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8 February 2013

John Bright
95 Customhouse Quay
Gas Industry Company
WELLINGTON

Submitted via: Gas Industry Company Website

Dear John

Insolvent Retailers – Options Paper

Genesis Power Limited, trading as Genesis Energy, welcomes the opportunity to provide a submission to the Gas Industry Company (“the GIC”) on its consultation paper “Insolvent Retailers – Options Paper” dated 17 December 2012.

Genesis Energy commends the GIC for the structured policy approach it has taken in response to the Castalia Report on gas retailer insolvencies¹. The GIC’s paper clearly identifies the risk of ‘orphaned customers’, following instances of retailer insolvencies, and presents a range of options specifically targeted at addressing this market failure. In particular, we appreciate the careful consideration of non-regulatory solutions. We provide our further comments on the options presented below. Our responses to the consultation questions are provided in Appendix A

Support the GIC relying on urgent regulation making powers (if needed)

Permanent regulations not necessary

Genesis Energy agrees that there is potential for customers to become orphaned in the event of a retailer becoming insolvent. However, we do not consider that the risk of this market failure is sufficient to warrant permanent regulations (as

¹ Castalia Strategic Advisors “Discussion Paper on Gas Retailer Insolvency – Report to Gas Industry Company”, June 2012.

proposed in Option 5). As we have submitted in the past, permanent backstop regulations may compromise normal insolvency processes and impose high administration costs². Industry participants have strong incentives to work with the insolvency practitioner when a retailer becomes insolvent and to negotiate a commercial sale of the entire customer base. The incentive on retailers and distributors is to minimise the risk of unallocated customers, as they will ultimately end up bearing the costs of these customers.

The E-Gas insolvency is commonly used as an example of orphaned customers; however, as noted in the paper, this was not a consequence of the insolvency *per se*, but, a result of these customers not being recorded accurately in the registry.³ Had they been known to the insolvency practitioner, it is likely these customers would have been included in the final sale.

Preference for establishing parameters for urgent backstop regulations (Option 3)

Although we are not convinced that the scale of the problem justifies regulatory intervention, our preference is to continue relying on the GIC's powers to make urgent regulations, if and when required, following retailer insolvency (Option 3 of the paper). This option would avoid the ongoing costs of permanent backstop regulations and would enable a more flexible and targeted response to the actual circumstances of a given retailer insolvency.

We agree that there would be value in the GIC consulting with the industry on a set of high level parameters for how these regulations could operate in practice. As a starter for consideration we suggest that any backstop regulations should:

- only apply once the insolvency practitioner has failed to complete a successful sale of the customer base, or ,has disclaimed a significant proportion of customers from a sale of the customer base. This will enable normal insolvency and commercial arrangements to play out as far as possible;
- provide any disclaimed or unallocated customers with a window of opportunity to switch retailers on their own accord, prior to being transferred;

² Genesis Energy "Submission on insolvent retailers workstream: castalia strategic advisors report" dated 27 July 2012 (Reference SUB-12-053)

³ Gas Industry Company "Insolvent Retailers – Options Paper" 17 December 2012, pg. 4 & 5.

- allow retailers to determine the terms and conditions (including price) for accepting new customers. In particular, retailers should not be expected to accept customers on the same price conditions as the insolvent retailer. Retailers have different wholesale purchasing arrangements and there may be situations in which the insolvent retailer has been offering unsustainable prices; and
- allocate customers to retailers in a way that preserves retailers existing market shares across different allocation groups at the relevant gas gates.

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 agree with our assessment of the RAG's proposal?</p>	<p>While there are differences between the Electricity and the Gas markets, the fact that 6/8 gas retailers are dual-fuel retailers supports the need to ensure that a consistent and well aligned approach is taken to retailer insolvencies in both markets. Allowing standard insolvency arrangements (that are consistent between both markets) to play out as far as possible is, we consider, the most effective way to achieve this alignment.</p> <p>The RAG's proposal does not provide a reasonable length of time for these standard arrangements to work. Additionally, having two separate schemes may also create additional complexities for the insolvency practitioner. We consider that these factors will have implications for the GIC's objectives for a commercially based solution in the gas market.</p> <p>We recommend that the GIC address this issue with the EA as it works on its detailed design of the RAG's proposal.</p>
<p>Q2: Do you agree with the stated regulatory objective?</p>	<p>Yes.</p>
<p>Q3: Do you consider that the orphaned customer risk could be managed contractually?</p>	<p>We consider that there is scope for use of system agreements within the gas industry to minimize counterparty risk. For example, these contracts can provide distributors with the rights to disconnect customers unwilling to change suppliers after their retailer has ceased trading.</p>

QUESTION	COMMENT
Q4: Do you think Gas Industry Co can add value to a normal insolvency process by, for instance, providing lists of orphan customers to market participants?	Yes, this proved highly valuable during the E-Gas insolvency. We consider that the GIC may have an additional role in assisting with the freeing up of pipeline capacity necessary for retailers to take on new customers.
Q5: Do you think voluntary contract principles can manage the orphaned customer risk?	We question the value in introducing voluntary contract principles. Major parties in the industry are currently progressing along these lines already. Our preference is that this work should be left to proceed without GIC involvement.
Q6: Do you agree that relying on urgent backstop arrangements that would apply after an insolvency process, where the parameters would be developed in consultation with the industry, is an efficient response to the orphaned customer risk?	Yes. We prefer this option for the reasons outlined in our cover letter.
Q7: Do you have any comments on the parameters that could apply for those regulations?	We outline some high level parameters for these regulations in our cover letter. We suggest that a technical working group could be established to assist in the more detailed design of these regulations.
Q8: If option 3 were selected, do you consider there to be any residual risks that would justify a more interventionist approach? If so, please elaborate on those risks.	No.

QUESTION	COMMENT
Q9: Do you have any comments on the option requiring distributors to disconnect orphaned customers from their networks?	We have (in past submissions ⁴) encouraged the GIC to further investigate this option. While we remain of the view that this is the most direct way to address the “orphaned customer” problem. We accept the GIC’s concerns that the cost of this option would be high.
Q10: If you consider that a permanent backstop arrangement is necessary please provide full supporting reasons.	For the reasons outlined in our cover letter, we do not support the need for permanent regulations.
Q11: Do you have comments on any of the sub-options for a permanent backstop regime? Are there other sub-options you believe warrant further investigation?	While we do not support the need for permanent regulations, should the industry decide to go down this path, we consider the GIC would need to provide a more thorough and detailed analysis of both of the sub-options and to provide the industry with ample opportunity to be consulted on these.
Q12: Are there any other options you think Gas Industry Co needs to analyse before moving to the next phase of this work stream?	No.
Q13: Do you agree with Gas Industry Co’s assessment of the practicable options?	Yes.

⁴ Genesis Energy “Submission on insolvent retailers workstream: castalia strategic advisors report” dated 27 July 2012 (Reference SUB-12-053)