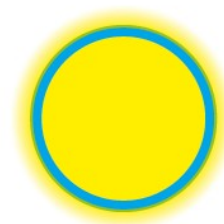


3 November 2009

Bas Walker  
Gas Industry Company  
PO Box 10-646  
Wellington

**POWERCO**



Dear Bas

**Powerco submission on Options for the Governance of Retail Contract Terms**

Powerco Limited (“Powerco”) welcomes the opportunity to comment on the Gas Industry Company’s (“GIC”) consultation paper *Options for the Governance of Retail Contract Terms*, published on 5 October 2009.

Powerco is broadly supportive of the GIC’s proposals in this area, especially action that promotes best practice and strengthens the New Zealand gas industry. We welcome the GIC’s efforts to complete cost benefit analysis on the options and these results should drive decision-making. Based on the evidence provided in the paper, the GIC’s recommendation to initially follow a voluntary approach for 18 months, followed by targeted regulation where necessary, seems appropriate.

In this submission, we have generally only commented on areas that directly impact distribution (eg, issues such as consumer safety, disconnections/connections, faults, emergencies and planned shut downs). Powerco however, often receives feedback from consumers on their gas services, and where relevant we have mentioned these issues. For example, some consumers on private networks have raised concerns related unpublished individual terms and conditions in their contracts. Effectively, where termination clauses exist, consumers are left with little choice or power. The GIC’s current proposal however, is to only monitor published standard terms.

We are concerned that this loop hole will incentivise retailers to move more customers to unpublished non standard terms. Powerco believes the simplest approach to achieve consistency in this area is for the GIC to state all consumers under 10TJ are to receive the same application by retailers of these benchmark terms. To monitor this, the GIC could request that retailers submit examples of their individual terms to the GIC for review.

Powerco's response to the GIC's questions is attached. If you have any further questions please contact Martyn Dudley on 04 978 0533.

Yours sincerely

**Paul Goodeve**  
Regulatory and Business Manager

## Response to GIC's Questions

(Powerco has not included responses to questions where we have no comment)

Question	Comment
<p><b>Q1:</b> Do you agree with the proposed regulatory objective? If you disagree explain why, and give an alternative formulation.</p>	<p>The primary outcome in the Government Policy Statement (GPS) is that “contractual arrangements [...] adequately protect the long term interests of small consumers”. Powerco recommends that the concept of protecting consumers’ interests is specifically included in the regulatory objective.</p>
<p><b>Q2:</b> Do you agree that the evidence available supports some degree of structured oversight of the quality of retail contract terms? If you disagree explain why.</p>	<p>Powerco notes the Commerce Commission’s statement in the discussion paper that “there is evidence that some retailers do not have acceptable contracts, and those retailers account for an appreciable proportion of retail gas”, and that the GIC’s analysis has provided further support for this statement. This seems appropriate grounds to consider regulation, subject to cost benefit analysis of the proposals.</p> <p>In our operations, we have come across consumers who have unknowingly become locked into contract roll over and would like this to be addressed. This type of clause seems unique to New Zealand and against promoting competition.</p>
<p><b>Q3:</b> Do you agree the ‘benchmark’ terms for retail contracts should be selective and outcome based rather than comprehensive and prescriptive? If you disagree explain why, and describe your preferred approach.</p>	<p>Powerco supports the approach that has the strongest cost benefit justification. We agree with the GIC proposals, as a selective approach with targeting seems more likely to be inline with this than a comprehensive approach.</p>
<p><b>Q4:</b> Do you agree the focus of governance on retail contracts should be the bundled service (gas, metering, transport) received by consumers?</p>	<p>The norm on open access networks is to provide a bundled service, so it seems appropriate to focus the governance of retail contracts on this.</p> <p>We note that the focus on bundled networks would exclude direct contracts between distributors or metering owners with consumers. We provide more detail on this in response to question 5.</p>
<p><b>Q5:</b> 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>Cases exist on public distribution networks where meter owners or distributors have direct contracts, although these tend to be larger users. In Powerco’s experience we have found it relatively common place for private networks to intertwine retail and distribution contract terms and conditions. In some cases a retailer has imposed a longer distribution contract term than the retail contract term. It therefore is essential for consumers to be just as protected on private networks as they will be on public networks, noting the GIC mandate for</p>

	creating a competitive market with real choice for consumers.
<b>Q6:</b> Do you agree with the analysis of the need for and scope of benchmark terms relative to consumer expectations? If not explain why.	In terms of scope, Powerco stresses the importance of safety in gas operations. While safety is mentioned in consumer expectation 6, “the supply of gas is safe, reliable, and ‘fit for purpose’, it is not carried through adequately into the benchmarks.
<b>Q9:</b> Are the benchmark terms proposed for ‘changes to a contract’ appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	Powerco recommends that an additional part is added, where the consumer must be told which clauses are being changed, altered, added or removed.
<b>Q11:</b> Are the benchmark terms proposed for ‘prices, bills and payment’ appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	To support the customer expectations (a) “a supplier does not impose additional or unexpected costs on consumer” and (b) “bills are easy to understand”, Powerco supports the disclosure of key components of a gas bill. Customer feedback to Powerco indicates that customers are confused as to what price increases relate to (eg energy, line, metering etc.) It seems better information is needed.
<b>Q13:</b> Are the benchmark terms proposed for ‘obligations of the parties in relation to supply to the site and access’ appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	The GIC has included the statement that “standards must comply with the Gas Act 1992 and the technical regulations and technical gas codes of practice”. We note that in the future there may be other relevant regulation. Powerco recommends the benchmark is reworded so that service standards comply with all relevant legislation.
<b>Q15:</b> Are the benchmark terms proposed for ‘metering’ appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	Powerco supports the terms and notes that in most cases retail contract terms will mirror those in the Gas Act, other regulations and in the Network Services Agreement between retailers and distributors.
<b>Q16:</b> Are the benchmark terms proposed for ‘disconnection and reconnection’ appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	Powerco agrees with the GIC that the issues on disconnection and connection between retailers and distributors should not be addressed by this programme of work.
<b>Q17:</b> Are the benchmark terms proposed for ‘faults and planned shutdowns’ appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	Powerco supports the inclusion of “unless agreed with the consumer” on 9.1(b) on minimum notice periods for planned shutdowns. We note that the Commerce Commission has set minimum notification periods for Powerco’s planned interruptions. For an interruption to be classed as planned, Powerco must give retailers at least 10 business days notice or as otherwise arranged with end customer. Consequently the current wording

	<p>meets this requirement.</p> <p>Powerco recommends the benchmarks include a provision that network and metering companies retain access to their equipment under current legislation for emergencies, safety disconnections and repairs.</p>
<p><b>Q20:</b> Are the benchmark terms proposed for 'dispute resolution' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</p>	<p>Powerco reiterates its support for the Electricity and Gas Complaints Commission ("EGCC") as the most appropriate vehicle for complaints resolutions and support its inclusion in the terms.</p>
<p><b>Q23:</b> Viewing the proposed benchmarks as a whole, are there topics which should have been included and have not, or are there terms which have been included but might be removed to make the benchmarks more compact? Give reasons for any views expressed, and examples where appropriate.</p>	<p>Please see Powerco's response to question 6.</p>
<p><b>Q24:</b> Should the benchmarks be extended or amended to prevent the use of such unfair conditions, or would another approach be more appropriate?</p>	<p>Yes, the benchmarks should be extended to prevent unfair conditions. Should a voluntary approach be unsuccessful, Powerco would support the introduction of a targeted mandatory approach; or possibly the forbidding of the unfair terms listed by the GIC.</p>
<p><b>Q25:</b> Are there other examples of unfair terms in use which should be excluded from acceptable terms? If the answer is yes please give examples.</p>	<p>Clauses that have been brought to Powerco's attention are Termination Clauses such as:</p> <ul style="list-style-type: none"> <li>• right to match;</li> <li>• role of clauses;</li> <li>• unacceptable notice periods;</li> <li>• split energy and distribution periods; and</li> <li>• supply subsequent to end of contract period.</li> </ul>
<p><b>Q26:</b> 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>Powerco understands that some retailers' individual contract terms differ from their standard terms. The GIC should consider how many small consumers are on individual unpublished terms to ensure these consumers are equally protected.</p>
<p><b>Q27:</b> 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)? If you disagree, explain why.</p>	<p>Powerco supports a common set of benchmarks or minimum terms and conditions being used, irrespective of whether implementation is voluntary or mandatory. Powerco reiterates its support for initially implementing a voluntary approach.</p>
<p><b>Q28:</b> Do you agree that these are the most appropriate options for analysis, and that they have been appropriately specified? If you think that other options should have been selected or the specifications should</p>	<p>Yes, the GIC has identified a range of options. Powerco supports the proposed period of 18 months.</p>

<p>be changed, set out your proposals and explain why.</p>	
<p><b>Q30:</b> 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 benchmarks terms?</p>	<p>Powerco supports a system whereby the industry participants self regulate by providing the GIC with evidence of non compliant retailer terms from both standard and individual contracts.</p> <p>If retailers continue to not comply the GIC might consider publishing non-compliant parties on its website.</p> <p>Subsequent to the 18 month voluntary imbedding period, should retailers not comply, then those specific terms should be regulated for all customers under 10TJ.</p>
<p><b>Q31:</b> 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? Explain why.</p>	<p>Powerco supports the voluntary approach to benchmarks for the suggested period of 18 months.</p>