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Bas Walker
Gas Industry Company
Level 8, The Todd Building
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Dear Bas

**SUBMISSION ON THE GOVERNANCE OF
RETAIL CONTRACT TERMS**

1. Vector Limited ("Vector") welcomes the opportunity to submit on the Gas Industry Company ("GIC") consultation paper: *Options for the Governance of Retail Contract Terms*. We appreciate the GIC's engagement with stakeholders in the development of benchmark terms for gas retail contracts.
2. Vector supports the Government's commitment to ensuring effective outcomes for consumers. We consider the development of benchmark contracts for the supply of gas to small consumers as appropriate in ensuring that gas retailers deliver at least a minimum standard of quality and service.
3. Overall, we believe that a more targeted approach in the implementation of the benchmarks than what is currently proposed will ensure that benefits will accrue to the most disadvantaged consumers without the need for industry participants to incur significant compliance costs. More importantly, a more targeted approach will enable businesses to better respond to the changing needs of consumers and the changing market environment.
4. This submission articulates Vector's views on particular issues raised in the consultation paper and in subsequent discussions with the GIC.

Consumption threshold

5. The consultation paper indicates that the proposed benchmarks are intended to be applied to retail contracts with “small consumers”, which it identifies as those supplied with less than 10 TJ per year.¹
6. Vector has given careful consideration to the characteristics of consumers who will potentially be captured by this definition, and examined other jurisdictions for comparison. Having done so, it is our strong view that the benchmarks should only apply to consumers supplied with less than 1 TJ per annum.
7. Setting a 1 TJ threshold will ensure:
 - consistency with overseas jurisdictions;
 - flexibility for larger consumers who have differentiated needs; and
 - a more targeted approach to consumers who need protection the most.
8. These reasons are discussed below.
9. We acknowledge that lowering the consumption threshold to 1 TJ would probably require amending the definition of small consumers in Part 4A of the Gas Act 1992. Alternatively, there may be potential under the existing legislative requirements and the objectives of the Government Policy Statement on Gas Governance 2008 (“GPS”) to better tailor the application of some of the benchmarks so that they do not apply to consumers supplied with 1-10 TJ of gas per annum. For example, the benchmarks which relate to “how to stop being a customer” and “changes to a contract” may be able to be tailored to only apply to consumers below the 1 TJ threshold.

Consistency with overseas jurisdictions

10. Australia’s Ministerial Council on Energy has developed a draft transition policy towards a National Energy Customer Framework (“NECF”). The new framework intends to cover residential customers and non-residential customers whose actual or estimated energy consumption is less than a threshold specified in the (Australian) Regulations. That threshold is 1 TJ per annum.²

¹The Gas Act 1992 refers to a small consumer as a “consumer who is supplied with less than 10 terajoules of gas per year” and domestic consumer as “any person who purchases gas in respect of any dwellinghouse”. The Government Policy Statement on Gas Governance 2008 uses the term “small consumers”.

²<http://www.ret.gov.au/Documents/mce/ documents/MCE%5FSCO%5FNational%5FFramework20080613111731.pdf>, page 22.

11. Currently, "small customer" thresholds vary across Australian states, with most states adopting a threshold of 1 TJ per annum. A 1 TJ threshold is used in New South Wales, South Australia, Queensland, Australian Capital Territory and Western Australia; 5 TJ in Victoria; and 10 TJ in Tasmania. The new framework aims for a convergence towards a 1 TJ threshold at a federal level.³
12. The UK regulator (Ofgem) uses the term "domestic customer" for the purpose of providing small consumers with protection, and has explicitly clarified that commercial consumers will not be subject to the same protection afforded to domestic customers. Rather, they will be subject to industrial and commercial ("I&C") contract terms. Ofgem stated that:

where gas and electricity is supplied in connection with services on a commercial basis (including residential or accommodation services), Ofgem expects that I&C contract terms will continue to apply.⁴

Flexibility for larger consumers who have differentiated needs

13. The Australian consultation document on the regulatory impact of the NECF indicates that:

the types of businesses that a consumption threshold of up to...1 TJ per annum is likely to capture includes petrol stations, bakeries, panel shops, small dairies and medium-sized restaurants that are open long hours and have a large output component such as a deep fryer or other large kitchen appliances that are constantly operating, or those that rely on gas as a key business input.⁵
14. This implies that consumers above a 1 TJ threshold are likely to be larger businesses. Vector estimates, for example, that a 10 TJ customer would have a total gas bill of approximately \$100,000 per annum.
15. In comparison to domestic consumers, larger customers are better able to negotiate with retailers and have more differentiated needs that are not better served by standard contract terms. Compared to prescribed terms, commercially agreed terms are easier, quicker and less costly to amend or replace to suit the changing needs of contracting parties and the changing market environment. For example, the proposed prohibition against locking a customer into a fixed term contract (clauses 2.1 and 2.2) would prevent

³<http://www.ret.gov.au/Documents/mce/ documents/MCE%5FSCO%5FNational%5FFramework20080613111731.pdf>, page 23.

⁴<http://www.ofgem.gov.uk/Markets/Archive/Ofgem's%20interpretation%20of%20the%20definition%20of%20the%20terms%20'domestic%20customer'%20and%20'domestic%20premises'.pdf>, page 1.

⁵<http://www.ret.gov.au/Documents/mce/ documents/RIS%5FNational%5FFramework%5Ffor%5FRegulating%5FEle%5Fand%5FGas20081021085248.pdf>, page 22.

retailers from offering longer fixed-term contracts to business consumers. Likewise, in the situation where a consumer has multiple ICPs beneath the threshold, the consumer may prefer a single tailored contract than multiple contracts, of a type that would conform to the benchmarks.

16. Lowering the consumption threshold to Vector's proposed level of 1 TJ will free up retailers and business gas consumers to engage in commercial negotiations to meet their particular business requirements, while retaining protection for the smallest consumers (those purchasing below 1 TJ, which include a majority of domestic consumers).

A more targeted approach

17. While the Gas Act refers to small consumers as those below the 10 TJ threshold, Vector considers that the policy justification for a model contractual approach to gas consumers purchasing between 1 TJ and 10 TJ has not been made. Such consumers should be capable and would wisely take legal advice on contracts of \$100,000 plus per annum, and regulated terms should not be substituting for consumer responsibility to examine the contracts they enter into.
18. For the reasons stated above, we strongly recommend that the small consumer threshold be amended from 10 TJ to **1 TJ per annum**. Adopting a 1 TJ threshold will focus the impact of the benchmarks on those who genuinely need protection — the smallest, least confident and most vulnerable consumers. This would meet the policy objectives while avoid undue costs to parties whose existing contracts are more or less aligned with the intent of the benchmarks.
19. For greater clarity, we further recommend that the final governance arrangements be explicit about its focus on retail contracts rather than distribution contracts.

Liquefied Petroleum Gas

20. The consultation paper does not explicitly exclude, nor allude to the possible inclusion or exclusion of, retail contracts for the supply of Liquefied Petroleum Gas ("LPG").
21. Vector notes that the GPS does not provide any specific policy guidance regarding LPG, including any requirement for the GIC to make recommendations in relation to aspects of LPG supply. It would therefore be appropriate, at this point, not to pre-empt any policy direction with respect to this market.

22. The LPG market is a fledgling market and has grown rapidly in recent times. Given these circumstances, we do not believe that the market would benefit, at this stage, from being covered by the GPS objectives, including the benchmark contract arrangement that the GIC is proposing. In addition, we believe that the scarce resources of the GIC and the gas industry are better focused on meeting the existing GPS objectives.

Dispute resolution

23. The consultation paper indicates that the development of benchmarks is closely related to the establishment of a single consumer complaints scheme for the gas and electricity sectors. Vector supports the joint initiative by the GIC and the Electricity Commission in developing such a scheme based on the existing Electricity and Gas Complaints Commission ("EGCC") scheme. We believe that the EGCC scheme, which covers the majority of lines companies and retailers, is operating well. A single, energy-based, nationwide complaints resolution scheme with mandatory membership is an appropriate and effective way forward.
24. The joint scheme must be of value for money to both consumers and retailers. Vector supports an efficient, low-cost scheme that limits duplication and avoids unnecessary complexity and confusion for complainants. In this regard, we maintain that overlaps between the work in developing the benchmarks and the single scheme should be minimised, where possible and practical.

Implementation

25. Vector strongly supports a voluntary rather than a mandatory approach to implementing the benchmarks. As the consultation paper itself indicates, it would be difficult to justify moving directly to a regulated regime, which has unclear incremental benefits and is likely to cost more in the long term.
26. Regulatory decisions in recent years have imposed an increasing amount of compliance activities on gas (and electricity) companies. At this stage, we see a need for some regulatory stability in order for the new arrangements to 'bed in'.
27. It is our view that a transition period of 18 months towards a voluntary adoption of these benchmarks is reasonable. This will provide ample time for information on consumer uptake, switching and exit to be captured, and to inform any future assessment of the effectiveness of the benchmarking process. The transition period should not be any longer, lest the momentum of this work stream, which has not been significantly progressed for several years now, be diminished.

Closing comment

28. It is important that the benchmarks do not stifle innovation in retail contracting and allow businesses to avoid becoming regulator focused. Variations in contract terms between suppliers or between service offerings are often a reflection of dynamic competitive pressures in the market. This could further incentivise retailers to provide better services and greater choice to consumers in the long term. There has to be sufficient justification for any regulatory intervention in competitive markets.
29. We therefore urge the GIC to exercise caution in being too prescriptive where the benefits of doing so are not overwhelmingly clear, as indicated by the indeterminate result of the qualitative cost-benefit analysis conducted as part of this work stream.
30. Our responses to specific questions in the consultation paper are indicated in the attached submission form. We would appreciate being consulted further prior to the implementation of the proposed benchmarks.
31. Thank you for considering this submission. If you have any queries, or require further information, please feel free to contact me at John.Rampton@vector.co.nz or 04 803 9036.

Kind regards

A handwritten signature in black ink, appearing to read 'John Rampton'.

John Rampton

Manager Industry Governance and Policy

Format for submissions

Gas Industry Co welcomes stakeholder feedback on the material presented in this Consultation Paper, and, in particular, responses to the questions posed. These are summarised here for ease of reference.

Responses in the format below would greatly assist Gas Industry Co in considering the responses received.

Submission from: Vector Limited

Contact: John Rampton (John.Rampton@vector.co.nz, 04 803 9036)

Question	Comment
Q1: Do you agree with the proposed regulatory objective? If you disagree explain why, and give an alternative formulation.	Vector generally agrees with the proposed regulatory objective. However, we strongly recommend that the benchmarks should only apply to consumers supplied with less than 1 TJ per annum. A 1 TJ threshold will enable a more targeted approach and ensure that benefits will accrue to the most vulnerable consumers without the need for industry participants to incur significant compliance costs. This will ensure: <ul style="list-style-type: none">• consistency with overseas jurisdictions;• flexibility for larger consumers who have differentiated needs; and• a more targeted approach to consumers who need protection the most. The above reasons are discussed in more detail in the letter accompanying this submission form.

Question	Comment
<p>Q2: 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.</p>	<p>We agree with the GIC’s conclusion that there are shortcomings in the current practice of some retailers, which adversely impact on enough consumers to justify some degree of structural oversight. Significantly, a ‘light-handed’ voluntary benchmark approach is appropriate, given the materiality and pervasiveness of the problems identified by the GIC.</p> <p>In terms of the nature of the compliance framework the GIC adopts, we recommend some degree of monitoring by the GIC on retailers’ compliance with the benchmarks. The GIC could compare the extent of retailers’ alignment with the benchmarks.</p> <p>Monitoring will encourage retailers to align their practices with the benchmarks.</p>
<p>Q3: Do you agree the ‘benchmark’ terms for retail contracts should be selective and outcomes based rather than comprehensive and prescriptive? If you disagree explain why and describe your preferred approach.</p>	<p>We strongly support a selective and outcomes based approach. Focusing on outcomes provides greater flexibility to both suppliers and consumers in reaching mutually acceptable terms that help achieve these outcomes. A selective approach enables the benchmarks to effectively target consumers who need the most protection without undue cost to retailers.</p>
<p>Q4: Do you agree the focus of governance on retail contracts should be the bundled service (gas, metering, transport) received by consumers?</p>	<p>The benchmarks should not focus on whether the contracts are for bundled services or not. Consumers are best served where and when they are able to choose services, standalone or bundled, that best suit their needs and preferences.</p> <p>In addition, tools that provide helpful information to consumers in making these choices already exist (e.g., powerswitch).</p>
<p>Q5: 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?</p>	<p>Yes, we are aware of such contracts. As far as we know, they are confined to large-use consumers who have a gas consumption of more than 10 TJ per annum.</p>

Question	Comment
<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>We agree with the GIC's analysis of the need for, and scope of, benchmark terms that meet consumer expectations. Importantly, we are pleased to see that the GIC recognises, in relation to some of the most important expectations of consumers, that these expectations are best met through competitive market outcomes, not benchmark conditions (i.e., points 1, 2, 3 and 10 in the analysis template).</p> <p>In terms of point 6, which relates to the supply of gas in a safe, reliable and fit-for-purpose manner, we suggest that any benchmark covering these matters should caveat that these should be subject to a 'best endeavours' obligation by retailers, not a strict obligation.</p>
<p>Q7: 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.</p>	<p>No comment.</p>
<p>Q8: 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.</p>	<p>Vector believes that these terms are appropriate for consumers which consume less than 1 TJ per year. However, they are not appropriate for consumers supplied with 1-10 TJ because such consumers have the wherewithal to negotiate commercial contracts with retailers and, in some cases, have elected to sign contracts with 'matching' provisions.</p>
<p>Q9: 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.</p>	<p>Vector believes that these terms are appropriate for consumers who consume less than 1 TJ per year. However, they are not appropriate for consumers supplied with 1-10 TJ because such consumers have the wherewithal to negotiate commercial contracts with retailers and, in some cases, have elected to sign up to contracts which permit the changes that are proposed to be forbidden in the benchmarks.</p>

Question	Comment
<p>Q10: 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.</p>	<p>We support the terms relating to 'service standards', which encourage good practice.</p>
<p>Q11: 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.</p>	<p>We support the terms relating to 'prices, bills and payment'.</p>
<p>Q12: 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.</p>	<p>No comment.</p>
<p>Q13: 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.</p>	<p>We support the terms relating to the 'obligations of the parties in relation to supply to the site and access'.</p>

Question	Comment
<p>Q14: 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, 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.</p>	<p>We support clause 7.1(c) and emphasise that its coverage should not be expanded further.</p>
<p>Q15: 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.</p>	<p>Customers should be required to notify their retailers of any hazards on site. Other relevant providers, such as meter service providers, should be noted as recipients of information related to the property.</p> <p>Clause 8.1(c) should be amended to read: “...with providing, changing OR REMOVING metering equipment...”.</p>
<p>Q16: 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.</p>	<p>We support the terms relating to ‘disconnection and reconnection’.</p>

Question	Comment
<p>Q17: 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.</p>	<p>It should be recognised that the interruption to supply may be from a distributor or meter service provider through its contract with the retailer.</p>
<p>Q18: 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.</p>	<p>No comment.</p>
<p>Q19: 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.</p>	<p>We support the terms relating to the ‘liability of the retailer and the consumer’, particularly clause 12.2.</p>
<p>Q20: 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.</p>	<p>We support the terms relating to dispute resolution. In particular, Vector supports the joint initiative by the GIC and the EC to establish a single consumer complaints scheme for the gas and electricity sectors based on the existing EGCC scheme. We support this scheme being an approved scheme under the Gas Act, noting that no scheme has yet been approved.</p> <p>We believe a joint scheme will be a good use of existing resources, and will therefore cost lower, limit duplication, and avoid unnecessary complexity and confusion for complainants.</p> <p>The benchmarks may need to be updated to reflect this development.</p>

Question	Comment
<p>Q21: 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.</p>	<p>We agree with the terms relating to ‘how consumers communicate with the retailer’. Retailers should be the point of contact for consumers because the contractual relationship exists between retailers and consumers, not with other parties such as distributors. Furthermore, consumers know and deal with their respective retailers.</p>
<p>Q22: 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.</p>	<p>Yes, but only for material changes affecting the consumer. If the changes are ‘trivial’ (for example, a change in the title of a particular legislation), then a public notice should be sufficient.</p>
<p>Q23: 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 but might be removed to make the benchmarks more compact? Give reasons for any views expressed and examples where appropriate.</p>	<p>We support the topics included in the benchmarks. We do not support them being expanded further until after the transitional period of 18 months, and only then if there is a reasonable justification to do so.</p>
<p>Q24: Should the benchmarks be extended or amended to prevent the use of such unfair conditions, or would another approach be more appropriate?</p>	<p>The benchmarks should not be extended further.</p>

Question	Comment
<p>Q25: Are there other examples of unfair terms in use which should be excluded from acceptable terms? If the answer is yes please give examples.</p>	<p>No comment.</p>
<p>Q26: To what extent do you think the published standard retail terms reflect the current practice of contracts between retailers and consumers (persons consuming less than 10 terajoules per annum)?</p>	<p>We believe published standard retail terms reflect, in the whole, current practices between retailers and mass market consumers in implementing their contracts. As acknowledged by the GIC, there are some ‘outlier’ retailers that supply to a sufficient number of consumers, which warrants the instigation of a voluntary benchmark approach.</p> <p>However, in relation to larger consumers who would be caught by the proposed 10TJ threshold, there is a greater degree of ‘non-alignment’. This is to be expected as larger customers have the wherewithal to negotiate with retailers on a more equal basis and often require more tailored contracts which do not necessarily conform with the GIC’s proposed benchmark provisions.</p> <p>As indicated, we strongly recommend that the consumption threshold be amended from 10 TJ to 1 TJ. This will ensure that contracting innovation is not stifled and retailers will be able to better respond to the changing needs of their consumers.</p>
<p>Q27: Do you agree that a common set of benchmarks or minimum terms and conditions should be used, irrespective of whether implementation is voluntary or mandatory (regulated). If you disagree, explain why.</p>	<p>We agree that a common set of benchmarks should be used and strongly support a voluntary approach in their implementation.</p>

Question	Comment
<p>Q28: 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.</p>	<p>We agree that the two options analysed — 1) the voluntary publication of recommended benchmark terms and 2) the option of regulating for minimum terms — are the appropriate options to assess.</p> <p>We note that section 43N of the Gas Act requires the GIC to seek to identify all practical options for achieving the objective of regulation, and ensure that the objective of the regulation is unlikely to be satisfactorily achieved by any reasonably practical means other than the making of the regulation.</p> <p>In this case, the identification and subsequent selection by the GIC of the non-regulatory selective benchmark approach is justified because the cost-benefit analysis did not reveal a clear benefit from adopting a regulatory approach.</p>
<p>Q29: Do you agree that all the relevant benefits, costs, risks and uncertainties of the option had been identified and appropriately characterised? If you disagree please provide alternative or additional material and explain your reasoning.</p>	<p>A quantitative analysis to complement the qualitative assessment would have been desirable. The qualitative cost-benefit analysis that produced an indeterminate result suggests that the GIC should be cautious in being too prescriptive where the benefits of doing so are not overwhelmingly clear. It is important that the benchmarks do not stifle innovation, to enable retailers to better respond to the changing needs of consumers.</p>
<p>Q30: 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 benchmark terms?</p>	<p>We recommend that retailers conform to the benchmarks by the 18th month of the transition period. Only after this transition period should the GIC investigate the reasons for any non-compliance and assess whether regulation is warranted.</p>

Question	Comment
Q31: 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?	Vector strongly supports a voluntary approach. We believe that a regulated solution will stifle innovation, limit flexibility on the part of consumers and retailers, and likely cost more to both parties in the long term. It is for the best interest of consumers that retailers do not become regulator focused.