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Angela Ibbotson
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By email: angela.ibbotson@gasindustry.co.nz

Dear Angela

Rulings Panel Treatment of Loss of Profit Evidence

The Rulings Panel has invited gas retailers to make submissions on the treatment of certain confidential information within the Gas Industry Company's compliance regime. The request is in the context of alleged breaches of the Gas (Switching Arrangements) Rules 2008 and relates to how the Rulings Panel should treat information on loss of profit.

The Rulings Panel has posed the following questions:

- whether the information is actually, or should be treated as, confidential and/or commercially sensitive;
- whether the information should not be provided to the competing retailer allegedly in breach; and
- whether an alternative arrangement should be applied (for example, loss of profit evidence could be provided to an independent expert to audit).

The following sections respond to each of these questions in turn.

Whether the information is actually, or should be treated as, confidential and/or commercially sensitive

Genesis Energy considers that loss of profit information is usually confidential and commercially sensitive.

To provide evidence on loss of profit, a retailer will need to disclose information on contracted price and volume, the term of the relevant contract, the retailer's costs, and the retailer's margins. Information on price, volume and term may be confidential between the retailer and their customer in a given case, while information on costs and margins is commercially sensitive for the retailer.

Whether the information should not be provided to the competing retailer allegedly in breach

Genesis Energy considers that it is likely to be to the disclosing party's detriment to have to provide commercially sensitive or confidential information to their competitor. To avoid causing this harm, Genesis Energy considers that disclosure to competitors should not be required.

If the Rulings Panel decides that such disclosure is nonetheless necessary in a given case, Genesis Energy suggests that disclosure should be subject to strict conditions such as limiting who in the recipient's organisation can receive the information and requiring future destruction of the information.

Whether an alternative arrangement should be applied

Genesis Energy recommends that it is preferable to use an alternative arrangement to verify claims for compensation.

Genesis Energy agrees with the proposal in clause 29 of the submission by Nova Gas Limited and Auckland Gas Company Limited. That is, that the retailer is only required to disclose confidential information to the Rulings Panel, the Investigator and an independent auditor appointed by the Rulings Panel.

This proposal is consistent with section 69 of the Evidence Act 2006 concerning the Court's discretion regarding confidential information. It is also consistent with section 48 of the Gas Governance (Compliance) Regulations 2008 regarding the Ruling Panel's use of independent experts, including auditors, to assist with proceedings when required.

If you would like to discuss any of these matters further, please contact me on 04 495 3348.

Yours sincerely

A handwritten signature in black ink that reads "R Parry". The signature is written in a cursive, flowing style.

Ross Parry
Regulatory Affairs Manager
Genesis Energy

cc: Ian Dempster, Gas Industry Company