



20 April 2009

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Dear Lisa,

APPROVAL OF A JOINT ELECTRICITY AND GAS COMPLAINTS RESOLUTION SCHEME

Introduction

1. Mighty River Power appreciates the opportunity to make a submission on the Electricity Commission and the Gas Industry Co's consultation paper "Proposal to Approve a Joint Electricity and Gas Complaints Resolution Scheme" (the "CRS consultation paper"), March 2009. Responses to the CRS consultation paper's questions are contained in the Appendix to this submission.
2. No part of our submission is confidential and we are happy for it to be made publicly available.

Opening comments

3. Mighty River Power does not support the Electricity Commission and GIC's draft decision to approve the EGCC as the sole/monopoly provider of a complaints resolution scheme ("CRS") for the electricity and gas markets. We consider the EGCC CRS to be too slow in dealing with disputes and too costly. We do not consider the EGCC to be efficient. We believe approval of the EGCC CRS alone would be detrimental to the long-term interests of end-users, except for a very small minority of consumers who do not have access to a CRS at present.
4. We do not believe the Electricity Commission and GIC have demonstrated that the EGCC is superior to the EGDRS or that the EGCC should be selected at the expense of the EGDRS. The evaluation that has been undertaken of the two schemes is subjective and highly debatable. At best we believe the evaluation demonstrates that both the EGCC and EGDRS are viable schemes with the question of which is superior dependent on individual customers' preferences. Mighty River Power would only support approval of the EGCC CRS if the EGDRS CRS was also approved.
5. Mighty River Power also does not believe the CRS consultation paper offers the full range of reasonably practicable options. We consider that reasonably practicable options include:

- a. The status quo.
 - b. A modified status quo in which all gas and electricity utilities are required to be a member of a CRS (whether one is approved or not), possibly with the EGCC as the default scheme.
 - c. Approval of the EGDRS proposal.
 - d. Approval of both the EGDRS and EGCC proposals.
6. We acknowledge that “The Panel agreed not to consider the DRSL application further because it did not conform to the requirements set out in the RFA”, and the comment that the DRSL “recommended that the Commission and GIC agree to integrate the resources and dispute management expertise of DRSL with those of the selected preferred applicant.”¹ We agree this means approval of the DRSL is not a reasonably practicable option, at this point in time. We consider though that the Electricity Commission and GIC should be open to approving the DRSL in the future if it submitted a revised scheme. As reflected later in this submission the DRSL appears to have performed well in the telecommunications industry in terms of speed and cost.
7. The EGCC recently² had a membership vote on whether to make further changes that would bring the EGCC Scheme into line with the Evaluation Criteria. This vote received less than 50% support from electricity retailers; with Genesis Energy, Mighty River Power and Energy Online voting against the changes. The voting results, in part, reflected concerns about the EGCC’s performance (time and cost) which Mighty River Power does not believe is serving the long-term interests of end-users. We believe the best way to resolve these concerns is through contestability of CRSs. Sole approval of the EGCC by the Electricity Commission and GIC would only result in the EGCC having a statutory monopoly which would likely entrench and exacerbate concerns about its performance. We also felt that the EGCC was taking a ‘tick the box’ approach to attempting (unsuccessfully) to meet the Electricity Commission and GIC’s Evaluation Criteria, rather than focusing on making changes that would actually benefit end-users; namely developing a streamlined and faster approach to dealing with customer complaints to ensure they are dealt with (typically) in a number of days rather than months.

Evaluation undertaken of the CRS proposals

8. The CRS consultation paper does not provide any basis on which approval of the EGCC can be adjudged to be superior to any of the alternative options listed above. The CRS consultation paper asserts “A detailed and comprehensive evaluation process resulted in the Evaluation Panel recommending the EGCC Scheme as the preferred applicant. This recommendation was endorsed by the boards of the Electricity Commission and the Gas Industry Co.”³ This statement is not adequate to rely on for surety that approval of the EGCC alone is the best option.
9. We have reviewed the Electricity Commission’s Board Report “Consumer complaints resolution scheme – consultation on selection of preferred provider” (Board meeting: 17-18 February 2009) and the Electricity Commission/GIC Evaluation Report “Electricity and Gas Complaints Resolution Scheme – Applications for Approval under the Gas Act and Electricity

¹ Paragraph 16 of the Electricity Commission’s Board Report “Consumer complaints resolution scheme – consultation on selection of preferred provider”, Board meeting: 17-18 February 2009.

² 3 April 2009.

³ Paragraph 5.4 of the CRS consultation paper.

Act” (February 2009). We consider (as reflected above) that these reports provide sufficient grounds for rejecting the DRSL proposal, but consider that at best they provide an arguable case that the EGCC proposal is superior to the EGDRS. Even then the evaluation was based on an assumption the EGCC would make further changes to its scheme that it has not been able to make. Even if the conclusion that the EGCC scheme is superior to the EGDRS this is not sufficient grounds for rejecting the EGDRS. Some energy utilities and consumers will invariably prefer the EGDRS’ less formal, regional and much faster mediation process to that of the EGCC scheme. We believe this choice should remain open to both energy utilities and consumers.

10. We discuss various aspects of the evaluation below.⁴
11. We disagree with the Electricity Commission and GIC’s claim that “The EGCC scheme procedures encourage an informal approach”.⁵ We consider the opposite to be the case. Our experience with the EGCC is that its approach is overly formal and legalistic. We do not believe a scheme that takes on average 5-months to deal with complaints should be rated highly (8.5 out of 10) for its procedures, nor should it be rated higher than the EGDRS (6.5 out of 10).
12. We also disagree with the Electricity Commission and GIC’s claim that complainants having to provide the “case” for a complaint” places a “substantial burden” on them.⁶ We believe the role of a CRS is to resolve consumers’ complaints, not to create grounds for a complaint. We consider that the EGDRS is superior in terms of accessibility because of the face-to-face approach it takes, compared to the EGCC office-bound approach.
13. Likewise, we consider resolution of complaints to be more important than the accuracy of the CRS’ determinations, contrary to the Electricity Commission and GIC’s concern that determinations issued relying on the information provided by the complainant and the member company may mean less information is available and there is also scope for inconsistent/less accurate determinations.⁷
14. We note that “The Panel had serious reservations about [the EGCC’s] governance structure and the diluted accountability”⁸ while “The EGDRS scheme application contains a more

⁴ The discussion has been limited given the evaluation material was provided less than three working days before submissions were due.

⁵ Paragraph 5.21 of the Electricity Commission/GIC Evaluation Report “Electricity and Gas Complaints Resolution Scheme – Applications for Approval under the Gas Act and Electricity Act”, February 2009. Repeated in paragraph 24 of the Electricity Commission’s Board Report “Consumer complaints resolution scheme – consultation on selection of preferred provider”, Board meeting: 17-18 February 2009.

⁶ Paragraph 5.21 of the Electricity Commission/GIC Evaluation Report “Electricity and Gas Complaints Resolution Scheme – Applications for Approval under the Gas Act and Electricity Act”, February 2009. Repeated in paragraph 27 of the Electricity Commission’s Board Report “Consumer complaints resolution scheme – consultation on selection of preferred provider”, Board meeting: 17-18 February 2009.

⁷ Paragraph 5.21 of the Electricity Commission/GIC Evaluation Report “Electricity and Gas Complaints Resolution Scheme – Applications for Approval under the Gas Act and Electricity Act”, February 2009. Repeated in paragraph 30 of the Electricity Commission’s Board Report “Consumer complaints resolution scheme – consultation on selection of preferred provider”, Board meeting: 17-18 February 2009.

⁸ Paragraph 5.22 of the Electricity Commission/GIC Evaluation Report “Electricity and Gas Complaints Resolution Scheme – Applications for Approval under the Gas Act and Electricity Act”, February 2009. Repeated in paragraph 32 of the Electricity Commission’s Board Report “Consumer complaints resolution scheme – consultation on selection of preferred provider”, Board meeting: 17-18 February 2009.

straight-forward governance arrangement with clear accountability”.⁹ We agree that the EGDRS should be given a higher rating in terms of governance (7.5 out of 10, compared to 6.7). The EGCC rating is presumably overstated as it based on an incorrect assumption that the EGCC would amend its governance arrangements further to address these concerns. The evaluation score for the EGCC should therefore be adjusted downwards.

15. We recognise that the EGCC has more experience in energy related issues than the EGDRS, but think the emphasis should be on dispute resolution skills. Based on actual experience, the EGDRS has proven itself to be adept at dealing with disputes in a fast and proficient manner; particularly if compared to the EGCC. We therefore do not agree with a ranking for skills and experience of 10 out of 10 for the EGCC (too high), nor 4 for the EGDRS (too low).
16. In summary, Mighty River Power believes the EGCC has been scored too highly (85 out of 100) and the EGDRS too lowly (71.9). We believe the EGDRS CRS better serves the long-term interests of end-users and should be scored higher than the EGCC. We do not believe the Electricity Commission and GIC’s evaluation provides clear-cut grounds for claiming the EGCC CRS is superior to that of the EGDRS. We find it interesting that “The Panel considered that the key difference between the EGCC and EGDRS schemes was one of approach and philosophy; the EGCC has a focus on supporting the complainant through the complaint process, while the EGDRS has a focus on mediation and settlement at an early point in the process.”¹⁰ The flip-side to this is the very lengthy periods the EGCC takes to address complaints.
17. Mighty River Power believes – at the very least – the status quo, modified status quo (as suggested above), and approval of more than one CRS would all be better than approval of the EGCC alone. We also consider the EGDRS to be a superior scheme to the EGCC.

Joint decision arrangements

18. Mighty River Power is pleased the Electricity Commission and GIC have agreed to act jointly in the CRS approval process. It would not make sense for two regulatory bodies to undertake separate decision making processes to determine whether to approve the same CRS(s). However, we have some misgivings about the practical arrangements for this. Our misgivings stem from:
 - a. The fact that the Electricity Commission can approve a CRS while the GIC can only recommend to the Minister that a CRS be approved; and
 - b. The imbalance in the size of the gas and electricity markets mean that while it is viable for a pure CRS to be established for electricity it may not be economic for a stand-alone CRS to be established in gas.
19. This puts the Electricity Commission and the GIC in a Stackelberg-type relationship where the Electricity Commission is in the leader position and the GIC is in a follower position. If the GIC wants gas utilities to be required to join an approved CRS it has no real choice than to recommend approval of the CRS the Electricity Commission supports. The practical reality is that if the Electricity Commission approved a CRS, but the GIC did not recommend it to the

⁹ Paragraph 36 of the Electricity Commission’s Board Report “Consumer complaints resolution scheme – consultation on selection of preferred provider”, Board meeting: 17-18 February 2009.

¹⁰ Paragraph 5.33 of the Electricity Commission/GIC Evaluation Report “Electricity and Gas Complaints Resolution Scheme – Applications for Approval under the Gas Act and Electricity Act”, February 2009.

Minister, companies like Mercury Energy who retail both gas and electricity, would realistically need to sign up to the CRS for both gas and electricity.

20. It would have been more appropriate – given the inter-relationship of gas and electricity on this matter – for the decision on whether to approve a CRS to be solely that of the Minister, with the Electricity Commission and GIC restricted to making a joint recommendation.
21. With this in mind, Mighty River Power considers that the joint-CRS approval process will only be legitimate if it is based on genuine consensus. If the Electricity Commission and GIC do not agree on which CRS should be approved, then the Electricity Commission should refrain from approving a CRS and the GIC should, in turn, refrain from recommending a CRS to the Minister. Or, alternatively, if the Electricity Commission and the GIC are comfortable with more than one CRS, but cannot agree on which is best, consideration should be given to approval of both CRSs.

Framework for economic regulation

22. As both the Electricity Commission and GIC are aware, Mighty River Power believes regulation should focus on addressing market failure. As an adjunct to this, economic regulation should focus predominantly on the monopoly sectors of the energy sector rather than the competitive sectors; reflecting the disciplines competition can have on price and service quality.
23. Mighty River Power's gas retail business is a good illustration of this. Mercury Energy has no gas 'incumbency' and only started its gas retailing operations in 2003/04. Mercury Energy had to build up its current customer base of almost 40,000 starting from no customers. All our customers have made a conscious decision to switch to us. If our contractual arrangements, service quality, pricing or customer dealings were not "fair and reasonable", in the view of our customers, they would have been unlikely to switch to or stay with us.
24. This kind of approach to economic regulation is reflected in legislation such as the Telecommunications Act 2001 and the Commerce Act 1986.
25. Under sections 18 and 19 of the Telecommunications Act the Commerce Commission (Telecommunications Commissioner) is required to determine whether regulation would promote competition for the long-term benefit of end-users, having regard to the efficiency consequences of regulation. The Commerce Commission applies the following three tests to determine whether regulation is warranted: (i) whether competition is limited; (ii) whether regulation would promote competition; and (iii) whether regulation would be to the long-term benefit of end-users.
26. Similarly, the statutory tests for whether to invoke price control, under section 52G of the Commerce Act, is whether there is (i) little or no competition; (ii) little or no likelihood of a substantial increase in competition; (iii) scope for exercise of substantial market power; and (iv) the benefits of regulation materially exceed the costs of regulation.
27. Mighty River Power has advocated to both the Electricity Commission and GIC that they apply a similar type of framework to economic regulation decisions. In considering whether to switch from voluntary arrangements to mandatory regulation, we have advocated the Electricity Commission and GIC apply the following tests:¹¹

¹¹ Refer to our submission to the Electricity Commission " Model Contracts", 6 May 2008, available at: <http://www.electricitycommission.govt.nz/opdev/retail/model/index.html#model-contracts-for-domestic>

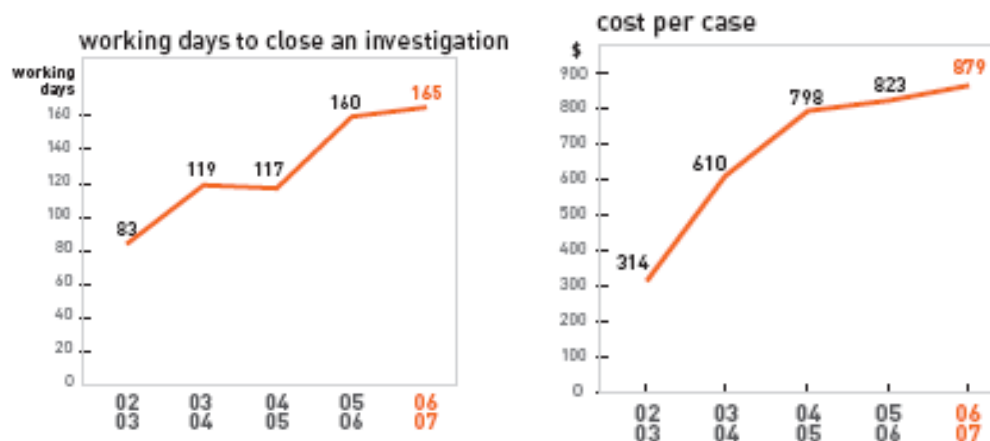
- a. A compliance test to see the extent to which the voluntary arrangements are being adhered to, and whether there are adequate reasons for any non-compliance;
- b. A competition test (as per the Telecommunications Act and Commerce Act); and
- c. A net benefit test to determine whether regulation would be to the long-term benefit of end-users (as per the Telecommunications Act and Commerce Act).

28. Mighty River Power feels the Electricity Commission and GIC have instead taken an approach which essentially predetermines that regulation is necessary (the CRS consultation paper is very clear that the status quo is not considered to be an option), with a cursory attempt at a (qualitative) cost benefit analysis to justify their conclusions.

Mighty River Power’s misgivings about the draft decision to approve the EGCC

29. Mighty River Power is frustrated with the performance of the EGCC as, given we are a member, the slow speed with which customer complaints get dealt with ultimately reflects badly on us. This is why Mighty River Power worked with Trustpower to establish the EGDRS. In order to improve and maintain (to the highest standards possible) the service offering to our consumers we must take into account the overall quality and cost of any scheme, and decide accordingly which scheme(s) best meet our specifications.

30. As we have said in our previous submissions, in relation to CRSs, we consider the length of time the EGCC takes to make decisions – on average around 5 months, with resolution times often in excess of 6 months – is entirely unsatisfactory; particularly for our customers. We are particularly concerned that the amount of time that the EGCC is taking to resolve complaints is getting slower, not faster, as shown the EGCC figure below. We consider that the EGCC is too slow and too costly in making decisions, with the unit cost of investigations continuing to rise dramatically. The cost per case has been steadily climbing each year, as shown the EGCC figure below.



Source: EGCC Annual Report 2006/07¹²

31. We fear this will only get worse if the EGCC is provided with a monopoly, sanctioned by the Electricity Commission and GIC (through approval of only the EGCC and no other CRS).

This is also substantially duplicated in our submission to the GIC "Current issues for domestic and small business gas consumers", 28 October 2008.

¹² <http://www.egcomplaints.co.nz/images/AnnualReport2007.pdf>

32. The design of both the DRSL and EGDRS took into account the shortcomings of the EGCC. We have been impressed by the balance of low cost and quick resolution of customer complaints by the EGDRS and the DRSL's CRS in operation in the telecommunications industry.¹³ The EGCC's 5 month average time for dispute resolution compares extremely poorly with both. The EGDRS typically deals with complaints within a matter of days, as reflected in the figure below:

EGDRS Office Actions Synopsis

| Month | Calls Received | Complaints | Complaints Resolved | Complaints still unresolved | Complaints reaching formal dispute process | Average time to resolve |
|--------|----------------|------------|---------------------|-----------------------------|--|-------------------------|
| Aug-07 | 6 | 3 | 3 | 0 | 0 | 1 day |
| Sep-07 | 2 | 2 | 2 | 0 | 0 | 1 day |
| Oct-07 | 3 | 3 | 3 | 0 | 0 | 1 day |
| Nov-07 | 3 | 2 | 2 | 0 | 0 | 1 day |
| Dec-07 | 0 | 0 | 0 | 0 | 0 | n/a |
| Jan-08 | 0 | 0 | 0 | 0 | 0 | n/a |
| Feb-08 | 2 | 1 | 1 | 0 | 0 | 1 day |
| Mar-08 | 0 | 0 | 0 | 0 | 0 | n/a |
| Apr-08 | 115 | 6 | 6 | 0 | 0 | 1 day |
| May-08 | 42 | 5 | 5 | 0 | 0 | 1 day |
| Jun-08 | 13 | 2 | 2 | 0 | 0 | 2 days |
| Jul-08 | 7 | 4 | 4 | 0 | 0 | 1 day |
| Aug-08 | 4 | 2 | 2 | 0 | 0 | 1 day |
| Sep-08 | 2 | 2 | 2 | 0 | 0 | 1 day |
| Oct-08 | 11 | 7 | 7 | 0 | 1 | 2 days |
| Nov-08 | 9 | 6 | 6 | 0 | 1 | 1.5 days |
| Dec-08 | 3 | 0 | 0 | 0 | 0 | n/a |
| Jan-09 | 5 | 4 | 3 | 1 | 0 | 2 days |
| Feb-09 | 2 | 1 | 1 | 0 | 0 | 1 day |
| Mar-09 | 4 | 4 | 2 | 2 | 0 | 5 days |

33. The DRSL's performance (and targets) for telecommunications dispute resolution (TDR) scheme are reflected below:

¹³ We are not familiar with the DRSL's operation in the review of ACC decisions.

Early resolution Service Level Indicator

| Dispute resolved | Number resolved | % Resolved | Target |
|------------------|-----------------|------------|--------|
| Level 1 | 632 | 98% | 75% |
| Level 2 | 8 | 1% | 18% |
| Level 3 | 8 | 1% | 6% |
| Level 4 | 0 | 0% | 1% |
| Total | 648 | | |

Timeliness Service Level Indicator

| Dispute resolved | Number resolved | Number resolved within target | % Resolved | Target |
|------------------|-----------------|-------------------------------|------------|--------------------------|
| Level 1 | 632 | 597 | 94% | 100% in 8 business hours |
| Level 2 | 8 | 8 | 100% | 75% in 32 working days |
| Level 3 | 8 | 7 | 88% | 75% in 50 working days |
| Level 4 | 0 | 0 | | 100% in 16 working days |
| Total | 648 | 612 | 94% | |

| NRE | Number NRE | Number NRE within target | % NRE within target | Target |
|-----|------------|--------------------------|---------------------|--------------------------|
| NRE | 334 | 331 | 99% | 100% in 3 business hours |

Telephony Service Level Indicator

| | % Answered within target | Target |
|-----------------|--------------------------|-----------------------|
| Answered calls | 93% | 80% within 20 seconds |
| Abandoned calls | 4% Abandoned | <5% on any given day |

Source: TDR Quarterly Report, July – September 2008¹⁴

34. The EGCC and DRSL's TDR scheme are also worlds apart in terms of cost. The EGCC's cost per complaint/investigation is approximately \$1,745¹⁵ (2007/08) while the DRSL's TDR scheme cost is approximately \$515 (2007/08).¹⁶ The cost difference may be understated as the TDR figures are based on resolved complaints, whereas the EGCC figures do not distinguish between resolved and unresolved complaints (with an average resolution time of 5 months a significant number of the EGCC complaints are likely to be unresolved, at any given time).

Expectation of a Single Joint Scheme

35. As indicated above, Mighty River Power remains of the view that the Electricity Commission and GIC should be open to approving more than one CRS. We do not support the establishment of a monopoly CRS, which approval of one CRS would create. We would only support approval of the EGCC CRS if the EGDRS CRS was also approved.

36. We wonder whether more CRS proposals would have been made if the Electricity Commission and GIC hadn't made such a clear statement of preference for a single scheme and hadn't been so prescriptive in the Evaluation Criteria.

37. For the avoidance of doubt, we agree with paragraph 13 of the Government Policy Statement on Gas Governance (Gas GPS) 2008 "... that consumers' best interests will be served by a joint gas and electricity consumer complaints resolution scheme". We believe one of the requirements for any CRS considered for approval should be that it covers both gas and electricity. However, this does not mean there should only be one CRS.

¹⁴ <http://www.tcf.org.nz/content/84576ff4-b5ee-4320-9f46-d911e7997201.cmr>

¹⁵ The EGCC scheme fees for 2007/08 were \$1,593,391 while there were 914 complaints/investigations: http://www.egcomplaints.co.nz/images/EGCC_AR08.pdf.

¹⁶ The TDR scheme fees for 2007/08 were \$431,164 while there were 840 resolved complaints/investigations: http://www.tdr.org.nz/system/files/Annual+Report+2008+to+2009_0.pdf.

38. The Government Policy Statement on Electricity Governance (Electricity GPS) 2008 states “The Government believes that consumers’ best interests are more likely to be served by a single independent complaints resolution scheme ...”¹⁷ (emphasis added). The Gas GPS does not state a preference for a single CRS (the preference is for a joint gas-electricity CRS) but claims “A single multi-fuel complaints system ... would provide benefits such as ease of access, consistency of outcomes and efficiencies of scale”.¹⁸
39. What the two GPSs do is indicate the Government thinks a single scheme may be better than multiple schemes and detail some of the benefits of having a single CRS. Whether or not a single CRS would be superior in practice is something the Electricity Commission and GIC should consider as part of its review of the CRS proposals. It would be a dereliction of the Electricity Commission and GIC’s roles if they simply relied on a statement from the Government that a single scheme is “more likely” to be better than more than one scheme. This would be true even if either or both of the GPSs stated un-categorically that the Government’s preference is for a single CRS. It is not the appropriate role of a GPS to dictate policy outcomes or solutions. That is the proper role of the Electricity Commission and GIC.
40. The status quo (or our suggested modified status quo) and approval of more than one CRS enable electricity and gas retailers to differentiate their service, by selecting from different competing CRSs. Electricity and gas consumers that prefer a prompt resolution of their complaints by a CRS can select a retailer that uses one of the CRSs that have a quick resolution.
41. Our support for approval of more than one CRS also reflects the competitive nature of the electricity and gas retail markets. We see choice of which CRS we use as a way of improving our service to our customers, and as a way of separating us from other retailers. As noted above, Mighty River Power is frustrated with the performance of the EGCC as, given we are a member, the slow speed with which customer complaints get dealt with ultimately reflects badly on us. We would be disappointed if economic regulation by the Electricity Commission and GIC prevents us from improving service quality to our customers by mandating only one scheme.
42. Having more than one CRS provides the benefit of enabling performance benchmarking.
43. Approval of a single CRS, as observed above, would instead create a statutory monopoly. Mighty River Power would not support this outcome regardless of which CRS proposal was approved. Approval of the EGCC as a statutory monopoly in supply of a CRS in the electricity and gas sectors would risk further deterioration of its performance in both time to deal with complaints and cost of dealing with complaints. The present speed and cost by which complaints are resolved are already far from satisfactory.
44. While proponents of a single CRS may argue it is simple and avoids boundary issues, such matters can readily be overcome by the establishment of clear inter-provider protocols that guarantee the consumer a single point of interface, with inter-company issues resolved behind the scenes. We are not aware of any such problems arising in practice with the existing CRSs.

¹⁷ Paragraph 29 of the Electricity GPS 2008.

¹⁸ Gas GPS 2008.

Concluding remarks

45. Mighty River Power does not support approval of the EGCC as the sole CRS provider in the electricity and gas markets. This would effectively establish the EGCC as a statutory monopoly. It would mean we could not improve our service provision to our customers by switching to a faster and more efficient CRS. Mighty River Power would be disappointed if economic regulation by the Electricity Commission and GIC prevents us from improving service quality to our customers.
46. We consider that the EGCC is too slow and too costly in making decisions, with the unit cost of investigations continuing to rise dramatically. We do not believe the EGCC is serving the long-term interests of end-users, and fail to see how the EGCC can pass criteria of fairness, accountability or efficiency. We have concerns that the EGCC may have taken a 'tick the box' approach the attempting (unsuccessfully) to meet the Electricity Commission and GIC's Evaluation Criteria, rather than focusing on making changes that would actually benefit end-users; namely developing a streamlined and faster approach to dealing with customer complaints to ensure they are dealt with (typically) in a number of days rather than months.
47. In summary, we do not believe the EGCC is serving the long-term interests of end-users.
48. We have reviewed the Electricity Commission's Board Report "Consumer complaints resolution scheme – consultation on selection of preferred provider" (Board meeting: 17-18 February 2009) and the Electricity Commission/GIC Evaluation Report "Electricity and Gas Complaints Resolution Scheme – Applications for Approval under the Gas Act and Electricity Act" (February 2009). We consider that these reports provide sufficient grounds for rejecting the DRSL proposal, but not the EGDRS proposal.
49. We do not believe the reports demonstrate that the EGCC is superior to the EGDRS or that the EGCC should be selected at the expense of the EGDRS. The evaluation of the two schemes is subjective and highly debatable. Furthermore, the evaluation was based on an assumption the EGCC would make further changes to its scheme that it has not been able to make.
50. Even if the conclusion that the EGCC scheme is superior to the EGDRS this is not sufficient grounds for rejecting the EGDRS. Some energy utilities and consumers will invariably prefer the EGDRS' less formal, regional and much faster mediation process to that of the EGCC scheme. We believe this choice should remain open to both energy utilities and consumers.
51. At best we believe the evaluation demonstrates both the EGCC and EGDRS are viable schemes. Mighty River Power would only support approval of the EGCC CRS if the EGDRS CRS was also approved.
52. If you would like to discuss any of the issues raised in this submission or obtain further information please contact me (on 09 308 8259 or robert.allen@mightyriver.co.nz) or Josh Butterfield (09 580 3806 or josh.butterfield@mercury.co.nz).

Yours sincerely,

Rob Allen
Regulatory Manager

Appendix: Responses to the Electricity Commission's questions

| Question | Mighty River Power's response |
|--|--|
| Q1: Do you agree that the EGCC Scheme arrangements represent an appropriate basis for a single nationwide complaints resolution scheme for electricity and gas? | No. Nor is there any evidence in the CRS consultation paper to support such an assertion. |
| Q2: Do you have particular areas of concern that would lead you to making suggestions for changes to the EGCC Scheme? | The main concerns relate to the slow speed at which complaints are resolved, the cost of the EGCC and the consequences of establishing the EGCC as a statutory monopoly. |
| 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? If not, do you have any additional observations on the merits of a fixed-term? | Cost effective performance should be encouraged by approval of multiple competing CRSs, with the option left open to approve additional CRSs in the future. |
| Q4: Do you agree that the transition to an approved EGCC Scheme should be relatively straight-forward? Do you have any views on how the transition should be managed? | |
| Q5: Do you agree that the Service Provider Regulated Scheme and the Fully Specified Regulated Scheme are the only reasonably practicable options to approving an applicant scheme, which meet the proposed regulatory objective? If not, what other reasonably practicable options exist in your view? | <p>No. Other reasonably practicable options include:</p> <ol style="list-style-type: none"> The status quo. A modified status quo in which all gas and electricity utilities are required to be a member of a CRS (whether one is approved or not), possibly with the EGCC as the default scheme. Approval of the EGDRS proposal. Approval of both the EGDRS and EGCC proposals. <p>We agree approval of the DRSL is not a reasonably practicable option, at this point in time.</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? If not, what other costs and benefits would you suggest? | <p>No.</p> <p>The qualitative cost and benefit analysis takes no account, for example, of the impact of establishing the EGCC as a statutory monopoly. Compared to the status quo, we expect each of the options the Electricity Commission and GIC consider to be reasonably practicable would result in less choice for consumers, slower</p> |

| Question | Mighty River Power's response |
|--|--|
| | dispute resolution times and higher costs. |
| 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? | No. We do not consider this provides a helpful basis for evaluating the different options, even if the full range of relevant options had been considered. |
| Q8: Do you agree that the range of weighting of costs and benefits in the table are reasonable? If not what alternative weightings would you suggest? | We consider the cost-benefit analysis to be superficial. Furthermore, it does not address the underlying question of whether approval of the EGCC scheme on its own would be superior to approval of one of the other proposed CRSs or approval of more than one CRS. |
| Q9: Do you agree that the Approved Scheme option (approving the EGCC Scheme is the best of the reasonably practicable options? | No. Mighty River Power believes – at the very least – the status quo, modified status quo, and approval of more than one scheme would all be better than approval of the EGCC alone. We also consider the EGDRS to be a superior scheme to the EGCC. Our observation of the DRSL in telecommunications suggests it could also be superior, but as no information as been provided on the DRSL proposal we cannot form a firm view on this. |
| 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? | No. We believe it would result in consumers being made worse off, with less choice, higher costs and a continuing trend of complaints taking longer to resolve once they reach the EGCC. |