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Dear Helen,

PROPOSAL FOR CHANGES TO THE SCHEME DOCUMENTS

Introduction

1. Thank you for providing Mighty River Power with the opportunity to make a submission on the Electricity and Gas Complaints Commission's (EGCC's) consultation paper "Proposal for changes to the scheme documents to comply with the proposed scheme requirement from the Electricity Commission and Gas Industry Co for approval of a scheme", July 2008.
2. No part of our submission is confidential and we are happy for it to be made publicly available.

Mighty River Power's concerns about a 'tick the boxes' approach to the Approval Criteria

3. The Electricity Commission and Gas Industry Companies' proposed Complaints Resolution Scheme (CRS) Approval Criteria contained an overall objective (clause 1.1.1) of providing an independent, timely and cost-effective CRS that is in the long-term interests of gas and electricity sector consumers (including potential consumers) and owners and occupiers of land. Mighty River Power supports this objective and changes to the EGCC that would better promote the objective.
4. What we would not support, as reflected in our 21 July 2008 submission to the EGCC, are changes to the EGCC which are simply intended to 'tick the boxes' of the proposed CRS Approval Criteria.
5. Mighty River Power is of the view that satisfaction of the proposed Approval Criteria would not necessarily satisfy the overall objective or even the six guiding principles. This is because the proposed Approval Criteria prescribes some requirements that:
 - a. Are not necessarily the best way of satisfying, or even consistent with, the overall objective and six guiding principles; and

- b. Go well beyond providing a set of evaluation criteria, by specifying the design of the CRS.
6. Mighty River Power is not convinced that all of the proposed criteria, and the EGCC's proposed adoption of them, have been justified or are warranted.
 7. An example is the governance arrangements for the CRS. The proposed Approval Criteria details one particular governance model involving an Overseeing Entity. There could be a lot of overlap and confusion over the boundaries between the responsibilities of the Overseeing Entity and the Electricity Commission/Gas Industry Co. We are not convinced this is necessarily the only or most appropriate governance arrangement that should be considered. The Electricity Commission and Gas Industry Co did not provide a justification for this particular arrangement, beyond reference to the Australian Benchmarks. The only reason the EGCC seems to have for adopting the Overseeing Entity is that it is specified in the proposed Approval Criteria (tick the box).
 8. We also have particular concerns about proposals that attempt to dictate the way that electricity and gas retailers operate.
 9. Mercury Energy, for example, has a philosophy of emphasising the quality of its service and the accuracy of the monthly meter reading (no estimated accounts) combined with competitive (but not necessarily the lowest) prices in its marketing. This philosophy on quality has also resulted in much time, resource and capital being invested in our systems. We would not like to see this point of difference weakened by requirements for homogeneous policies such as the adoption of ISO 10002 as the minimum standard required for members' in-house consumer complaints handling service. It is a choice for those who want to invest in the internal systems to maintain a higher quality versus those who do not and so expose themselves to the costs (fines) of the complaints scheme and unhappy customers. Further, we are not convinced that the benefits of adopting ISO 10002 would outweigh the costs. The EGCC has proffered no evidence to support this view.
 10. As another example, Mighty River Power considers it overly prescriptive for the proposed Approval Criteria (clause 2.1.2) to require members of the CRS to promote the CRS on customer invoices. Accordingly, Mighty River Power does not support the EGCC's proposed clauses C21.1A and B in the Code of Practice.
 11. The reason for our objection is that we do not believe this is the best way to promote awareness of the CRS. 98% of customers will never have a need to use the CRS. What is important is that the 2% of less of customers who are (potentially) unable to resolve their complaint with their company are made aware of the CRS and the resolution process including their right to seek independent resolution. The EGCC Code of Practice should, accordingly, focus on ensuring that members inform customers with complaints of the CRS, rather than trying to actively promote the Scheme to all customers.
 12. A more fulsome explanation of our views on the proposed Approval Criteria is provided in our submission to the Electricity Commission and Gas Industry Company "Approval of a joint Electricity and Gas Complaints Resolution Scheme", dated 12 May 2008. A copy of this submission is attached.
 13. Mighty River Power fully expects, and would support, the Electricity Commission and Gas Industry Co approving a CRS (or CRSs) that did not meet the proposed Approval Criteria,

but could be shown to best satisfy the overall objective and the requirements contained in the Government Policy Statements (GPSs) on Electricity and Gas Governance 2008.

14. With this in mind, Mighty River Power believes the focus of the EGCC, in reviewing and proposing amendments to its scheme documents should be on ensuring “independence”, “efficiency” and “resolv[ing] disputes quickly and cost-effectively without unduly protracted or costly processes”. Mighty River Power believes the EGCC presently falls well short of meeting these GPS standards. This is demonstrated by the fact that the EGCC’s average determination time is around 5 months. This length of time compares poorly, for example, against the Telecommunication Dispute Resolution Scheme, as shown by its service level indicators.¹

Early resolution Service Level Indicator				
Dispute resolved	Number resolved	% Resolved	Target	
Level 1	392	98%	75%	
Level 2	4	1%	18%	
Level 3	5	1%	6%	
Level 4	0	0%	1%	
Total	401			

Timeliness Service Level Indicator				
Dispute resolved	Number resolved	Number resolved within target	% Resolved	Target
Level 1	392	378	96%	100% in 8 business hours
Level 2	4	4	100%	75% in 32 working days
Level 3	5	5	100%	75% in 50 working days
Level 4	0	0		100% in 16 working days
Total	401	387	97%	

NRE	Number NRE	Number NRE within target	% NRE within target	Target
NRE	151	149	99%	100% in 3 business hours

Telephony Service Level Indicator		
	% Answered within target	Target
Answered calls	93%	80% within 20 seconds
Abandoned calls	5% Abandoned	<5% on any given day

Non-relevant enquiry (NRE) – an enquiry which is not attributable to a Scheme Member, does not relate to a customer’s telecommunication service or relates to an event which occurred before the commencement of the Scheme on 30 November 2007

Level 1 – TDR establishes whether deadlock has been reached (deadlock = when the end of the company’s internal complaints procedure has been reached, or six weeks have passed since the customer made a complaint and there is no resolution)

Level 2 – TDR facilitates negotiation between the customer and the company through exchange of documents

Level 3 – conciliation – a TDR conciliator works with both parties to achieve a mutually acceptable outcome

Level 4 – adjudication – a TDR adjudicator considers all the information available and delivers a fully reasoned written decision which is binding on the company

15. We are not suggesting that the Telecommunication Dispute Resolution Scheme service time-frames are appropriate for the EGCC. What is appropriate depends on a balancing of cost and speed, complexity of complaint issues etc. The EGCC should undertake benchmarking of its scheme against other schemes to determine appropriate service levels and reflect these in its proposal for Approval.

Specific comments on the proposed changes to the scheme documents

16. Mighty River Power’s specific comments on the proposed changes to the scheme documents are provided in the figure below. Due to the fact that the EGCC has gone about ensuring compliance with the proposed Approval Criteria, and this Criteria has not been finalised yet, many of the comments we make below essentially replicate the comments we made to the Electricity Commission and Gas Industry Co on the proposed Approval Criteria.

¹ <http://www.tdr.org.nz/system/files/TDR+Quarterly+Report+Web.pdf>

Proposed change	Mighty River Power's view
Schedule A: A1.1A	Mighty River Power supports this purpose statement.
Schedule A: A2.2(aa)	Typo. Change "setting" to "set".
Schedule A: A6.3A	Mighty River Power believes a clause should be added along the lines of "must be consistent with providing an independent, timely and cost-effective CRS that is in the long-term interests of gas and electricity sector consumers (including potential consumers) and owners and occupiers of land" or "must be consistent with the purpose of the Commission".
Schedule B: B2.1(k)	Mighty River Power does not support this clause. Any party choosing to use a legal representative should do so at their own cost. This clause is also inconsistent with clause B2.1(g) as free legal services would encourage use of legal representatives.
Schedule B: B2.2A	Granting two weeks for the EGCC to indicate the acceptance of the complaint is inconsistent with resolving disputes quickly. Mighty River Power believes the EGCC should respond to the complainant within 8 working hours of receipt of the complaint.
Schedule B: B2.5A	<p>A wider disclosure carve-out should be included such that a Council Member is able to withhold information where disclosure would place it in breach of a duty of confidentiality, regardless of whether the relevant third party is identified.</p> <p>There will be situations where information has been obtained by a third party and is subject to confidentiality obligations even though the third party is not identified.</p> <p>This clause should also clarify on what grounds (eg or ie privacy?) information may be deleted.</p> <p>Mighty River Power suggests the clause be amended to read "... which is confidential, the information must only be provided to the Complainant with the confidential material deleted."</p>
Schedule B: B2.5B	This clause should be reinforced by adding a sentence along the lines of "If the Complainant declines to provide information the Commissioner reasonably considers would be desirable or necessary in making a decision, the Commissioner will take this refusal into account in its decision".
Schedule B: B3.2(a) and (d), B3.6, B3.12(e)	Mighty River Power believes 15 working days is excessive and should be reduced to 5.
Schedule B: B15.1(ga) and k	<p>Any such reports should be made available to CRS members.</p> <p>More importantly, the Schedule should make it explicitly clear that the EGCC will aim to achieve the achievement standards. Mighty River Power is of the view that the standards in clause 9.1.2 of the proposed Approval Criteria are not strong enough. The EGCC should</p>

Proposed change	Mighty River Power's view
	<p>consequently set itself tougher standards. The clause 9.1.2 standards are deficient because:</p> <ol style="list-style-type: none"> a. The timelines will not provide for timely resolution of complaints. We believe the 60 day period should be halved as a very minimum. b. There are no caps on the 10% of complaints that need not be meet within 60 days. Mighty River Power believes 99% of complaints should be dealt with in 60 days (90% in 30 days). c. There should also be a provision for the timeframe for the EGCC to determine whether the complaints are within the scope of the EGCC.
<p>Electricity Code of Practice 3.1(ca)/Gas Code of Practice CA3.1(ca)</p>	<p>It is unclear what this clause means. Is it intended to relate to which tariff customers are on (which does not matter for Mercury Energy customers, as we reimburse residential customers if they are not on the cheapest tariff) or contracts more generally.</p> <p>The requirement assumes the retailer, rather than the customer, is best placed to make decisions about their own needs.</p>
<p>Electricity Code of Practice C16 – 18</p>	<p>There is substantial overlap/repetition between these clauses and the Electricity Commission's Low Income and Vulnerable Consumer Guidelines, 2008 which should be removed. The changes in clause 16.1 heighten this overlap/repetition.</p>
<p>Electricity Code of Practice C23.1A-B/ Gas Code of Practice C23.1A-B</p>	<p>Mighty River Power does not support these clauses.</p> <p>The reason for our objection is that we do not believe this is the best way to promote awareness of the CRS. 98% of customers will never have a need to use the CRS. What is important is that the 2% of less of customers who are (potentially) unable to resolve their complaint with their company are made aware of the CRS and the resolution process including their right to seek independent resolution. The EGCC Code of Practice should, accordingly, focus on ensuring that members ensure customers with complaints are aware of the CRS, rather than trying to actively promote the Scheme to all customers. It would be acceptable though to require scheme members to inform customers of the scheme through: their websites, and provision of a brochure to new customers and annually to all customers.</p>
<p>Deed: Clause 7.11D</p>	<p>Mighty River Power believes a clause should be added along the lines of "must be consistent with providing an independent, timely and cost-effective CRS that is in the long-term interests of gas and electricity sector consumers (including potential consumers) and owners and occupiers of land" or "must be consistent with the purpose of the Commission".</p>

Concluding remarks

17. Mighty River Power believes changes should only be made to the EGCC where they are consistent with ensuring the Scheme provides an independent, timely and cost-effective CRS that is in the long-term interests of gas and electricity sector consumers (including potential consumers) and owners and occupiers of land. Mighty River Power does not believe all of the proposed Approval Criteria are consistent with this objective and accordingly we do not support of the proposed changes aimed at ensuring full compliance with the Criteria.
18. Mighty River Power expressed substantive concerns to the Electricity Commission and Gas Industry Co about the proposed Approval Criteria. We are not going to support changes to the EGCC that entrench these concerns.
19. It is our hope that the Electricity Commission and Gas Industry Co will revise the proposed Approval Criteria to address our concerns about the Criteria. Regardless, Mighty River Power fully expects the Electricity Commission and Gas Industry Co to allow variations from the Criteria where it can be demonstrated this would be desirable. Either way, Mighty River Power believes further work is needed on the EGCC's proposed changes to the scheme documents, with greater emphasis on meeting customer needs and less on ticking the boxes in the proposed Approval Criteria.
20. If this creates problems in terms of the Electricity Commission and Gas Industry Co's planed deadline of 1 December 2008 for Scheme Applications, Mighty River Power believes the EGCC should raise this issue with the two regulatory bodies and seek an extension to the deadline.
21. 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
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