

Gas Governance (Insolvent Retailers) Regulations 2010—Statement of Proposal

Submission prepared by: Nova Gas Limited

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QUESTION	COMMENT
<p>Q1: Do you agree that the Regulations should be revoked under regulation 19? If not, what suggestions do you have for overcoming the shortcomings outlined above?</p>	<p>Yes</p>
<p>Q2: Do you have any comments on the provisions of the Regulations themselves?</p>	<p>Nova’s main concern with the regulations was the placement of unknown obligations on other retailers without the opportunity to identify, consider, mitigate or reject them.</p> <p>We also have concerns with the practical application of the regulations in different circumstances. In our view the regulations as currently written would not be appropriate in such scenarios where gas supply is constrained leading to a retailer insolvency event. In such scenarios the ability of other retailers to absorb another retailers customer load could put them at risk of insolvency as well – especially if there is any requirement to take on the insolvent retailers contractual terms with its customers.</p>
<p>Q3: In your view, is some form of regulatory intervention required to deal with cases of retailer insolvency?</p>	<p>Yes. Regulations or changes to existing regulations such as switching arrangements in particular are necessary. Also the critical contingency regulations and reconciliation rules should be reviewed to ensure that retailer insolvency events do not interfere with there operation.</p> <p>Based on our experiences following the Egas liquidation, management of the situation was hampered by a number of issues:</p> <ol style="list-style-type: none"> 1) Even though Egas went into voluntary liquidation, customers were unable to terminate their contracts with

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	<p>Egas so they could make alternative arrangements. While other retailers were approaching and being approached by Egas customers, Egas (on instruction of the Liquidators) was not releasing customers from their contracts. Nova believes that once a retailer becomes insolvent (voluntarily or otherwise), and there is a prospect that other retailers must absorb the insolvent retailers customers, there should be no such impediment to customer switching.</p> <p>In some commercial arrangements, insolvency is often an event of default allowing the other party to terminate. Such a provision allows either party to not be hampered by supply/consumption issues of the other party.</p> <p>Regulating for this outcome may be to the detriment to creditors of an insolvent organisation but is appropriate given that other competing retailers are expected to rearrange their affairs at short notice to continue to supply consumers without interruption.</p> <p>2) If a retailer is insolvent and cannot or does not continue to manage its obligations under the switching rules then even if customers make alternative arrangements for supply, there is no process for updating the registry to record this. Nova believes that in the event of retailer insolvency and where the insolvent retailer is not in a position to complete switches in accordance with the rules, then there must be some mechanism for completing switches. Nova believes that the registry process should be modified to deal with such a situation and allow the completion of switches on behalf of an insolvent retailer by the GIC or an agent of the GIC.</p> <p>3) If there are to be “retailer of last resort” provisions then:</p> <ol style="list-style-type: none"> a. All retailers should be provided with the opportunity to opt in; b. There must be clear processes for transfer of customers including: <ol style="list-style-type: none"> i. the provision of all information necessary for a new retailer to supply and bill the customer; ii. Any property or contractual rights necessary to supply the customer (eg transmission capacity rights) c. Customers should be given the reasonable opportunity to select a retailer of their choice otherwise they should be transferred to a default retailer and on the default retailers terms and conditions; d. Retailers of last resort should be able to claim reasonable costs from the insolvent retailer (although

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	<p>that would likely be subject to a high level of credit risk but nonetheless they should have the opportunity to make a claim to the receiver/liquidator);</p> <p>4) The regulations should contemplate the worst case scenario of insufficient supply capacity to meet the requirements of all consumers including those of an insolvent retailer.</p>
<p>Q4: Are there other factors to consider that have not been mentioned?</p>	<p>See Q3 response.</p>
<p>Q5: Do you agree that the objectives addressed by the Regulations were appropriate?</p>	<p>No.</p> <p>We do not believe that it is appropriate for a retailer to be forced to assume the obligations of contracts they have not entered into.</p> <p>In cases of supply shortage that also gives rise to a retailer insolvency situation, the objective of maintaining supply to all customers is not practicable. Consideration should also be given to linkages with the Critical Contingency and reconciliation regulations and what impact there is in the case of retailer insolvency.</p>
<p>Q6: Are there others that an insolvent retailer policy should address?</p>	

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<p>Q7: Are there any other options that Gas Industry Co should consider?</p>	<p>Ideally, industry arrangements should support commercial arrangements between customers and suppliers that reflect risk of non supply through events such as insolvency. Customers should face incentives to consider the risk of supplier default when contracting and suppliers should be incentivised to manage their risks appropriately.</p> <p>Regulatory solutions tend to protect suppliers and customers and dilute these considerations in normal day to day market conditions and that is why Nova prefers a minimalist regulatory approach so that the consumers bear some of the risk of their retailer selection forcing suppliers to deal with their concerns about ability to deliver on the contractual commitments and manage their business accordingly.</p>
<p>Q8: What are your views concerning alignment with the default arrangements being developed by the Electricity Authority? Are there opportunities for harmonisation that we have not identified?</p>	<p>It would be useful at a practical level (if not regulatory) given the fact that many gas consumers (residential in particular) are supplied with electricity by the same retailer. "Dual fuel" arrangements are very common in todays energy market so there would be some efficiency benefits of alignment of retailer insolvency arrangements. Apart from On Gas and Greymouth Petroleum (who we believe has also signalled an interest in retailing electricity) all other gas retailers are also electricity suppliers so an insolvency event in the gas industry is likely to also involve electricity consumers.</p>