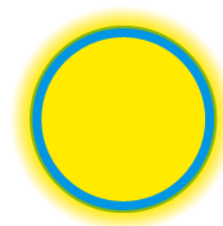


15 April 2011

Pamela Caird
Gas Industry Co
PO Box 10-646
Wellington 6143
New Zealand

POWERCO



Dear Pamela

Submission on the Gas Governance (Insolvent Retailers) Regulations 2010

1. Powerco welcomes the opportunity to comment on the *Gas Governance (Insolvent Retailers) Regulations 2010 – Statement of Proposal*. Powerco agrees with the Gas Industry Company (GIC) that the Regulations, as they stand, are not suitable for use as a general case of retailer insolvency and should be allowed to expire as per regulation 19.
2. Powerco however, considers that there must be some sort of regulatory back-up present to provide certainty to the industry and customers in the event that a retailer becomes insolvent. Creating regulations under urgency has a number of risks that we have reservations about. We recognise the GIC's concerns that regulations may not pass a cost benefit test, however we'd prefer the issue to be unpacked in more detail before ruling out regulations.

Current Regulations (Q1)

3. Powerco agrees that the Regulations as they stand should be revoked by 16 May 2011 as per regulation 19. The current regulations are too specific to the E-Gas case – given the potential variability in situations where a retailer might become insolvent these emergency regulations are not appropriate.

The best outcome for the industry (Q5)

4. The E-Gas situation highlighted the importance of having a regulatory back-stop. The regulations helped ensure the process was resolved quickly and provided more certainty - this was very reassuring to Powerco.
5. The gas industry is battling with persuading people to switch or stay on reticulated gas. We must give consumers confidence that when they buy a gas appliance and make an investment for 10 or more years, they will continue to receive a high quality of service. The gas industry can not afford reputational damage and confidence in the gas industry being undermined. All risks must be carefully managed – and we see retailer insolvency as a very real risk.
6. We recognise the GIC's concern that it is difficult, and potentially costly, to make regulations that cater for small and large retailers becoming insolvent. However, we do

not think it is impossible and request that the GIC at least examine the issue in more detail.

7. At this time, Powerco does not have suggestions on the content of regulations, but the outcomes we would be looking for are:
 - regulations as part of a process which ensures a quick and assured transfer of customers to recipient retailers, providing certainty as to how the situation will be resolved;
 - customer interests are protected;
 - the carry-on of business as usual processes as much as possible;
 - minimise incentives for parties to 'game' the system; and
 - clear communication of information between affected parties.

Regulatory Requirement (Q3)

8. The consultation paper provided a list of past cases where retailers have exited the market and notes that regulatory intervention has not yet been required to resolve these cases. However, this does not mean regulatory input will not be required in the future. The probability of needing regulatory intervention should be part of the cost benefit analysis of different regulatory options.

Backstop Regulations (Q7)

9. During the E-Gas case, emergency regulations were able to be passed within two weeks from their inception. The GIC suggests that creation of regulations in this manner may be a feasible back-stop option.
10. Powerco has four concerns with using emergency regulation powers:
 - there is a risk that regulations may not be able to be made under urgency in the future;
 - there are many advantages of regulations being made in advance – eg once the event happens, companies are trying to manage a number of risks and it is very hard to get an industry consensus as companies may start "game playing";
 - just because relatively good quality regulations were able to be written in two weeks, does not mean this will happen in the future – eg people with the level of expertise may leave the GIC or there may be less time; and
 - finally, and most significantly, the philosophical basis of Government being able to impose laws and regulations on citizens requires a process to be followed. For example the Cabinet Manual provides a robust and democratic process to make regulations, including widespread consultation and a 28 period of notification. A decision that undermines this process must be made with caution.

Further thoughts

11. Powerco raises a question of whether there is a potential for preliminary steps to be taken if a retailer shows signs of becoming insolvent – early identification and action could help to minimise the impact if this does occur.

Concluding remarks

12. Thank you for the opportunity to make a submission. If you have any queries please contact me on 06 759 6241 or charlotte.littlewood@powerco.co.nz .

Yours sincerely,



Charlotte Littlewood
Regulatory Manager