

# Stakeholder Involvement in Regulatory Decision- Making

December  
**2010**

---

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

Consultative  
Document

# **STAKEHOLDER INVOLVEMENT IN REGULATORY DECISION-MAKING**

## **OVERVIEW**

This document is one of a series of discussion papers exploring a specific aspect of stakeholder involvement in regulatory decision-making, as part of the second price control review for the electricity transmission and distributor sector, when the RIC will set charges for the period June 01, 2011-May 31, 2016. The RIC's initial thinking in the specific area of stakeholder participation is detailed herein as part of the regulatory framework. The RIC expects to publish further consultation/information documents concerning other areas of work over the coming months. The RIC will use the feedback received on this document, and others which will be published, to inform the overall approach to price control for the second price control period. The RIC will also consult on its overall price setting methodology.

## **INTRODUCTION**

It is now just over four years since economic regulation of the electricity and distribution sector was first established under the RIC Act No. 26 of 1998. The RIC's final determination of charges for the sector (published in May 2006) anticipated a number of benefits/improvements over the period June 01, 2006 – May 31, 2011. These included customer service improvements in a number of areas, fairly stable bills after the first year's initial jump in tariffs (tariffs were adjusted after almost sixteen years) and the delivery of a large investment programme. Although the new regulatory framework has delivered benefits to customers and the service provider, T&TEC, which is now in a financially sustainable position, the RIC wishes to build on the success to date. As the economic regulator of the sector, the RIC must ensure that the sector is not only financially viable, but is also sustainable to meet the challenges that lie ahead, including affordability and rising customer expectations. One of the ways the RIC discharges its duties is

to review and set price limits. Under its Act, the RIC is required to carry out reviews of price limits every five years.

As the RIC plans ahead for the second price control review, a series of papers detailing key aspects of the regulatory framework, the RIC's thinking and its rationale underpinning these key areas will be released for public consultation and comment. It is important to emphasize that the RIC does not expect fundamental changes to the existing regulatory framework but envisages evolutionary development of the existing framework and processes. The RIC will set price limits to achieve its objectives under its Act. 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.

## **RESPONDING TO THIS DOCUMENT**

All persons wishing to contribute to this document are invited to submit their comments. Responses should be sent by post, fax or e-mail 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; 627-0821; 627-0503  
**Fax** : 1(868) 624-2027  
**Email** : [ricoffice@ric.org.tt](mailto:ricoffice@ric.org.tt) or [comments@ric.org.tt](mailto:comments@ric.org.tt)  
**Website** : [www.ric.org.tt](http://www.ric.org.tt)

All responses will normally be published on the RIC's website unless there are good reasons why they must remain confidential. Any requests for confidentiality must be indicated. A copy of this document is available from the RIC's website at **[www.ric.org.tt](http://www.ric.org.tt)**.

## **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. In fact, engaging customers/stakeholders is an on-going primary concern for regulators. 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 customers' perspective; and
- improve the service provider's focus on customers.

The RIC is also 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.

### **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). The RIC has also taken note of the ways in which customers have been successfully involved in other jurisdictions. There are a number of actions that will help the RIC to enhance customers/stakeholders participation, while being mindful that the cornerstone of the RIC's approach is that customers/stakeholders are at the centre of its decision-making process. These actions will include:

- determining appropriate ways to engage with customers and other stakeholders;
- simplifying the price setting process, reducing the amount of technical information involved and making information more accessible and easier to understand;
- identifying core issues that require customers/stakeholders engagement;
- involving customers earlier in the price control process, as this should allow their views to be incorporated more effectively in the decision-making process, as well as allowing more time to enable a fuller discussion and engagement with customers and other stakeholders;
- considering appropriate timing for engagement;
- seeking to expand the list of stakeholders who might help the price setting process (e.g. a panel of stakeholders/customers who may be more directly involved in the rate review process);
- working closely with all key stakeholders, which include: Government, the large industrial customers' group, NGOs, Tobago House of Assembly, Parliament, and a range of other household and business stakeholders; and

- targeting workshops and seminars to particular interest groups, as well as capturing the views of different social groups.

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. Other examples of customer involvement exist in countries, such as Argentina, the US, Australia and the UK. In Argentina, the Government mandated that new investment proposals by the national transmission company be voted for and paid for by transmission users. In spite of initial problems, this engagement method (known as "Public Contest" method) has worked well, where the users were able to work together to decide on investments and were willing to pay for them.

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. Construction 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.

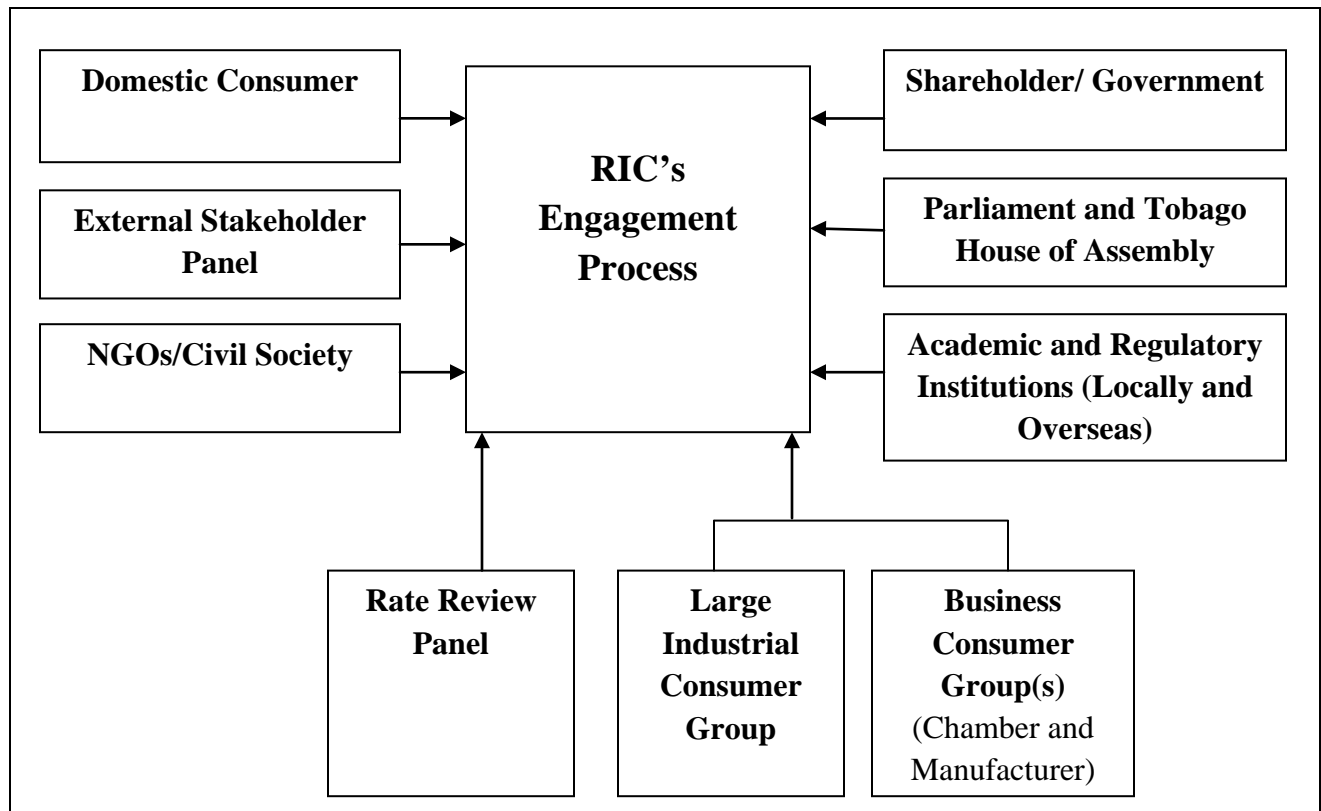
## **RIC'S PROPOSED ENHANCED ENGAGEMENT PROCESS**

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 to feed into the regulatory process. Consequently, the RIC's proposed enhanced engagement process (**Figure 1**) 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, etc.;
- 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.

**Figure 1: RIC's Proposed Engagement Process**



The RIC's "traditional" consultative process will be improved by making information more accessible and easier to understand, and potentially by targeting workshops and seminars to particular interest groups. In this regard, the RIC will introduce a range of measures designed to enhance the accessibility of information, including publishing plain language summaries of major consultation documents and issue-specific blogs. The RIC will ensure that its consultative process is linked to the use of specific indicators to evaluate the success of the programme. This approach will include a mix of logistical indicators to determine whether the communication programme is on point, in addition to monitoring indicators which measure the immediate impact of the communication activities. When evaluating its consultative process, the RIC will use opinion polls and surveys among other methods to determine the impact and the outcome of the consultative exercise in relation to favourably impacting/changing the knowledge, attitudes and practices of stakeholders. In fact, 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** the RIC typically follows 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.

- **Pre-Consultation** – Before the consultation document is released, the RIC may discuss policy options with key audiences.
- **Initial Consultation** – Involves the releasing of a consultative paper and soliciting comments from the public. The consultative paper will clearly define all relevant issues,

provide background information on these issues, and set out the RIC's preliminary views on the issues.

- **Comment and Reply Period (collecting feedback from the public)** – The purpose of this stage is to ensure that all views are considered and includes a formal reply period. Additionally, for consultations involving complex issues, the RIC may hold seminars/meetings to obtain the broadest range of views.
- **Final decision** – After the conclusion of the consultation period, the RIC will release a final decision based on the feedback received. The RIC's final statement will present and justify its conclusion on the issues.

## **STAKEHOLDERS/GROUPS INVOLVEMENT**

Free and open dialogue continues to be the core principle of the RIC's stakeholder involvement initiatives. The RIC's approach entails seeking the views of individuals or groups on policies or plans that may affect them directly or indirectly. A range of distinct groups can be readily identified and they include:

- **Ad hoc Working Groups and Committees** – representatives of service providers, customers and other interest groups who will discuss specific issues;
- **Independent Advisors** – will be consulted on matters of a technical nature;
- **Regulatory Professionals and Institutions** – professionals/institutions from other jurisdictions with whom discussions and consultations will be held;
- **Shareholder/Government** – Government sets overall sector policy and must be consulted. However, consistent with its independent role, the RIC will continue to take decisions on price controls independent of Government;
- **External Stakeholder Panel** – essentially an independent stakeholder interest group, set up by the RIC to challenge and provide advice on policy issues, and to ensure that the interests/views of consumers in particular, are fully considered and taken into account

when framing regulatory policy. Regular contact and an expectation of continued consultation is likely to improve engagement and understanding;

- **Private Sector** - Open dialogue will be sought as a direct form of interaction (e.g. Industrial Customer Group, Business Consumer Group, etc.); and
- **Rate Review Panel** – a group of stakeholders meeting regularly to provide input about a range of issues during the rate setting process.

## ENGAGEMENT METHODS

The RIC's existing suite of tools and the new forms of engagement methods 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**;
- **Annual Meetings** with **Parliamentarians** and the **Tobago House of Assembly**;
- **Annual Public Lecture Series** with plenary and keynote sessions featuring academics and subject matter experts;
- **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 also the first in what will be a series of discussion documents concerning the second five year regulatory control period of the electricity transmission and 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.

**The RIC welcomes responses and suggestions of interested parties on all matters raised and, in particular, on the proposed use of an External Stakeholder Panel, Rate Review Panel, Large Industrial Consumer Group and web-based communication.**