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21 July 2011

Ian Wilson
Gas Industry Company
95 Customhouse Quay
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By email: submissions@gasindustry.co.nz

Dear Ian

Support for Draft Gas Distribution Principles

Genesis Power Limited, trading as Genesis Energy, welcomes the opportunity to provide a submission to the Gas Industry Company ("GIC") on the consultation paper "Draft Principles for Arrangements on Gas Distribution Systems" dated June 2011.

We support the introduction of high-level principles to guide the contractual arrangements between gas distributors and retailers. Our responses to the consultation questions are set out in Appendix A.

If you would like to discuss any of these matters further, please contact me on 04 495 6354.

Yours sincerely

A handwritten signature in black ink, appearing to read "K Collins", with a stylized flourish at the end.

Karen Collins
Senior Regulatory Advisor

Appendix A: Responses to Consultation Questions

QUESTION	COMMENT
<p>Q1: Do you have any comments on the proposed purpose and definitions for the principles?</p>	<p>Genesis Energy queries why the GIC has not used the definitions for “retailer” and “consumer” that are set out in the Gas Act 1992. Using established definitions provides consistency and should assist participants’ understanding.</p> <p>We recommend that the GIC remove the reference to metering in the explanation given for “distribution services”. Metering is a competitive market and therefore is addressed through separate, standalone contracts. We believe that including it as an example could be misleading and may encourage anti-competitive tying of metering services to distribution services.¹ We are happy to provide a detailed briefing to GIC staff on Genesis Energy’s position on the metering market if that would assist.</p> <p>The GIC should also consider including a definition of LPG as it may be beneficial to extend these principles to the LPG sector in future if similar problems arise in the contracting environment. We consider that including relevant definitions now would ensure the principles were sufficiently “future-proofed”.</p>

¹ In the electricity industry, we note that both a 2004 Commerce Commission investigation into advanced metering and a High Court decision (Commerce Commission vs. Bay of Plenty Electricity) found that a competitive market for advanced metering services already exists.

QUESTION	COMMENT
<p>Q2: Do you have any comments on the proposed General Principles?</p>	<p><u>Principle one</u></p> <p>We query whether this principle is intended to include or exclude private distributions networks such as those owned by Nova. The current drafting is unclear on this matter.</p> <p><u>Principle two</u></p> <p>We are unsure whether the inclusion of the term “consumer” will provide any tangible benefits. As a retailer, we act as the agent for our customers and therefore seek distribution service agreements that promote the interests of consumers.</p> <p>We recommend that the explanation of principle two make reference to the asymmetric bargaining power that consequently leads to inefficient risk allocation between parties, particularly around liability clauses. From our experience, liability clauses are one of the main areas where retailers and distributors cannot reach agreement.</p>
<p>Q3: Do you have any comments on the draft ‘obligation and rights of parties’ principle?</p>	<p>While parties are legally required to comply with legislation, we believe the reference to consistency with “relevant legislation, regulations, and rules” is a useful inclusion. It enables a contracted party to hold the other party accountable for a breach of contract if legal requirements are not met.</p> <p>We suggest that GIC remove the reference to <i>NZS 5422:2008 specification for reticulated gas</i>. This standard is a matter of contention within the industry and views on where the responsibility should rest remain unresolved.</p>

QUESTION	COMMENT
Q4: Do you have any comments on the draft 'distribution services provided' principles?	No.
Q5: Do you have any comments on the draft 'Pricing including pricing changes' principles?	<p><u>Principle eight</u></p> <p>To enable retailers to easily implement a distributors' price change, it is important that the information received by retailers is clear and concise. At present, this is not always the case, with information and criteria often "buried" within a price change notification document. We recommend principle eight be amended as followed:</p> <p style="padding-left: 40px;">"A Distributor's notification of price changes to a Retailer should be <u>clear, concise and accompanied</u> by all of the information required to enable the effective implementation of the price changes by the Retailer."</p> <p>To assist alignment with this principle, we recommend the GIC consider whether a gas information exchange protocol (GIEP) similar to the Electricity Information Exchange Protocol (EIEP) 12, should be developed. EIEP 12 is currently under development and will provide electricity distributors with a mechanism to communicate pricing information to traders.² We believe a similar protocol for gas would be beneficial and we note that there is already an Information Exchange File Formats Working Group established that could undertake this work.</p>

² The Electricity Authority is proposing Code amendments to require distributors and traders to comply with EIEP 12 as part of its work on distribution standardisation. *More standardisation of distribution arrangements: Proposed amendments to the Code*, Electricity Authority, 26 May 2011.

QUESTION	COMMENT
	<p><u>Principle nine</u></p> <p>We recommend that the notice period in principle nine be extended to 40 days (not 30 days as drafted). As we are required to give our customers 30 days notice of any price changes, a 30 day notice period from a distributor would be insufficient time for retailers to process the price change.</p> <p>We also recommend the principle nine state that a 60 day notice period should be required for price structure or methodology changes. The time required to implement these changes is greater than that required for simple price changes.</p>
<p>Q6: Do you have any comments on the draft 'commencement and cessation of line charges' principle?</p>	<p>No.</p>
<p>Q7: Do you have any comments on the draft 'disconnection and reconnection' principle?</p>	<p>No.</p>
<p>Q8: Do you have any comments on the draft 'information exchange and use' principles?</p>	<p>No.</p>

QUESTION	COMMENT
<p>Q9: Do you have any comments on the draft 'service interruptions' principle?</p>	<p>We recommend the following amendments to make it clear that principle 15 deals with planned interruptions and principle 16 deals with unplanned interruptions:</p> <p>15. "The Distribution Service Arrangement should explain, or refer the Retailer to, the Distributor's policy for planned interruptions to Distribution Services. It is expected that the policy would take account of the costs of notification for the retailer and whether other lower-cost alternatives can be adopted. <u>The minimum notice period of a planned shutdown should be no less than 4 business days unless agreed otherwise with the Retailer.</u></p> <p>16. The Distribution Service Arrangement should describe how the Distributor will provide the Retailer with timely information when an unplanned service interruption occurs. The information to the Retailer is expected to include the cause(s) of the interruption and progress towards reinstatement of Line Function Services. The minimum notice period of a planned shutdown should be no less than 4 business days unless agreed otherwise with the Retailer".</p>

QUESTION	COMMENT
<p>Q10: Do you have any comments on the draft 'managing critical contingencies' principle?</p>	<p>We note that the Critical Contingency Operator (CCO) is intending to remove guidance regarding regional contingencies from the CCO information guide (and associated communications plan).³ Retailers have now been advised to include regional contingency plans as an addendum to their distribution agreements.</p> <p>This change should be reflected in principle 17.</p>
<p>Q11: Do you have any comments on the draft 'publication of the standard distribution agreement' principle?</p>	<p>No.</p>
<p>Q12: Do you agree that an assessment should take place approximately six months after the principles are finalised?</p>	<p>We query whether the GIC intends to undertake a baseline assessment of distribution agreements once the principles are finalised (as was done with the retail benchmarks work). A baseline assessment would allow the GIC to establish a starting position for annual reporting and measure progress over time. It would also provide distributors an opportunity to identify and discuss with the GIC any material areas of non-alignment.</p> <p>We acknowledge that it may be difficult to carry out a baseline assessment as many of the distribution agreements are not finalised. However, a baseline assessment within the next six months should incentivise distributors to progress or finalise agreements with retailers.</p>

³ *Information Guide Amendment Submissions Analysis*, Critical Contingency Operator, 15 June 2011.

QUESTION	COMMENT
	<p>We also recommend the GIC publish a document outlining how it will assess distribution agreements against the principles (as was done with retail contracts).⁴</p> <p><u>Future use of a model contract</u></p> <p>While we do not advocate for the use of a model distribution contract at present, we caution the GIC from dismissing this option without sufficient analysis.</p> <p>The GIC appears to not favour this option due to “the experience in the electricity sector [that] suggests that going beyond principles/benchmarks to a model contract would be difficult and expensive”.⁵ While we acknowledge that developing and getting agreement on a model contract is certainly difficult, we observe that many of the electricity retailers and distributors frustrations have actually arisen from the lack of a finalised model contract.⁶</p> <p>If alignment with the distribution principles did not achieve the intended outcomes, we encourage the GIC to further evaluate the merits of a model contract.</p>

⁴ *Retail Gas Contract Benchmarks (Restatement 2011)*, Gas Industry Company, 8 June 2011.

⁵ Page 4, *Draft Principles for Arrangements on Gas Distribution Systems*, Gas Industry Company, June 2011

⁶ The GIC’s paper on Gas Governance Issues in Distribution (7 December 2010) incorrectly states that the Electricity Commission reviewed the models and released final versions in 2005. The Electricity Authority (that replaced the Electricity Commission) has yet to publish a final model use of system agreement.