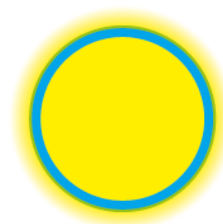


11 February 2013

Ian Dempster  
Gas Industry Company  
PO Box 10 646  
Wellington  
New Zealand

[Submitted via Gas Industry Co website]



Dear Ian,

### **Powerco Submission on Insolvent Retailers Workstream - Options Paper**

#### *Introduction*

1. Powerco welcomes the opportunity to comment on the Gas Industry Company's (GIC) consultation, *Insolvent Retailers – Options Paper* (Paper), published on 17 December 2012. Powerco considers that gas retailer insolvency, while rare, is still a risk that could result in reduced customer confidence and damage to the reputation of the gas industry. As such, we support the GIC's continued work to identify a workable solution for industry participants and customers.
2. This submission is in two parts:
  - key comments on relevant parts of the paper; and
  - responses to the GIC's questions (Annex A).

#### *Support for Option 3: development of urgent backstop regulation*

3. Powerco considers regulatory intervention necessary to address the potential market failure of orphaned customers, created due to normal insolvency arrangements failing and resulting in disclaimed customer contracts existing. Having a regulatory back-stop in place, whether introduced under urgency or as permanent regulation, reduces the uncertainties around the retailer insolvency process and creates assurances that the issue of orphaned customers will be addressed. Providing certainty to industry participants and the public is essential in building confidence levels and market development.
4. We are confident that the majority of rare events of gas retailer insolvency would be resolved under existing New Zealand insolvency law and contractual arrangements within the industry. We therefore consider the development of urgent backstop regulation over permanent regulation as the appropriate

regulatory response. This option allows an insolvency situation to run its course without initial regulatory intervention but provides a case by case solution to address any instances where it becomes apparent that disclaimed customer contracts will exist.

5. Powerco agrees that the preferred proposal of developing urgent backstop regulatory is aligned with principle objective of the Gas Act 1992 (Gas Act) and the Government Policy Statement on Gas Governance 2008 (GPS 2008). We acknowledge that the GIC's process has considered section 43N(1)(c) of the Gas Act and that no other reasonably practicable means for achieving the objective exist.

#### *Importance of industry body leadership during retailer insolvency*

6. The GIC's involvement in the E-Gas insolvency contributed to a resolution being reached without the need to trigger the urgent backstop regulation. We consider this an important point to note, as by providing strong leadership and coordination, the GIC are increasing the opportunity for insolvencies to be resolved without regulatory intervention. While liquidators will follow standard procedures for liquidation and receivership, having a strong signal from the GIC that they are supporting the liquidator and are ready to act swiftly and decisively if required, provides assurance to industry participants.

#### *Customer disconnection should be considered a last resort action*

7. The Paper suggests options to provide gas distributors with the power through contractual arrangements or regulations to disconnect customers. This is an understandable solution as it directly addresses the market failure of orphaned customers. However, when considering the bigger picture, disconnecting customers should be considered a last result action due to gas being an essential utility, the reputational damage to gas being a secure and reliable energy source and the associated disconnection/reconnection costs.

#### *Development of urgent backstop regulation parameters*

8. Powerco supports the recommendation of the GIC to develop and include appropriate parameters in the urgent regulation. Industry engagement would be essential in the process of creating workable parameters that are flexible enough to address a range of insolvency scenarios. Powerco would be happy to provide resources as required to support any development process.

#### *Conclusion*

9. Powerco is pleased that the GIC is progressing the issue of retailer insolvency and will continue to support the workstream where required by the GIC.

10. Thank you for the opportunity to make this submission. If the GIC wishes to discuss any aspects of this submission further, please do not hesitate in contacting me on 06 757 3397 or [oliver.vincent@powerco.co.nz](mailto:oliver.vincent@powerco.co.nz).

Yours sincerely,

A handwritten signature in blue ink, appearing to read "O. Vincent", with a stylized flourish above the name.

**Oliver Vincent**  
Regulatory Analyst  
Powerco

Submission prepared by: Oliver Vincent - Powerco Limited

QUESTION	COMMENT
<p>Q1: Do you agree our assessment of the RAG's proposal?</p>	<p>Yes.</p> <p>The narrative in section 3.2 of the Paper covering the Electricity Authority's insolvency workstream provides an accurate, high level overview of the RAG's proposal. Powerco agrees that the differences between the markets means that by trying to develop a single solution, a real risk is created of comprising the best fit solution for each industry. Additionally, the GIC cannot regulate to intervene in the potential or likely insolvency, only after. As the RAG proposal has trigger points that do not require an electricity retailer to be insolvent, there is a clear misalignment.</p> <p>We support the continuation of dialogue between the GIC and EA to ensure that the solutions developed are complementary and issues such as how dual-fuel retailers are dealt with are addressed.</p>
<p>Q2: Do you agree with the stated regulatory objective?</p>	<p>Yes.</p> <p>The objective simply and accurately reflects the purpose and goal of the retailer insolvency work.</p>
<p>Q3: Do you consider that the orphaned customer risk could be managed contractually?</p>	<p>No, not fully.</p> <p>We recognise that a commercial solution using retailer and distributor contracts could be developed but do not consider this to provide the level of certainty that a regulatory backstop would provide. Issues relating to the binding state of a contract with an insolvent retailer and ability to enforce retailer contractual requirements with customers that the distributor does not have a direct relationship with are examples of our concerns.</p> <p>As the E-Gas situation demonstrated, leadership and coordination is key to the smooth management of retailer insolvency events. The industry body involvement is therefore essential in providing a neutral party for industry participants and consumers. If it is not certain that all events can be sorted out through commercial means and that the GIC's involvement may be required, we consider that a regulatory backstop approach is preferable as it provides greater certainty.</p>
<p>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?</p>	<p>Yes.</p> <p>However, while support can be beneficial it does not provide 'up front' certainty or assurances that an event will be dealt with efficiently with a positive outcome for all industry participants and gas consumers.</p>

QUESTION	COMMENT
<p>Q5: Do you think voluntary contract principles can manage the orphaned customer risk?</p>	<p>No, not fully.</p> <p>As with Option 1 (no intervention), in the majority of circumstances we believe that events of retailer defaults will resolve themselves though industry participants (and the GIC) working together to achieve the best solution for the industry. However, in events where the insolvent retailer is of a significant size or other complexities exist, a guarantee of resolution can only come from when a regulatory solution is in place as a backstop.</p> <p>While providing contractual means for distributors to disconnect customers provides a solution to the identified market failure, disconnection is not seem as a path we would like to go down and should be considered an act of last resort. The gas industry is continually fighting to maintain and develop its customer base and the damage disconnecting customers would do to the reputation of gas is high and should be avoided at all costs.</p>
<p>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?</p>	<p>Yes.</p> <p>Considering the rarity of insolvency situations and the need for a level of certainty to deal with orphaned customers, urgent backstop regulation is a justifiable and cost effective solution. The success of urgent backstop regulation will be dependent on the design of the parameters, the triggers and range of scenario responses developed. Once in place, the regulation would provide clarity and certainty to industry participants and liquidators by addressing the only identified market failure of orphaned customer's scenario. Historical trends illustrate the rarity that the regulation would need to be enacted and we do not consider the impact it may have on the selling of insolvent retailer customers as a barrier to its selection as the preferred solution.</p>
<p>Q7: Do you have any comments on the parameters that could apply for those regulations?</p>	<p>No, not at this time.</p> <p>Significant consideration will need to be put into designing the parameters if urgent backstop regulation is selected as the solution. Powerco will fully engage in the development if and when required.</p>
<p>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.</p>	<p>No.</p> <p>However, support for urgent backstop regulation over a more interventionist approach is based on the swiftness in which the GIC can act in a scenario of retailer insolvency and the flexibility that the parameters offer. If either of these are compromised then we believe the greater certainty that permanent regulation can offer may be a better solution.</p>

QUESTION	COMMENT
<p>Q9: Do you have any comments on the option requiring distributors to disconnect orphaned customers from their networks?</p>	<p>Yes.</p> <p>Compulsory disconnection of orphaned customers provides a focused and targeted approach but results in what we consider to be the 'worst case scenario' for the industry, customer disconnections. As stated earlier, any action that reduces customer confidence and damages the reputation of the gas industry must be avoided as the gas industry is battling with persuading people to connect, 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, and disconnecting customers due to a industry issue undermines this.</p>
<p>Q10: If you consider that a permanent backstop arrangement is necessary please provide full supporting reasons.</p>	<p>No.</p> <p>While the option may provide the highest level of certainty, it offers more negatives than positives in terms of the signals it could send the market, the cost of development and inflexibility to deal with all insolvency scenarios.</p>
<p>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?</p>	<p>We do not consider either sub option as suitable solutions. They are both heavy handed regulatory interventions for addressing a rare scenario and impose unnecessary costs on industry participants.</p> <p>As Powerco does not support a permanent backstop regime we do not consider it necessary to investigate any other sub-options.</p>
<p>Q12: Are there any other options you think Gas Industry Co needs to analyse before moving to the next phase of this workstream?</p>	<p>No.</p> <p>Practical options that are possible within the constraints of contractual arrangements and the Gas Act 1992 have been identified.</p>
<p>Q13: Do you agree with Gas Industry Co's assessment of the practicable options?</p>	<p>Yes.</p> <p>We consider the assessment of each option is a fair and accurate reflection against the evaluation criteria and support the GIC's preferred approach of option 3, development of urgent backstop regulation.</p> <p>As stated earlier, as we do not agree with the concept of disconnecting customers over ensuring the transfer of customers in a timely manner, Powerco does not support option 2.</p> <p>The process we advocate for is to allow an insolvency scenario to run its course under existing New Zealand laws (procedures for liquidation and receivership) and the GIC monitoring the situation in readiness to execute the urgent backstop regulation promptly if predetermined triggers are activated.</p>