

24 February 2021

Genesis Energy Limited
660 Great South Road
PO Box 17-188
Greenlane
Auckland 1051

Attention: [REDACTED]

By email: [REDACTED]

CC: [REDACTED]

Dear [REDACTED],

Fair Trading Act 1986: Warning for false representations of fixture charges

1. The Commerce Commission has been investigating Genesis Energy Limited (**Genesis**) under the Fair Trading Act 1986 (**Act**) following a self-report by Genesis, regarding a billing error concerning electricity line charges which affected certain business customers. We have now completed our investigation and are writing to you to inform you about our views.
2. The Commission considers that Genesis is likely to have breached the Act in that between February 2014 and July 2020, it issued invoices that displayed inaccurate multipliers applied in respect of some line 'fixture' charges. As a result, the fixture charges were miscalculated and Genesis made false representations to affected business customers regarding the total price to be paid for the electricity service provided.
3. We are issuing you with this warning letter because in our view, Genesis' conduct is likely to have breached section 13(g) of the Act. A warning is not a finding of non-compliance; only the courts can decide whether a breach of the law has occurred, and we have determined that at this time we will not be bringing legal action.¹

¹ Commission's published *Enforcement Response Guidelines* at [41].

4. Genesis has confirmed to us that it has ceased the conduct, has put measures in place to minimise the risks of a billing error occurring again and is taking remedial action towards affected customers.

The investigation

5. In July 2020, Genesis self-reported to the Commission that as a result of a billing error, business customers had either underpaid or overpaid fixture charges.
6. Genesis collects fixture charges from business customers on behalf of line companies. Multipliers used to calculate the costs associated with fixture charges are set by each line companies on an annual basis. They are specific to each customer on the basis of the quantity of power used, the congestion of the lines and the distance of line required to supply a connection.
7. Between February 2014 and July 2020, Genesis applied incorrect multipliers when calculating fixture charges owed by some business customers, as a result of an incorrect multiplier being entered on the customer's account either at account set up or during a pricing update. Consequently, customer invoices did not accurately disclose the total price of fixture charges payable.
8. As a result of this billing error, the investigation identified that 1,576 customers overpaid \$1,138,943 and 1,356 customers underpaid more than \$2,400,000.
9. Genesis has taken the following steps to remedy the issue:
 - 9.1 696 existing customers have been credited \$490,324.80 plus 5.35% interest;
 - 9.2 out of the 880 previous customers impacted:
 - 9.2.1 354 customers² have received a refund plus 5.35% interest;
 - 9.2.2 refunds of a further 276 customers are in progress;
 - 9.2.3 the process of identifying the remaining 250 previous customers is under way;
 - 9.3 internal processes have been reviewed to minimise the risks of a billing issue occurring again.
10. In the event some customers are not contactable:
 - 10.1 all unclaimed refunds over \$100 will be lodged under the IRD in accordance with the requirements of the Unclaimed Money Act 1971;
 - 10.2 all unclaimed refunds under \$100 will be donated to the Foodbank Project; and

² Of these, 10 customers have opted to donate their refund to charity.

- 10.3 Genesis will maintain a record of all unclaimed refunds, so that affected customers can get in contact with Genesis for a refund.
11. Genesis also advised it will not seek to recover charges from customers who have underpaid fixture charges.
12. To minimise the risk of a billing issue occurring again, Genesis has implemented an audit process whereby pricing data is routinely checked and is providing additional staff training.

Legal framework

13. Section 2 of the Act defines price as including any consideration that relates to the purchase or supply of goods and services. It also specifically includes the supply of electricity in the definition of services.
14. Section 13(g) of the Act prohibits businesses from making false or misleading representations in relation to the price of goods and services offered for supply.

The Commission's view

15. In this case, and having fully considered relevant information received, the Commission's view is that it is likely that Genesis' conduct breached the Act.
16. By issuing invoices that displayed an incorrect multiplier for the calculation of fixture charges Genesis is likely to have made false representations about the price payable by customers for the supply of electricity.
17. The nature of the issue makes it difficult for customers to identify a billing error, because line companies do not directly contract with end customers. Line companies set fixture charges which electricity retailers such as Genesis pass on to customers. Accordingly, it is essential that electricity retailers provide accurate information about the charges set by line companies.
18. In reaching its decision to issue this warning, the Commission acknowledges Genesis' actions in identifying the billing error and self-reporting the error to the Commission. The Commission also acknowledges the actions taken by Genesis to remedy customer harm and prevent another billing issue from occurring again.
19. We encourage Genesis to continue reviewing its internal billing processes for compliance with the Act.

Warning

20. After weighing up the factors set out in our Enforcement Response Guidelines, we have decided it is appropriate and sufficient to conclude our investigation by issuing this warning letter rather than by issuing legal proceedings.
21. This warning represents our opinion that the conduct in which Genesis have engaged is likely to have breached the Act and that legal action remains available to the Commission in future if the conduct continues or is repeated.

22. We may draw this warning letter to the attention of a court in any subsequent proceedings brought by the Commission against Genesis.
23. This warning letter is public information and will be published on the case register on our website. We will be making public comment about our investigations and conclusions, including issuing a media release or making comment to media.

The Commission's role

24. The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the Act. The Act prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.

Penalties for breaching the Fair Trading Act

25. As indicated above only the courts can decide if there has actually been a breach of the Act. The court can impose penalties where it finds the law has been broken. A company that breaches the Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.
26. You should be aware that our decision to issue this warning letter does not prevent any other person or entity from taking private action through the courts.

Further information

27. We recommend that you seek legal advice and encourage you to regularly review your compliance procedures and policies.
28. We have published a series of fact sheets and other resources to help businesses comply with the Act and the other legislation we enforce. These are available on our website at www.comcom.govt.nz. We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the Act.
29. You can also view the Act and other legislation at www.legislation.co.nz.
30. Thank you for your assistance with this investigation. Please contact Sophie Ridoux on [REDACTED] or by email at [REDACTED] if you have any questions about this letter.

Yours sincerely



Kirsten Mannix
Consumer Manager Wellington
Competition and Consumer Branch