

2 November 2007

Ms Judi Jones
Electricity and Gas Complaints Commissioner
Review of the Codes of Practice
Electricity and Gas Complaints Commission
PO Box 6144
WELLINGTON

Dear Judi

Submission on Review of Codes of Practice

Thank you for advising us of your review of the Electricity and Gas Complaints Commission (EGCC) electricity and gas codes of practice.

Gas Industry Co, as the co-regulator of the gas industry, would like to make some general points to assist you with this review process.

Consumer Protection Framework

In considering the appropriate role of the EGCC gas code of practice, Gas Industry Co is of the view that regard needs to be had to the wider consumer protection framework for gas consumers and, accordingly, the interrelationship between the EGCC Scheme (including its code of practice) and the roles, activities and initiatives of the Gas Industry Co in the area of consumer protection.

Legislative and Policy Provisions

Gas Industry Co has powers under the Gas Act 1992 (the Gas Act) to make recommendations to the Minister of Energy to make rules or regulations to provide for:

- minimum terms and conditions in contracts between domestic consumers and gas distributors or gas retailers; and
- the establishment of, or participation by gas distributors and gas retailers, in a complaints resolution system for the purpose of addressing complaints by all or any

small consumers or owners or occupiers of land into, through, or against which pipelines have been laid down or placed.

In addition, the Government Policy Statement on Gas Governance of October 2004 (the GPS) has invited the Gas Industry Co to recommend "*efficient and effective arrangements for the proper handling of consumer complaints*" and "*the development of model contract terms and conditions between consumers and retailers*".

In response to these GPS invitations, the Gas Industry Co has made two recommendations to the Minister of Energy. These are set out below.

Consumer Complaints Scheme

Gas Industry Co wrote to the Minister in March 2005 recommending the Electricity and Gas Complaints Scheme (EGCC Scheme) as a complaints resolution scheme for gas customers. The Minister advised Gas Industry Co in May 2005 that, whilst he was pleased with the recommendation made by Gas Industry Co, he anticipated that the EGCC Scheme would be expanded to cover owners and occupiers of land and give consideration to complaints raised by consumers of LPG. The expansion of the EGCC Scheme to include land owner/occupier complaints came into effect in October 2006.

The Electricity Act also has provision for a complaints resolution system to be approved. However in that case approval is given by the Electricity Commission rather than by the Minister of Energy. Earlier this year the Ministry of Economic Development (MED) advised that there is a desire for the Electricity Commission and the Minister to be consistent in their approaches to approval. Accordingly, Ministerial approval of a complaints resolution scheme for gas has been delayed until this has been completed.

Interrelationship between Consumer Complaints Resolution Scheme Recommendation and Effect on Review of Code of Practice

In response to MED's request, the Electricity Commission and Gas Industry Co will be working together to ensure there is a consistent approach to the approval of complaints resolution schemes for electricity and gas. A necessary part of these discussions will be the consideration of the appropriate role and/or content of codes of practice within an approved complaints resolution scheme and how any role is reflected in any approval criteria.

In undertaking your review of the gas code of practice, it should be noted that the final approval criteria for a gas consumer complaints scheme may require additional changes to the EGCC scheme (or its code of practice) if EGCC wishes to apply for approval.

Model Contract Arrangements

In June 2006, Gas Industry Co made a recommendation to the Minister on model contract arrangements which can be summarised as follows:

- Gas Industry Co does not develop a separate model contract but rather that model domestic contract guidelines continue to be effected through the existing EGCC Scheme (this scheme would continue to administer and develop existing codes of practice in accordance with its own constitution and governance arrangements).
- The Minister approves the EGCC Scheme as an approved consumer complaints scheme under the Gas Act. This would, in effect, give the EGCC Scheme code of practice mandatory status.
- The Minister and Gas Industry Co jointly suggest to the EGCC members that a number of amendments are made to the EGCC Scheme to improve self monitoring and access to the Scheme.
- Gas Industry Co reviews the effectiveness of the arrangements between consumers and their retailers within two years of the EGCC Scheme being approved. This review would include an evaluation of the nature of the contracts, and an evaluation of the level of compliance by retailers with the code of practice. Following this review, Gas Industry Co would make recommendations to the Minister in light of the review findings.

Some of the key factors considered in making the above recommendation were as follows:

- the gas retail market is relatively small (approximately 230,000 gas customers);
- the current EGCC Scheme code of practice contains requirements which provide a reasonable level of consumer protection to customers; and
- the majority of the gas retailers are members of the EGCC Scheme. Only four out of the nine retailers are not members and three of those are owned by the same parent company.

The Minister wrote to Gas Industry Co on 26 July 2006 advising that, whilst he agreed in principle with our recommendations, he considered it inappropriate to approve the arrangements until such time as he had approved a complaints resolution scheme.

Interrelationship between Model Contract Arrangements Recommendation and Review of Code of Practice

A number of events have occurred that have resulted in Gas Industry Co recently deciding to review its recommendation on model contract arrangements. Gas Industry Co's review will reconsider the various options available to protect consumers in respect of retail gas contracts and whether its recommendation (that the EGCC code of practice provides a reasonable level of consumer protection) is still appropriate.

As the review is just commencing its outcome is uncertain. However two factors which will be important in the review are governance and rule change criteria. In this regard, Gas Industry Co will need to consider the ability of industry participants to consider requested amendments to the EGCC code of practice and the criteria that industry participants will apply in considering any proposed amendments. Gas Industry Co may, in accordance with its obligations under the Gas Act and the GPS, be required to apply different criteria.

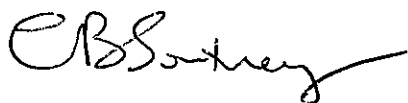
One option available to Gas Industry Co is that it develops minimum terms and conditions for contracts between retailers and consumers which are either held by Gas Industry Co or recommended to the Minister to be contained within regulation. As the current EGCC gas code of practice is a mix of a "code of conduct" (i.e., minimum standards of behaviour for member companies) and minimum terms and conditions to be contained in retail contracts, this option could result in the duplication of aspects of the current EGCC code of practice.

Code of Practice Amendments

In June 2006, Gas Industry Co requested that the EGCC consider a number of amendments to its code of practice including amendments which formed a key part of Gas Industry Co's model contract recommendation. These requested amendments are set out in Appendix A.

We trust the above information will be useful in undertaking your review of the electricity and gas codes of practice. If you would like to discuss any aspect of this letter further, please contact me on 04 472 1800.

Yours faithfully

A handwritten signature in black ink, appearing to read 'CSouthey', with a long horizontal flourish extending to the right.

Christine Southey
Chief Executive

Appendix A

Changes to EGCC Scheme Requested by Gas Industry Co

There are three types of additions/amendments that we have requested be considered/made by the EGCC as part of the model contract recommendation. These are set out below:

1. Amendment Required as Integral Part of the Recommendation

The recommendation to the Minister set out the following amendments should be made to the EGCC Scheme to encourage increased self-monitoring by Scheme members and also enhance the levels of access consumers have to the default benchmark terms:

- Individual members should be required to publicly disclose the extent to which they comply with the code of practice.
- Retailers' invoices should:
 - (a) set out EGCC Scheme contact details.
 - (b) advise customers of the existence of the code of practice and how it can be accessed;
 - (c) on a periodic basis include a leaflet explaining the code of practice.

2. Changes Arising Through Consideration of Draft Guidelines

The MCWG, the Model Contract Working Group established by the Gas Industry Co, developed draft model contract guidelines and these were compared with the EGCC Scheme code of practice. The MCWG determined that a number of draft guidelines were not included in the EGCC Scheme code of practice and should be included. Accordingly, we asked the EGCC that the following changes be made to the EGCC Scheme code of practice:

- (a) Commencement of Contract - The guidelines require the contract to clearly define the steps a consumer and retailer must take to form a contract and commence supply and require the contract to state when the contract is to commence and supply is to be taken. If the agreed supply date is retrospective the contract must make this clear to the customer.
- (b) Termination of Contract – The guidelines require the contract to set out the ways in which the company and the consumer may terminate the contract.

The contract should clearly set out responsibilities of the consumer when they wish to terminate the account.

- (c) Metering - Where metering is provided by the retailer, the consumer contract must clearly explain:
- the requirements for metering relevant to the pricing option selected by the consumer. Any additional costs associated with providing or changing metering equipment must be explained;
 - the consumer's responsibility for protecting, not tampering with and providing access to meter(s) for maintenance and reading purposes;
 - the process to be followed in the event that either the retailer or the consumer suspects that a meter is reading incorrectly.
- (d) Notice Delivery – The contract must specify how notices under the contract will be delivered to consumers.

3. Changes Arising Through Submission Process

We have requested that the following comments made by the MCWG on the submissions be *considered* by the EGCC:

- “(a) There is currently a lack of clarity as to whether some of the EGCC Scheme code of practice provisions are permissive or mandatory. This lack of clarity has arisen from the use of the word “should” in a number of the code of practice provisions. We consider that the EGCC needs to review the use of the word “should” and clearly state whether the provisions are mandatory or permissive.
- (b) We recommend that a number of additions to the code of practice be considered. These are as follows:
- (i) Where a customer agrees to take a supply before having access to the contract details and that supply is on a fixed term contract for the supply of gas or where there is a cost to transfer to another gas retailer, the customer has the right to withdraw from the contract within 5 working days of that access, paying only a reasonable prorated rate for gas and other services received before withdrawal.
 - (ii) Changes to a retail contract are personally notified to all affected consumers.
 - (iii) Retail contracts specify how often a retailer intends to read a meter.

- (iv) Retail contracts specify how a customer can reconnect following disconnection. We considered that it would be reasonable for contracts to specify that disconnection for credit only took place where the customer could clear the outstanding account balance by making a payment. Disconnection should not occur immediately before weekends and public holidays if the retailer did not provide facilities for receiving payment over that period. We also considered that retail contracts must specify that retailers have to provide a reconnection service within 24 hours of disconnection.
 - (v) Retail invoices clearly separate electricity and gas charges.
- (c) The EGCC Scheme code of practice provides that there is a requirement to notify a price increase of over 5%. We recommend that the EGCC considers whether the code of practice should be clarified to provide that:
 - (i) the 5% threshold applies to the delivered energy rate and also to miscellaneous service fees;
 - (ii) any cumulative increase of over 5% over a twelve month period is advised to the customer; and
 - (iii) any miscellaneous service fees are advised to the customer **within a reasonable time before** the service is to be provided.
- (d) We understand that the EGCC has already considered the issue of a limitation period for the recovery by retailers of amounts which have not previously been invoiced. We further understand that no agreement was reached between consumer and retailers on this issue and therefore it was deferred for further consideration. We recommend that this issue needs to continue to be considered by the EGCC as a matter of priority.”