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Dear Mr Beatty

APPROVAL METHOD FOR CONSUMER COMPLAINTS RESOLUTION SCHEMES

Introduction

1. Thank you for the opportunity to make a submission on the Electricity Commission's [Commission] consultation paper "*Approval method for consumer complaints resolution schemes*", dated December 2006 [Resolution Scheme Paper]. No part of this submission is confidential and we are happy for it to be made public.
2. Mighty River Power strongly supports the approval by the Commission of more than one consumer complaints resolution scheme [Scheme]. The current Electricity & Gas Complaints Commission [EGCC] Scheme is a monopoly. A monopoly inevitably develops undesirable characteristics particularly in respect of service. This is certainly the case with the EGCC Scheme where resolution times in excess of 6 months are common and the unit cost of investigations continues to rise dramatically. We consider the introduction of competing Schemes can give consumers greater choice and in turn provide incentives on competing Schemes to provide a more timely and efficient service.
3. While the proponents of a single Scheme may argue that it is simple and avoids boundary issues, such issues can easily be overcome by the establishment of clear inter-provider protocols that guarantee the consumer a single point of interface with their company - with inter-company issues being resolved behind the scenes.
4. Also having more than one Scheme provides the benefit of enabling performance benchmarking, which would assist the Commission greatly in the future monitoring of Schemes.

Mighty River Power responses

Q1: Do you see any problems with the Commission using the Australian Benchmarks to evaluate consumer complaints resolution schemes? If so what evaluation method should the Commission use?

5. Mighty River Power considers that the Australian Benchmarks generally provide a reasonable framework by which to evaluate Schemes.¹ We agree that any Scheme should be evaluated by the six guiding principles of the Australian Benchmarks: Accessibility, Independence, Fairness, Accountability, Efficiency, and Effectiveness (Benchmark Principles).

Q2: The suggested level of achievement is to indicate the level at which the Commission believes the benchmark criteria would be met. Is it useful to have a suggested level of achievement for each of the benchmark criteria?

6. Yes, it is useful to have a suggested level of achievement by which to assess whether benchmark criteria have been met. The key term in this question is “suggested” which indicates the achievement level is intended as a guideline, rather than a mandatory requirement. We consider this appropriate.
7. While we support the use of the Australian Benchmarks, we believe that the manner by which the Commission proposes that the Schemes be evaluated against the Benchmark Principles is in places overly prescriptive and inflexible. Over prescription stifles innovation. What is important is that prospective Schemes achieve the Benchmark Principles, and meet the requirements of section 158G Electricity Act and paragraphs 21 to 24 of the Government Policy Statement on Electricity Governance 2006.
8. The Commission should be mindful that there may be more than one way the Australian Benchmarks could be satisfied.
9. The example provided by the Commission (pertaining to Benchmark principle 1.1 “awareness and promotion”) highlights the concerns we have in respect of the Benchmark Principles being converted into achievement standards. There are numerous ways customers could be made aware of Schemes. We believe the Commission’s achievement standards go well beyond what is needed to achieve the Benchmark Principle. It does this by requiring onerous levels of promotion which go beyond what is needed to make customers aware that a Scheme is in place.

¹ Refer to Appendix 1 for some specific comments on the Australian Benchmarks.

10. In reality 98% of customers will never have a need to use a Scheme and accordingly have little or no interest in one. Therefore, creating awareness with all customers is nigh on impossible, very expensive and has little point. What is important is that the 2% or less of customers who are unable to resolve their complaint with their company are made aware of the resolution process steps and their ultimate ability to seek independent resolution. The EGCC scheme was set up with the primary purpose of resolving complaints where the consumer and the company could not reach agreement. Indeed one of the objectives is to assist the members of the Scheme to resolve complaints directly with their customers. Customers need to be made aware that Schemes are in place, but high levels of promotion to all customers will work against company-customer resolution and cross the boundary from being a resolution mechanism for difficult complaints into selling the Schemes as a commercial enterprise.
11. This leads on to a further issue. The importance of Schemes retaining their impartiality and independence. In our view, the placing of onerous levels of promotion on Schemes tends to undermine independence and will cause Schemes to become consumer advocacy groups. This tends to occur where funding for a Scheme is tied to the number of complaints – the Scheme tends to chase business by chasing complaints. To put this in perspective, imagine the District Court advertising its services – clearly that would be inappropriate. The point here is that a truly independent service will not encourage customers to make a complaint, nor align themselves with the customer.
12. Accordingly, Mighty River Power considers that the Commission’s achievement standards should only be a guide as to a possible means of achieving the Benchmark Principles. The corollary of this is that the Commission should retain the discretion to accept a Scheme on the basis that it meets the Benchmark Principles irrespective of whether it meets the specific achievement standards.

Q3: The Commission is seeking comments on the individual benchmark criteria and achievement standards detailed in the table attached as Appendix one:

a) Identify benchmark criteria that are not suitable for the evaluation of an electricity consumer complaints resolution scheme. If possible, suggest an alternative;

b) Identify achievement standards that are not suitable for the evaluation of an electricity complaints resolution scheme. If possible, identify an alternative; and

c) Should any additional benchmark criteria be inserted? If so, what should the additional benchmark criteria specify, and what would the achievement standard be?

13. See Appendix 1 for Mighty River Power's comments on individual benchmark criteria and achievement standards.

Q4: Should the Commission approve more than one scheme?

14. Yes. We consider there are benefits to the Commission approving more than one scheme, including:

a. As noted by the Commission, smaller regionally based Schemes could provide consumers with a more targeted programme in their local area. Such regionally based Schemes are also likely to be simpler to administer and in turn produce efficiency benefits.

b. The main objectives of any Scheme are to provide an independent determination in the event that a company and its customer cannot agree, and for that determination to happen expeditiously so that a customer is not waiting for a long period. Quick determinations are also very important to the company involved in the complaint because regardless of the independence of the Scheme, customers blame the company for tardiness if the complaint is not dealt with in a reasonable time period. Also a solution delivered quickly is more likely to be acceptable to the customer.

The current EGCC scheme has been in existence for 5 years, which is sufficient time for the scheme to bed down. Despite this, the average determination time is around 5 months. This is unsatisfactory. In our view, an independent scheme set up as a competitive offering to the EGCC scheme could produce significantly better complaint resolution times.

c. The EGCC scheme is a monopoly. Allowing more than one Scheme provides customers with choice, which in turn places competitive incentives on competing Schemes. For example, where a retailer sets up a Scheme, that Scheme becomes closely associated with the retailers brand. This provides strong incentives on the retailer to ensure that its Scheme complements its retail brand, i.e. if complaints are dealt with quickly and fairly this will reflect well on the retailer's brand.

d. In our view the EGCC scheme is too legalistic and too costly. We consider smaller regionally based Schemes likely to be less adversarial and less expensive.

e. Having more than one Scheme means that competing Schemes can be benchmarked against each other for the purpose of monitoring performance.

Q5: If the Commission were to approve more than one scheme, what should be required of each scheme to ensure that consumer confusion is avoided? Are the achievement standards under criteria 6.2(a) sufficient?

15. In our view, any confusion resulting from having more than one Scheme can easily be resolved by having a protocol between Scheme providers. The key issue is that the consumer has a single point of interface in cases where there is mixed accountability and that company shares of any determination are resolved behind the scene. In this respect, Mighty River Power is supportive of the first two bullet points in the Commission's achievement standard 6.2(a), which provide that:
- a. each scheme must establish procedures to refer complaints which are outside its jurisdiction to another approved dispute resolution scheme (if appropriate) or to advise the complainant of other avenues for redress; and
 - b. each scheme must establish procedures (including the power to compel information from a scheme member) to share information with other approved schemes if another scheme requires it to enable resolution of a complaint.
16. In the vast majority of cases it will be clear where the complaint should lie. Accordingly, the crucial issue of ensuring that a customer's complaint is directed to the correct Scheme for resolution should be a straight forward matter in most cases. In many respects the process of directing a complainant to the correct Scheme will be similar to the current process under the EGCC Scheme for determining which retailer (where there is more than one) should take a complaint from the preliminary internal stage of the complaint process through to the EGCC stage. We see this process being no different where there is more than one Scheme.
17. It should also be remembered that Scheme use is free to customers. Accordingly, in the rare circumstance that a customer is directed to the wrong Scheme, it will be a straight forward matter to redirect them to the right Scheme. This will cause no financial loss to the customer and only a minor delay.
18. We do not agree with the third bullet point under achievement standard 6.2(a), which is:
- each scheme must establish procedures covering the circumstances under which it will recognise and enforce a decision of another approved scheme which is adverse to a member of the scheme.
19. In our view it is not appropriate for one Scheme to enforce the decision of another Scheme. This is because it would be a breach of the principles of procedural fairness to enforce a decision against a party that has not been party to the decision making process in question. It also does not sit well with the voluntary nature of scheme membership.

Q6: Is it appropriate that the Commission is able to consider applications that do not meet the level of achievement for each benchmark criterion? That is, should the Commission be able to accept alternative evidence that a benchmark principle is met to an acceptable standard even

though individual benchmark criteria are not satisfied as specified by the achievement standards?

20. We strongly agree with the Commission that applicants should be able to show alternative ways in which they meet the Australian Benchmark principles. In our view this is essential. It is worth noting that even the current EGCC Scheme would not meet all of the Commission's achievement standards. For example, in relation to the accountability principle, Commission achievement standard 5.5 provides "*the scheme has a policy stating that 90 per cent of all complaints received by the scheme are resolved within three months of receiving notification of the complaint.*" The EGCC scheme does not meet this level of performance, with the vast majority of complaints taking more than 3 months to resolve.

21. The Commission should take a pragmatic approach. As previously stated, what is important is that the overall Benchmark Principles are met, as opposed to prescriptive achievement standards, which represent only one conceivable way of meeting the Benchmark Principles. The achievement standards are useful, but they should not be used to exclude Schemes which meet the Benchmark Principles.

Q7: Do you have any comments on the performance monitoring process?

22. We agree that the Schemes should be monitored once they are approved.

Concluding remarks

23. The key messages that Mighty River Power would like to convey are that:

- a. The Commission should be open to the prospect of approving more than one Scheme; and
- b. The Commission's proposed achievement standards should be treated as suggestions or guidelines only, and not as mandatory requirements.

24. If the Commission has any queries regarding this submission please do not hesitate to contact the undersigned on 09 308 8259 or robert.allen@mightyriver.co.nz or James Moulder on 09 580 3824 or james.moulder@mightyriver.co.nz.

Yours sincerely

Rob Allen

Regulatory Manager

Appendix 1

Comments on benchmark criteria and achievement standards

Principles		Feedback on benchmark criteria	Feedback on Commission's achievement standards
Awareness and promotion	1.1-1.2	It is not practical to ensure that all customers of the industry are aware of a Scheme's existence. From a practical perspective what is important is that customers are aware of the Scheme when they are in a position that they feel that they are not getting resolution with their supplier, and would like to take the matter further.	<p>Achievement standards a. to e. are too onerous. We consider that an appropriate standard would be:</p> <p>Scheme requires members to make its customers aware of the Schemes existence through:</p> <ul style="list-style-type: none"> • Periodic promotion/communication; • Company website; • Directly inform customers when disputes appear to be hitting deadlock. <p>As stated in the body of our submission, we consider that there are risks in encouraging a Scheme to promote its own existence with respect to maintaining impartiality and independence. This is especially the case where funding of a Scheme is based on complaint numbers.</p>
	1.3		The requirement that information about the Scheme is in different languages should only be a guide. There are a large number of different ethnicities in New Zealand. It would be cost prohibitive to provide information in multiple languages. What is important is that any scheme be flexible enough to deal with the needs of its members.
	1.4 – 1.5		We agree that it is important that staff of members be trained to recognize complaints and advise customers of Schemes where customers express dissatisfaction.
	1.6	This criterion is too vague.	
Non-adversarial approach	1.18-1.20	We strongly support the non-legalistic, conciliatory approach of these criteria.	

Legal Representation	1.21-1.22	We don't consider that schemes should allow legal representation. By way of analogy, the disputes tribunal does not allow legal representation. Allowing legal representation would make the scheme prohibitively expensive - which is an expense that would be inevitably born by consumers.	
The Decision maker	2.2		We agree with the Commission that it is not necessary for the decision-maker to have a fixed term appointment.
Determinations	3.1		We agree with this criterion and associated standard. We note that fairness and reasonableness are the paramount objectives and "the law" is but one consideration for the decision maker. We support this approach and believe that it is consistent with a non-legalistic and non-adversarial approach.
Tracking of Complaints	5.5		We agree that any Scheme should have a policy of stating that 90 per cent of all complaints received by the scheme are resolved within three months of receiving notification of the complaint.
Coverage	6.2		As noted in the main body of our submission we do not consider it appropriate for one Scheme to enforce the decision of another Scheme. This is because it would be a breach of the principles of procedural fairness to enforce a decision against a party that had not been party to the decision making process in question.