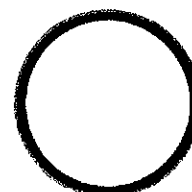


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POWERCO

Review of the Electricity and Gas Consumer Codes of Practice



Introduction

Powerco welcomes the opportunity to participate in this review of the Electricity and Gas Consumer Codes.

This submission consists of:

- This covering letter;
- A table of responses in the requested form regarding electricity;
- A table of responses in the requested form regarding gas; and
- Appendices referred to in the tables.

Historical Evolution

The Electricity Code was developed at a time when there was no standardisation of consumer contracts and the model consumer contract evolution had barely started. As a result, there was no other place for consumer focused minimum expectations to reside. The Gas Code was added as a duplicate of electricity with little tailoring.

The Electricity and Gas Consumer Codes were not intended to be all encompassing statements of contract terms but *"undertakings by Electricity/Gas Company members of the EGCC Council to their consumers for fair and reasonable dealings with Consumers"* (C1.1 and CA1.1).

We now have a situation where the Electricity Commission, which is the Crown entity set up under the Electricity Act to oversee New Zealand's electricity industry and markets, has approved model consumer contracts which contain the Commission's "expectations for the content of domestic consumer customers". It is quickly apparent on a review of the documents that the Electricity Code and the electricity model contracts are not synchronous or compatible.

Good contract documents strike a balance between the rights and responsibilities of the contracting parties. There are a number of good examples already in use today by industry players. These contracts outline all the things a consumer can expect from the supplier but also make clear what the consumer's responsibilities are. Many of these responsibilities have a safety/network

integrity focus or serve to remind customers that energy supply is unlikely to ever be constant and uninterrupted.

There has been a tendency over the last few years in EGCC documentation to treat gas as if it were the same as electricity and to produce mirror documentation. It is clear, however, from a review of the underlying statutes and Government Policy Statements that the intent of Parliament and Government was different in respect of electricity and gas from governance, consumer protection and other perspectives. Practically as well, gas and electricity present distinctly different challenges. The approach to the appropriate form of electricity and gas consumer contracts has accordingly, also diverged substantially over the last few years.

As a result of the passing of time and the divergence between the treatment of electricity and gas model contracts, Powerco is of the view that the Electricity and Gas Consumer Codes of Practice need to be treated separately. Powerco has therefore produced two tables, one covering electricity and one covering gas.

For the avoidance of confusion, Powerco notes that it operates an interposed model with all its domestic and small consumers. Powerco's comments around electricity model contracts are therefore focussed only on the interposed consumer contract model. Consideration will be needed from the Commission as to how Powerco's comments to apply to all scenarios applying and the conveyance model contracts.

Gas Code of Practice-Background and Context to comments in Table

In November 2005 the Gas Industry Company issued a paper entitled "Gas Industry Co Consultation Paper Options for Consumer Contract Arrangements". This paper was the result of work by a working party (the MCWG) which produced a set of draft guidelines for inclusion in domestic consumer contracts. Work was also carried out to compare the draft guidelines with the EGCC Gas Consumer Code. In Section 7 on page 28 the report notes the areas where the EGCC Code of Practice does not include topics and issues included in the Guidelines. The report also notes that a review of the EGCC Codes of Practice would be forthcoming. The implication from these comments was that there would be an opportunity in the future to amend the Gas Code to include these missing elements.

The missing elements identified were:

- Commencement of Contract
- Termination of Contract
- Metering
- Notice Delivery.

This would seem to be the opportunity to build on the work already done by the industry and the GIC. It is important however to note that the guidelines and/or the code were never intended to be an exclusive set of contract terms or issues. It was always envisaged that other balancing clauses would be needed to make up a full contract.

The Gas Industry has, for pragmatic reasons, now decided that a Code of Practice in the EGCC Constitution can serve the industry as well as having a model form of contract, with the Code acting effectively as a set of guidelines. However, the EGCC Code of Practice was not drawn up as a guideline or statement of terms and is missing many of the normal balancing conditions you would expect to see in a consumer contract.

Powerco therefore submits that the opportunity should be taken to restate the role of the EGCC Gas Code and add in the elements necessary to strike a fair and responsible balance between consumers and industry participants. Powerco endorses the comments in the November 2005 GIC report for additions to the Code with some further additions.

See Table 2 for Powerco's detailed comments.

Electricity Code of Practice-Background and Context to comments in Table

It is important for both consumers and industry players that there is nothing in the Code that is inconsistent with the Model Contracts that have been approved by the Electricity Commission. As the industry regulator it is important that the documents approved by the Electricity Commission take precedence over anything produced by the EGCC. It would seem to be inappropriate and possibly thwarting of Government policy if an industry player could be sanctioned by the EGCC in a scenario where it would not have been found at fault by a court applying a Model Contract.

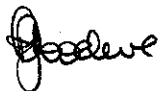
Once the Model Contracts are finally launched, much of the Electricity Code will be redundant either to the extent that it is already covered in the Models or because it is inconsistent. The focus back on the consumer contracts as the place to look will simplify matters for consumers, because their rights will all be set out in one place. Fair protection will also be achieved for industry contracting parties.

See Appendix A to the table attached for Powerco's summary of matters that can be removed and those that could be retained in the Electricity Code because they are not dealt with in the Model Domestic Contract.

Next Steps

Powerco would be happy to discuss this submission with the independent reviewer if that will assist the process.

Yours sincerely



Paul Goodeve
General Manager Corporate Commercial (Acting)

**Review of the Electricity Consumer Code of Practice
Powerco Submission
Table 1**

Note: This table sets out Powerco's comments in respect of electricity only

Question	Relevant Clause in Code	Comment Where possible, please include details about the number and source of complaints that have lead to the concern.
Q1. Do we need the Electricity and/ Gas Codes? If so, how do you see them working with guidelines that are created by the Electricity Commission and Gas Industry Company? For example, the electricity model retail contract.		It is important for both consumers and industry players that there is nothing in the Code that is inconsistent with or overrides the Model Contracts that have been approved by the Electricity Commission. See Appendix A for Powerco's summary of matters that can be removed and those that may be retained in the Electricity Code because they are not dealt with in the Model Domestic Contract.
Q2. Are the Electricity and/ Gas Codes working well?		No comment.
Q3. Are there any clauses in the Codes that promise more than can reasonably be delivered?		See comments in Appendix A.
Q4. Are there any clauses in the Codes that are vague or ambiguous?		See comments in Appendix A.
Q5. Should complaints handling by the Electricity and Gas Complaints Commissioner always be free to consumers? Are there some circumstances where a charge is appropriate such as where a meter undergoes testing or voltage variation is recorded?		The 2004 GPS specifically says : <i><u>Consumer Complaints Resolution System</u></i> 21. <i>The Government expects everyone (including potential consumers and owners and occupiers of land) to have access to a free, independent system for resolving complaints about electricity distributors (including Transpower) and electricity retailers, whether or not they have a consumer contract with the retailer or distribution company".</i> In the light of this GPS statement it would be difficult to argue for charges. However, it is very important that members are confident that the EGCC Scheme rejects complaints that do not fit within the

		specified jurisdictional limits or are vexatious and acts as a mediator and not as a consumer advocate. This rigour would ensure that only legitimate complaints, where members have erred, are handled through the Scheme. Where the EGCC does not have jurisdiction consumers still have other very inexpensive avenues like the disputes tribunals.
Q6. Would it be useful if the Codes included an explanation of the purpose of some or all of the clauses? If so, which ones in particular?		Should be unnecessary if the Code is cut down as recommended.
Q7. Are there examples of changed industry duties and practice that should be incorporated into the Electricity and/ Gas Codes?		No.
Q8. What other changes should be made to the Codes? Please provide reasons why you think the changes should be made.		See other comments.
Q9. Are there any other matters that you wish to raise?		See covering letter
Q10. Please tell us how you first became aware of the Codes and the associated issues.		Powerco has been involved with the EGCC Scheme since inception.
Q11. How do you think consumers usually become aware of the Codes? Do you have any specific suggestions as to how consumer awareness of the codes can be broadened?		No comment.

**Review of the Gas Consumer Code of Practice
Powerco Submission
Table 2**

Note: This table sets out Powerco's comments in respect of gas only

Question	Relevant Clause in Code	Comment Where possible, please include details about the number and source of complaints that have lead to the concern.
Q1. Do we need the Electricity and/ Gas Codes? If so, how do you see them working with guidelines that are created by the Electricity Commission and Gas Industry Company? For example, the electricity model retail contract.		Powerco endorses the comments in the November 2005 GIC report for additions to the Code and has a number of additional proposals, as set out in Appendix B .
Q2. Are the Electricity and/ Gas Codes working well?		No comment.
Q3. Are there any clauses in the Codes that promise more than can reasonably be delivered?		See comments below.
Q4. Are there any clauses in the Codes that are vague or ambiguous?		See specific comments.
Q5. Should complaints handling by the Electricity and Gas Complaints Commissioner always be free to consumers? Are there some circumstances where a charge is appropriate such as where a meter undergoes testing or voltage variation is recorded?		<p>The issue of costs is another area where Government policy and parliamentary intention differed between electricity and gas.</p> <p>Powerco believes there needs to be further discussion on this issue because current arrangements go further than Parliament intended. This free service might have been the industry's intention for a voluntary scheme but if regulations were promulgated under Section 43G of the Gas Act 1992 a different approach may be needed. See Appendix C for further details and background.</p>
Q6. Would it be useful if the Codes included an explanation of the purpose of some or all of the clauses? If so, which ones in particular?		If the Code is clear no explanation should be necessary.
Q7. Are there examples of changed industry duties and practice that should be incorporated into the Electricity and/ Gas Codes?		No.
Q8. What other changes should be made to		See other questions and answers.

the Codes? Please provide reasons why you think the changes should be made.		
Q9. Are there any other matters that you wish to raise?		See covering letter.
Q10. Please tell us how you first became aware of the Codes and the associated issues.		Powerco has been involved since inception of the EGCC Scheme.
Q11. How do you think consumers usually become aware of the Codes? Do you have any specific suggestions as to how consumer awareness of the codes can be broadened?		This question illustrates the importance of the consumer contracts for informing consumers about their rights and responsibilities. These contracts are readily available from retailers.

Appendix A

Powerco suggestions for retention in the Electricity Consumer Code of Practice

Clause number	Retain or remove	Comments
C1	Retain and amend	Amend to reflect the fact that most of the undertakings of members of the EGCC to their consumers are contained in the Model Domestic Contract.
C2	Retain and amend	Amend C2.3 to reflect the fact that most of the undertakings of members of the EGCC to their consumers will be contained in the Model Domestic Contract.
C3	Retain some	C3.1(c) and (d) may not be relevant once the Model Domestic Contract is in use.
C4	Retain	
C5	Retain	
C6	Retain	
C7	Retain some	C7.2 and C7.3 will not be relevant once the Model Domestic Contract is in use. It is important that the contract and not the Code takes precedence in the case of inconsistency.
C8	Retain	
C9	Remove	Will not be relevant once the Model Domestic Contract is in use.
C10	Remove	Dealt with in the Model Domestic Contract.
C11	Remove	Dealt with in the Model Domestic Contract.
C12	Remove	C12 is dealt with in the Model Domestic Contract and/or in statute.
C13	Remove	Dealt with in the Model Domestic Contract.
C14	Remove	Dealt with in the Model Domestic Contract.
C15	Remove	Dealt with in the Model Domestic Contract.
C16	Retain some	C16.1 is dealt with in the Model Domestic Contract. C16.2 and C16.3 should be deleted. .
C17	Remove	C17 is mostly dealt with in the Model Domestic Contract, except for the requirement that the Consumer Contract

		state if interest is payable on the Bond (the current draft of the Model Domestic Contract does not state whether or not interest is payable, it may be that by being silent on this matter no interest is payable).
C18	Remove	The principals around disconnections are dealt with in detail in the Model Domestic Contract.
C19	Remove	Dealt with in the Model Domestic Contract.
C20	Remove	Dealt with in the Model Domestic Contract.
C21	Remove	Dealt with in the Model Domestic Contract.
C22	Remove	Dealt with in the Model Domestic Contract.
C23	Retain some	Most of C23 is dealt with in the Model Domestic Contract. However, it may be appropriate to retain C23.4, 23.5 and 23.6.
C24	Remove	Dealt with in the Model Domestic Contract.
C25	Remove	Dealt with in the Model Domestic Contract.
C26	Remove	Dealt with in the Model Domestic Contract.
C27	Retain	
C28	Retain	
C29	Retain	These should be consistent with the definitions used in the Model Domestic Contract.

Appendix B

Specific Amendments to the Gas Code of practice

	Proposal	Details
CA1.1	Delete and insert new words	"The Code sets out the principal terms that are expected to be found in a Consumer Contract and includes undertakings for fair and reasonable dealings with Consumers".
CA7.2	Delete	Modify to clarify the role of the Code as against a contract.
CA7.3	Delete	The wording of CA7.3 is inconsistent with the reality that responsibilities of the consumer will inevitably be less favourable than the Code contents.
CA9.1 Bullet point 5	Delete	The electricity model contracts envisage a wide range of circumstances when disconnection can occur. This concept should either be deleted or a list of scenarios should be reflected in this Code or there will be an inequitable situation between gas and electricity. For example, a retailer wishing to disconnect a customer who has been tampering with gas and electric meters would only be able to disconnect the electricity. We note that there are no "other reasons" authorised under the Gas Regulations 1993 (this is an example of having mirrored the electricity code without tailoring).
CA18	Amend	Use the electricity model as a guide to provisions around disconnections.
CA19	Amend	Rename as "Faults, Emergencies and Safety" and incorporate provisions such as those found in the electricity model around the Consumer's responsibilities.
CA21	Amend	See electricity model for items to add including items covering what is to be supplied and technical interruptions. Include a more specific section on the consumer's responsibilities.

Appendix C

Parliamentary Intention regarding Scheme costs

Section 43G of the Gas Act 1992 contains the power for the Minister to make regulations providing for the establishment of a complaints resolution scheme for complaints by small consumers.

A small consumer is defined as “a consumer who is supplied with less than 10 terajoules of gas per year”. A small consumer effectively equates to a medium sized industrial user.

The Gas GPS Paragraph 11 says it invites GIC to recommend arrangements for *“the development of efficient and effective arrangements for the proper handling of consumer complaints”*.

There are 3 key points arising from the combination of these statements of Parliament/the Government:

- No regulations have been promulgated
- The Act envisages a Scheme for small consumers and not all consumers
- The GPS makes no mention of a free scheme.

So it would seem that Parliamentary intention was for a scheme covering many consumers but not necessarily for free. This contrasts with the wording used in the Electricity GPS which specifically said free.

