



20 April 2009

Bronwyn Christie
Electricity Commission
Level 7, ASB Bank Tower
2 Hunter Street
WELLINGTON

First Floor
Genesis Energy Building
Cnr Woodward St & The
Terrace
PO Box 10568
The Terrace
Wellington 6143
New Zealand

Genesis Power Limited
trading as Genesis Energy

Telephone: 04 495 6350

Fax: 04 495 6363

By email: submissions@electricitycommission.govt.nz

Dear Bronwyn

Supplementary Submission on Complaints Resolution Schemes

Genesis Power Limited, trading as Genesis Energy, welcomes the opportunity to provide a supplementary 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.

This submission is in addition to our main submission dated 15 April. This submission is a response to the last minute extension of the submission deadline, and the provision of additional information by the Commission following requests under the Official Information Act (OIA).

No Clear Basis for Preference

Genesis Energy has reviewed the evaluation panel report released in response to OIA requests. The report does not provide a strong case for preferring the Electricity and Gas Complaints Commission (EGCC) to the Electricity and Gas Disputes Resolution Service (EGDRS), let alone for extinguishing the EGDRS.

The report reveals that the EGCC and EGDRS are both viable schemes that can (with minor amendments) satisfy the performance standards that the regulators seek.

The panel evaluated both schemes against a set of evaluation criteria and settled on a weighted score of 85.0 (from 100) for the EGCC against 71.9 for the EGDRS. The scoring is subjective, and for many of the criteria it is debatable as to whether the EGCC should have achieved a higher score than the EGDRS.

The panel separately considered the costs of the schemes and found that the figures put forward by both schemes were comparable, with a slight advantage to the EGDRS. The values put forward by the EGDRS are an estimate of the costs involved in scaling a relatively small scheme up to provide full nationwide coverage for all retailers and lines companies. Genesis Energy has some doubts as to whether this provides an accurate comparison of likely costs.

Scheme Philosophies

At a high level, the regulators are seeking a scheme that aligns reasonably closely with the Australian Commonwealth Government's "Benchmarks for Industry-Based Customer Dispute Resolution Schemes" ("the benchmarks").¹

The preface to the benchmarks document sets out under the heading "Emphasis on Alternative Dispute Resolution" that:

"The benchmarks should be approached in a spirit of seeking resolution by consensus as far as possible at an early stage to reduce costs, increase productivity and build better relationships between the parties."

In its February board paper on complaints resolution, the Electricity Commission observes that:

"The emphasis with the EGDRS scheme is placed on conciliators settling complaints early, rather than gathering facts and investigating particular issues. This is intended to be a differentiating feature of the EGDRS scheme."²

Genesis Energy's agrees with the Commission's observation that the EGDRS scheme focuses on early, consensus-based resolution of complaints.

In contrast, the EGCC scheme places a greater emphasis on third party investigation, which has consequences in terms of time, cost, and complainants' interaction with the resolution process. The EGCC scheme also

¹ The benchmarks are a voluntary guidance document published in 1997 by the Australian Commonwealth Government. <http://www.treasury.gov.au/contentitem.asp?NavId=014&ContentID=1124> .

² Electricity Commission board paper "Consumer complaints resolution scheme – consultation on selection of preferred provider", dated 8 February 2009, paragraph 25.

places a greater emphasis on supporting complainants through the complaints process.

While the EGCC's approach may appear more complainant-friendly, the comparison is not so clear-cut. An investigation-centred process can easily tend towards being formal and legalistic. Similarly, complainant assistance can turn into complainant advocacy and a consequent loss of impartiality. Taken together, these characteristics can lead to scope creep, and can run counter the objective of early, consensus-based resolution.

The evaluation report and the board report don't address these issues in these terms. However, the Commission and the panel seem to have taken the arguably closer alignment of the EGDRS to the Australian benchmarks philosophy as a negative.

Evaluation Criteria

The evaluation panel scored both schemes similarly, with the differences to the total scores mostly relating to a few key criteria.

Procedures

EGCC score 8.5, EGDRS score 6.5 out of 10.³

The panel considered that both schemes equally encourage an informal approach, but that the EGCC, with its focus on investigation and fact gathering, has procedures that are more "robust".

Genesis Energy's perception is that the EGCC scheme's investigatory approach is quite formal and legalistic. Also, complainants don't have the same opportunity for face-to-face resolution as with the less centralised EGDRS approach.

Accessibility

EGCC score 6.7, EGDRS score 4.6 out of 7.

The panel's evaluation of this criterion again rests on the perception that an investigatory methodology is preferable to a resolution-focussed methodology.

Decision Making

EGCC score 12.0, EGDRS score 9.0 out of 15.

³ All scores are from the panel's secondary round of scoring (carried out following face-to-face meetings with representatives of each scheme).

Once more, the difference in scoring rests on the panel favouring an investigatory approach. The panel has attached value to centralisation of decision-making, citing consistency and accuracy as virtues of the EGCC scheme.

The EGDRS scheme empowers regional dispute makers to issue determinations because they are directly in contact with complainants. This can readily be seen as a strong virtue of the EGDRS scheme, rather than a weakness.

It's not clear that consistency and 'accuracy' should necessarily be treated as more valuable than timely and 'close' decision-making. The Australian benchmarks document mentions consistency and fairness in relation to the 'accountability' benchmark, but doesn't elevate consistency above other characteristics.

Also, it's not clear that the EGCC scheme would actually produce more consistent decisions than the EGDRS scheme. The EGCC scheme rules explicitly state that the Commission is not bound by any previous decisions.⁴ EGDRS dispute resolvers are similarly not bound by previous decisions, but the scheme rules explicitly set out an obligation to take into account any previous decisions.

Skills and Experience

EGCC score 10.0, EGDRS score 6.0 out of 10.

The difference in scores seems to reflect a bias towards the incumbent. The EGCC gains a higher score because it has been operating the longest. The EGDRS has "a strong background in dispute resolution" and employs people with sector experience.

Stakeholder Support

EGCC score 5.1, EGDRS score 2.4 out of 6.

The difference in scores again seems to reflect a bias towards the incumbent. The EGDRS is a smaller and younger scheme, and is less visible than the EGCC. The panel seems to have relied on unsolicited expressions of support, rather than directly testing stakeholder support in light of information regarding both schemes.

⁴ Clause B1.4.

Scheme Costs

Both the EGCC and EGDRS charge member companies a fixed per-ICP rate and a variable per-complaint rate. The EGCC revises per-complaint costs on a quarterly basis to reflect changes in active complaint numbers and variable costs. Based on recent data from the EGCC, the comparison of per-complaint costs is shown in the table below.

Stage	EGCC	ERDRS
	Qtr 3 08/09 Variable Fees (\$)	Proposed Variable Fees (\$)
Complaint	258	500
Facilitation	3760	
Investigation	7220	
Investigation/Mediation		2500
Ruling	2570	1500
TOTAL	13,808	4,500

The evaluation report lists budget costs of the EGCC and the EGDRS as \$1.62M and \$1.51M respectively. According to the report, the EGCC uses a 63:37 split between fixed and variable costs, while the EGDRS uses a 50:50 split. The total variable cost components of the schemes' budgets are therefore \$599k and \$755k for the EGCC and the EGDRS, respectively.

Given the lower per-complaint cost structure of the EGDRS, this seems to imply that the EGDRS has assumed a much greater volume of complaints.

The evaluation report points out that the EGDRS scheme has had to estimate the costs of expanding to provide nationwide coverage, and to incorporate new retailer members, distribution company members, and Transpower. Genesis Energy agrees with the evaluation panel that EGDRS seems to have relied on EGCC's published costs to guide its estimates.

Given the points above, Genesis Energy is not convinced that the budget figures the panel has received provide a useful indicator of likely "real world"

costs. Genesis Energy is also concerned that approving either scheme on its own could lead to cost escalation in future.

Other Features

One of the features of the EGCC that concerns Genesis Energy is that it creates incentives weighted very heavily in favour of complainants. Ultimately, this is to the detriment of retailers and non-complainant customers alike.

The EGCC scheme:

- is free for complainants;
- costs up to \$14,000 per complaint for member companies;
- has a time-limited facilitation stage, but the investigation process is not time-bound;
- produces rulings that are binding on member companies, but not on complainants; and
- does not provide an appeal mechanism.

Taken together, these features place complainants in a very strong position and leaves member companies vulnerable to abuse of process.

In contrast, Genesis Energy understands that the EGDRS scheme operates under the framework of the Arbitration Act 1996. This provides that rulings are binding on both parties, and can be appealed on points of law. The EGDRS is free for complainants, accessible, and independent. Taken together, these characteristics seem to provide a fair balance between complainants and members.

Conclusion

Genesis Energy is not convinced that the Commission and the GIC have a strong basis for selecting the EGCC as their “preferred scheme”.

Differences in evaluation panel scores for the two schemes are largely accounted for by factors relating to incumbency of the EGCC scheme, and by the panel’s view on the relative merits of an investigation-centred model versus a resolution-focussed model.

The panel does not appear to have received useful information for comparing the costs of the two schemes. Genesis Energy expects that the EGDRS is a

lower cost scheme on a net public cost basis, primarily because it uses a faster and fairer process for reaching resolution by consensus.

For clarity, Genesis Energy is not advocating that the Commission and the GIC should approve the EGDRS instead of the EGCC. Our main submission provides further discussion on process and other issues.

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