews. A copy of the trust’s annual report is to be sent to AMINZ, who has the right to audit the trust’s records in relation to the information in the report about the Guidelines. AMINZ will provide a report to the trust on any audit AMINZ may conduct.

Changes: The only change is to replace AMINZ in place of the Electricity and Gas Complaints Commissioner, as the auditor.

Clause 11 Review of Guidelines

Changes: This clause is wider than some earlier versions, which required the trust to review the Guidelines annually. Clause 11.1 now provides that the Guidelines shall be reviewed by each trust no later than two years after their adoption by that trust, and every three to five years thereafter, with no more than five-year intervals between each review.

Clause 11.2 states that prior to making any changes to the Guidelines, a trust shall consult with its Beneficiaries and other interest groups on the need for and content of any such changes. To assist in this consultation process, such consultation may happen at the

time of the annual meeting of that trust. By explanation, other interest groups could include Grey Power and consumer groups.

Clause 11.3 requires each trust to report the outcome of the review and any intention to amend the Guidelines to ETNZ. *It is important to note here* that if ETNZ does not support the proposed amendments, then AMINZ will *not* be required to appoint Reviewers under the Guidelines. The effect of that is the trust will be unable to have the complaint considered and it will be necessary for the trust to notify the Minister of this difficulty. The Minister will no doubt make his decision how best to proceed.

Clause 12 Energy Trusts of New Zealand Inc [ETNZ]

Previously ETNZ was required to consult with trusts in respect of the Guidelines, encourage trusts to adopt them and enabled ETNZ to make recommendations to any trust concerning the review of the Guidelines.

Changes: These three tasks have been added to. ETNZ will in future:

- Receive copies of all opinions of Reviewers and will circulate these to all member trusts.
- Produce and publish an annual report on those opinions and provide a copy to the Minister of Energy, and to the Chief Executive Officer of AMINZ, and,
- Report to the Minister annually, or at any other time as ETNZ in its discretion shall determine, on the content of all changes made by trusts to these Guidelines.

Clause 13 Publicity

As before, trusts are required to publicise its adoption of these Guidelines and inform Beneficiaries how they can obtain or inspect a copy – including publication through newsletters, websites and at annual meetings of Beneficiaries.

Conclusion

The Guidelines have been kept succinct to enable all trusts to meet the measures the Government announced in October 2000. Over time changes will be made and we urge trusts to refer any proposals for change to ETNZ for initial comment before changes are progressed. This is to maintain consistency of application for all electricity community and customer trusts.

Ken Gilligan
Chairman

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