

Stakeholder Involvement in RIC's Regulatory Decision-Making Process

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This document is one of a series of discussion papers exploring a specific aspect of stakeholder involvement in the regulatory decision-making process.

Information
Document

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This document is being released for information. Clarification and enquires should be addressed to:

Executive Director
Regulated Industries Commission
Furness House – 1st & 3rd Floors
Cor. Wrightson Road and Independence Square
Port-of-Spain, Trinidad

Postal Address:: P.O. Box 1001, Port-of-Spain, Trinidad

Tel. : 1-868-625-5384; 627-7820/0821/0503

Fax : 1-868-624-2027

Email : ricoffice@ric.org.tt or comments@ric.org.tt

Website : www.ric.org.tt

Copies of this document are available from the RIC Information Centre or from our Website at www.ric.org.tt

STAKEHOLDER INVOLVEMENT IN RIC'S REGULATORY DECISION-MAKING PROCESS

INTRODUCTION

The Regulated Industries Commission (RIC) has commenced the process for Price Reviews for both T&TEC and WASA and a series of papers detailing key aspects of the regulatory framework, the RIC's thinking and its rationale underpinning these key areas are being released for public consultation and comment. One important aspect of the RIC's work is considering how customers' views can be properly and adequately taken into account during the rate review process. This is particularly important when specifying outputs to be delivered that are important to customers. The purpose of the document is to inform all stakeholders on how the RIC will be approaching stakeholders' involvement in the regulatory decision-making process.

The RIC is aware that there may be a number of factors that may deter stakeholders from engaging meaningfully in the RIC's decision-making process. For instance, the price control process itself is fairly complicated and technical. Customers may not understand and value the improvements they are paying for and the costs and benefits associated with alternative approaches and options, or may feel insufficiently informed or competent, to make effective choices or contribute effectively. By involving customers in the process, they may better understand these issues, while being mindful that the cornerstone of the RIC's approach is that customers/stakeholders are at the centre of its decision-making process.

RIC OBLIGATIONS UNDER THE ACT

Customer engagement is one of the important elements of the RIC's work and part of the RIC's legal duties. The RIC Act No. 26 of 1998, Section 6(2) subsection (1)(e), (g), (h) and (j) stipulates that the RIC ... **“shall consult with service providers and representatives of**

consumer interest groups and any other parties it considers as having an interest in the matters before it”.

To discharge its duty effectively and in a manner that is transparent and accountable, the RIC must understand the interests of all stakeholders. This can be best achieved by engaging stakeholders in the RIC’s decision-making process, as well as encouraging the service provider to engage consumers on an on-going basis. However, the challenges revolve around how to:

- effectively engage consumers in the regulatory process and ensure that approaches to customer engagement are appropriate for different types of end-users;
- improve the credibility of the regulatory regime from the customers’ perspective; and
- improve the service provider’s focus on customers.

EFFECTIVE ENGAGEMENT AND ROLE OF CONSUMERS

Broadly, there are three possible areas where customers could be involved in the regulatory process and these areas have been engaging a lot of attention as to the role that customers can play. These are:

- As part of the general consultation process for any regulatory decision-making by the regulator (e.g. publication of consultation documents, public meetings, etc.);
- As part of the accountability process through some form of right to appeal regulatory decisions; and
- Related to the justification of elements of an investment programme since customers pay and will benefit from the investment.

As part of the first area identified, the RIC’s focus will continue to seek to improve the methods of engagement with consumers and all other stakeholders to inform the RIC’s decision-making process (i.e. *ex ante* involvement where consumer views impact on regulatory decisions). There are a number of considerations shown in figure 1 below, that will help the RIC to enhance customers/stakeholders participation.

Figure 1. Stakeholder Engagement Considerations



The second area where customer involvement is becoming a major concern for the regulator is the role given to consumers in the determination of investment needs, as well as the entire area of improving service providers' focus on customers. Many regulators require service providers to undertake customer surveys prior to each price control review to establish willingness-to-pay. This information is then used as an input into a cost benefit analysis, with projects required to meet the cost benefit test for inclusion in the Capex programme.

The US Federal Energy Regulatory Commission has successfully encouraged parties to settle cases and these settlements ("constructive engagement") have become part of established policy. For example, the Office of Public Counsel in Florida, USA, has frequently negotiated settlements with utilities on behalf of customers. Similarly, the Civil Aviation Authority, UK, has asked the airlines and airports to participate in "constructive engagement" in order to try to agree on specified elements of the price control, that is, quality of performance standards, traffic forecasts and the investment programme. Constructive engagement mechanisms can range from relatively informal discussions with stakeholders to formal, negotiated settlements. In negotiated settlements, stakeholders negotiate directly with service providers to reach an agreement that the regulator then endorses.

Of course, engagement with customers by a regulatory body is different from service providers and customers engaging with each other with a view to reaching agreement. The RIC is of the view that there is a role for the service providers to play in actively engaging their customers on an on-going basis, not just during price reviews. In fact, constructive engagement is consistent with local legislation and practice, while the public contest method would require legislative changes. The former offers the benefits of negotiated settlements, provided that the regulatory specification of the issues to be engaged in, reflects the preferences of the participants and that the rules are clearly defined. The parties also have to consider the cost implications which would be, in the final analysis, the responsibility of the regulator.

The RIC will encourage the service provider to provide opportunities for consumer engagement and to engage proactively with customers on an on-going basis. In the case of State-owned public utilities, customers are the service provider's ultimate shareholders and should therefore be involved in key decision-making. Additionally, there are also certain expectations about how the service provider communicates with the public and is held accountable for its activities. Currently, there is a reflex aversion to disclosure and for a closed rather than an open style of operation. Consultation should be at the heart of good policy development. Openness and real dialogue with the public are likely to be extremely beneficial to service providers to gain and keep public support, as well as to move closer to their customers/stakeholders. In this regard, the RIC will encourage all service providers to:

- consult with the public on proposals for, and the undertaking of any significant activity in the exercise of their core functions. Among the topics for public consultation, the service providers must ensure that those affected by their infrastructure and construction projects are fully consulted and informed about these activities. This will provide a sense of ownership and stewardship over the process and resulting decisions;
- use their websites to promote openness and to facilitate knowledge about, and participation in, its core activities by:
 - making information and documentation available on the website;
 - making the website more interactive, especially to e-mail queries; and

- including a prominent section dealing with the service provider’s planning and development activities (on-going and completed); and
- demonstrate that their business plans have been discussed with their customers and that due regard has been given to the views expressed during this process.

The third area where customer involvement can be considered is the issue of third party right to challenge the RIC’s final price control decisions (i.e. *ex post* involvement where consumers can appeal against regulatory decisions). Currently, the judicial review mechanism allows challenges to be brought on the basis that the decision was unlawful, procedurally unfair or irrational but not on the merits of decision taken. A third party merits-based right of challenge could enhance and improve the perceived legitimacy of the regulatory regime. However, there are risks that such a mechanism may prompt unwarranted challenges that unnecessarily raise regulatory uncertainty and lead to delays in the implementation of price controls/decisions. In fact, in the few countries where customers have the right to appeal regulatory decisions, the experience demonstrates that an unfettered right to appeal may not be appropriate.

RIC’S ENGAGEMENT PRINCIPLES

The RIC’s enhanced engagement principles will, *inter alia*, include:

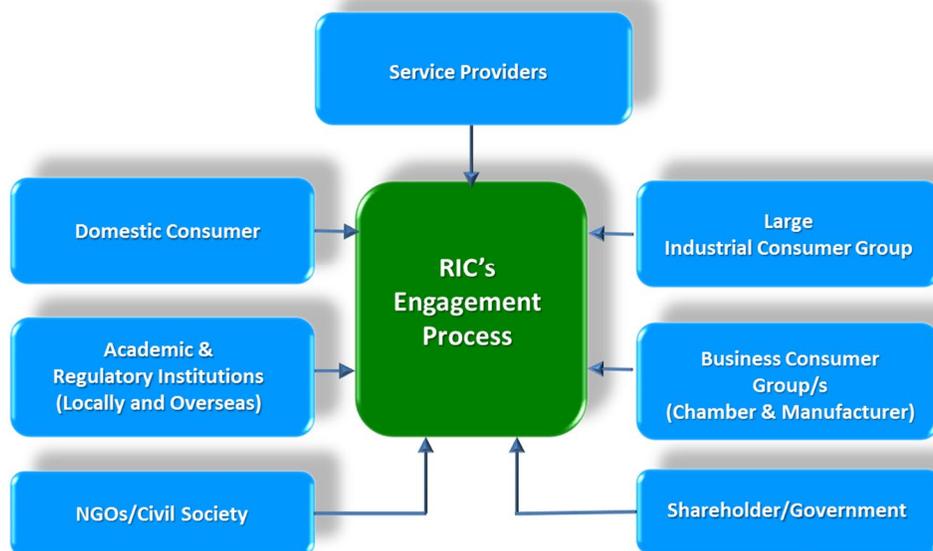
- **Inclusiveness** – ensuring that the views of all stakeholders are sought, using a wide range of methods and that the engagement be two-way, that is, both informing customers and listening to them;
- **Taking Views Seriously** – ensuring that all comments/views are given serious consideration;
- **Accessibility and Transparency** – ensuring that the RIC’s documents/information is easily accessible and that all stakeholders are aware of the opportunities to engage; and
- **Responsiveness/Assessment** – ensuring that the RIC’s process for engagement is flexible, responding to the information revealed and that the RIC continuously reviews its engagement process to make appropriate and necessary changes.

RIC'S PROPOSED ENHANCED ENGAGEMENT PROCESS

Given the range of stakeholders that have an interest in the regulatory decisions of the RIC, the engagement has to be multi-layered to allow different groups of stakeholders, as shown in figure 2, to feed into the regulatory process. The RIC would expand the stakeholder groups to include a rate review and an external stakeholder panel as we move into the future. RIC's proposed enhanced engagement process will:

- provide more targeted opportunities to ensure that the views of all stakeholders are effectively represented;
- seek to expand the list of stakeholders and include representatives of smaller businesses, industrial consumers, local or national groups representing consumers;
- encourage greater stakeholder engagement to enable them to articulate their views on all policy issues;
- facilitate a more holistic understanding of views across the various stakeholders and the rationale underpinning these;
- facilitate direct input of individuals into the process, in the event that parties represented by the groups had a preference for direct participation in the process; and
- incorporate a number of forward-thinking engagement methods, where possible.

Figure 2: Major Stakeholders involved in the Consultative Process

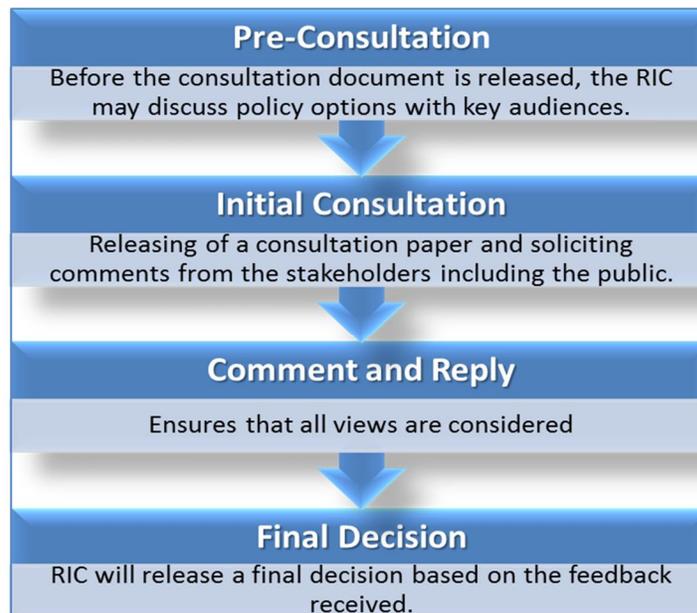


The objectives of the RIC's public consultative process are multifaceted and include:

- to obtain input, information and feedback from persons affected by the proposed interventions, other stakeholders and the public so as to ensure that customers have the best services possible in terms of choice, quality and value for their money;
- to acquire substantive information and knowledge from all major stakeholder groups so as to make informed decisions, resulting in improved regulatory outcomes;
- to ensure that the RIC has investigated all aspects of an issue; and
- to ensure greater understanding and transparency of the determinations of the RIC;

The **consultative process** of the RIC, as shown in figure 3, typically has four stages, which serve as the minimum procedural safeguard to ensure that the public is notified of a pending decision, allowed to participate in the process and informed of the final decision and its reasoning.

Figure 3: RIC's Consultative Process



STAKEHOLDERS INVOLVEMENT & ENGAGEMENT METHODS

The RIC's approach entails seeking the views of individuals or groups on policies or plans that may affect them directly or indirectly. The RIC's will utilize its existing suite of tools and incorporate new forms of engagement methods (social media) that will include:

- Formal invitations for **Written Submission**;
- Producing shorter **Non-technical consultation documents** that are reader-friendly and accessible to a broader set of stakeholders;
- **Workshops, seminars, panel discussions** and **public meetings** with representative groups and other interested parties including rural communities;
- **Media Interviews**;
- **Research** including **In-depth interviews** and **Focused Group Discussions, Surveys** and **Opinion Polls**;
- **Website Discussion Forum** or **Web Chats**;
- **Stakeholder Information Days**;
- **Live Online Consultation** – enables the involvement of large numbers of stakeholders in real-time;
- **SMS Text Messaging** – using the exchange of short text messages to solicit feedback on regulatory issues;
- **Newspaper Column & Radio Programmes**; and
- **Social Media** – capitalizing on the popularity of social media sites like **Facebook & Twitter** to create awareness and including informative **Podcasts** (audio & audio recordings) on the website.

CONCLUSION

This paper outlines the RIC's initial thinking on how stakeholder involvement might best be encouraged. This document is one of a series of information/consultative documents concerning the second five year regulatory control period of the electricity transmission and distribution

sector and for the first regulatory control period of the wastewater and water distribution sector. The RIC expects that enhanced engagement would:

- provide both the RIC and its stakeholders with a better understanding of what needs to be delivered;
- encourage the service providers to be more participatory in their decision-making process; and
- increase the perceived credibility of the regulatory framework and the RIC's decision-making process.