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Dear Susan

## **Constitutional Changes to the Electricity & Gas Complaints Commissioner Scheme**

Genesis Power Limited, trading as Genesis Energy, welcomes the opportunity to provide comments to the Electricity & Gas Complaints Commission (the 'EGCC') on its consultation paper entitled 'Constitutional Changes to the Electricity & Gas Complaints Commissioner Scheme', dated April 2007. Genesis Energy has reviewed the consultation paper and is pleased to have the opportunity to respond to issues raised in it.

In its paper, the EGCC, states that it intends to seek approval of its scheme from the Electricity Commission<sup>1</sup> and that it intends amending its constitution to meet the Electricity Commission's approval criteria. While Genesis Energy supports the EGCC's intention to seek approval, it has some concerns about the EGCC's paper. Those concerns are set out below and are related to the following issues:

1. Whether the EGCC needs to take action now;
2. The definition of consumer;
3. Potential consumers;
4. Consistency with the Government Policy Statement; and
5. The absence of a consumer contract.

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<sup>1</sup> Under the Electricity Act 1992 (sections 158G(1) and 172O(1)(j)) and the Government Policy Statement on Electricity Governance, October 2006, the Electricity Commission is responsible for approving a customer complaints system.

## **Is the EGCC Acting Prematurely?**

In relation to question 12 of the EGCC's paper, Genesis Energy questions whether the EGCC is, in proposing to amend its constitution now, acting prematurely.

The Electricity Commission recently (March 2007) sought feedback from electricity market participants on its proposed approach for evaluating consumer complaints schemes. The Electricity Commission received over 20 submissions, from a variety of interested parties (including consumer groups, energy retailers, energy distributors, energy user groups and the Commerce Commission). Genesis Energy understands that the Electricity Commission is currently considering those submissions, and has yet to finalise its approach for approving consumer complaints scheme(s), and in particular, it has yet to determine the principles and benchmarks it expects to see in a consumer complaints scheme. As the EGCC's constitution will need to align with those principles and benchmarks, Genesis Energy believes that it is prudent for the EGCC to wait until the Electricity Commission has determined those principles and benchmarks before embarking down a course of amending its constitution.

Notwithstanding the above concern, Genesis Energy makes the following particular comments on the proposed amendments to the EGCC constitution.

### **Definition of Consumer and Concept of Materiality**

In relation to the EGCC's questions 2 and 3, Genesis Energy does not agree with the proposed definition of "consumer" and it also does not agree that it is preferable not to use "materiality" as a connecting factor between a complainant and the complainant's issue.

The EGCC proposes to amend the definition of "consumer" to include users and potential users of electricity and lines services.

Genesis Energy does not support the EGCC's view (as expressed in paragraphs 21 to 30 of its paper), and prefers the Electricity Commission's concept of including, within the jurisdiction of a scheme, every person who has been materially affected by the acts or omissions of a retailer or lines company.

In Genesis Energy's view, both the Electricity Act and the Government Policy Statement on Electricity Governance dated October 2006 reflect that, in most cases, the role of a consumer complaints scheme is to settle a dispute between a consumer and the retailer (or distributor) who are in a contractual relationship. But both the Electricity Act and Government Policy Statement recognise there may be cases where a retailer or distributor does something adverse, which affects an innocent third party, and that third party needs to be able to complain to the relevant company

– and if his or her complaint isn't settled, the complaint needs to be heard by a consumer complaints scheme.

Genesis Energy believes the Electricity Commission's approach is consistent with both the Electricity Act and the Government Policy Statement.

Genesis Energy also believes the use of a materiality threshold ensures that there is at least some sensible minimum threshold for hearing non-contractual disputes.

Genesis Energy believes the materiality threshold would enable affected persons like property owners along the proposed Transpower 440kV line route, or an innocent party whose power is disconnected by the agent of a retailer that has no relationship with that retailer, to have access to the complaints scheme. But, sensibly, it will not capture those persons whose complaint is based on a retailer refusing to accept them as a customer (something that should not be within the EGCC's jurisdiction) or other vexatious complainants who simply have a 'bug-bear' with a retailer (but are not customers of that retailer).

Genesis Energy notes that the EGCC suggests the Electricity Commission's term "materially affected" is unsatisfactory because it focuses too much on monetary value. Genesis Energy questions why the EGCC considers that this is wrong. In Genesis Energy's view only the person whose position has been, or will be, genuinely adversely affected by a company it has no contractual relationship with, should be able to have recourse to that company.

Finally, Genesis Energy suggests the EGCC's concept of a "potential user" is confusing, given that it is not a category of complainant that is capable of any precise meaning. Is the person whose power is cut off by the agent of a retailer that it has no relationship with, a person who is "potential user" of that retailer? If the answer to that is "yes", then the question becomes – "who isn't a potential user"? Opening up the scheme to anyone and everyone just is not a sensible and commercially realistic prospect.

## **Potential Customers**

In relation to the EGCC's questions 4 and 5, Genesis Energy agrees that it is appropriate for the EGCC's jurisdiction in relation to potential customers to be strictly and clearly limited. It does not agree with the proposed draft clause set out at paragraph 32 of the paper.

Genesis Energy agrees that it is not appropriate for the EGCC to consider complaints where a company has refused to supply, and firmly believes that this extends to all aspects of the decision and the decision making process.

Further, Genesis Energy notes that the collection, storage, disclosure and use of information (including collection, correction of and use of credit

information) is governed by the Privacy Act 1993 and the various codes of practice issued by the Privacy Commissioner. Genesis Energy believes that matters relating to the collection and use of information (including disputes concerning credit information) should continue to be handled by the Privacy Commissioner.

### **Consistency with the Government Policy Statement**

In relation to the EGCC's question 9, Genesis Energy does not agree with the EGCC's proposed drafting of Clause 6.

Genesis Energy believes it is appropriate for the EGCC to have regard to relevant Government Policy Statements when considering changes to its constitution. It does not agree, however, that the constitution should be amended to expressly provide that the EGCC scheme must be consistent with the Government Policy Statement. The Government Policy Statement is not law, but an expression of the incumbent Government's expectations of the Electricity Commission. Believing that one must do nothing but act consistently with the Government Policy Statements implies a belief that those policy statements are law.

### **No Customer Contract**

In relation to the EGCC's question 10, Genesis Energy does not sufficiently understand the approach mooted and, therefore, cannot agree with the approach suggested.

Genesis Energy does not understand the EGCC's proposal, and would appreciate further explanation.

Genesis Energy believes the EGCC may be suggesting that where there is a dispute but no contract, that the EGCC can either impose a contract on the parties (being a contract that the EGCC believes is pertinent), or failing that, apply good industry practice, in order to determine the dispute. If this is the EGCC's suggestion, Genesis Energy is extremely uncomfortable. It firmly believes the start point in resolving a dispute should be, if the matter is of a contractual nature, to try and determine what the two parties did agree to, and seek to revolve on that basis – not to arbitrarily apply something else.

Genesis Energy is happy to discuss further any aspect of this submission with the EGCC, should it wish to do so.

Yours sincerely



John A Carnegie  
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