



Electricity and Gas Complaints Resolution Scheme - Approval under the Gas Act and Electricity Act

Submissions Analysis

June 2009

The Electricity Commission is a Crown Entity set up under the Electricity Act 1992 to oversee the New Zealand electricity industry and markets. The Commission regulates the operation of the electricity industry and markets. In doing so, its principal objectives are to:

- Ensure that electricity is produced and delivered to all classes of consumers in an efficient, fair, reliable and environmentally sustainable manner; and
- Promote and facilitate the efficient use of electricity.

The Gas Industry Co is an approved gas industry body under the Gas Act 1992. Gas Industry Co recommends arrangements, including rules and regulations where appropriate, which improve:

- The operation of gas markets;
- Access to key infrastructure; and
- Consumer outcomes.

Gas Industry Co also reports regularly to the Minister of Energy and Resources on the performance and present state of the New Zealand gas industry, and the achievement of Government's policy objectives for the gas sector.

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1 Introduction

Purpose

- 1.1 The Electricity Commission and Gas Industry Co have operated a joint process over the last 18 months, guided by both the Government Policy Statement on Electricity Governance May 2008¹ (Electricity GPS) and the Government Policy Statement on Gas Governance April 2008 (Gas GPS) to achieve the goal of a single, energy-based complaints resolution scheme (CRS) that meets the principles of accessibility, independence, fairness, accountability, efficiency, effectiveness, and community awareness.
- 1.2 In March 2009, the Electricity Commission and Gas Industry Co issued a joint consultation paper seeking submissions on a proposal by the Electricity Commission to approve, and Gas Industry Co to recommend that the Minister of Energy and Resources (Minister) approve, the Electricity and Gas Complaints Commission (the EGCC Scheme), as the single energy-based complaints resolution scheme under the provisions of the Electricity Act 1992 and the Gas Act 1992 respectively.
- 1.3 Submissions on this consultation paper were received in April 2009.
- 1.4 The purpose of this paper is to:
 - Highlight a number of key issues that emerged from submissions;
 - Summarise other issues that arose from submissions, particularly in response to the questions contained in the consultation paper; and
 - Outline the response of the Electricity Commission and Gas Industry Co on each of the issues that have been raised.

Background

- 1.5 Both the Electricity Act and the Gas Act provide for the approval of a complaints resolution scheme for the purpose of addressing complaints by any person, including consumers, potential consumers, and occupiers or owners of land, relating to electricity and gas retailers and distributors.
- 1.6 The requirements of the Electricity Act and the Gas Act are described in detail in the March 2008 consultation paper listed in paragraph 1.2 above. The key points are:
 - Every electricity distributor (including Transpower) and electricity retailer and every gas distributor and gas retailer must participate in an approved complaints resolution scheme (if one exists);
 - The Electricity Commission has the power to approve one or more complaints resolution scheme(s) for electricity;
 - The Minister has the power to approve one or more complaints resolution scheme(s) for gas; and

¹ A revised GPS was confirmed by Government in May 2009 – the aspects dealing with complaints resolution have not changed.

- As an alternative to approval of a proposed scheme, the Electricity Commission and Gas Industry Co may recommend that the Minister make a recommendation for regulations (under both the Electricity Act and the Gas Act) to establish a complaints resolution scheme.
- 1.7 Applications were sought through a Request for Applications in September 2008 (RFA) for the selection of a preferred applicant for approval as a single, joint complaints resolution scheme, under the Electricity Act and the Gas Act.
- 1.8 The Electricity Commission and Gas Industry Co have operated a joint process, guided by Government Policy Statements (for Electricity and Gas Governance), to select a preferred applicant for approval.
- 1.9 Further background to the process to select a preferred complaints resolution scheme is provided in papers issued jointly by the Electricity Commission and Gas Industry Co as follows:

March 2009	Consultation Paper – Proposal to Approve a Joint Electricity and Gas Complaints Resolution Scheme
September 2008	Request for Applications – to be Selected as Preferred Candidate for Approval as a Complaints Resolution Scheme under the Electricity and Gas Acts
September 2008	Submissions Analysis – Selection of a Preferred Candidate for Approval as a Complaints Resolution Scheme under the Electricity and Gas Acts
March 2008	Consultation Paper – Approval of a Joint Electricity and Gas Complaints Resolution Scheme

Recent Developments

- 1.10 The March 2009 consultation paper set out the key terms of the EGCC scheme, and assessed the costs and benefits of approving this scheme relative to the reasonably practicable options for complaints resolution, and the status quo. The reasonably practicable options included two versions of a regulated scheme.
- 1.11 The Electricity Commission and Gas Industry Co preference for the EGCC scheme was conditional upon the EGCC gaining approval for some key changes to its constitution. On 6 April 2009, the EGCC advised the Electricity Commission and Gas Industry Co that these changes had failed to pass a vote of members.
- 1.12 This was considered by the Electricity Commission and Gas Industry Co to be a significant change in the assumptions underpinning the Consultation paper and it was decided to extend the consultation period from a closing date of 13 April to 20 April 2009, to enable submitters to take account of the changed circumstances if they so wished. Additional material about the Electricity Commission and Gas Industry Co's process to recommend the EGCC scheme for approval was also released under the Official Information Act at this time.

Glossary of Terms

- 1.13 This paper uses a number of terms that are set out here for the convenience of the reader.

Achievement standards²	The standards that an approved complaints resolution scheme will need to meet as set out in Appendix A of the Request for Applications, amended through responses to the questions and answers during the application process, and amended by changes during the evaluation process.
Assessment criteria	The criteria used to assess the costs and benefits of the preferred complaints resolution scheme and other reasonably practicable options (relative to the status quo) and set out in a consultation paper described in paragraph 1.9.
Australian Benchmarks	The Australian Benchmarks for Industry-Based Customer Dispute Resolution Schemes as developed by the Australian Minister of Customs and Consumer Affairs with assistance from the NZ Ministry of Consumer Affairs.
Complainant	A person (including a consumer, potential consumer, former consumer or affected land owner) with a complaint about a gas or electricity retailer or distributor.
Complaints Resolution Scheme	A set of rules and an associated body, which are independent of retailers and distributors, and are available to any person who wishes to complain about an energy retailer or distributor.
Determination	A finding by the decision-maker about a complaint.
Electricity Act	The Electricity Act 1992.
Evaluation Panel	The panel established by the Electricity Commission and Gas Industry Co in order to evaluate applicant schemes.
Gas Act	The Gas Act 1992.
GPS	The Government Policy Statement on Electricity Governance or Gas Governance.
Minister	The Minister of Energy and Resources.
Scheme rules	The rules by which a complaints resolution scheme considers complaints, obtains information, makes determinations, awards compensation and changes its own rules.

² A copy can be found at <http://www.electricitycommission.govt.nz/pdfs/opdev/retail/consultationdocs/complaints-resolution/achievement-standard.pdf>

2 EGCC Scheme Amendments

Approval Process

- 2.1 The March 2009 consultation paper indicated that the Electricity Commission and Gas Industry Co had selected the EGCC Scheme as their preferred applicant for approval as a single nationwide scheme to cover gas and electricity related complaints.
- 2.2 In reaching this preference the Electricity Commission and Gas Industry Co evaluated two of the three applications received in detail³. These applications were from the EGCC and the Electricity and Gas Disputes Resolution Service (EGDRS).
- 2.3 The Electricity Commission and Gas Industry Co formed a joint Evaluation Panel to undertake the process of considering applications and selecting a preferred applicant. A detailed and comprehensive evaluation process resulted in the Evaluation Panel recommending the EGCC Scheme as the preferred applicant (subject to some changes being made to the EGCC constitution – see below). This recommendation was endorsed by the boards of the Electricity Commission and Gas Industry Co.

EGCC Governance Amendments

- 2.4 Although the EGCC application complied with most of the Achievement Standards supplied with the original Request for Applications (RFA), the Evaluation Panel had concerns about a number of issues. These concerns were discussed with representatives of EGCC and they agreed to consider amendments to the EGCC Scheme. By far the issue of greatest concern was that of governance.
- 2.5 It was necessary for the EGCC membership to endorse the amendments before they could take effect. Accordingly, the EGCC consulted with its members on the amendments to the EGCC Scheme during March and early April 2009.
- 2.6 For the purpose of assessing the costs and benefits of the EGCC scheme against the reasonably practicable options in the March 2009 consultation paper, it was assumed that these amendments would be agreed by EGCC Scheme members. The assessment of the approved EGCC Scheme relative to the reasonably practicable options was therefore undertaken using the EGCC constitution and rules which included the amendments.
- 2.7 It was noted in the consultation paper that if the amendments were not agreed by the EGCC members, it would be necessary for the Electricity Commission and Gas Industry Co to reconsider whether to proceed with the approval process.
- 2.8 The proposed amendments to the governance structure included:
 - The EGCC Scheme Amendment Committee would cease to exist;
 - The EGC Commissioners would oversee the process to amend the constitution and rules of the EGCC Scheme and any amendments would

³ One non-conforming application was received but was not progressed to the detailed evaluation stage.

require support from four out of the five EGC Commissioners, following consultation with members.

- 2.9 Although several other amendments to the EGCC scheme were agreed by the members, the proposed changes to the governance arrangements were not approved⁴.

⁴ There were other proposed changes not related to governance that were also not approved.

3 Submissions

Context for Submissions

- 3.1 The failure of the desired constitutional changes to be supported by EGCC members has created a dilemma for the Electricity Commission and Gas Industry Co. Governance issues aside, the Evaluation Panel which recommended the EGCC as the preferred applicant, continues to hold the view that the EGCC scheme best meets the criteria established for the evaluation. These criteria reflect the Achievement Standards established in late 2008 in accordance with the requirements set down in the electricity and gas GPSs, together with factors such as experience and cost.
- 3.2 However, the current EGCC governance arrangements are substantially at variance with the relevant Achievement Standard and especially the requirement that:
- "The overseeing entity (for the scheme) will have a balance of consumer interests, industry interests, and where relevant other key stakeholder interests..."*
- and will have functions including:
- "approving any changes to the scheme rules".*
- 3.3 No decisions have been made at this point about how these circumstances should impact on either the preference for the EGCC scheme, or on the assessment of the approved scheme against other reasonably practicable options for complaints resolution.
- 3.4 However, some submitters have taken the opportunity to comment on the failed EGCC constitution amendments and some have suggested a way forward in this context.

Submissions Received

- 3.5 Submissions were received from 36 representatives of various community groups, dispute resolution experts, and from across the energy industry. The table on the following page lists all submissions and demonstrates that, while a large majority of stakeholders support the approval of the EGCC scheme, a number of retailers and two distributors oppose it.

Table 1 Submission summary

Submission	Retailers	Lines companies	Consumer organisations	Community law centres and disputes resolution	Other
<p>Support EGCC approval as single, joint complaints resolution scheme</p>	<p>Energy Direct NZ Meridian Contact Energy</p>	<p>Transpower Electricity Networks Association Powerco Unison Orion Vector</p>	<p>Federated Farmers of New Zealand New Zealand Federation of Family Budgeting Services Ministry of Consumer Affairs MEUG Consumer NZ Grey Power Domestic Energy Users' Network</p>	<p>Whitireia Community Law Centre Office of the Ombudsman Insurance and Savings Ombudsman Australia & New Zealand Energy and Water Ombudsman Network Community Legal Advice Whanganui Electricity and Gas Complaints Commissioner Wellington Community Law Centre</p>	<p>Commerce Commission Whitlow and Associates Veritek David Close</p>
<p>Do not support approval of EGCC as single, joint complaints resolution scheme</p>	<p>Genesis Energy Energy Online Trustpower Mighty River Power Bay of Plenty Energy King Country Energy</p>	<p>Northpower Waipa Networks</p>		<p>Electricity and Gas Disputes Resolution Service</p>	

4 Key Issues from Submissions

Process Concerns

- 4.1 Genesis Energy has indicated support for the Electricity Commission and Gas Industry Co working together to consider the preferred approach to complaints resolution in the energy sector. However, Genesis Energy has also suggested that the process followed has created an impression that approving the EGCC scheme may have been a predetermined outcome, with implications for the integrity of the RFA process.
- 4.2 Genesis Energy has suggested that, because of this, the Electricity Commission and Gas Industry Co should make a fresh start, commencing with a re-evaluation of objectives and options.
- 4.3 The Electricity Commission and Gas Industry Co reject the suggestion that there has been predetermination or a lack of integrity in the RFA process. In particular they point out that:
- A set of Achievement Standards for a CRS, which were largely based on the Australian Benchmarks, were the subject of consultation in March 2008;
 - Following submissions, the Achievement Standards were finalised and issued along with the RFA in September 2008;
 - The process for considering applications was set out in the RFA, and this made it clear that the Electricity Commission and Gas Industry Co would evaluate applications against the Achievement Standards, select a preferred applicant that best met the Achievement Standards, and undertake consultation on the merits of the preferred applicant relative to the reasonably practicable options;
 - It has been clear from the start of the process that the Electricity Commission and Gas Industry Co favour approval of a single joint CRS.⁵
 - The RFA made it clear that the Electricity Commission and Gas Industry Co reserved the right to negotiate with any applicant in order to establish whether it would be possible to modify an application sufficiently to consider it for approval;
 - An Evaluation Panel was established to evaluate the applications and it developed a detailed weighted scoring system based on the evaluation criteria included in the RFA, in order to support its evaluation;
 - Meetings were held with representatives of both the Electricity and Gas Complaints Commission (EGCC) and the Electricity and Gas Disputes Resolution Service (EGDRS) to discuss possible modifications to their applications and both parties agreed to a number of significant amendments in order to enhance the merits of their application; and
 - The Evaluation Panel considered the applications, based on the amended versions, and made a recommendation to both the Electricity Commission

⁵ The Electricity Commission has been carrying out policy work and consultation on this issue since 2006/2007 with a very clear preference for a single scheme. See <http://www.electricitycommission.govt.nz/opdev/retail/consumercomplaints/archive>

and Gas Industry Co, to approve the EGCC scheme, subject to the changes to the constitution that were agreed with the EGCC representatives. All members of the Panel independently scored the EGCC scheme higher than the EGDRS.

- 4.4 As highlighted by paragraph 4.3, this process was objective, independent and comprehensive, and not at all suggestive of predetermination.
- 4.5 Genesis Energy also suggests that it was problematic that the period for consultation on the assessment of the preferred EGCC application relative to the reasonably practicable options spanned the voting process for amendments to the EGCC constitution, and that the consultation paper effectively treated a successful EGCC vote as a *fait accompli*.

Response

- 4.6 The Electricity Commission and Gas Industry Co were conscious that there would be an overlap in the EGCC Scheme and the Electricity Commission and Gas Industry Co consultation processes and discussed the possibility of delaying the Electricity Commission and Gas Industry Co consultation process with the EGCC representatives. The parties agreed that it was better to proceed rather than delay, and there should not be a problem with overlapping consultation. If the Electricity Commission and Gas Industry Co consultation had been deferred, it should still have been clear that the EGCC amendments were being made in order to enhance the prospects of the scheme being approved. It is difficult to see why this would have changed Genesis Energy’s resolve to veto the proposed EGCC constitutional amendments, since it must have considered that the amendments would likely enhance the prospects of approval.
- 4.7 The Electricity Commission and Gas Industry Co consider that the process has been clear, and the process has been appropriate to the circumstances. They remain of the view that a single joint industry-based CRS that meets the benchmarks set out in the GPS is the best outcome and that it would be highly desirable to proceed to approval.

Status Quo should have been considered as a Reasonably Practicable Option

Submitters	Genesis Energy	Mighty River Power
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- 4.8 These parties submitted that the Status Quo should have been considered as a reasonably practicable option because it offers more choice to members than is achieved by approving a single CRS.

Response

- 4.9 The Electricity Commission and Gas Industry Co do not consider that the Status Quo is a reasonably practicable option because it fails to meet the regulatory objective set out in the March 2009 consultation paper. In particular, under the Status Quo, not all gas and electricity consumers (including potential consumers) and owners and occupiers of land, have free access to a CRS.
- 4.10 Under the Status Quo there is no requirement for gas and electricity retailers, and gas and electricity distributors, to participate in a CRS, and several companies

have chosen not to participate, despite at least four existing schemes being in existence. The only way to ensure all retailers and distributors do participate is to either approve a scheme or schemes under the Acts or, for regulations to impose such an obligation. In either case, some form of regulatory intervention is required.

- 4.11 The Electricity Commission and Gas Industry Co continue to hold the view that all gas and electricity consumers (including potential consumers) and owners and occupiers of land, should have free access to a CRS.
- 4.12 It is also noted that the Electricity and Gas GPSs indicate that the Government expects all electricity consumers (including potential consumers) and owners and occupiers of land, to have free access to a CRS and all small gas consumers to have effective free access to a complaints resolution system.
- 4.13 Accordingly, the Status Quo is not considered to be a reasonably practicable option.

Multiple Approved Schemes

Submitters	Genesis Energy Energy Online EGDRS	Mighty River Power Trustpower BOPE
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- 4.14 These parties submitted that the Electricity Commission and Gas Industry Co should consider approving multiple schemes because this would allow retailers and distributors to choose a CRS that suited their approach to dispute resolution, would provide competition between CRSs, and help maintain pressure on costs. In the view of these parties, approving a single CRS would establish an effective monopoly with a risk of escalating costs.

Response

- 4.15 The March 2009 consultation paper pointed to a number of benefits of a single joint electricity and gas scheme. In particular it avoids:
 - Inconsistent determinations to resolving complaints of a similar nature;
 - Possible confusion among complainants about where to complain;
 - Issues caused by a consumer’s distribution and retail company belonging to different CRS;
 - Duplication of overhead costs associated with multiple CRS; and
 - A possible weakening of the incentives for each CRS to provide an effective service to complainants.
- 4.16 Although the Electricity Commission and Gas Industry Co agree that providing multiple schemes would have the likely effect of maintaining pressure on costs, they consider that the benefits of a single joint approved scheme outweigh the possible costs. They also consider that industry oversight of an industry-based scheme can be effective in maintaining downward pressure on costs. This is one of the reasons that they prefer an industry-based scheme to a regulated scheme.
- 4.17 Many submitters agreed with the Electricity Commission and Gas Industry Co views in this area and suggested that the best scheme for potential complainants

might not necessarily align with the best scheme for participants. If participants have the ability to select between competing CRS, they may elect to join a CRS that has lower costs and provides less support to complainants. The polarisation of views on this issue was very marked – consumers, dispute resolution organisations (EGDRS being the exception) and distributors, almost unanimously support a single joint scheme, while several retailers prefer multiple schemes.

- 4.18 It is worth noting that research into complaints resolution in other energy markets (see Appendix A), all of which are far bigger than New Zealand's, reveals that in all cases participation in a single CRS established under legislation, is mandatory for all energy retailers and distributors.
- 4.19 Although approving a single CRS establishes an effective monopoly, it needs to be recognised that the Achievement Standards (and both the EGCC and EGDRS schemes) provide that all retailers and distributors have 20 business days in which to resolve complaints through in-house complaints resolution systems⁶, before a complaint is progressed to the independent scheme. In a sense, the member companies have incentives to 'compete' with the independent scheme – if a member company is able to resolve a complaint within the 20 day period, it never gets to be considered by the independent scheme.
- 4.20 Further, members of the scheme have a say in how that scheme is run and are at liberty to propose changes to how the scheme operates (provided such changes remain within the scope of approval).

A Regulated Alternative

Submitters	Genesis Energy
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- 4.21 Genesis Energy suggested that a regulated scheme would be preferable to approving only one CRS because creating an effective monopoly from a scheme originally established in a voluntary setting was not appropriate.
- 4.22 Genesis Energy suggested that, if the Electricity Commission and Gas Industry Co remained convinced that the benefits of a single joint CRS outweighed the benefits of multiple schemes, then a regulated service provider would probably be the best mechanism for achieving this.

Response

- 4.23 The Electricity Commission and Gas Industry Co do not agree that a regulated approach represents the best means of implementing a single joint CRS and continue to hold the view that an approved industry-based scheme is the preferred means, for the reasons set out in the March 2009 consultation paper. Nonetheless, if a regulated solution is preferred, they agree that a regulated service provider is likely to be the best means of achieving this (and the assessment in the March 2009 consultation paper supported this conclusion).

⁶ The Decision maker also has flexibility to allow more time in certain circumstances.

A Mediation-based Approach

Submitters	Genesis Energy EGDRS Trustpower	Mighty River Power King Country Energy Northpower
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4.24 Several parties likened the approach of the EGCC to an “ombudsman” or “judicial-based” approach and contrasted this with the approach of the EGDRS, which favours a more mediation-based process. They considered the mediation-based approach of the EGDRS preferable because it:

- Resulted in quicker settlement of disputes; and
- Lower overall costs associated with the complaints resolution process.

4.25 However, consumer and community organisations, and other dispute resolution bodies, strongly support the approach adopted by the EGCC.

Response

4.26 The Electricity Commission and Gas Industry Co continue to favour a CRS that incorporates mediation at an early point in the process (as evidenced by the Achievement Standards), while providing an acceptable level of support to the complainant through the process.

4.27 The Electricity Commission and Gas Industry Co also observe that a requirement on members of both the EGCC and EGDRS is that they attempt to resolve all complaints using “in-house” dispute resolution systems. Participants are free to apply mediation in order to settle disputes at an early point, rather than have them go to an independent CRS. It is only if a complaint is not resolved within 20 business days that it would be referred to the independent CRS.

EGCC Governance Amendments

Submitters	Vector Transpower	MEUG
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4.28 Vector, Transpower and MEUG submitted that the failure to amend the EGCC constitution was unfortunate, but should not be considered fatal to the possibility of approval of the EGCC scheme. They suggested that the Electricity Commission and Gas Industry Co should approve the scheme, despite the possible flaws in governance. Vector suggested that a more appropriate governance arrangement could be arrived at in the future.

Response

4.29 The Electricity Commission and Gas Industry Co agree that it is unfortunate that the amendments to the EGCC constitution have not been made. Although they have a general preference for the EGCC scheme over the EGDRS scheme in most respects, as evidenced in the Evaluation Report⁷, the issues with governance of the EGCC scheme remain a real concern. The ability of one member, or a small

⁷ See <http://www.electricitycommission.govt.nz/pdfs/opdev/retail/consultationdocs/complaints-resolution/OIA-response.pdf>

group of members, to veto a rule change, fails to meet the desired standard for governance of a CRS and highlights concern about the scheme's balance of interests. Furthermore, overall accountability of the scheme is diluted where decision-making on governance issues is split between the EGCC Scheme Amendment Committee and the EGCC, as is currently the case.

Consultation on EGCC Scheme Rules

Submitters	Contact Energy	BOPE
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- 4.30 Bay of Plenty Energy (BOPE) submitted that consultation on the proposed changes to the EGCC scheme should have allowed input from all stakeholders, rather than just the members of the scheme.
- 4.31 Contact Energy submitted that the proposed rules set by the EGCC scheme for members (the membership rules) should have been the subject of consultation.

Response

- 4.32 The EGCC scheme is required to apply its own rules in making changes to its rules. Accordingly, it followed those rules in consulting with its members where necessary. The Electricity Commission and Gas Industry Co have no power to require the EGCC to follow a particular course of action.
- 4.33 Nevertheless, the Electricity Commission and Gas Industry Co did seek submissions from all stakeholders, on the EGCC rules (including the membership rules) when they released the March 2009 consultation paper. A link was provided in the paper to the amended version of the EGCC rules and submissions were invited. The Electricity Commission and Gas Industry Co agreed to consider submissions and, if particular issues needed to be addressed, undertook to do that in the context of any final approval decision⁸.

Electricity Commission and Gas Industry Co Joint Approach

Submitters	Mighty River Power
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- 4.34 Mighty River Power suggested that, if consensus on approval could not be achieved between the Electricity Commission and Gas Industry Co, then the Status Quo should prevail. Alternatively, multiple schemes could be proposed if the agencies had differing views as to which scheme was superior.

Response

- 4.35 The Electricity Commission and Gas Industry Co agree with Mighty River Power that they should continue a joint process to approve a CRS.

Other Issues

- 4.36 Submissions raised a number of other issues that the Electricity Commission and Gas Industry Co have considered. These issues are addressed in Appendix B,

⁸ No submissions were, in fact, received on this point.

which is organised around the 10 questions that were included in the consultation paper, and Appendix C, which addresses some other issues that were raised in submissions.

5 Conclusion

- 5.1 The Electricity Commission and Gas Industry Co have carefully considered all of the issues raised in submissions and have noted that the EGCC constitution has not been amended to provide governance arrangements that meet the Achievement Standards set out in the RFA.
- 5.2 There is strong support for approval of the EGCC scheme from consumer organisations, community organisations, distributors and other dispute resolution bodies, and there is some support from energy retailers.
- 5.3 However, several retailers have indicated a preference for the status quo or multiple approved schemes.
- 5.4 There appears to be little support for a regulated scheme. However it is noted that this remains a possibility if agreement on an industry based scheme is not able to be achieved.
- 5.5 The Electricity Commission and Gas Industry Co have also noted that under both the proposed arrangements and under existing schemes, in the first instance, all retailers and distributors have 20 business days in which to resolve complaints through their in-house complaints resolution systems before a complaint is progressed to the independent scheme. If a member company is able to resolve the complaint within the 20 day period, it never gets to be considered by the independent scheme.
- 5.6 The Electricity Commission and Gas Industry Co have concluded that:
- A single joint independent electricity and gas CRS, available to all potential complainants, and consistent with the requirements of the electricity and gas GPSs, is the preferred outcome;
 - The best way of achieving this outcome is to approve an industry-based scheme; and
 - The EGCC scheme rates as superior to the EGDRS scheme in delivering many of the desired outcomes, but the governance arrangements remain a source of concern and approval without amending these arrangements is not desirable.
- 5.7 The Electricity Commission and Gas Industry Co have decided not to recommend approval of any CRS at this stage to allow time for industry participants to consider whether it is possible to amend an existing scheme in a manner which is acceptable to both organisations. Accordingly the Electricity Commission and Gas Industry Co encourage industry participants to work towards that outcome.
- 5.8 However the current situation, which denies some potential complainants access to an independent CRS, cannot be allowed to persist for an extended period.

Appendix A: Complaints Resolution in other Energy Markets

Market	UK	Australia (NEM)	Ireland	United States (PJM)	Canada (Ontario)	Canada (Alberta)
Scheme administration	Ombudsman ⁹ established under legislation	Ombudsman ¹⁰ established for each state. Some are industry-based with legislative backing (NSW & Victoria), some are established under legislation (Tasmania, Queensland). All decisions 'binding'	Regulator (Commission for Energy Regulation - Energy Customers Team ¹¹) operates the scheme under legislation	Public service commission (or equivalent) operates scheme for each state under legislation	Ontario Energy Board ¹² (the regulator) operates the scheme under legislation	Office of the Utilities Consumer Advocate ¹³ (part of the Ministry of Services) operates scheme under legislation
Scope of scheme	Energy consumers of suppliers and network operators	Energy consumers, combined with water in certain states	Consumers of electricity and natural gas suppliers and network companies	Typically utility company consumers (electricity, gas, telecommunications, water, etc.)	Consumers of electricity and gas utilities and retailers	Electricity and natural gas small consumers
Participation	Compulsory as of October 2008 (existed since July 2006 on a voluntary basis)	Compulsory	Compulsory	Compulsory	Compulsory	Compulsory
Single scheme	Yes	Yes	Yes	Yes	Yes	Yes

⁹ <http://www.energy-ombudsman.org.uk/links/index.php>

¹⁰ <http://www.anzoa.com.au/links.html>

¹¹ <http://www.energycustomers.ie/complaints/index.aspx>

¹² <http://www.oeb.gov.on.ca/OEB/For+Consumers/Have+a+Question+or+Complaint>

¹³ <http://www.ucahelps.gov.ab.ca/105.html>

Appendix B: Answers to specific questions

1. Do you agree that the EGCC Scheme arrangements represent an appropriate basis for a single nationwide complaints resolution scheme for electricity and gas?

Submission summaries	EC/GIC comment
<p>Yes</p> <p>The majority of submissions agreed that the EGCC Scheme arrangements represented an appropriate basis for a single nationwide complaints resolution scheme for electricity and gas, subject to constitutional changes recommended by the EC and GIC.</p> <p>These submitters included DEUN, Commerce Commission, Federated Farmers, Powerco, Wellington Community Law Centre, Veritek, Unison, Orion, Office of the Ombudsmen, EGCC, NZ Federation of Family Budgeting Services, Ministry of Consumer Affairs, Meridian, Insurance & Savings Ombudsman, ANZEWON, Contact, Consumer NZ, Community Legal Advice Whanganui, Whitlow & Associates, Grey Power, ENA, Energy Direct NZ, Whitireia Community Law Centre.</p> <p>Some submitters went further and agreed that the EGCC Scheme arrangements were appropriate even in the absence of the constitutional changes to the scheme. These submitters included Vector, MEUG and Transpower.</p> <p>Partially</p> <p>Northpower agreed that the EGCC is appropriate but suggested that the scheme requires some modification to reduce its costs.</p> <p>No</p> <p>A number of submitters did not consider that the EGCC Scheme arrangements were an appropriate basis for a nationwide scheme.</p> <p>Mighty River Power submitted that there are a number of different options that are superior to EGCC being approved, including the status quo, the status quo in conjunction with requiring all utilities to be a member of a scheme, approval of the EGDRS scheme and approval of multiple schemes.</p> <p>The idea of multiple schemes being approved is one echoed by other submitters, including Genesis Energy, TrustPower, EGDRS, Energy Online and BOPE.</p> <p>Trustpower also responded to a number of issues raised in the proposal to approve a scheme. Specifically, Trustpower suggested that:</p> <ul style="list-style-type: none"> • The Achievement Standards are met by more than one scheme; • All complainants could have access to a complaints resolution scheme under multiple schemes. • Complainant confusion from having multiple schemes is simple to overcome. 	<p>There is a high level of agreement amongst distribution companies, Transpower, consumer groups and dispute resolution agencies that EGCC is an appropriate scheme and should be approved.</p> <p>Some submitters do not consider that changes to the EGCC constitution are necessary and that the approval of EGCC is warranted irrespective of whether the constitution changes are made.</p> <p>Some retailers and the EGDRS prefer the status quo, multiple approved schemes and/or approval of a scheme with a stronger mediation focus than the EGCC.</p> <p>EC/GIC response</p> <p>The status quo and approving multiple schemes both fail to meet the regulatory objective (one scheme with all consumers covered). EC/GIC continue to hold the view that a single, joint scheme covering all gas and electricity complainants will provide the best overall outcome.</p> <p>EC/GIC accepts that there may be benefits from the EGCC scheme placing more emphasis on mediation at an early stage in the complaint process and that the industry members should continue to encourage cost reductions.</p>

Submission summaries	EC/GIC comment
<ul style="list-style-type: none"> • Multiple scheme operation is not necessarily more costly than a single approved EGCC scheme. • The approach of EGCC is judicial in nature and inferior to the mediation approach of EGDRS, which provides for face-to-face meetings. <p>BOPE and King Country Energy also preferred the face-to-face approach provided by the EGDRS.</p> <p>Genesis submitted that there is no evidence that EGCC is superior relative to other schemes. Genesis also submitted that it is inappropriate to approve a scheme that was formed in a voluntary setting and provide it with a de facto monopoly position.</p>	

2. Do you have particular areas of concern that would lead you to making suggestions for changes to the EGCC Scheme?

Submission summaries	EC/GIC comment
<p>No</p> <p>A number of submitters had no concerns that would warrant making changes to the EGCC Scheme. These submitters included DEUN, Vector, Federated Farmers, Powerco, Veritek, Office of the Ombudsmen, EGCC, NZ Federation of Family Budgeting Services, ANZEWON, Consumer NZ and Energy Online.</p> <p>Yes</p> <p>Various concerns were raised by submitters that led to suggestions for changes to the EGCC Scheme. Mighty River Power, EGDRS, Genesis and Trustpower all submitted that the EGCC scheme was slow to resolve complaints.</p> <p>Trustpower questioned the quality of decision making that will result from ‘in-house’ decision making versus using experts on a per-case basis (as would be the case with EGDRS).</p> <p>The level of cost of the EGCC Scheme was raised by Mighty River Power, Waipa Networks, Northpower, EGDRS, BOPE, Energy Direct NZ, Trustpower and Genesis.</p> <p>Waipa Networks, Unison and Energy Direct NZ shared concerns that the fee structure failed to assign costs to those that should incur them.</p> <p>An ‘overly legalistic and judicial approach’ was criticised by Northpower, EGDRS, Trustpower, King Country Energy, BOPE and Genesis. The latter three also express preference for greater ‘face-to-face’ resolution between parties. Contact expressed the view that a mediation step was necessary before adopting an ‘adversarial’ legalistic approach.</p> <p>Orion submitted that Transpower should be a full member of the scheme.</p> <p>Issues of governance were also raised by a number of submissions. The Ministry of Consumer Affairs submitted that industry capture is a problem for the scheme, given its structure, while Transpower disagreed with the governance changes proposed and suggested its own. In particular Transpower proposed that:</p> <ol style="list-style-type: none"> 1. The Commission be expanded so that it comprises an independent chairperson, two consumer representatives, two retailer representatives and two lines company representatives; and 2. Changes to the constitution be approved by at least six of the seven representatives. 	<p>Although there is a high level of support for the EGCC Scheme, there is also pressure for change and development of the scheme, with suggestions around:</p> <ul style="list-style-type: none"> • speed and quality of resolution; • cost; • fee structure; • a greater mediation focus. <p>EC/GIC response</p> <p>At present, EGCC Scheme members are able to propose rule changes that would allow the scheme to improve over time and address these issues. Such developments would be much more difficult to achieve under a regulated outcome.</p> <p>The EC and GIC propose that EGCC Scheme members consider possible development of their scheme to address cost, fee structure, and mediation focus.</p>

3. Do you agree that approval should be on the basis of an indefinite term, while encouraging cost-effective performance through the independent review process? If not, do you have any additional observations on the merits of a fixed-term?

Submission summaries	EC/GIC comment
<p>Yes</p> <p>A number of submitters agreed that the approval of the scheme should be for an indefinite term (subject to review). These submitters included DEUN, Vector, Federated Farmers, Powerco, Veritek, Unison, Orion, Office of the Ombudsmen, EGCC, NZ Federation of Family Budgeting Services, Ministry of Consumer Affairs, ANZEWO, Consumer NZ and Transpower.</p> <p>Trustpower and EGDRS submitted that the scheme should be approved indefinitely but with limited tenure for the decision maker (TrustPower suggested two years, EGDRS suggested five years). EGDRS also suggested a limited tenure for any mediation panel of the same term.</p> <p>Contact also suggested the scheme should be approved indefinitely but with reviews every 18 months, as opposed to the proposed three year review.</p> <p>No</p> <p>Other submitters suggested a finite term of approval, including BOPE, King Country Energy, Energy Direct NZ, Energy Online and Genesis Energy. Mighty River Power suggested that multiple schemes are necessary to encourage cost-effectiveness and that the option should be left open to approve further schemes in the future, while Northpower suggested an ability to change the provider in the event that there is major dissatisfaction with its performance.</p>	<p>EC/GIC note that supporters of the EGCC Scheme tend to favour an indefinite term, while those opposed to the EGCC Scheme tend to favour a fixed-term.</p> <p>No new arguments in favour of a fixed-term have emerged.</p> <p>It may be possible for the scheme to be appointed for an indefinite term and the overseeing entity could decide to appoint a decision-maker for a fixed term.</p> <p>EC/GIC response</p> <p>The question of whether the term is fixed or indefinite may depend on the form of scheme finally agreed. Either way there should be regular reviews to ensure ongoing performance.</p>

4. Do you agree that the transition to an approved EGCC Scheme should be relatively straight-forward? Do you have any views on how the transition should be managed?

Submission summaries	EC/GIC comment
<p>Yes</p> <p>A number of submitters agreed that the transition to an approved EGCC Scheme should be relatively straight-forward, including DEUN, Vector, Powerco, Veritek, Unison, Orion, Office of the Ombudsmen, EGCC, Northpower, NZ Federation of Family Budgeting Services, ANZEWON, Contact, Consumer NZ, Transpower, King Country Energy, Energy Online and Genesis.</p> <p>Federated Farmers and Energy Direct NZ expressed some concern about administrative delay for complaints involving non-member companies while they go through the process of joining the EGCC Scheme. Energy Direct NZ proposed the establishment of a guideline to ensure a smooth transition.</p> <p>EGDRS, BOPE and Trustpower all suggested a longer period of transition, preferably 12 months. BOPE cited the costs of transition for companies as a concern, including changing their Terms and Conditions and staff retraining.</p> <p>No</p> <p>The Ministry of Consumer Affairs suggested that there may be issues of jurisdiction over those disputes that arose before a company was a member of the scheme. Furthermore, there may be equity issues for consumers arising from different resolution periods for scheme complaints.</p>	<p>There is a high level of agreement that transition should be straightforward, although some debate around whether a longer transition period is required.</p> <p>EC/GIC response</p> <p>If the EGCC Scheme is approved there will need to be careful consideration of transition issues. The issue of staff retraining for some companies is noted.</p>

5. Do you agree that the Service Provider Regulated Scheme and the Fully Specified Regulated Scheme are the only reasonably practicable options to approving an applicant scheme, which meet the proposed regulatory objective? If not, what other reasonably practicable options exist in your view?

Submission summaries	EC/GIC comment
<p>Yes</p> <p>Vector, Federated Farmers, Powerco, Veritek, Unison, Orion, EGCC, ANZEWON, Contact, Consumer NZ, Transpower, Energy Direct NZ and DEUN all submitted that the Service Provider Regulated Scheme and the Fully Regulated Scheme were the only reasonably practicable options to approving an applicant scheme. DEUN suggested that these alternatives should only be viewed as last resorts.</p> <p>No</p> <p>A number of submitters suggested that other reasonably practicable alternatives were possible. Those submitting that the status quo was practicable included BOPE and Mighty River Power. The latter also proposed the status quo in conjunction with requiring all utilities to be a member of a scheme. Mighty River Power also proposed the approval of multiple schemes, as did EGDRS, BOPE, Trustpower, Energy Online and Genesis. Northpower suggested that the Small Claims Tribunal was a practicable option not considered.</p>	<p>Those opposed to the EGCC tended to suggest that other reasonably practicable options should be considered. These options largely focus on the status quo and approving multiple schemes. However, the status quo and approving multiple schemes are not reasonably practicable options because they fail to meet the regulatory objective (one scheme with all consumers covered).</p> <p>There is no mechanism to ‘require’ companies to be a member of a scheme other than by approving a scheme under the Electricity and Gas Acts, or through recommending a regulatory solution to the Minister.</p> <p>The Small Claims Tribunal (now known as the Disputes Tribunal) is not seen as a reasonably practicable option for an energy-based CRS as it may not have sufficient experience with electricity and gas issues to balance the unequal bargaining power between consumers and retailers/distributors. It also has a limit of \$7,500 or \$12,000 if all parties agree, whereas the EGCC scheme or a regulated scheme has a limit of \$20,000. Furthermore, under the current EGCC scheme, if a complainant is still dissatisfied, they can take their claim to the Disputes Tribunal anyway – this option would always be available.</p> <p>Accordingly, preference is for a specialised service that can provide consistent decisions based on a comprehensive knowledge of the industry.</p>

6. Do you agree that the costs and benefits set out in the table are the main costs and benefits that need to be considered? If not, what other costs and benefits would you suggest?

Submission summaries	EC/GIC comment
<p>Yes</p> <p>Vector, Powerco, Veritek, Unison, EGCC, NZ Federation of Family Budgeting Services, ANZEWON, Energy Direct NZ and Energy Online agreed that the costs and benefits considered were sufficient.</p> <p>Contact suggested that member benefits could also have been included, while Transpower suggested that the benefits of brand recognition and costs of transition to a regulated scheme if approval fails should have been included.</p> <p>No</p> <p>A number of submitters suggested that other costs and benefits should have been included.</p> <p>EGDRS submitted that timeliness, skill base of independent neutrals, neutrality, cost, opportunity to be heard, opportunity for real issues to be resolved, empowerment of the consumer and availability should all be included.</p> <p>BOPE submitted that face to face meetings offer a benefit that should be included.</p> <p>Dynamic efficiency benefits, such as competition placing downward pressure on scheme costs, and/or monopoly costs are suggested for inclusion by BOPE, Genesis and Mighty River Power.</p> <p>DEUN suggested that there is an additional adaptability benefit through learning, which is not available under mediation.</p> <p>Trustpower suggested that benefits accruing to complainants should be included.</p> <p>The Ministry of Consumer Affairs submitted that the benefit of improved industry perception should be included.</p>	<p>Several additional cost and benefit categories have been suggested but they are all largely encompassed within the cost-benefit framework adopted in the consultation paper. For example, some submitters suggest that the negative dynamic efficiency effects of approving a single scheme, relative to the status quo, should be included. However, these costs are included in the evaluation under operating costs and the approved scheme is considered to have costs materially higher than the status quo.</p> <p>Much of the debate appears to focus on the relative weightings and judgements, rather than on the overall framework.</p>

7. Do you agree that the simple scoring system set out in the table is a reasonable way of comparing costs and benefits across the options?

Submission summaries	EC/GIC comment
<p>Yes</p> <p>The simple scoring system was considered reasonable by Powerco, Veritek, Unison, EGCC, NZ Federation of Family Budgeting Services, Ministry of Consumer Affairs, ANZEWON, Vector, Contact, Transpower, Energy Direct NZ and DEUN, with the latter agreeing as long as adaptability benefits of learning are included for the EGCC scheme.</p> <p>No</p> <p>Mighty River Power did not consider the scoring system to be helpful. BOPE suggested that the scoring system was hard to reconcile, particularly with respect to operating costs, complainant benefits, transition costs and adaptability benefits. Trustpower submitted that actual operating costs and a quantitative view of consumer satisfaction should have been included, while Genesis submitted that the system is useful to inform decision but should not be determinative,</p> <p>King Country Energy did not consider the scoring system relevant due to other proposed schemes being excluded from assessment.</p>	<p>Although there is some disagreement about the simple scoring system and whether it is a reasonable approach, the comments imply that concerns are more about the relative weightings and judgements, rather than suggesting an alternative approach.</p> <p>No new costs or benefits have been suggested that are not already incorporated within the framework.</p> <p>EC/GIC agree with Genesis that the simple scoring system is useful, but should not be determinative.</p>

8. Do you agree that the range of weighting of costs and benefits in the table are reasonable? If not what alternative weightings would you suggest?

Submission summaries	EC/GIC comment
<p>Yes</p> <p>The weightings of the costs and benefits were deemed reasonable by DEUN, Powerco, Veritek, Ministry of Consumer Affairs, ANZEWON, BOPE, Transpower, Energy Direct NZ and Vector, although the latter suggested that setup and transition costs may be weighted too high.</p> <p>No</p> <p>The weightings of the costs and benefits were not deemed reasonable by a number of other submitters, including Genesis. Contact suggested that operating costs may not rise due to economies of scale, while EGDRS submitted that customer satisfaction should have been included as a benefit. Unison suggested that there are enforcement benefits if a company is 'referred' to EC/GIC. EGCC suggested that the regulated option should have higher establishment costs, while the approved scheme's operating costs should be lower.</p> <p>Other</p> <p>Other submissions concluded that the weighting was irrelevant (Mighty River Power and King Country Energy), while Trustpower submitted that the question that should be asked is 'are the conclusions of the CBA accurate and valid?' Trustpower also submitted that the benefits are exaggerated for the EGCC scheme in terms of complainant benefits, enforcement benefits, transition benefits and adaptability benefits relative to the status quo.</p>	<p>The parties disagreeing with the proposal to approve the EGCC Scheme tend to disagree with the weightings of costs and benefits applied by EC/GIC.</p> <p>It is recognised that the weightings are somewhat subjective and that different views on the relative weightings are possible. It was for this reason that a range of weightings was assumed in the analysis, The range of weightings is reflected in a range of costs and benefits for the proposal and the reasonably practicable options.</p> <p>EC/GIC conclude that the weightings used in the consultation paper are reasonable, but it is possible to make different plausible judgements, and the simple scoring system should be used to inform the decision process rather than be determinative.</p>

9. Do you agree that the Approved Scheme option (approving the EGCC Scheme) is the best of the reasonably practicable options?

Submission summaries	EC/GIC comment
<p>Yes</p> <p>A number of submitters agreed that the Approved Scheme option is the best of the reasonably practicable options, including DEUN, Vector, Commerce Commission, Federated Farmers, Powerco, Wellington Community Law Centre, Veritek, Unison, Orion, Office of the Ombudsmen, EGCC, NZ Federation of Family Budgeting Services, Ministry of Consumer Affairs, MEUG, Meridian, Insurance & Savings Ombudsman, ANZEWON, Contact, Community Legal Advice Whanganui, Whitlow & Associates, Grey Power, ENA, Energy Direct NZ, Whitireia Community Law Centre, Community Legal Advice Whanganui and Transpower.</p> <p>Partially</p> <p>Northpower submitted that the EGCC scheme is the best of the reasonably practicable options but that its costs need some modification.</p> <p>No</p> <p>Multiple scheme approval is favoured by Mighty River Power, Genesis and Energy Online.</p> <p>Mighty River Power and Genesis also preferred the status quo, while Mighty River also put forward an option whereby the status quo is retained in conjunction with requiring all utilities to be a member of a scheme.</p> <p>Mighty River Power and EGDRS preferred approval of the EGDRS scheme, while King Country Energy suggested that other schemes were more appropriate.</p> <p>Genesis also preferred a regulated service provider to the sole approval of EGCC (if a single scheme was preferred to the approval of multiple schemes).</p> <p>Other</p> <p>Trustpower suggested that as not all reasonably practicable options have been considered, the point is moot.</p>	<p>There is a high level of agreement amongst distribution companies, Transpower, consumer groups and dispute resolution agencies that EGCC is an appropriate scheme and should be approved.</p> <p>Several retailers would prefer the status quo or multiple approved schemes, neither of which are considered reasonably practicable options because they fail to meet the regulatory objective (one scheme with all consumers covered). A scheme with a stronger mediation focus is also favoured by some retailers.</p> <p>EC/GIC continue to prefer the EGCC scheme relative to the reasonably practicable options, but retain concerns about the governance arrangements.</p> <p>EC/GIC also note that the EGCC scheme may benefit from considering more emphasis on mediation at an early stage in the process.</p>

10. Do you agree that the Approved Scheme option (approving the EGCC Scheme) would yield overall benefits that are reasonably material and that these benefits would outweigh the slight increase in overall costs that could be expected relative to the Status Quo?

<u>Submission summaries</u>	<u>EC/GIC comment</u>
<p>Yes</p> <p>A number of submitters suggested that the Approved Scheme option would yield overall benefits that are reasonably material and that these benefits would outweigh the slight increase in costs expected, relative to the status quo. These submitters include DEUN, Federated Farmers, Powerco, Veritek, Unison, Office of the Ombudsmen, NZ Federation of Family Budgeting Services, Ministry of Consumer Affairs, ANZEWON, Contact, Consumer NZ, Transpower and Energy Direct NZ.</p> <p>Probably</p> <p>Vector suggested that the approval of the EGCC Scheme would probably be net beneficial.</p> <p>No</p> <p>Mighty River Power, Northpower, EGDRS, King Country Energy, Trustpower, Energy Online and Genesis do not accept that the approval of the EGCC scheme would be beneficial relative to the status quo.</p>	<p>There is a high level of agreement amongst distribution companies, Transpower, consumer groups and dispute resolution agencies that approving the EGCC scheme will yield overall benefits.</p> <p>Several retailers do not agree with this assessment.</p> <p>EC/GIC conclude that approval of an industry-based EGCC scheme with an amended governance arrangement would yield overall benefits</p>

Appendix C: Additional issues raised in submissions

Other issues	Submitter	EC/GIC response
Travel is an issue under a mediation service	DEUN	Noted.
Concern about moving too far away from the current situation as it is working well	Federated Farmers	Noted.
Compliance is best served when the industry is involved and engaged in the scheme (relative to the Service Provided Regulated Scheme)	Ministry of Consumer Affairs	Agreed. The EC/GIC concluded in the Consultation Paper that the approval of the EGCC Scheme is preferable to the Regulated Service Provider Scheme.
Retailers should be forced to disclose to consumers their complaints resolution scheme	David Close	Achievement Standard 2.3 includes the requirements relating to the promoting of the scheme by members.
Contact is keen to have input into the monitoring requirements	Contact	Noted.
Inconsistent language is used in the executive summary (which should refer to electricity and gas consumers as opposed to energy consumers)	Vector	Agreed.