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Dear Rebecca

Mechanisms to Implement a Central Registry

Genesis Power Limited trading as Genesis Energy welcomes the opportunity to provide comments to the Gas Industry Company on the discussion paper entitled 'Mechanisms to Implement a Central Registry' dated 19 June 2006 (the 'discussion paper'). Genesis Energy has reviewed the paper and is pleased to have the opportunity to respond to the issues raised in it.

Genesis Energy continues to support a central registry implemented by rules and agrees with the views set out in the discussion paper. However, having said that, (putting our disappointment with the extremely short timeframe in which to respond to one-side), Genesis Energy questions the underlying rationale for the discussion paper and why it was required.

Rationale for the Paper

There would appear (at least on the face of it) to be two reasons which underpinned the delivery of the discussion paper. These being:

1. A prior commitment (as set out in paragraph 1.2 of the discussion paper);¹ and
2. Apparent criticism from industry participants, in particular Genesis Energy, of a failure by the Gas Industry Company to pursue an industry arrangement with respect to the proposed switching arrangement in preference to rules or regulations under the Gas Act 1992.

Genesis Energy addresses both of these issues in turn below. Our responses to the specific questions posed by the Gas Industry Company are attached as Appendix One to this letter.

¹ Gas Industry Company Discussion Paper entitled 'Mechanisms to Implement a Central Registry' dated 19 June 2006, Section 1: Executive Summary, page 1, paragraph 1.2 which states:

"Gas Industry Company committed to the industry that it would provide a separate opportunity for the industry to provide feedback on the alternative mechanism to implement the preferred approach (i.e. a central registry, which would be in the form of a mandatory arrangement."

Overall Support for a Central Registry

Before getting into the detail of the response, Genesis Energy considers it worthwhile to reiterate, as stated in its previous submissions, that it supports the imposition of a mandatory central registry. In our view, such a registry should be instituted by rules under the Gas Act 1992.

Meeting a Prior Commitment to Consult

Having said that, Genesis Energy questions whether this discussion paper was required. This view is based upon the information contained in the Gas Industry Company's first consultation paper on the switching arrangements, as well as specific views provided by Genesis Energy in its submissions on this issue.

Genesis Energy believes, in the context of the information provided in the first consultation paper that participants must have understood that rules and/or regulations were to have been subsequently developed for Option 3. That was, in Genesis Energy's view, clearly the intended purpose of the 'commitment' made in paragraph 2.17. Genesis Energy also considers that it was equally clear from the analysis contained in the first consultation paper that it fulfilled the Gas Industry Company's obligation to consider non-regulated options. This was the purpose of including option 1. Had Genesis Energy thought this not to have been the case it would have raised this as a concern in its response to the first consultation paper.

The Gas Industry Company's analysis in the first consultation paper concluded that option 3 was the preferred option. While Genesis Energy had some concerns regarding the over-arching strategic context within which the Gas Industry Company's analysis sat, as well as concerns regarding the absence of a clear cost-benefit analysis² and articulation of process going forward, Genesis Energy supported the choice of option 3. Indeed, in Genesis Energy's submission, it stated that:

"On the basis that current industry arrangements are inefficient, and do not provide full transparency for all affected parties, Genesis Energy supports the work undertaken by the Gas Industry Company, in line with its obligations under the Government Policy Statement, to propose improvements to customer switching arrangements. The current situation is highly undesirable in an industry where the financial transactions total in the hundreds of millions of dollars per annum."³

Again later in its submission, Genesis Energy noted, in the context of subsequent work that it believed was required by the Gas Industry Company:

"e Implementation. This should include (amongst other things):

- i. management of the tender process;
- ii. **rule drafting;**
- iii. a review of the CBA once the tender price known; and

² As noted in the current discussion document in paragraphs 2.5 and 2.6, this issue has been addressed to Genesis Energy's satisfaction, and Genesis Energy responded to the Gas Industry Company paper entitled 'Consultation Paper on Cost Benefit Analysis of Switching and Registry Arrangements in the New Zealand Gas Market' accordingly.

³ Genesis Energy submission to the Gas Industry Company entitled 'Options for Switching Arrangements for the New Zealand Gas Industry', dated 4 November 2005, Executive Summary, page 1, paragraph 4.

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- iv. frequent, targeted communications with the industry on progress against the project plan.” (emphasis added)⁴

It was in the context of our understanding of the information contained in the first consultation paper, including the references to future rule development that Genesis Energy responded positively to the choice of option 3 as the preferred option. As a result, Genesis Energy considers that the subsequent discussion paper addressing implementation options was unnecessary. Further information supporting this view is set in out in Appendix Two attached to this letter.

Reliance on Industry Arrangements in Preference to Rules and Regulations

The Gas Industry Company has also indicated that feedback it received from Genesis Energy amongst others provided it with the added impetus to develop the discussion paper. Genesis Energy is unaware of any feedback it has given that could have been construed by the Gas Industry Company as not supporting the implementation by rules of a mandatory central registry.

It is possible that the reference in paragraph 1.3 of the discussion paper and the discussion paper itself have in part arisen from Genesis Energy’s submission on the Gas Industry Company’s compliance and enforcement workstream. However, such a contention would simply be speculation as at no point did Genesis Energy resile from its support of a mandatory central registry in its submission on that workstream. Given this apparent misunderstanding Genesis Energy is interested in discussing this issue further with the Gas Industry Company in order to resolve any confusion regarding Genesis Energy’s views and their applicability on the pursuit of industry arrangements.

Summary

Genesis Energy supports the imposition of a mandatory central registry via rules and/or regulations. In light of Genesis Energy’s persistent support of both a mandatory central registry, and its implementation via rules, Genesis Energy can not understand how its views on this matter have apparently come to be misconstrued.

Indeed, Genesis Energy’s support of the Gas Industry Company’s preferred option arose from, and its expectations of future switching arrangement work were set by, section 8.1 of the Gas Industry Company’s first consultation paper. This was clearly focused on the detailed design of the central registry, including the development of rules and not on other options to implement a central registry. As such, Genesis Energy fails to see why the discussion paper was warranted in the form provided.

Genesis Energy looks forward to discussing this issue with the Gas Industry Company in the near future.

Yours sincerely



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⁴ Op cit, page 5, paragraph 20.

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Appendix One: Specific Responses to Consultation Questions

QUESTION	COMMENT
<i>Q 1: Do you agree that mechanisms to implement a central registry must be mandatory? If not, please explain.</i>	Yes
<i>Q 2: Do you agree Gas Industry Co has identified the most likely alternatives for mechanisms to implement a central registry? If not, please provide details of any other likely alternative mechanisms.</i>	Yes
<i>Q 3: Do you agree with Gas Industry Co's analysis of a Pan-Industry Agreement as a mechanism to implement a central registry? If not, please explain.</i>	Yes
<i>Q 4: Do you agree with Gas Industry Co's analysis of Pan-Industry Agreement with a Rules fallback as a mechanism to implement a central registry? If not, please explain.</i>	Yes
<i>Q 5: Do you agree with Gas Industry Co's analysis of Rules as a mechanism to implement a central registry? If not, please explain.</i>	Yes
<i>Q 6: Do you agree with Gas Industry Co's preferred approach? If not, please explain what is your preferred approach and why.</i>	Yes

Appendix Two: Further Comments of the Commitment to Consult

The 'commitment' is set out in the Gas Industry Company's first consultation paper on the proposed switching arrangements. This commitment is set out in a section entitled "Purpose of the Report" and states:

Subject to the form of the Gas Industry Co's recommended switching option, the arrangements to achieve mandatory participation of the recommended option will be the subject of a separate consultation process."¹

However, it is important to place this commitment into the overall context of the first consultation paper. In Part B, that paper set out four potential switching options. These options were:

1. Status Quo – a voluntary arrangement;
2. Reconciliation Code Enhancements – enhancements to the existing Code that would become regulation and mandatory for all industry participants;
3. A Central Registry – development of a central database of record and information to support switching; and
4. A Central Registry integrated with Allocation Mechanism – option (3) extended to include allocation and reconciliation processes²

This high level summary of the options only mentions mandatory regulations in reference to option 2. There is no mention in regard to option 3 of either rules or regulations. The absence of any indication in the summary statement of the first consultation paper of the need for rules and/or regulation appears to add impetus to the development of the current discussion paper.

However, it is again informative to refer back to the first consultation paper on the switching arrangement. While the summary of the options made no mention of rules and/or regulation for option 3, other parts of the paper clearly did. For example, in Part A of that consultation paper, the Gas Industry Company states:

"The Central Registry would consist of:

- The registry, being a single central database or an integrated set of participant databases, in which certain data are held and maintained by participants (according to specific business and **system rules**); and
- The processes by which....."³ (*emphasis added*)

and again in Part C of that paper, where the Gas Industry Company states:

"If the Gas Industry Co determines that the preferred Central Registry option is the recommended option for the gas industry, the following arrangements and processes will need to be developed:

¹ Gas Industry Company consultation paper entitled 'Consultation Paper for Gas Industry Co: Options for Switching Arrangements for the New Zealand Gas Industry', dated October 2005, page 6, paragraph 2.17.

² Op cit, page 17, paragraph 7.1.

³ Op cit, page 6, paragraph 2.14.

- Governance, including audit and compliance, and funding arrangements;
- Definition of switching and Central Registry processes **and rules**;
- Description of.....”⁴ (*emphasis added*)

and again in paragraph 8.2 which states that:

“The functionality is based on draft industry switching and registry processes **and rules** which are not included as part of this consultation paper, but will be the subject of a separate consultation process.”⁵
(*emphasis added*)

This characterisation – of the central registry option needing to have rules developed and implemented to be made effective– was entirely consistent with Genesis Energy’s understanding of the range of options set out in the paper that progressively ‘moved’ from voluntary to mandatory (in other words from industry arrangement to rules and regulations, albeit in a form yet to be determined). In Genesis Energy’s view, a failure to explicitly mention rules and/or regulation in the summary statement of options 3 and 4 appears to have been more an error of oversight resulting in inconsistency across the paper rather than an intentional omission requiring further analysis of the implementation mechanism.⁶

⁴ Op cit, page 27, paragraph 8.1.

⁵ Op cit, page 27, paragraph 8.2.

⁶ Indeed, the very choice of name of ‘central registry’ implies a solution that will implemented by some form of central fiat.