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Dear Ian

Standard insolvency processes work in the gas industry (but tailored improvements may be necessary to resolve issue of 'unaccounted for customers')

Genesis Power Limited, trading as Genesis Energy, welcomes the opportunity to provide a submission to the Gas Industry Company ("the GIC") on the consultation paper "Insolvent Retailers work-stream: Castalia Strategic Advisors report" dated 22 June 2012 ("the report"). Genesis Energy's responses to the consultation questions are in Appendix A and additional comments are set out below.

Overview of Genesis Energy's comments

The report supports the conclusion that standard insolvency processes can be relied on to ensure the bulk of an insolvent gas retailer's customers are successfully transferred to viable retailers. We agree that the risk of unaccounted for customers is a problem that may warrant further investigation by the GIC.

However, any options considered should be proportionate to the scale of the problem. A regulated retailer of last resort ("RoLR") scheme is not likely to be an appropriate solution for this reason. This type of regulation poses a risk to the effective operation of normal insolvency arrangements and may not be in the long term interests of gas customers.

We consider that a more tailored solution to addressing the problem of 'unaccounted for customers' may be required. For example, we would support further investigation into options targeted at:

- establishing clear processes and timeframes for distribution companies to disconnect unaccounted for customers who continue to consume gas without a responsible retailer; and,
- improving the rules around the allocation of pipeline capacity to allow retailers to more effectively compete for an insolvent retailer's customer base.

Standard insolvency processes work in the gas industry but further investigation may be necessary to explore options to address 'unaccounted for customers'

The findings in the paper support the conclusion that standard insolvency processes work well in the gas industry. In particular, as evidenced by the E-Gas event, these arrangements can be relied on to ensure that the bulk of an insolvent retailer's customer base will be successfully sold by an insolvency practitioner.

However, we agree that there is the potential for 'unaccounted for customers' where an insolvency practitioner does not sell an insolvent retailer's entire customer base. The fact that retailers are not able to disconnect these customers, but may continue to pay the cost of supplying these customers, is a problem worthy of further investigation by the GIC. We consider that a regulated solution to this problem may be preferable to the GIC having to resort to its urgent regulation-making powers in an insolvency event.

RoLR scheme not an appropriate option

It is important that the options considered as part of any further investigation are proportionate to the likelihood of this problem occurring and its expected impact. As identified in the report, the risk of these insolvency events occurring is low. Furthermore we consider that in an insolvency event it is likely that the majority of orphaned customers would seek a new retailer on their own accord.

While a RoLR scheme may provide one option to reducing the potential for 'unaccounted for customers', we consider that the costs and adverse consequences of this type of regulation may outweigh the benefits. As identified in the report, a RoLR scheme:

- can impose high administration costs. The ongoing costs of maintaining backstop regulations are expensive and may not be

commensurate with the rare likelihood of an insolvency event occurring;

- may compromise the effectiveness of standard insolvency processes by weakening the incentives on parties to constructively engage with the insolvency practitioner. For example, retailers will be less incentivised to compete for customers they expect to acquire for free if a successful sale process is not able to be completed; and
- is unlikely to operate in the long term interests of gas customers. Backstop arrangements that transfer customers of an insolvent retailer to larger, more stable retailers present a risk to those retailers that will inevitably be reflected in the prices faced by all gas customers.

Support investigation of tailored options

We consider that a more tailored and proportionate solution to addressing the problem of 'unaccounted for customers' would be preferable. We suggest the GIC further investigate the below options.

Regulation to establish clear processes and timeframes for distribution companies to disconnect unaccounted for customers

We support the GIC further investigating the use of regulation to establish clear processes for distributors to disconnect unaccounted for customers. We consider this type of regulation would benefit distributors by giving them a clear mandate to disconnect customers. In addition, customers would be further incentivised to seek a new retailer on their own accord. Regulations could be designed to ensure that:

- customers are provided with adequate timeframes to seek a new retailer and with good information to allow them to understand their choices; and
- the cost of disconnecting these customers is allocated fairly amongst industry parties.

Improving the rules around the allocation of pipeline capacity

Although not discussed in the paper, the current arrangements for allocating pipeline capacity may prevent retailers from competing for an insolvent retailer's customers. This will have implications for the ability of the insolvency practitioner to sell the entire customer-base. Improvements to these arrangements may assist in reducing the risk of unaccounted for customers. We recommend this issue is addressed as part of the wider work being considered under the Gas Transmission Investment Programme.

If you would like to discuss any of these matters further, please contact me on 04 495 6357.

Yours sincerely,



Lizzie Wesley-Smith

Regulatory Advisor

Appendix A: Responses to Consultation Questions

QUESTION	COMMENT
<p>Q1: Do you have any comments or concerns on the summary of standard insolvency arrangements provided in this section?</p>	<p>No.</p>
<p>Q2: Do you have any comments on the summary of physical and contractual characteristics of the New Zealand gas market set out above?</p>	<p>It would be helpful if this part of the paper discussed the physical and contractual arrangements for allocating pipeline capacity in the New Zealand gas market. This has implications for a retailer's ability to compete for an insolvent retailer's customers.</p>
<p>Q3: Are you aware of any reason(s) why a gas retailer may become insolvent in addition to those mentioned in this section?</p>	<p>Other reasons, not discussed, could include:</p> <p>Exposure in other markets: a dual-fuel retailer could become insolvent because of financial stress in its electricity business. As noted in the paper "most gas retailers in New Zealand are dual-fuel retailers". The risk of insolvency in the electricity market is therefore relevant.</p> <p>Regional specific risks: Retailers may also face risks related to the location of their customer base. For example it is plausible that an event like the Christchurch earthquake could have caused a retailer with major users in this area to become insolvent.</p>
<p>Q4: Are there other likely scenarios of how a gas retailer insolvency might play out that have not been discussed above?</p>	<p>The scenarios discussed might play out differently in the case of a dual-fuel retailer insolvency. This is an issue that needs to be investigated further.</p>

QUESTION	COMMENT
Q5: Do you agree with the description of customers' perceptions of the risk of insolvency, and the likely customer experience when their retailer becomes insolvent?	The description is not accurate for commercial users of gas. These customers place a much higher value on continuity of gas supply and will go to greater efforts to manage the risk of insolvency.
Q6: Do you agree with this discussion of the incentives that apply in an insolvency event?	Yes, however, it should be noted that the incentives that apply in an insolvency event will be affected by the allocation of pipeline capacity.
Q7: Do you agree with the market failures identified?	Yes.
Q8: Do you agree that the market failures identified will only eventuate if an insolvency practitioner disclaims customer contracts or if an acquiring retailer does not acquire the whole customer base in a sale process?	Yes.
Q9: Do you agree that contracts provide some ability for gas industry participants to manage the costs that they might bear if their counterparty becomes insolvent?	Yes.
Q10: Based on the issues discussed above and for the market failures identified, do you consider that there is a need for regulatory intervention beyond using the urgent regulation-making powers in the Gas Act?	Please refer to our cover letter.