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Dear Bronwyn

Complaints Resolution Schemes

Genesis Power Limited, trading as Genesis Energy, welcomes the opportunity to provide a submission to the Electricity Commission (Commission) and Gas Industry Company (GIC) on the consultation paper "Proposal to Approve a Joint Electricity and Gas Complaints Resolution Scheme" dated March 2009.

Genesis Energy's responses to the consultation questions are in Appendix A and additional comments are set out below.

Introduction

Genesis Energy supports the objective that all electricity and gas customers should have access to effective and efficient complaints resolution services. However, Genesis Energy does not agree that approving the Electricity and Gas Complaints Commission (EGCC) in its present form is the best means of achieving this objective.

Genesis Energy's reservations concerning the proposal are:

- doubts as to whether the EGCC is the best scheme for all consumers and retailers; and
- concerns about the mechanism of 'approving' a monopoly scheme.

Genesis Energy is also uncomfortable with the process that the Commission and GIC are using to reach their preferred outcome, particularly given that it proposes to extinguish an otherwise viable complaints resolution service.

Given these reservations about process and potential outcome, Genesis Energy recently voted against changes to the EGCC scheme requested by the Commission and the GIC.

Genesis Energy's vote was not an attempt to prevent consumer access to good quality complaints resolution services. Genesis Energy is a member of the EGCC and supports an outcome that involves all energy customers, regardless of where they live or who their retailer is, enjoying access to good quality, fit for purpose complaints resolution services.

The remainder of this submission discusses the bullet points above, followed by comments on the process to date and the options now available.

Complaints Resolution Schemes

The evaluation panel will have considered applications for approval from schemes that operate in different ways, for example:

- the EGCC scheme mirrors schemes in other countries and sectors that have adapted the parliamentary ombudsmen tradition to suit a private sector setting. The scheme's methodology involves progressing through conciliation, investigation, and recommendation stages; and
- the EGDRS scheme is based on the tradition of non-court dispute resolution, also found in other sectors and countries. The scheme's methodology involves progressing through conciliation, mediation and arbitration stages.¹

From Genesis Energy's perspective, it is not clear that one approach is unequivocally better than the other approaches, or that one scheme delivers better outcomes than the other schemes. It is therefore disappointing that the consultation paper does not provide any analysis of the relative merits of the applicant schemes. This omission leaves most submitters in the dark as to whether they should agree with selection of the EGCC as the preferred scheme.

¹ Genesis Energy is not familiar with the methodology or tradition of the third application, Dispute Resolution Services Limited, but notes that it is an established provider in other sectors and uses a conciliation-adjudication approach for telecommunications disputes.

Genesis Energy understands that advantages of the EGDRS scheme include quicker resolutions, the opportunity for face-to-face meetings, and significantly lower complaint-handling costs. The first two of these advantages are likely to appeal to member companies and complainants alike. The third advantage should appeal to regulators, member companies, and non-complainant customers.

This is not to say that the EGDRS scheme does not also have disadvantages relative to the EGCC scheme. However, the consultation paper does not provide any basis for assessing this. In the absence of any such analysis, the most visible advantage of the EGCC scheme is incumbency. Genesis Energy would be disappointed if incumbency were a decisive factor in selecting the EGCC.²

Monopoly Approval

The Commission and the GIC are proposing to make membership of their selected scheme compulsory for all industry participants. Setting aside the question of which scheme is selected, Genesis Energy does not support this mechanism and believes that other approaches would be preferable.

The 'approved scheme' mechanisms in the Electricity and Gas Acts³ are better suited to the scenario of approving multiple schemes for each sector than to the scenario of approving a single scheme. If a single scheme is ultimately the preferred option, then use of a more conventional 'regulatory' mechanism would be preferable.

The 'monopoly approval' approach has weaknesses in terms of the enforceability of scheme rules and fees, and the incentives on the scheme to perform. It offers, in effect, the worst of all worlds:

- accountability for good process and satisfactory service levels would primarily be via the scheme's need to retain regulatory approval, but this mechanism is weak if competing schemes are extinguished at the outset and the threat of the regulators actually revoking approval is, in reality, very slight; and
- accountability for cost effective and timely performance is primarily via the same approval mechanism, and so is similarly

² Genesis Energy received information regarding evaluation and selection of EGCC as a preferred scheme from the Electricity Commission on 9 April in response to a request under the Official information Act. This information confirms that the EGCC and EGDRS are both viable schemes with very similar evaluation scores and with incumbency accounting for much of the difference between the evaluation panel's assessments of the schemes.

³ Section 158G of the Electricity Act 1992 and s43E of the Gas Act 1992.

weak. Industry ownership and partial governance wouldn't be able to add much pressure on performance in a monopoly approval setting.

Process Flaws

Genesis Energy is pleased that the Commission and the GIC have worked together during the latter stages of this process. Genesis Energy is also pleased that the regulators have recognised their obligation to consider options other than approving the EGCC, and have recognised that compulsory codes of practice cannot be a feature of an approved monopoly scheme.

However, the process since the previous consultation round does not seem to have done enough to dispel the impression that approving the EGCC as the sole scheme may have been a predetermined outcome. An impression of predetermination could arise from the following factors in particular:

- in 2005, again in 2006, and once more in 2007, the GIC recommended that the Minister approve the EGCC as a complaints resolution service for gas;⁴
- in 2006, the Commission decided that it would only approve one scheme. At that time, the EGCC was the only operating scheme;⁵
- the first joint consultation paper from the Commission and the GIC (dated March 2008) started with the premise that the regulators would approve a single scheme;⁶
- the current consultation paper is silent on the merits of any of the applicant schemes other than the EGCC; and
- government policy statements for gas and electricity are detailed and directive with respect to complaints resolutions services, rather than focussing on objectives and outcomes as per their statutory mandates.

⁴ Refer submission by the GIC to the EGCC dated 2 November 2007 regarding codes of practice for discussion of the first two recommendations (<http://www.egcomplaints.co.nz/images/Gas%20Industry%20Co.pdf>). Refer joint Commission and GIC consultation paper "Approval of a Joint Electricity and Gas Complaints Resolution Scheme" dated March 2008 for mention of the third recommendation (<http://www.electricitycommission.govt.nz/pdfs/opdev/retail/consultationdocs/Consultation-Paper.pdf>) p14.

⁵ Refer <http://www.electricitycommission.govt.nz/opdev/retail/consumercomplaints/archive>

⁶ Refer <http://www.electricitycommission.govt.nz/opdev/retail/consultationdocs/ElecGasComplaints>

An impression of predetermination has implications for the integrity of the request for applications (RFA) process, the consultation process, and the various policy development process obligations set out in the Electricity and Gas Acts.

Genesis Energy also considers that it is problematic that the consultation period spans the voting process for EGCC amendments. This leaves Genesis Energy, and all other submitters, with considerable uncertainty as to what happens next. It also prematurely extinguishes the option of approving one of the other applicant schemes. The consultation paper seems to have treated a successful EGCC vote as a *fait accompli*. Genesis Energy would have preferred not to have been forced to exercise its effective veto of the proposed EGCC constitutional changes at this stage of the process.

Options

The Commission and the GIC have a range of options that they could pursue from this point. Genesis Energy recommends that a fresh start, with a re-evaluation of objectives and options, is the best strategy for reaching an appropriate outcome.

Genesis Energy is concerned that the Commission and the GIC could be tempted to stop working together on complaints resolution at this stage. Genesis Energy would be disappointed if this were the case, because it is sensible for the regulators to adopt a consistent approach given the close links between gas and electricity retail.

The following sections discuss the merits of some of the options that the Commission and GIC may consider.

Approve the EGCC or the EGDRS

Approving either of the applicant schemes at this point would be problematic:

- the EGCC has not been able to alter the design features as requested, so approving the scheme as it stands would strengthen any perceptions of predetermination and weaken the legitimacy of the current consultation round; and
- the EGDRS was not the regulators' preferred scheme and has not been consulted on as an option.

Genesis Energy maintains that the 'approval' mechanism is not suited to a sole provider outcome.

Implement a 'service provider' model

If the regulators remain convinced that the benefits of a sole provider approach clearly outweigh the benefits of a multiple provider approach, then a regulated service provider model would probably be the best mechanism for achieving this.

The case for favouring a sole provider approach would need to be strong enough to warrant extinguishing the EGDRS (and potentially the EGCC). Genesis Energy is not convinced that the case is sufficiently strong, but anticipates that as a small player the EGDRS may not have a strong enough veto authority to preserve its existence.

To implement this option, the regulators would need to go through an appropriate policy development process, followed by a service provider selection process. Key features for successful application of this approach would include:

- service provider contestability;
- contractual transparency;
- enforceability; and
- contractual incentives for good service provider performance.

A downside of this option (as with any sole provider option) is that it limits opportunities for innovative entrants.

Approve Multiple Schemes

The consultation paper doesn't assess the option of approving multiple schemes. Genesis Energy considers that this is a viable option with some advantages over a sole provider approach.

In particular, approving multiple schemes provides:

- access for all consumers to a scheme, regardless of their lines area or their retailer;
- regulator oversight of scheme performance in terms of process and consumer outcomes;
- competitive pressure on resolution times and service cost;

- benchmarking between schemes; and
- adaptability.⁷

Approving multiple schemes also avoids extinguishing any viable schemes that meet the regulators' approval standards and are serving their customer's needs.

Genesis Energy considers that the regulators may overstate the downsides of approving multiple schemes. The following table sets out brief responses to the concerns noted in the consultation paper.

CONCERN	RESPONSE
Customer confusion	Requiring schemes to operate a 'no wrong door' policy as a condition of approval would avoid this problem.
Confusion over jurisdiction	Requiring suitable protocols for file handover and cooperation between schemes as a condition of approval would address this problem.
Duplication of costs	Any costs from duplication should be weighed against the downward pressure that competition and benchmarking would have on costs, as well as the other benefits of approving multiple schemes.

Approving multiple schemes could also preserve the option of moving to a regulated service provider approach at a later date if operating multiple schemes proves problematic.

Conclusion

Genesis Energy recently voted against changes to the EGCC constitution based on concerns that a vote in favour of the changes would pre-empt the outcome of the consultation process.

⁷ To maximise adaptability benefits, Genesis Energy considers that nationwide coverage should not be a condition of approval. As long as participation in an approved scheme is compulsory, each scheme can adapt its geographic coverage to suit its membership. This could also allow regional approaches to evolve if particular regional needs or characteristics merit a unique approach.

Genesis Energy looks forward to the Commission and the GIC continuing to work jointly towards an option that will provide the best outcomes for consumers and industry participants.

Genesis Energy considers that approving multiple schemes is the best option, and that contracting for complaints resolution services is the best sole provider option.

If you would like to discuss any of these matters further, please contact me on 04 495 3348.

Yours sincerely

A handwritten signature in black ink that reads "Ross Parry". The signature is written in a cursive, flowing style.

Ross Parry
Regulatory Affairs Analyst
Genesis Energy

Appendix A: Responses to Consultation Questions

QUESTION	COMMENT
<p>Q1: Do you agree that the EGCC Scheme arrangements represent an appropriate basis for a single nationwide complaints resolution scheme for electricity and gas?</p>	<p>No.</p> <p>The consultation paper does not provide any information on the merits of other candidate schemes. From information that Genesis Energy has obtained, it appears that the EGDRS scheme has similar merits to the EGCC scheme.</p> <p>Genesis Energy does not agree that 'approval' of a scheme that was formed in a voluntary setting is an appropriate basis for implementing a mandatory nationwide monopoly scheme.</p>
<p>Q2: Do you have particular areas of concern that would lead you to making suggestions for changes to the EGCC scheme?</p>	<p>Complaints resolution under the EGCC is relatively costly, lengthy, legalistic and detached.</p>
<p>Q3: Do you agree that approval should be on the basis of an indefinite term, while encouraging cost-effective performance through the independent review process?</p> <p>If not, do you have any additional observations on the merits of a fixed-term?</p>	<p>No.</p> <p>The effectiveness of an independent review process would largely depend on how strongly the incumbent approved scheme perceived the threat of losing approval, or losing its monopoly on approval.</p> <p>Under the proposed approach, the EGCC's main rival would be extinguished at the outset, leaving the Commission and the GIC without much leverage.</p> <p>If a single scheme is approved, then it would be prudent to repeat the 'request for applications' (RFA) process in advance of the expiry of each term. For example, if the term of</p>

QUESTION	COMMENT
	<p>approval was five years, then an RFA could be issued in the third quarter of the fourth year. To be credible, the RFA evaluation criteria would need to avoid any unnecessary bias towards the incumbent scheme.</p>
<p>Q4: Do you agree that the transition to an approved EGCC scheme should be relatively straight-forward?</p> <p>Do you have any views on how the transition should be managed?</p>	<p>Genesis Energy agrees that transition should be relatively straightforward.</p> <p>However, given the process flaws to date, and that approval would extinguish at least one viable alternative scheme, there could be a risk of judicial review interrupting the transition.</p> <p>Also, given the limitations of the 'monopoly approval' mechanism there could be a risk of one or more parties 'holding out' by refusing to become a member of the EGCC.</p> <p>To be clear, Genesis Energy is not threatening either of these actions but is wary of the destabilising effect should any other party decide to pursue either of these options.</p>
<p>Q5: Do you agree that the Service Provider Regulated Scheme and the Fully Specified Regulated Scheme are the only reasonably practicable alternatives to approving an applicant scheme, which meet the proposed regulatory objective?</p>	<p>No. Refer cover letter section on options.</p>

QUESTION	COMMENT
<p>Q6: Do you agree that the costs and benefits set out in the table are the main costs and benefits that need to be considered?</p>	<p>Each option places different incentives on the CRS scheme (or schemes) with respect to costs and service performance. This could have a significant effect on net public benefit over time.</p> <p>Adaptability benefits should include consideration of the scope for innovation.</p>
<p>Q7: Do you agree that the simple scoring system set out in the table is a reasonable way of comparing costs and benefits across the options?</p>	<p>A simple scoring system is a useful technique for screening options when costs and benefits are not readily quantifiable, and the impact of the decision does not warrant a more rigorous evaluation approach.</p> <p>In this case, the impact of the decision is reasonably significant, especially for the EGDRS and its members.</p> <p>Given this, the outcome of the scoring system may help inform the decision, but it should not be determinative.</p>
<p>Q8: Do you agree that the range of weighting of costs and benefits in the table are reasonable?</p>	<p>No.</p>

QUESTION	COMMENT
<p>Q9: Do you agree that the Approved Scheme option (approving the EGCC Scheme) is the best of the reasonably practicable options?</p>	<p>No.</p> <p>Genesis Energy considers that:</p> <ul style="list-style-type: none"> • approving multiple schemes is probably the best option; • the regulated service provider model is probably the best sole-provider option; and • the status quo, perhaps with enhanced information for consumers, is probably a better option than approving the EGCC scheme.
<p>Q10: Do you agree that the Approved Scheme option (approving the EGCC Scheme) would yield overall benefits that are reasonably material and that these benefits would outweigh the slight increase in overall costs that could be expected relative to the Status Quo?</p>	<p>No.</p> <p>Genesis Energy expects that complaints resolution costs are likely to escalate if EGCC is approved as a monopoly scheme.</p>