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3 November 2009

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Mr B Walker
Gas Industry Company Ltd
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Dear Bas

**OPTIONS FOR THE GOVERNANCE OF RETAIL CONTRACTS CONSULTATION
PAPER (5 OCTOBER 2009)**

Thank you for the opportunity to comment on the October 2009 consultation paper. I am responding on behalf of Energy Direct NZ (EDNZ).

On the whole, we agree that the proposed benchmarks are both comprehensive and reasonable. Ideally the benchmarks should focus on a few key issues which are most important to customers, and be consolidated where possible.

Most retailers to small businesses and residential customers offer both electricity and gas, and a customer will usually have their electricity and gas supplies covered by one set of terms and conditions. Consideration should be given to how the gas minimum terms would fit into an agreement for the supply of gas and electricity.

Our preference is for a voluntary regime. However, the regime will only achieve the desired outcome if all retailers agree to comply.

If you would like to discuss our comments further please contact me by email at tara.gannon@energydirectnz.co.nz or by phone on DDI 06 349 2055. Alternatively you can contact our General Manager, Michael Ram, by email at michael.ram@energydirect.co.nz or by phone on 06 349 0129.

Yours sincerely



Tara Gannon
Energy Trading Manager

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Question	Comment
Q1: <i>Do you agree with the proposed regulatory objective? If you disagree explain why, and give an alternative formulation.</i>	EDNZ agrees that the proposed regulatory objective is reasonable.
Q2: <i>Do you agree that the evidence available supports some degree of structured oversight of the quality of retail contract terms? If you disagree explain why.</i>	<p>We agree that if mandatory benchmarks for contractual terms are set, some structured oversight will be necessary to ensure that they are complied with.</p> <p>If these benchmarks are not mandatory, and some retailers chose not to comply with them, oversight will not be necessary. Consumers will be able to address any concerns that they have through the complaints resolution scheme.</p>
Q3: <i>Do you agree the 'benchmark' terms for retail contracts should be selective and outcome based rather than comprehensive and prescriptive? If you disagree explain why, and describe your preferred approach.</i>	<p>We agree that the benchmarks for retail terms should be outcome based, and focus on a small number of key contractual terms, including safety, contract termination and dispute resolution.</p> <p>If the list of benchmarks is exhaustive, it will almost form a model contract, giving retailers little opportunity to differentiate themselves.</p>
Q4: <i>Do you agree the focus of governance on retail contracts should be the bundled service (gas, metering, transport) received by consumers?</i>	We agree that the governance of retail contracts should be on the bundled service received by consumers. There are terms and conditions within our contracts with gas distributors and gas measurement system operators that we are required to pass on to our consumers.
Q5: <i>Are you aware of any instances in the gas industry of consumers having direct contracts with meter owners or distributors? If so, how should these contracts be governed?</i>	<p>Yes. Approximately five years ago we had two customers who line charges agreements directly with the network operator. The network operator billed the customer for their line charges, which were excluded from EDNZ's pricing. We are also aware that some customers who are connected to bypass networks have line charges agreements separate to their retail contracts with the network owner.</p> <p>We are not aware of any direct contracts for gas metering.</p> <p>Metering and distribution are fundamentally different to gas retailing, and for this reason we believe it would be inappropriate to require the same minimum terms and conditions. Whether it would be worthwhile setting specific minimum terms for these types of agreements would depend on the number of direct agreements, and how fair</p>

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	they are at present.
<p>Q6: Do you agree with the analysis of the need for and scope of benchmark terms relative to consumer expectations? If not explain why.</p>	<p><i>Connections and disconnections</i> We agree that connection and disconnection is a key process that should be included in the benchmark terms. The contract terms should specify that gas switching is governed by the Gas (Switching Arrangements) Rules 2008.</p> <p><i>Gas supply and related services</i> We agree that gas safety, reliability and minimum customer support services should be covered in the benchmarks. Unfortunately, the retailer does not have full control over ensuring that the gas supply is reliable and of good quality. We are reliant on our contracts with wholesalers, transmission, distribution and meter operators to ensure that sufficient gas is delivered to our customers. This should be taken into consideration when setting the benchmarks.</p> <p><i>Contractual terms</i> We agree that contractual terms of supply of gas to the consumer must be lawful, fair and reasonable and easy to understand.</p> <p><i>Costs</i> We agree with the GIC's comments relating to exclusion of cost details from the contract. Retail contracts should not be expected to accurately reflect all upstream conditions, constraints and costs to supply. For example, some upstream wholesale contracts have take or pay pricing and transmission contracts capacity reservation overrun charges, neither of which would be acceptable to small consumers.</p> <p>We agree that suppliers should not impose additional or unexpected costs on consumers.</p> <p><i>Billing and payment</i> We agree that timeliness and frequency of billing would be better covered in a code of conduct.</p> <p><i>Treatment by the supplier</i></p>

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	<p>We agree that disconnection procedures should be included in the benchmarks. It would be more appropriate to address other consumer expectations relating to treatment through a code of conduct.</p> <p><i>Access to remedies</i> We agree that dispute resolution processes are a key concern for customers and it would be appropriate to include them as a benchmark.</p>
<p>Q7: <i>Are the benchmark terms proposed for 'how to become a customer' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</i></p>	<p>1.1 Under the Gas (Switching Arrangements) Rules 2008 which govern gas switching, the commencement date is not usually chosen by the retailer and consumer, unless the customer is moving into a new premises. For next read date (NRD) switches the losing retailer chooses the commencement date. The benchmarks should be updated to more closely reflect the Gas (Switching Arrangements) Rules 2008.</p> <p>1.2 We agree that the customer should be given reasonable opportunity to agree to the terms offered and terminate the supply if they wish. However, we believe this opportunity should be given to the customer before they enter into the retail contract, rather than providing a period where they can terminate after they have entered into the agreement.</p>
<p>Q8: <i>Are the benchmark terms proposed for 'how to stop being a customer of your current retailer' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</i></p>	<p>2.1 We agree that customers should be able to provide notice and terminate their gas supply contract once the initial agreed term has expired.</p> <p>2.2 We agree that termination must be in accordance with the Gas (Switching Arrangements) Rules 2008 for customers switching to a new retailer, and that permanent disconnections should be carried out as soon as possible after the customer has requested them.</p>
<p>Q9: <i>Are the benchmark terms proposed for 'changes to a contract' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</i></p>	<p>3.1 We agree that 30 days notice of changes to non-price terms is appropriate.</p> <p>3.2 We believe that allowing the customer to terminate the contract on one month's notice if the changes notified by the retailer are "materially less favourable" is too subjective. As long as the other benchmarks are met, the contract should be fair and</p>

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	<p>reasonable, so any changes to contract terms should theoretically have a relatively low impact.</p> <p>If this benchmark is implemented, clear guidance needs to be given on how changes would be assessed and by whom. Retailers should be given the opportunity to have any changes to their terms and conditions assessed against the rules before implementing them to ensure that they are not materially less favourable.</p>
<p>Q10: <i>Are the benchmark terms proposed for 'service standards' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</i></p>	<p>4.1 Accepted service levels for services such as reconnection and fault responses, and compensation for failure to meet them, vary between networks and over time. We believe it is more appropriate to cover service levels and fees separately to the contract, but to provide customers with notice of any changes in the same way we do for gas price changes.</p>
<p>Q11: <i>Are the benchmark terms proposed for 'prices, bills and payment' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</i></p>	<p>5.1-2 We agree that at least 30 days notice should be provided, and customers should be individually notified in writing if an increase is more than 5%. Our standard practice is to explain the reason for price increases to our customers.</p> <p>5.3 We agree that payment options should be explained to customers and we do have information available to customers on paying their energy account.</p>
<p>Q12: <i>Are the benchmark terms proposed for 'bonds' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</i></p>	<p>6.1 We agree that the benchmark terms relating to bonds are complete and reasonable.</p>
<p>Q13: <i>Are the benchmark terms proposed for 'obligations of the parties in relation to supply to the site and access' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</i></p>	<p>7.1 We agree that the benchmarks relating to supply to the site and access are reasonable and compatible with our own network and metering agreements.</p>
<p>Q14: <i>Clause 7.1(c) reflects the outcomes in the GPS which relate to efficient market structures and good understanding of roles, in relation to gas metering,</i></p>	<p>7.1(c) We believe it is appropriate to explain responsibilities of the retailer, meter operator and distributor at a high level, so that the customer understands that there are several parties involved in supplying energy to them. Our terms and conditions</p>

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<i>pipeline and energy services. Accepting the limitations in what can be covered in a retail contract, does this clause go as far as possible in reflecting these outcomes? Provide alternative wording if you think that amended or extended wording would improve the clause.</i>	currently cover the responsibilities of each party at a high level.
Q15: <i>Are the benchmark terms proposed for 'metering' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</i>	8.1 We agree that the benchmark terms relating to metering are complete and appropriate.
Q16: <i>Are the benchmark terms proposed for 'disconnection and reconnection' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</i>	<p>Overall we agree with the disconnection and reconnection terms. We have some minor points for clarification below:</p> <p>9.2 For dual energy customers, it is difficult to determine whether outstanding balances relate to gas or electricity. Our system attributes any payments received to the oldest outstanding invoice, rather than a particular fuel type. Typically we would disconnect the gas supply first as it usually has a lower impact on the customer.</p> <p>9.3(b) Whether the final warning should be issued or received by the customer 24 hours to 7 days before disconnection should be confirmed. Delivery time should be specified if the notice may be mailed to the customer.</p> <p>9.5 We agree that circumstances under which disconnection and reconnection charges may apply may be included in the contract. However, the charges associated with disconnection and reconnection should be included in a separate schedule as they may change from time to time.</p>
Q17: <i>Are the benchmark terms proposed for 'faults and planned shutdowns' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</i>	<p>The benchmarks relating to disconnection and reconnection appear reasonable.</p> <p>10.1(b) Unless a planned shutdown related to a meter check of an individual customer's meter (which would be negotiated with the customer), retailers do not typically initiate and schedule planned shutdowns. Retailers are provided with notice by the network or meter operator initiating the shutdown. Typically retailers would be given more than</p>

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	four days' notice of a planned shutdown by the meter or network operator, but if less notice was provided it would be impossible for the retailer to provide four days' notice to the customer.
Q18: <i>Are the benchmark terms proposed for 'privacy' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</i>	11.1 We agree with the terms relating to privacy.
Q19: <i>Are the benchmark terms proposed for 'liability of the retailer and the consumer' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</i>	12.1-12.2 We agree that the terms are reasonable, and that retailers should have control over setting limitations of liability.
Q20: <i>Are the benchmark terms proposed for 'dispute resolution' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</i>	We agree that the terms relating to dispute resolution are reasonable. 13.1 We believe it should be acceptable for the contract to cover complain procedures at a high level and refer to a separate document with detailed procedures for handling customer complaints.
Q21: <i>Are the benchmark terms proposed for 'how consumers communicate with the retailer' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</i>	14.1 We agree that the terms relating to how consumers communicate with the retailer are reasonable.
Q22: <i>Are the benchmark terms proposed for 'notices from the retailer' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</i>	15.1 We agree that the terms relating to how consumers communicate with the retailer are reasonable.
Q23: <i>Viewing the proposed benchmarks as a whole, are there topics which should have been included and have not, or are there terms which have been included</i>	The benchmarks appear to be complete and comprehensive. Ideally the benchmarks should focus on the terms that are most important to customers, including:

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<p><i>but might be removed to make the benchmarks more compact? Give reasons for any views expressed, and examples where appropriate.</i></p>	<ul style="list-style-type: none"> • That terms should be lawful, fair and reasonable and easy to understand • Connection processes • Disconnection and termination processes • Pricing, billing and payment • Responsibilities for supply, safety and access • Dispute resolution; and • Privacy. <p>Some of the benchmarks could be consolidated, for example:</p> <ul style="list-style-type: none"> • How the retailer and consumer communicate with each other (14.1 and 15.1) could be combined. • Faults and planned shutdowns (9.1 and 9.2) could be included within the responsibilities for supply, safety and access (7.1). • The points relating to metering (8.1) could be included in the responsibilities for supply, safety and access (7.1) and pricing billing and payment (5.1 to 5.3).
<p>Q24: <i>Should the benchmarks be extended or amended to prevent the use of such unfair conditions, or would another approach be more appropriate?</i></p>	<p>We believe the best way to prevent the use of contract terms which are perceived to be unfair would be through the benchmarks, rather than another approach. Often terms that are viewed as unfair are used to prevent certain specific and uncommon situations, and are used as a last resort by retailers.</p> <p>We have reviewed the terms provided as examples:</p> <p><i>"If any person living at your property owes us money we may refuse to supply to your property until that amount has been paid."</i> This term is used to allow retailer to protect themselves in situations where one person in a house signs up for gas but does not pay, and when the supply is disconnected the next person signs up and does not pay, and the pattern repeats itself. It is relatively rare, but a house with many flatmates can incur significant debt relating to months of consumption.</p> <p><i>"We are not under any obligation to continue to supply you with energy. We may for example terminate supply where we believe the supply is impractical, uneconomic, unsafe"</i></p>

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	<p><i>or may adversely affect the existing Energy supply to any other Customer.” Obviously, appropriate notice clauses would also apply in the event that a customer’s supply was terminated. This clause would be enforced rarely as a last resort, if ever.</i></p> <p><i>If the gas supply at your premises is disconnected (but not decommissioned) we may still charge you a daily fixed charge for gas...” If this term is seen to be unfair, it must be addressed with the gas networks and meter operators as it is a pass through from retailers’ contracts with them. If a gas supply has been disconnected the retailer will continue to be charged daily meter and network charges until at least the date of meter removal and/or the date of decommissioning. There are charges associated with removing a meter and decommissioning the supply.</i></p>
<p>Q25: <i>Are there other examples of unfair terms in use which should be excluded from acceptable terms? If the answer is yes please give examples.</i></p>	<p>We believe that customers have a responsibility to read and understand contracts before they enter into them, and that retailers should make sure that their customers understand key terms, particularly those which relate to the customer’s responsibilities, termination and handling customer complaints. Customers then make an informed decision on price, terms and other factors that are important to them when choosing a retailer.</p> <p>We have come across a number of customers of other retailers who did not understand the termination clauses, and therefore did not make a fully informed decision at the time they chose their retailer. For instance, some of these customers used tender agents and went through an RFP process, and chose to switch to another retailer, before discovering when the switch was processed that they could not switch as their contract had automatic rollover, price matching or right of renewal clauses. These occurrences are a waste of time and energy for all concerned.</p> <p>All of our customers are provided with copies of our standard terms and conditions and can request additional copies at any time. When they enter into a contract with us they are required to confirm that they accept our terms and conditions.</p>
<p>Q26: <i>To what extent do you think the published standard retail terms reflect the current practice between retailers and consumers (persons consuming</i></p>	<p>We cannot speak for other retailers, but our actions are usually more favourable to the customer than what is covered within our terms and conditions. For instance, our terms require us to notify customers of price changes at least 30 days in advance and notice</p>

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<i>less than 10 terajoules per annum)?</i>	can be by placing an advertisement in a local newspaper if the increase is less than 5%. However, we will usually write to customers individually, with a full explanation of the reasons for the change, even if it is less than a 5% increase.
Q27: <i>Do you agree that a common set of benchmarks or minimum terms and Q27: conditions should be used, irrespective of whether implementation is voluntary or mandatory (regulated)? If you disagree, explain why.</i>	<p>We do not believe it is worthwhile setting and monitoring compliance with benchmarks as an industry unless all retailers are willing to comply with them, either voluntarily or through regulation.</p> <p>Otherwise, if some retailers are not willing to comply, there will be no change to their contracts even if monitoring and assessment has found them to be deficient.</p> <p>Retailers who are members of a complaints resolution scheme will be required to include certain terms and conditions to protect customers. Depending on the outcome of this workstream, member retailers could be required to include certain minimum terms as a condition of their membership to the scheme.</p>
Q28: <i>Do you agree that these are the most appropriate options for analysis, and that they have been appropriately specified? If you think that other options should have been selected or the specifications should be changed, set out your proposals and explain why.</i>	<p><i>Option 1: Publication of recommended benchmark terms, with monitoring of the uptake occurring on the basis of voluntary disclosure.</i> We agree that voluntary disclosure of contract terms is already occurring, and EDNZ has its contract terms published on its website and will provide a hardcopy on request. We do not believe that assessment of the terms and conditions against voluntary benchmarks would be of value unless all retailers agree to comply. If the GIC identified areas where a retailer's contracts were deficient through their analysis, the retailer would have the right to refuse to change their contract.</p> <p><i>Option 2: Regulation for minimum terms with enforcement provided by the existing Gas Governance (Compliance) Regulations.</i> If compliance is mandatory assessment against the terms and the ability to allege breaches of the minimum terms would be appropriate.</p>
Q29: <i>Do you agree that all of the relevant benefits, costs, risks and uncertainties of the option had been identified and appropriately characterised. If you disagree please provide alternative or additional</i>	<p>We agree that the costs and benefits of each option are difficult to quantify at this stage.</p> <p>There will be significant costs to retailers to physically change any of their terms and conditions. EDNZ is required under its current terms and conditions to notify its</p>

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<p><i>material and explain your reasoning.</i></p>	<p>customers in writing of any changes, and provide the opportunity for the customers to provide feedback. There would also be costs associated with printing of notifications, analysis of feedback, rewriting, reprinting and distributing the updated terms and conditions.</p> <p>Any changes to the benchmarks over time will result in the retailer incurring cost to notify and consult with their customers, and update and republish their terms and conditions.</p>
<p>Q30: <i>What degree of commitment do you think is required from retailers, in relation to the voluntary alignment of their contracts with the proposed benchmarks, to shift the cost/benefit analysis away from regulated benchmarks terms?</i></p>	<p>There are costs to retailers to change their existing terms and conditions in terms of time, effort, publication and distribution.</p> <p>It is more than likely that any changes required to meet the benchmarks would be to the customer's advantage and the retailer's detriment, therefore there is little incentive for retailers to voluntarily comply. The GIC could consider publishing information on retailers who do not comply with the minimum terms, to both warn consumers and encourage voluntary compliance.</p> <p>Unless all retailers agree to comply with the benchmarks, we believe that the voluntary regime will not be effective.</p>
<p>Q31: <i>Based on the analysis above or any additional analysis that you include in your submission, what do you think the preferred option for inclusion in the statement of proposal should be? Explain why.</i></p>	<p>Ideally, we would prefer a voluntary regime. However, the regime will only achieve the desired outcome if all retailers agree to comply.</p> <p>Otherwise we believe it will be necessary to have legislated minimum terms, with focus on the most critical terms only.</p>