

Model Retail Contract Workshop

Wellington - Friday, 22 April 2005

Copthorne Hotel Plimmer Towers
Corner of Boulcott and Gilmer Terrace
Level 6
Gilmer Room

9.00 am – 4.30 pm

Attendees

Bill Heaps – Chair	Mike Boyd - Vector
Alex Nisbet - Orion	Nanette Moreau - Electricity and Gas Complains Commission
Annette Scullion - Electricity Commission	Neville Ross - Orion
Airihi Mahuika - Electricity Commission	Nick Dwan - Genesis Energy
Brian White - Ministry of Economic Development	Pamela Caird - Contact Energy
Clive Bull - Vector	Paul de Aboitun - Powerco
Colin Starnes - Network Tasman	Peter Rutledge - Grey Power
David Berry - Grey Power	Peter Watt - EECA
David Close - Electricity Commission	Rachel Yarkowski - Meridian Energy
Helen Peacock - King Country Energy	Roop Bhullar - King Country Energy
Ian Burgess - Contact Energy	Ross Milner - Ministry of Economic Development
Jeremy Levy - TrustPower	Shaun Hayward - Mighty River Power
John Anderson - The Lines Company	Steve Cross - Contact Energy
Josephine Bartley - Ministry of Consumer Affairs	Steve Nightingale - Buddle Findlay
Ken Gilligan - Energy Trusts of NZ Inc.	Steve Rawson - Mighty River Power
Margot Forrest - Buddle Findlay	Tim Whiteley - Contact Energy
Mark Carter - Mighty River Power	Tony Bittar - NZPVA
Martin Shaw - NZPVA	Trevor Staw - Genesis Energy
Mel Orange - Meridian Energy	

Also in Attendance

Robert Reilly - Senior Advisor Retail, Electricity Commission (EC)
Jacinda Papps - M-co

1. Introduction and objectives of the meeting (Bill Heaps and Robert Reilly)

The workshop opened at 9.10am.

The Chair, Bill Heaps, introduced himself as the Chair for today's meeting, the Retail Market Advisory Group and the Wholesale Market Advisory Group. The Chair welcomed all participants to the model retail contract (MRC) workshop and thanked those who travelled to attend.

The Chair noted that the issues surrounding the MRC's are very important, topical and contentious. The objective of the workshop was identified as an opportunity to gain clarity around the key issues regarding the contracts and move towards resolution of these key issues in order to finalise the work stream.

2. Presentation from Robert Reilly

Robert Reilly- Senior Advisor, Retail welcomed the participants to the workshop.

The Senior Advisor presented the background to the MRC work stream, outlined the work done to date and the main issues arising from submissions received on the contracts. The presentation slides are attached to the minutes as Appendix One. It was noted that MRC is a high priority for the EC.

The Senior Advisor noted that both the current and previous versions of the Government Policy Statement on Electricity Governance (GPS) have reasonably specific requirements for the EC regarding the development of a MRC, in particular the current GPS requires the EC to:

“...prepare, in consultation with the Ministry of Consumer Affairs and consumer representatives, minimum terms and conditions for contracts with domestic consumers. The following features should be designed into the contract:

- Transparency of charge components;
- Frequency of billing;
- Company-specific arrangements for dispute resolution;
- Arrangements for consumer protection with respect to outages;
- Use of bonds; and
- Arrangements regarding the availability of prepayment meters to domestic consumers at reasonable cost.”

The Senior Advisor highlighted that the prepayment meter requirement in the February 2002 version of the GPS which required the development of “rules to ensure that all retailers serving more than 25 per cent of the market for domestic consumers in a line network area, measured by the number of customers to whom profiling applies, must offer prepayment meters to domestic consumers at reasonable cost” was no longer part of the current GPS.

It was noted that the MARIA Governance Board (MGB) undertook the development of the MRC and Model Distribution Arrangements. The MRC project team (under MARIA) comprised an independent chair, consumer, retailer and distributor representatives. The MGB, in its handover of MARIA work streams to the EC (dated 27 February 2004), noted that the development of a model domestic consumer contract is a GPS deliverable. Therefore it is a high priority for the EC. The MGB recommended that the EC consider the MRC and carry out the consultation it considers necessary and appropriate. The EC Board agreed with this recommendation. The Senior Advisor noted that this workshop, to discuss the main issues arising from submissions, is an outcome of the consultation process.

The Senior Advisor noted that there are three Draft Model Contracts for Domestic Consumers, specifically:

- The Model Retail Contract for Domestic Consumers (Interposed);
- The Model Retail Contract for Domestic Consumers (Retailer); and
- The Model Retail Contract for Lines Services.

However, it was also noted that the majority of the work to date has been on the interposed agreement.

Consultation yielded a large number of high quality submissions and the Senior Advisor noted that the quality of the contracts has improved as a result. It was noted that 11 issues were identified as needing further work. When considering these, the EC Board questioned

whether a generic contract was the best mechanism to protect consumers and discussed possible alternatives, such as the development of guidelines or a code.

The Board requested a workshop be held to consider whether it is appropriate to have model retail contracts or guidelines and, if appropriate, to finalise the model retail contracts. This was in addition to discussing the main issues.

The Senior Advisor noted that, in addition to today's workshop, there was a forum on electricity consumer issues held in Christchurch with representatives of organisations who have frontline experience of dealing with consumers. This was held on 30 March 2005 and was chaired by Electricity Commissioner David Close (also in attendance today).

With respect to whether guidelines or a model contract is more appropriate, the Senior Advisor asked whether the Electricity and Gas Complaints Commission's Code would be a suitable guideline.

It was noted that the main issues for discussion are:

- Alignment with other supply contracts
- Transparency of invoices
- Length of contract
- Tenant vs Property owner contractual obligations
- Contract formation
- Performance commitments
- Amount of bond
- Distributed generation

A participant questioned whether there is a definition for domestic consumer. It was noted that at present there is not one, but a definition would be needed.

The Senior Advisor noted that the EC plans to develop a MRC for small and medium enterprises during the 2005/2006 financial year.

3. Presentations

Steve Nightingale (Buddle Findlay)

The Chair introduced Steve Nightingale from Buddle Findlay, it was noted that Steve is a partner in the commercial law team specialising in the energy sector (among other areas), Steve is a member of the Executive Committee of the Energy Law Association.

The presentation is attached to the minutes as Appendix Two.

Buddle Findlay has been appointed to finalise the draft Model Contracts with changes resulting from submissions, it was noted that they have been specifically working on the interposed contract to date.

The presenter noted that the scope for Buddle Findlay was to review the following specific issues and propose an approach to deal with each of these:

- Contract formation;
- Alignment with distribution agreements;
- Transparency of invoices;
- Owner vs. occupier issue;
- Increase in capacity demands;
- Tree trimming; and
- Distributed generation.

The presenter outlined each of the issues and the proposed approach to deal with each.

Contract Formation

It was noted that the contract provided two methods for contract formation, these were

- Retailer's acceptance of customer's application; or
- Use of electricity supplied by retailer, where no application has been made.

It was noted that the second method was inaccurate and that a contract would not always be formed upon use of electricity by customer. The proposed solution was electricity use gives rise to a contract only after customer has received notice of retailer's terms. Additionally, it was noted that general contract law would still apply but that it is useful to retain a contract formation clause.

Alignment with distribution agreements

It was noted that, in addition to the MRC, the model distribution arrangements and transmission benchmarking arrangements are also being developed by the EC. This will lead to contracts for all areas in the supply chain. It was noted that all contracts will need to be aligned and that this alignment will be an iterative process.

Transparency of invoices

The GPS requires the EC to include "transparency of charge components" in retailer-consumer contracts. To date Buddle Findlay has made the following amendments to address practical issues raised in submissions:

- Extension of timeframe to 3 months for retailer to provide notice of decrease in distributor's charges; and
- Exemption for prepayment meters from requirement to show distributor's charges separately.

Owner vs. occupier issue

A submission noted that the MRC's imposed obligations on the tenant of a premise, as the likely party to a contract for supply, which should rightly fall on the property owner. Specific instances quoted included the installation, location and protection of meters and related equipment and clearing trees and vegetation from lines. It was suggested that such clauses were better included in a connection agreement with the property owner.

The EC's response was that distributors are free to enter into connection contracts if they wish and provisions should remain in the contracts for situations where the consumer is the property owner tenant's responsibility to have arrangements with landlord where necessary.

Increase in capacity demands

It was noted that submissions were made on the clause requiring consumers to inform the Retailer (or Distributor in Conveyance and Lines agreements) if he/she expected to increase significantly the amount of energy used. The submissions noted there was no distinction made between kWh consumption and capacity demands. Of prime interest and importance was where a customer planned to increase peak demand. It was noted that the issue was that increased use is only significant if peak consumption is affected. The proposed solution from Buddle Findlay is that the customer only needs to notify the retailer of proposed significant increase during hours of peak consumption.

Tree trimming

It was noted during submissions that the clause requiring consumers to keep trees, vegetation and other obstacles clear of lines and related equipment should be amended to better reflect the regulations and safety requirements. The issues regarding this were identified as:

- The draft contract required consumers to keep trees clear of lines;
- The consumer might not own the trees (eg. if a tenant);
- The tree regulations only impose obligations on tree owners;
- Domestic contract needs to be clearer on rights and obligations under the tree regulations; and
- More emphasis on potential danger required.

Buddle Findlay propose that:

- The obligations only apply in respect any trees than the consumer owns;
- An outline of tree regulations to be included in Schedule 1 for information purposes; and
- The contracts should be more explicit statement about potential dangers with reference to relevant safety regulations.

Distributed generation

Submissions were made on the requirement for consumers to obtain prior written consent if they wish to generate and send electricity through the Network. It was noted that a new schedule has been included based on the draft provisions from EECA and that this only relates to the payment for generated electricity. Any other matters will be dealt with in a connection contract.

Questions/Comments

- *A representative of the NZPVA noted that more advantages from distributed generation accrue than the slide shows. The representative asked if Buddle Findlay has a provision for these?*

It was noted that the EC would be open to a proposal and would include it in a model contract if it could be.

- *With regards to contract formation, if a person takes a product without a contract AND without the owner's knowledge (such as taking power before a contract is formed) is this theft?*

It was noted that the common law principle of quantum meruit allows for a retailer to obtain compensation for electricity taken prior to contract formation. It was noted that this situation often arises with 'move-ins' as the retailers do not disconnect and reconnect between each tenant. The time between occupiers leads to ambiguity. A participant suggested a retrospective clause that covers electricity consumption prior to contract formation.

- *A participant requested feedback from the forum held in Christchurch.*

It was noted that copies of the minutes of this forum were available at the start of the workshop.

- *How does the MRC align with a model tenancy agreement?*

It was noted that this alignment had not been investigated to date.

[The workshop broke for morning tea at 10.03 am and reconvened at 10.15 am.]

Nanette Moreau (Electricity & Gas Complaints Commission (EGCC))

The Chair introduced Nanette Moreau (Electricity & Gas Complaints Commission), it was noted that Nanette joined the Office of the EGCC in April 2002, prior to this she has practiced as a lawyer and a mediator.

The presentation is attached to the minutes as Appendix Three.

The presenter thanked the EC for the invitation to speak to the EGCC submission. It was noted that the presentation would cover the following discussion points:

- Contract Formation/Termination;
- Landlord/Tenant Issues;
- Invoices;
- Switching;
- Length of Contract; and
- Bonds.

Contract Formation/Termination

The presenter discussed the legal Framework and when a contract is formed. It was noted that the EGCC code of practice (COP) clause 23.7 states, "For new Consumers, Retailers must have in place an effective process to ensure there has been an offer and acceptance of the Consumer Contract." The presenter asked, if the power is available (i.e. not disconnected) and the customer turns the light on, whether this is offer and acceptance?

The presenter noted that approximately 70% of complaints are about billing and the issues regarding contract formation leads to many of these complaints. It was noted that the information provided to consumers on sign up is sometimes not to a required standard.

It was noted that there is no legislative requirements regarding termination and no specific requirement in the Code.

The presenter noted that the EGCC was not sure what "immediately by you ceasing to be a domestic customer" meant in clauses 152 – 155 of the draft contracts.

Invoices

The EGCC Code states that invoices must be clear and easy to understand. It was noted that the majority of complaints that the EGCC get are around the 'due date' in an invoice and the use of estimates as opposed to actual meter reads. It was noted that the complainants are primarily concerned with how estimates are derived. There have been instances where consumers have gone for two years without an actual meter reading.

The presenter questioned the definition of 'due date' and the relationship to the prompt payment discount date.

The presenter noted that the MRC would need to explain how estimates are derived and allow for a consumer to take their own readings.

Switching

The main issue regarding customer switching is - who is responsible for communication? Another issue is around the date of the switch and the fact that many consumers are not aware that there is a 23 day time frame within which a switch can take place.

Length of Contract

The presenter noted that the contract is lengthy and raised the question whether the consumer will take notice of such a large document. It was noted that a guide to the contract might be useful. Anecdotally, consumers do not often recall seeing the terms and conditions.

Bonds

The presenter noted that the EGCC Code requires bonds to be a reasonable amount, a retailer must explain why the bonds are required, and the amount of the bond must relate to the expected loss if a consumer does not pay.

Questions/Comments

- *A participant noted that there is no right for a retailer to terminate in the contract*
The presenter noted that most retailers' contracts have a termination clause. The Senior Advisor noted that the MRC does not cater for this, and that this was a deliberate omission. It was noted that the retailer has more power than the consumer and the retailer can terminate if the consumer is in breach of the contract. The retailer cannot terminate just because they want to, they must have a valid reason to do so.
- *Is the issue of contract formation being looked at the wrong way? Do consumers need to approach retailers for power? Most consumers assume that the electricity will be on upon moving into an abode. It was noted that the consumer should be responsible for approaching the retailer.*
It was noted that this issue goes back to that of offer and acceptance. A consumer must pay for any electricity used.
- *Many people move locations without informing the retailer, for example flatmates moving from a flat but the flat still getting supplied under the former flatmate's name.*
It was noted that whoever is named on the contract is ultimately responsible, even if they have moved from the dwelling and are not technically receiving supply.

Steve Cross (Contact Energy)

The Chair introduced Steve Cross from Contact Energy, it was noted that Steve is the General Manager, Trading for Contact Energy.

The presentation is attached to the minutes as Appendix Four.

The presenter asked the participants whether the MRC should be high-level principles or highly prescriptive, at present it is highly prescriptive. Contact believes that model contracts must add value to consumers and other industry participants. The contract provisions should address a demonstrated need or problem, be the best available option to address that problem, provide a net benefit, and be consulted upon (good process as required by the GPS). There are a number of provisions in the draft contracts whose purpose seems unclear or that would result in a net cost if implemented.

It was noted that the model contracts are trying to be all things to all people.

The EC states in its response to consultation "*when the EC reviews the uptake of the model contracts it will look at underlying principles rather than specific wording of individual contracts.*" These "underlying principles" are not spelled out anywhere.

The presenter noted a concern that the model contracts contain provisions that have not been rigorously analysed (as per prescribed good process) and therefore are not appropriate as the basis for regulation, one such example is the clause regarding payment of interest on bonds. This is a high cost to retailers and it is not evident that this clause has had a cost benefit analysis applied to it.

Commissioner Close noted that the contracts were inherited and that he hoped to define some key principles in the workshop.

The presenter noted that Contact's preference is for a principle-based approach to the MRC. Therefore, it was proposed that a list of essential provisions is identified and the draft contracts are substantially edited to remove "optional components" and operational aspects. It was noted that if the contracts are to be kept largely the way they are (prescriptively written), then Contact propose that as much ambiguity be removed as possible. The presenter noted concern that many issues have been raised in consultation but have not been adequately addressed. Responses such as "*noted - model contract is voluntary*" or "*noted - the contract can be tailored to individual retailers' circumstances*" may raise questions of interpretation when the EC reviews compliance.

Invoices: Should retailers be required to itemise lines company charges?

The presenter noted that Contact does not agree that retailers should be required to itemise lines company charges. It was noted that it is unclear what problem this would solve and that no other options have been identified.

The presenter asked why should cost of any input be itemised and that lines company charges are no different from cost of metering, cost to serve and the cost of energy. It was noted that it would be technically difficult to do this regarding embedded networks (complex), conversion of GXP-based lines pricing (complex) and prepayment meters (not possible). Additionally, the presenter noted that this would be costly to implement, Contact's cost estimated at \$2.75 million, including changes to bill format, requiring major changes to billing software, a customer education programme, and additional ongoing analytical support to ensure correct application of all network company tariffs on the bills. It was noted that this would not add value, rather this would result in an increased cost to consumers, increased barriers to entry for retailers, and increased confusion to consumers. Contact provided an example of an unbundled bill; this can be seen in slide 5.

The presenter noted that Contact's market research indicates that customers want simple, easy to read bills and that bill unbundling would significantly increase complexity of bills without adding meaningful information, this would increase costs to consumers. The presenter noted that bill unbundling should not be mandatory, rather a point of differentiation and competitive advantage for some retailers.

Bonds

It was noted that bad debts are a major cost, this can be built into tariff costs. The presenter noted that Contact try to act socially responsibly regarding disconnections and invest lots of effort into reducing bad debts. Contact believe that retailers should be able to charge up to 2 months' equivalent of an average customer charges as this better reflects the credit risk exposure of a retailer. Retailers cannot disconnect customers within one month, two months bond better reflects the amount owed at disconnection and is therefore fairer on the retailer.

The presenter noted that bonds should not accrue interest, this would be impractical to implement and be a major administrative effort. It was noted that this is inconsistent with other government policies, for example Tenancy Services, a division of the government Department of Building and Housing, does not pay interest on the bonds it holds for

landlords, and these bonds are larger amounts held for longer periods of time. Contact believes that the cost of implementation would outweigh benefit to consumers.

Performance Commitments

The presenter questioned why performance commitments are needed in the MRC and noted that the wording in the draft contracts is too prescriptive, noting that this has the potential to inhibit innovation and would require costly compliance monitoring system. It was noted that it should be up to individual companies to determine what their standards are and how they are implemented. This is a point of differentiation for a retailer, all strive to give good service.

Distributed Generation

The presenter noted that the model contract should deal with general provisions, rather than cater for the exceptions. The presenter outlined Contact's approach for dealing with distributed generation, it was noted that Contact has been purchasing electricity from distributed generation sites for a number of years. Electricity vendors read their own meters and send invoices for payment. It was noted that this reflects normal commercial practice for anyone vending goods. Provisions in the MRC are unnecessary, too prescriptive and costly to implement.

Questions/Comments

- *A participant noted that Contact Energy has included an additional line on its invoices for the EC Levy, and noted that this is unbundling of costs.*
The presenter noted that this is a very simple unbundling of costs (similar to GST).
- *How do consumers know that they are being charged the correct amount if they don't know what is being charged?*
All tariffs are published.
- *A participant noted that you know you are charging the correct price if you are charging what you offered your consumers.*
- *A participant noted that people want to see what is driving price changes. This can be achieved by a simple separation on the bill.*
It was noted that there is a need to assess what the EC is trying to achieve with such clauses in the MRC and then identify the best way to meet such objectives.

Neville Ross and Alex Nisbet (Orion)

The Chair introduced Neville Ross and Alex Nisbet from Orion, it was noted that Neville is the Commercial Contracts and Pricing Manager at Orion, he is responsible for Orion's delivery pricing, its agreements with electricity retailers and the valuation of its fixed assets. It was noted that Alex Nisbet is a Commercial Analyst with Orion.

The presentation is attached to the minutes as Appendix Five.

The presenter noted that the Orion presentation focuses on three areas of interest. These are:

- Alignment;
- Distributed Generation; and
- Transparency.

Alignment

It was noted that the interposed arrangement has one contract, the domestic contract for delivered electricity. This is where customers contract entirely with their retailer, via this contract, retailers supply energy and purchases distribution service from the distributor and the distributor may provide some services to customers (eg faults call centre, new connections and alterations).

Under a conveyance arrangement there are two contracts, the domestic contract for electricity only and the domestic contract for distribution only. In the first of these contracts the customers contracts with their retailer for purchase of electricity, and customers contract with their distributor for purchase of distribution service, via the second of these contracts. It was noted that the EC focus is on the interposed arrangement (as this is the most common arrangement).

The presenter noted that, under Orion's Network Access Agreement, the retailer is required to include some conditions and requirements from the distributor in "Domestic contract for delivered electricity", such as:

- No guarantee of continuous service;
- Distributor's equipment:
 - Provide suitable housing;
 - Do not interfere with it; and
 - Provide distributor with access to maintain and operate.
- Compliance with all statutory requirements;
- Terminated if interposed agreement is terminated (omitted from new clause 152); and
- Liability limitations – consumer guarantees act applies plus specific amounts, compatible with the OEGCC scheme (omitted from new clauses 140 – 146).

Distributed Generation

The presenter noted that the current schedule 2 is good, but suggested as alternative title: "Payment and other arrangements for electricity you send into the network".

Transparency

The presenter noted that Orion support clarity for customers regarding their purchases and suggested that in the interposed approach the invoice should show charges for delivered electricity. For the conveyance approach invoices should separately show charges for electricity (retailer), and charges for distribution (distributor). The presenter noted that Orion do not support incorporation of distribution charges when an interposed approach applies.

The presenter noted that clause 36 (interposed contract) should be deleted because:

- Distributor's charges are irrelevant to this domestic contract;
- Distributors already publicly disclose their prices;
- Extraneous information confuses customer;
- Not available if distributor has wholesale pricing, unless converted into retail form - varying by retailer, causing more confusion;
- In UK, "confusing bills are often the reason for their debt" – Energywatch CEO on fuel poverty issue;
- In the contractual context the GPS requirement is met without clause 36; and
- Clauses 30 & 31 are acceptable, but not strictly needed.

Questions/Comments

- *A participant noted that most retailers look at a lifetime value of a customer rather than a year-to-year relationship. It was noted that retailers do not often pass through extreme prices, these are smoothed out for consumers.*

- *It was noted that it is perceived that the electricity industry earns excessive profits and transparency may place downward pressure on prices.*
- *A participant noted that a common definition of transparency will need to be ascertained.*

Peter Rutledge (Grey Power)

The Chair introduced Peter Rutledge from the Grey Power Federation of New Zealand, it was noted that Peter is a current member of the Retail Market Advisory Group of the EC as a consumer representative.

The presentation is attached to the minutes as Appendix Six.

Transparency of Invoices

The presenter noted that this is a controversial issue, but it has been included in the GPS for good reason, to help consumers see how and why their bills are increasing. Additionally, it is not just a case of listing line and energy charges but detailing all components of an account that arise after supply is taken at the GXP

Length of Contract

The presenter noted that the contracts are too long and complicated for the average domestic consumer. It would be preferable to have a simple document comprising an agreement to supply by the retailer and to pay the cost by the consumer. All other aspects pertaining to supply could be contained in a “Code of Practice” or “Code of Ethics” which would only require to be referred to in cases of dispute.

Bonds

The presenter noted that bonds should be avoided if at all possible. To be effective, a bond needs to be of a reasonable sum and this is generally beyond the means of consumers where one would normally be required. Preference needs to be given to the use of prepayment meters or a system of regular and frequent payments for consumers on limited income. The latter can be readily arranged through the consumer’s bank account

Distributed Generation

The presenter noted that distributed generation has many advantages, not the least of which is the deferment of substantial investment in transmission. However the use of natural resources for this purpose should be encouraged. Enthusiasts should be encouraged to develop small renewable units such as wind or solar. A standard formula should be derived for payment to the consumer for electricity fed back into the network.

Questions/Comments

- *It was noted that delivered energy prices have increased by over 30%, and that line charges are not a major aspect in the increase in delivered energy prices.*
- *It was noted that there are different sets of legislation regarding distributed generation and that the MRC has to reflect this. It was noted that the main issue with this is the fact that the distributed generation regulations are still being updated.*

The Chair thanked the speakers and requested that the participants reflect on the morning session during the lunch break. It was noted that MARIA looked at key principles in the development of the model contracts, this analysis started with the ECC principles. The Chair asked that participants think about the key principles for the MRC and whether consideration of the EGCC key principles should be the initial step.

[The workshop broke for lunch at 12.00 pm and reconvened at 1.10 pm.]

4. Workshop session

The Chair noted that the purpose of the workshop is to ascertain various points of view regarding the issues associated with the MRC. The aim is not to get resolution on these issues. The Chair outlined the format for the afternoon session:

- Introduction- Commissioner Close.

Issues:

- Guideline or contract:
 - Is the EGCC Code appropriate?
- Alignment with other supply contracts:
 - Tenancy Agreements;
 - What to align with, how far to go; and
 - Timing of reviews.
- Transparency:
 - Accuracy of information;
 - Price Signals;
 - Costs;
 - Retailers choice to absorb or cross subsidise;
 - Complexity; and
 - Consumer confusion.
- Length of contract:
 - Short form of contract, mandated in the contract setting out the basic rights and obligations (referring to the main contract).
- Tenancy versus property owner contractual obligations:
 - Tenancy agreement alignment.
- Contract Formation:
 - Retailer's right to terminate;
 - Is this a real issue; and
 - Any solutions?
- Performance Commitments;
- Amount of bond/interest on bonds;
- Distributed Generation; and
- Definitions.

Introduction- Commissioner Close.

Commissioner Close thanked both the Chair and the workshops for the robust discussion. The context for the MRC work stream task was outlined, the Commissioner noted that there are 2 ½ pages in the GPS regarding consumer protection, this section has been brought forward in the current GPS reflecting the increased importance of this issue. It was noted that the GPS states that the EC is to promote competition and maintain constant downward pressure on prices and that these contracts are part of this process.

It was noted that the EC wants contracts that are easy and cost effective to implement. The EC is keen for the market to work without too many rules.

The Senior Advisor, Retail thanked the participants for the debate during the morning session and noted that the speakers were specifically chosen. The Senior Advisor noted Contact's comments regarding a principle versus prescription based contract and stated that principles (applied largely from the EGCC COP) formed the basis of the MRC.

The Senior Advisor noted that the GPS recommends that the EC use models/guidelines rather than rules/regulations.

The Senior Advisor noted that the MRC currently has footnotes where a clause relates to the EGCC COP and questioned whether footnotes be added where a clause relates to the GPS requirements. This will show clauses that are principles and clauses that are included for completeness. There will also be clauses in square brackets; these are clauses that are nice to be included, but not necessary.

The Senior Advisor noted that the EC would look at the structure of the contracts as a result of today, with the aim to achieve balance and fairness.

The Chair summarised, noting that both the GPS and EGCC COP feed into the MRC, which also includes some discretionary clauses. It was noted that the structure is the same format as a contract, participants were asked whether a series of information papers would be more appropriate.

Participants noted that the contracts should use similar wording as would normally be used with customers. A participant queried the level of flexibility retailers have to change the wording of the model contract without changing the legal interpretation. Participants agreed that terminology is important and that a 'preferred list of terminology' would be useful for users to utilise, for example rate, price, tariff and charge have similar meanings and all are used.

Alignment with other supply contracts

- MDA;
- Transmission Contracts
- Tenancy Agreements; and
- Interposed versus conveyance.

It was noted that the focus would be on alignment in electricity, the alignment to tenancy agreements to be discussed under the tenancy versus property owners section.

The workshop discussed how best to keep these contracts aligned over time and noted that if these contracts remain highly prescriptive, alignment will be difficult in a dynamic industry. It was noted that there is a lengthy process to change. A participant noted that it is a very important point to ascertain how to keep these contracts in line with changes in product offers, for example dual energy.

It was noted that guiding principles rather than prescriptive clauses would be more beneficial in an environment where a retailer may have to contract with 30 different distributors, all of whom have different practices.

Transparency

Workshop participants identified some issues relating to transparency:

Consumer	Other
Accuracy of information	Complexity
Accuracy of price signals	Cost
Demand side action	Customer Confusion
No distortion	Competitive environment- cross subsidy pr bundling, retailer ability to package in a competitive environment
	Commercial sensitivity

In a competitive environment retailers wish to maximise advantages and any requirement to publish all prices would decrease the competitive right of retailers.

A participant noted that consumers have access to newspapers, the internet, Powerswitch and the Citizens Advice Bureau and that newspapers are not the main medium for information exchange anymore. It was noted that the main point to remember is that a consumer only wants to know when/if/what the changes are regarding prices.

A participant noted that recent customer surveys have shown that over 90% of consumers look at total price only, this is a different message to that from consumer representative groups. Retailer representatives noted that they are happy to disclose information, but the main issue is the method of disclosure and that transparency on invoices is not seen as the most appropriate method. Retailers see this solution leading to more customers querying their bills each month. The increase in information will lead to an increase in customer queries each month. This will increase the cost to all consumers for the 10% that would like more information.

The Senior Advisor noted that this is a GPS requirement, a participant noted that it is also a requirement of the GPS for the EC to go through a process to identify all reasonably practicable options and assess whether any options have a net benefit before proceeding with work stream tasks.

A participant noted that network charges may need to be simplified if invoices are going to be transparent.

Tenancy versus property owner contractual obligations

A participant noted that a set of obligations for a property owner may need to exist aside from the tenancy agreement. It was noted that this is not the correct forum to discuss and that this should be included in legislation for property owners. There was a suggestion for a connection agreement with the landlord and another agreement with the tenant, the connection agreement would then survive different tenants.

Amount of bond/interest on bonds

Participants noted that the requirement for bonds originated from the GPS but highlighted that bonds are not the only option. It was agreed that the GPS statement regarding bonds is highly prescriptive. A participant also noted that there is not a net benefit for retailers regarding interest on bonds, the administration costs are high for the potential small returns to the consumer. It was noted that electricity bonds are small compared to those required in tenancy agreements.

It was noted that retailers are commercial entities and the reality of the situations is if they can't get a bond in some areas then some of these customers will not get supplied at all. A retailer noted that some in some flats the first flatmate may be disconnected, then the second flatmate will be reconnected, then they may be disconnected and so on. This can lead to a flat getting free electricity.

It was noted that the aim is to ensure continual supply of electricity but not at the expense of the retailer. It was noted that the RMAG sees electricity as an essential service therefore there is some social responsibility in the industry. The RMAG has defined two key principles regarding low income consumers, that is, no disconnections and no additional credit risk to the retailers. The participants agreed that a clear distinction between the 'can't pay' and 'won't pay' consumers is needed.

Participants discussed a fixed fee bond option and questioned whether this would be a better option than one month or two months bond. There was general preference for a fixed fee, it was noted that the amount of bonds charged range from \$100-\$200 at present. However, a fixed fee in legislation will not get adjusted for inflation, there is a definite risk with this.

Contract Formation

- When formed:
 - On signing;
 - When electricity is taken.
- Switching issues;
- Termination rights.

Participants discussed when a contract is formed, there was a suggestion that a contract could be formed when a start read is made, with the property owner responsible for the interim period from a previous tenants final read and the new tenants start read. Buddle Findlay summarised what happens in the interim period. It was noted that a contract is formed when there has been offer and acceptance and questioned what the contract is in respect of the interim period. It was noted that a contract could be made retrospectively (i.e. start from the final meter read of the previous tenant) but this might not be fair. It was noted that if there is no contract a retailer could use quantum meruit and claim reasonable amounts.

Participants discussed the use of programming prepayment meters to repay debt, i.e. purchase \$20 of electricity, \$7 goes to debt repayment and \$13 to electricity. It was pointed out that prepayment meters are associated with dwellings not people, so if the bad debtor moved out, the new tenant might be repaying someone else's debt.

[The workshop broke for afternoon tea at 2.55 pm and reconvened at 3.15 pm.]

It was noted that a participant at the Christchurch forum raised an issue regarding frequency of meter reads and suggested that the requirement that meters be read quarterly be changed to meters to be read every two months. This was suggested to resolve issues of estimates. A participant noted that there is a difference in cost regarding meter reads for urban and rural areas and suggested that the meter read requirement could be every two months for urban areas and three months in rural areas.

Length of contract

The workshop participants discussed the possibility of having a short form contract and a guideline. Participants agreed that the EGCC COP is a good size. It was noted that customers don't tend to read their contracts in advance. Supply is organised before they receive the terms and conditions.

A participant asked if a customer received the short form contract are they bound by the full contract. It was noted that the customer would need to be offered the full terms and conditions on request to be binding.

Performance Commitments

It was noted that the area of performance commitments is where retailers differentiate themselves from other retailers and a question was asked whether a consumer should reasonably expect performance agreements from retailers in the form of a model contract.

Participants questioned how prescriptive a model contract should or shouldn't be. Most participants agreed that this should be left to the retailers, performance commitments are driven by competition.

Distributed Generation

It was agreed that there is a need to avoid going into areas that the regulations will cover with regards to distributed generation. It was noted that the MRC is trying to capture that consumers can sell electricity and that connection issues will be covered in the regulations.

A participant queried whether schedule 2 could be a separate agreement. Overall there were diverse opinions as to whether the distributed generation clauses should be retained in the MRC or not.

Definitions

It was noted that definitions for due date and domestic need to be developed. The Chair asked participants if participants could identify any more definitions that need development. A participant noted that the definition of domestic becomes blurred for farmers, dairy sheds and consumers working from home. The Senior Advisor noted that a MRC for small and medium enterprises is on the retail work plan for 2005/2006.

Participants discussed the term 'due date' with respect to the prompt payment discount (PPD) date, it was questioned whether a PPD date is defined. A participant noted that the PPD is actually the due date and that if consumers pay on this date they get the benefit (in terms of the discount) of the retailer not having to chase the arrears.

The possibility of retailers who have prepay meters cooperating with retailers who have low income customers was mentioned.

The Chair thanked the participants for attendance noting that there was good discussion of issues and consideration of other's perspectives and points of view.

The workshop closed at 4.15 pm.

Appendix One: Presentation from the Senior Advisor, Retail

(Attached to email as a separate file: Appendix One Robert MRC Presentation.ppt)

Appendix Two: Presentation from Buddle Findlay

(Attached to email as a separate file: Appendix Two Buddle Findlay MRC Presentation.ppt)

Appendix Three: Presentation from EGCC

(Attached to email as a separate file: Appendix Three EGCC MRC Presentation.ppt)

Appendix Four: Presentation from Contact

(Attached to email as a separate file: Appendix Four Contact MRC Presentation.ppt)

Appendix Five: Presentation from Orion

(Attached to email as a separate file: Appendix Five Orion MRC Presentation.ppt)

Appendix Six: Presentation from Grey Power

(Attached to email as a separate file: Appendix Six Grey Power MRC Presentation.ppt)