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Bas Walker
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By email: submissions@gasindustry.co.nz

Dear Bas

Retail Contract Terms

Genesis Power Limited, trading as Genesis Energy, welcomes the opportunity to provide a submission to the Gas Industry Company (GIC) on the consultation paper "Options for the Governance of Retail Contract Terms" dated 5 October 2009.

Genesis Energy's responses to the consultation questions are in Appendix A.

Genesis Energy welcomes the GIC's decision to step back from pursuing a model domestic contract and to consider more carefully the nature of the policy problem and the range of options that might best fit the problem. The GIC has made an excellent start on this work. The decision to develop selective, outcome-level benchmarks is particularly welcome given that it preserves scope for business model innovation while identifying and promoting the most important bottom lines for gas consumers.

Genesis Energy notes that since the GIC released its consultation paper, members of the Electricity and Gas Complaints Commission (EGCC) have amended their disputes scheme to suit regulators' criteria for recommendation as an approved scheme. This should allow the GIC and the Electricity Commission to approve the scheme so that participation becomes compulsory for all distributors and retailers. This has a direct affect on some of the benchmarks

proposed by the GIC and is important in terms of the context it provides for the GIC's analysis.

The EGCC scheme now has a voluntary code of practice and a compulsory code of conduct. Combined with (soon to be) universal access to high-quality disputes resolution, this should help to improve the contracting environment for gas consumers. EGCC members are also keen to improve their scheme further to ensure it operates as smoothly and efficiently as possible.

Genesis Energy considers it is important that there should be consistency across fuels and networks. This includes electricity, gas, LPG, open-access networks and private networks. As such, Genesis Energy welcomes the GIC's cooperation with the Electricity Commission on complaints resolution and consumer contracting. Genesis Energy is also keen to see the EGCC scheme expand to cover LPG and will be working with other industry participants to achieve this.

The consultation paper is silent on private networks and LPG. It is not clear that there is any reason for the GIC's work on consumer contracting to discriminate between fuels or network types in this way. The nature of any policy problems are likely to be identical, if not more acute.

Finally, although the GIC has made good progress on developing its proposed benchmarks, the work on developing and analysing options is disappointing. Genesis Energy considers that the GIC needs to develop a broader range of options and carry out a much more thorough analysis of benefits and costs. As part of this further work, Genesis Energy also recommends that the GIC should not think about contract terms in isolation from the contract formation process and contract dispute processes.

If you would like to discuss any of these matters further, please contact me on 04 495 3348.

Yours sincerely



Ross Parry
Regulatory Affairs Manager
Genesis Energy

Appendix A: Responses to Consultation Questions

QUESTION	COMMENT
<p>Q1: Do you agree with the proposed regulatory objective?</p>	<p>No.</p> <p>The objective statement pre-supposes that the solution is a “gas governance arrangement for the oversight of retail contract terms”. There may be other means of improving consumer outcomes without implementing a governance arrangement for overseeing contracts.</p> <p>The first bullet point essentially seeks comprehensive (or complete) contracts, which may not be practicable or desirable in practice. It can be better for contracts to err on the side of accessibility (i.e. the second bullet point) and flexibility rather than completeness. Even if completeness is desirable, it may not be achievable. In practice, retailer discretion combined with recourse to the Electricity and Gas Complaints Commission (EGCC) is an efficient way of dealing with contractual gaps for rare or unusual issues.</p> <p>It is not clear that market structures need to be reflected in retail contracts explicitly. For the most part, market structures are “behind the scenes” and not directly of interest to consumers. Consumers are interested in the price, reliability and service level outcomes that efficient market structures can deliver rather than in the market structures themselves. The GIC’s work on retail contracts is generally not concerned with price and reliability, or with low-level aspects of service quality. As such, Genesis Energy believes that the bullet point on market structures does not add anything useful to the regulatory objective statement.</p> <p>The objective should not need to refer to complaints resolution schemes given that the GIC should soon be recommending the EGCC for approval. Following approval, all retailers</p>

QUESTION	COMMENT
	<p>will be required to participate in the EGCC.</p> <p>Given the comments above, Genesis Energy recommends the following regulatory objective for the GIC's work on retail contracts:</p> <p style="padding-left: 40px;">To ensure that consumer contracts for gas supply are sufficiently complete, accessible and balanced to support the long-term interests of gas consumers.</p> <p>Alternatively, the GIC could consider an objective that is not limited to the content of consumer contracts, but spans consumer contracting for supply more broadly. For example, this could include contract formation.</p>
<p>Q2: Do you agree that the evidence available supports some degree of structured oversight of the quality of retail contract terms?</p>	<p>Yes.</p>
<p>Q3: Do you agree the 'benchmark' terms for retail contracts should be selective and outcome based rather than comprehensive and prescriptive?</p>	<p>Yes.</p> <p>Genesis Energy fully supports the GIC's analysis of the merits of a selective and outcome-focussed approach versus a comprehensive or prescriptive approach.</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>Any intervention should, as far as possible, be flexible enough to be able to accommodate any business model.</p> <p>Similarly, any intervention should be careful not to favour or penalise any business model unless the business model itself clearly has significant adverse affects on the long-term interests of consumers.</p>

QUESTION	COMMENT
<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.</p> <p>Genesis Energy understands that customers on Nova Energy’s private gas networks contract directly with a vertically integrated distributor, meter owner and retailer. The same may also apply to customers on private Rockgas LPG networks.</p> <p>As per Q3 above, the option that the GIC decides to adopt should be agnostic as to the contractual or ownership arrangements that sit behind a customer’s contract (or contracts) for gas supply, except to the extent that those arrangements are detrimental to gas consumers’ long term interests.</p>
<p>Q6: Do you agree with the analysis of the need for and scope of benchmark terms relative to consumer expectations?</p>	<p>Genesis Energy offers the following comments relating to the consumer expectations listed on pages 27 – 30:</p> <ul style="list-style-type: none"> • Expectation 2: Genesis Energy agrees that a benchmark cannot cover this expectation. However, if the GIC provided the market with regular analysis of retail contracts against the benchmarks then this could help consumers to understand their supply options; • Expectation 3: This expectation is relevant if contractual terms limit the ability for customers to switch retailer. As such, proposed Benchmark 2 addresses this expectation. • Expectation 4: It is not correct that setting up supply is “...a matter over which the retailer has full control but the consumer has no control”. In particular, retailers have limited or no control of the services provided by distributors and the consumer typically has full control over site access; • Expectations 5 and 6: As above, retailers do not have full control over disconnection and supply quality and have limited ability to influence the services delivered by monopoly

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	pipeline businesses.
Q7: Are the benchmark terms proposed for 'how to become a customer' appropriate?	Genesis Energy believes that suppliers should be able to recover charges for any gas consumed and for any services that the customer has used.
Q8: Are the benchmark terms proposed for 'how to stop being a customer of your current retailer' appropriate?	<p>It could be useful to provide separate benchmarks for fixed-term contracts versus open-ended contracts.</p> <p>The fixed-term benchmark should require the supplier to:</p> <ul style="list-style-type: none"> • clearly communicate to the customer that the contract is for a fixed term; • clearly communicate the expiry date; and • explain in simple terms the basis on which the supplier will calculate any early termination charges. <p>The open-ended contract benchmark could simply be as follows:</p> <ul style="list-style-type: none"> • the customer must be free to terminate their contract at any time and without unnecessary delay; and • the customer may be charged for direct costs, but must not be charged penalty fees or exit fees. <p>It should not be necessary for the benchmarks to be markedly more detailed than set out above. It also seems unnecessary for the benchmarks to refer to legislation such as the switching rules unless there is a direct consumer interest in being aware of that legislation.</p>

QUESTION	COMMENT
Q9: Are the benchmark terms proposed for 'changes to a contract' appropriate?	Yes.
Q10: Are the benchmark terms proposed for 'service standards' appropriate?	<p>Genesis Energy suggests the following amendments:</p> <p>4.1 The contract must describe the services and quality of service standards to be provided to the consumer <u>customer</u>.</p> <p>4.2 The contract must provide that the services and quality of service standards will at all times be:</p> <p style="padding-left: 40px;">(a) consistent with all legal obligations relating to the supply of gas;</p> <p style="padding-left: 40px;">(b) no less than good industry practice then prevailing in New Zealand.</p> <p>4.3 The contract must set out how the retailer <u>supplier</u> will respond to the consumer <u>customer</u> where quality of service standards are not met, including any compensation that would be paid to the consumer if the retailer does not meet its obligations.</p> <p>Benchmark 4.2(a) should not be necessary, while 4.2(b) is subjective and arguably not meaningful or useful.</p> <p>Genesis Energy currently deals with compensation on a case-by-case basis and considers that this is appropriate given that it allows flexibility for compensation to reflect individual circumstances. Setting out compensation in contracts would be a rigid approach and may not be practicable unless scenarios and compensation arrangements are described in very broad terms. To limit exposure, suppliers would be likely to adopt more limited compensation policies than may be offered on a case-by-case basis.</p>

QUESTION	COMMENT
<p>Q11: Are the benchmark terms proposed for 'prices, bills and payment' appropriate?</p>	<p>Yes, except for proposed benchmark 5.1(c).</p> <p>Given that retail prices are set in response to market dynamics and customers are subject to competitive pressures, it is not clear that there is any policy rationale for requiring retailers to try to explain price rises. Gas retail is not a "cost-plus" business.</p>
<p>Q12: Are the benchmark terms proposed for 'bonds' appropriate?</p>	<p>Yes.</p>
<p>Q13: Are the benchmark terms proposed for 'obligations of the parties in relation to supply to the site and access' appropriate?</p>	<p>Genesis Energy queries whether benchmark 7.1(c) as written is necessary. It is difficult to see any policy rationale for using customer contracts to educate consumers about the parties in the gas supply chain.</p>
<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?</p>	<p>Genesis Energy disagrees that clause 7.1(c) is necessary to give effect to the GPS objective on role clarity. The GPS objective is aimed at ensuring roles are able to be understood, but it does not go on to say that customers (or even suppliers) must be educated about the roles of respective sector participants.</p> <p>A good response to the GPS objective would be to examine whether the contractual and regulatory environment has gaps or inconsistencies that lead to ambiguity about roles, then to consider whether this is a problem and whether there is a regulatory solution. It seems unlikely that this analysis would lead to the conclusion that retail contracts must describe the respective roles of retailers, distributors and meter owners.</p>

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<p>Q15: Are the benchmark terms proposed for 'metering' appropriate?</p>	<p>Genesis Energy queries benchmarks 8.1(a) and (b).</p> <p>Proposed benchmark 8.1(a) is unclear. It should be the supplier's obligation to ensure that they do not offer a customer a pricing option that the metering installation at the customer's premises does not support, or to inform the customer if there is a charge associated with upgrading meters to support a particular tariff.</p> <p>Notwithstanding the above, there could be value in a benchmark that requires the contract to set out the customer's obligations with respect to site access for meter reading, and the supplier's obligations with respect to meter reading frequency.</p> <p>Proposed benchmark 8.1(b) is unnecessary.</p> <p>Genesis Energy agrees with proposed benchmarks 8.1(c) to 8.1(e).</p>
<p>Q16: Are the benchmark terms proposed for 'disconnection and reconnection' appropriate?</p>	<p>Genesis Energy recommends that the term "avoid disconnection" should be replaced with the term "prevent disconnection" in proposed benchmark 9.1(b).</p> <p>The term "validly invoiced" in proposed benchmark 9.2 seems redundant given proposed benchmark 9.4 covers disputes.</p> <p>Genesis Energy recommends that the GIC should modify proposed benchmark 9.4 to ensure it is consistent with the EGCC code of practice clause CA18.5. If initiating a dispute provides a customer with blanket protection from debt disconnection then this will invite abuse of the disputes system by some customers.</p>

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Q17: Are the benchmark terms proposed for 'faults and planned shutdowns' appropriate?	Yes.
Q18: Are the benchmark terms proposed for 'privacy' appropriate?	It is not clear that this benchmark is necessary given it simply refers to a statutory obligation that retailers cannot contract out of anyway.
Q19: Are the benchmark terms proposed for 'liability of the retailer and the consumer' appropriate?	Yes.
Q20: Are the benchmark terms proposed for 'dispute resolution' appropriate?	<p>Genesis Energy agrees with proposed benchmark 13.1.</p> <p>EGCC members amended the scheme last week to meet the conditions required for approval as a mandatory scheme for electricity and gas. As such, the GIC and the Electricity Commission should be able to approve the scheme before the GIC's work on retail contracts is completed. This means that proposed benchmark 13.3 should be deleted and proposed benchmark 13.2 can refer directly to the EGCC.</p>
Q21: Are the benchmark terms proposed for 'how consumers communicate with the retailer' appropriate?	Yes.
Q22: Are the benchmark terms proposed for 'notices from the retailer' appropriate?	Yes.

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<p>Q23: Viewing the proposed benchmarks as a whole, are there topics that should have been included and have not, or are there terms that have been included but might be removed to make the benchmarks more compact?</p>	<p>As above, Genesis Energy recommends that the GIC should remove proposed benchmarks 4.2, 5.1(c), 7.1(c), 8.1(a), 8.1(b) and 13.3.</p> <p>Proposed benchmark 2 should deal separately with fixed-term contracts and evergreen contracts.</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>Genesis Energy does not agree that the example terms are candidates for prohibition. They are valid responses to the commercial pressures faced by retailers and distributors.</p>
<p>Q25: Are there other examples of unfair terms in use which should be excluded from acceptable terms?</p>	<p>Genesis Energy is not aware of any other specific examples of unfair terms.</p>
<p>Q26: To what extent do you think the published standard retail terms reflect the current practice between retailers and consumers (persons consuming less than 10 terajoules per annum)?</p>	<p>Genesis Energy cannot comment on other retailers' practices. However, as per Q1, it is not clear that the GIC should necessarily limit the scope of its analysis to the contents of contracts. It may be appropriate to consider contract formation processes and context.</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)?</p>	<p>Yes.</p>

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<p>Q28: Do you agree that these are the most appropriate options for analysis, and that they have been appropriately specified?</p>	<p>It is not clear why option one requires a transition period (published benchmarks, monitoring based on voluntary disclosure). The concept of a transition period does not seem to fit with this approach, as there is, in effect, nothing to transition to.</p> <p>Other options that the GIC could consider include:</p> <ul style="list-style-type: none"> • disseminating information publicly on alignment with the benchmarks, with voluntary or compulsory disclosure to the GIC (and possibly to prospective customers); • selectively applying mandatory compliance only to benchmarks with strong evidence of persistent non-compliance and consumer harm.
<p>Q29: Do you agree that all of the relevant benefits, costs, risk and uncertainties of the option had been identified and appropriately characterised?</p>	<p>Genesis Energy considers that a more thorough analysis of costs and benefits is required. This should include quantification to the extent possible, and should include a broader range of options.</p> <p>The analysis does not include the risk of regulatory error. This could include, for example, setting benchmarks that are detrimental to consumers' long-term interests.</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>This depends on an assessment of the harm caused by "non-compliance" as opposed to the costs involved in regulatory intervention. It is also possible that other options (including those identified in response to Q28) would be more fit for purpose than either of the options identified by the GIC.</p>

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<p>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?</p>	<p>Genesis Energy considers that more robust analysis of the options available and their relative costs and benefit is required to support a decision on which option should be preferred.</p>