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Greig Hinds
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Dear Greig

Submission on the Review of the Retail Contracts Oversight Scheme

Introduction

1. Vector Limited ("Vector") welcomes the opportunity to make this submission on the Gas Industry Company's ("GIC") consultation paper, *Retail Gas Contracts: Review of the Oversight Scheme*, dated 13 June 2013.
2. No part of this submission is confidential and Vector is happy for it to be made publicly available.
3. Vector's contact person for this submission is:

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Overall comments

4. Vector supports the voluntary nature of the Retail Gas Contracts Oversight Scheme ("the Scheme") and the GIC's position that further regulatory intervention in gas retail contracting, such as the introduction of a model contract or regulated minimum terms, is not necessary.¹

¹ During the GIC's establishment of the Scheme in 2010, Vector supported its voluntary nature, and continues to hold this view. Vector notes that the cost-benefit analysis that informed the establishment of the Scheme did not reveal a clear benefit from adopting a regulatory approach. Submissions on the consultation paper of 5 October 2009 on the then proposed Scheme also indicated a preference for a voluntary approach.

5. Given the competitive nature of the gas retail market, Vector believes there is no need for greater prescription in retail contract terms. As the GIC itself highlighted in its first Quarterly Report for 2013, the retail market is actively contestable, with over 95% of gas consumers connected to a gas gate where at least six retailers trade.
6. Imposing more prescriptive terms would stifle contracting innovation, limit the flexibility of retailers to provide more competitive services, and is likely to cost more for retailers and consumers in the long term.
7. Vector supports a selective and outcomes-based approach for the Scheme. The Scheme should focus on small consumers who need protection the most, without the need for industry participants to incur significant compliance costs which have flow-on effects on consumers.
8. Vector considers the GIC's decision to suspend the annual assessment for 2013 in order to review the Scheme to be sensible. Given there is already substantial industry alignment with the gas retail contract benchmarks developed by the GIC and industry ("the Benchmarks"), and retailers are planning few changes to contracts in the next year or so, an assessment would have had little value. For the same reason, Vector does not believe there is a need for an industry workshop to progress, if not conclude, this review.
9. In particular, Vector supports the GIC's suggestions to:
 - a. reconsider whether annual assessments are still necessary; and
 - b. explore opportunities to align the Scheme with the Electricity Authority's ("EA") Minimum Terms for domestic contracting arrangements for electricity.
10. However, Vector does not support:
 - a. including small commercial consumers in the Scheme, i.e. those supplied with less than 10TJ of gas per annum;
 - b. special terms being covered by the Scheme; and
 - c. expanding the Scheme to include retail LPG supply contracts; otherwise, a lower or separate threshold should be applied to LPG.
11. Vector also believes the GIC should consider, given the competitive nature of the retail market, whether there is any useful purpose in retaining the Scheme at all.

Vector's responses to specific questions

Question	Vector's Comment
<p>Q1: Should the Scheme only apply to domestic contracts?</p>	<p>Vector recommends that only domestic contracts should be covered by the Scheme.</p> <p>Targeting domestic contracts would ensure the Scheme is focused on protecting the smallest, least confident consumers, who have very limited ability to negotiate with their retailer.</p> <p>Imposing more prescriptive terms on commercial consumers below the 10TJ threshold would inhibit contracting innovation, which requires flexibility in reaching mutually acceptable terms that do not necessarily conform to the Benchmarks. For example, more prescriptive terms would prevent retailers from offering longer fixed-term contracts to commercial consumers covered by the Scheme.² Also, in a situation where a consumer has multiple ICPs beneath the threshold, the consumer may prefer a single tailored contract than multiple contracts, of a type that would conform to the Benchmarks.³</p> <p>A degree of non-alignment between commercial contracts is expected in a workably competitive market. It is Vector's experience that commercial consumers themselves often request for variations in their contracts to better meet their unique needs or preferences. It is in consumers' interest that businesses remain competitive and avoid being regulator-focused.</p> <p>Vector estimates that a 10TJ consumer would have a total gas bill of approximately \$100,000 per annum.⁴ Such consumers should be capable and would wisely take legal advice on contracts of this value, and prescribed terms should not be substituting for</p>

² <http://www.vector.co.nz/sites/vector.co.nz/files/17-SubmissionOnTheGovernanceOfRetailContractTerms3Nov09.pdf>, paragraph 15

³ Ibid.

⁴ <http://www.vector.co.nz/sites/vector.co.nz/files/17-SubmissionOnTheGovernanceOfRetailContractTerms3Nov09.pdf>, paragraph 17

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	<p>consumer responsibility for the contract they enter into.⁵</p> <p>In addition, small consumers (including commercial consumers) have recourse to the Electricity and Gas Complaints Commissioner ("EGCC") Scheme, which provides free dispute resolution services for claims with a value of up to \$100,000.</p> <p>Limiting the Scheme's coverage to domestic contracts would also align with the EA's Minimum Terms, which only cover domestic supply agreements.</p> <p>The harm of imposing more prescriptive terms on commercial consumers within the threshold is apparent while the benefits are not overwhelmingly clear. The GIC should err on the side of caution in casting a wider net.</p>
<p>Q2: Should the Scheme cover special terms?</p>	<p>Vector recommends that the GIC exclude the assessment of special terms from the Scheme.</p> <p>Variations in contractual terms between commercial parties are often a reflection of dynamic competitive pressures in the market,⁶ which benefit consumers. This is consistent with the Scheme's objective of reflecting market structures as far as possible.⁷</p> <p>As stated above, it is commercial consumers themselves who often ask for special terms. They are best served when they are able to articulate to their supplier the services that would better suit their business and customers.</p> <p>Allowing consumers to define the services they desire, with the ability to shop around for better terms, would incentivise retailers to provide better services and greater choice. Tools enabling</p>

⁵ <http://www.vector.co.nz/sites/vector.co.nz/files/17-SubmissionOnTheGovernanceOfRetailContractTerms3Nov09.pdf>, paragraph 17

⁶ Ibid., paragraph 28

⁷ Consultation paper, page 2

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	<p>customers to make choices already exist, e.g. powerswitch, a free service provided by Consumer NZ.</p> <p>Practically, it would be costly to assess special terms, which could greatly vary from contract to contract across retailers, for no overriding benefits.</p>
<p>Q3: Should the Scheme be extended to retail LPG supply contracts?</p>	<p>Vector recommends that the GIC does not extend the Scheme to retail LPG supply contracts.</p> <p>Firstly, there is no market failure in retail LPG supply that the Scheme would address. The retail LPG market is fully competitive.</p> <p>Secondly, Vector does not see any significant benefits from doing so, while potentially increasing costs for LPG suppliers and customers in the form of an additional GIC levy for LPG retailers, etc.</p> <p>The LPG market is not rapidly growing and would not benefit from more prescriptive contractual terms. LPG prices are already higher than natural gas prices. Added costs would make LPG even less attractive as a fuel source. This is inconsistent with the objective of the Government Policy Statement on Gas Governance ("GPS") of "[d]elivered gas costs and prices [being]...subject to sustained downward pressure".</p> <p>The consultation paper (page 10) notes that "there are no formal rules governing switching on reticulated LPG networks". Vector does not consider switching to be particularly relevant as reticulated LPG networks are 'closed networks', i.e. not part of the open access network. It would be impossible for customers to switch as there is no other supplier on that network; they would have to move to a completely different network, if available in their area.</p> <p>Thirdly, consumer complaints in relation to LPG retail services are infinitesimal and can be addressed by the EGCC. The LPG industry received only 68</p>

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	<p>complaints over the past five years or from approximately 0.05% of its customer base annually, on average. Most of these complaints related to billing and delivery, which are not essentially contractual issues.</p> <p>Given that the EGCC is expanding its coverage to include the LPG market, consumers would now have the recourse to use this service as a back-up to the free internal complaints services provided by an LPG supplier such as OnGas.</p> <p>Including LPG supply to capture a very low number of complaints, which are able to be addressed by suppliers' internal complaints services or the EGCC, is not compelling enough to impose more prescriptive contractual terms. Vector notes that section 43EA(4) of the Gas Act 1992 ("the Act") exempts particular persons from membership of the EGCC:</p> <p style="padding-left: 40px;">The Minister of Consumer Affairs may grant an individual exemption to a person only if he or she is satisfied that membership of the dispute resolution scheme by the person is not necessary in order to meet the purpose of the dispute resolution scheme because complaints are unlikely to be made against the person or because complaints should be made in another forum. [emphasis added]</p> <p>The GIC would be upholding the spirit of the Act by following the same reasoning in the treatment of LPG supply contracts.</p> <p>However, should the GIC pursue the inclusion of LPG supply contracts in the Scheme, Vector strongly recommends that a lower threshold (e.g. 2TJ) or a separate threshold (e.g. 5 or 10 tonnes, or be residential in nature only – i.e. not commercial) be applied. 10TJ in natural gas equates to 50 tonnes of LPG, which is quite a significant volume. Consumers of LPG of this magnitude would have the ability to negotiate with their retailer, or shop around, for</p>

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	<p>better contractual terms. Significant gas users are also likely to position themselves to be able to access natural gas pipelines rather than rely, or rely solely, on LPG.</p> <p>Establishing a threshold would ensure flexibility is retained for larger LPG consumers who have differentiated needs, without compromising the protection of much smaller LPG consumers, i.e. domestic consumers.</p> <p>Vector recommends the GIC engage with LPG suppliers and the LPG Association before making a decision on this matter.</p>
<p>Q4: Should the frequency of assessments be changed?</p> <ul style="list-style-type: none"> • Should the time period between assessments be increased? • Should agreements only be assessed when they are updated? • Reassessment if Benchmarks significantly revised • Should retailers be able to request additional reviews? 	<p>Yes. Vector recommends that retail contracts be assessed only 'as required'.</p> <p>The independent assessment in 2012 considers the current gas retail contracts to be in "substantial alignment" with the Benchmarks, and the GIC recognises that contracts are not able to be updated frequently. For these reasons, Vector believes annual assessments would not yield major benefits and are therefore unnecessary. The retail market is workably competitive and does not require constant fixing.</p> <p>Assessments could be conducted if there are significant changes to 1) consumer legislation, 2) the regulatory or commercial environment, 3) the Benchmarks, or 4) retailer contracts.</p> <p>More targeted reviews would reduce disruption and costs to retail market participants and the GIC, and ultimately, consumers.</p> <p>Vector does not have any issue with retailers being able to request additional reviews, subject to an initial assessment by the GIC if such reviews are warranted. Retailers whose contracts are being assessed should bear the costs of those assessments.</p>

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<p>Q5: Should assessment focus on alignment of key benchmarks (with a watching brief on others)?</p>	<p>Vector recommends that assessments focus on alignment with key Benchmarks and systemic issues as much as possible. This would ensure resources are targeted to benefit the most disadvantaged consumers, who do not have the wherewithal to negotiate on a 'level playing field' with retailers.</p> <p>The consultation paper (page 11) notes the requirement that gas retail contracts confirm that retailers are complying with legislative and regulatory obligations, for example, the EGCC Scheme being appropriately referenced by retailers. Vector notes that membership by gas (and electricity) companies in the EGCC Scheme is now mandatory, making compliance with EGCC requirements non-negotiable.</p> <p>Vector supports the GIC exploring opportunities for improved alignment of the Scheme with the EA's Minimum Terms for domestic contracting arrangements for electricity, without compromising benefits to gas consumers. This is consistent with the GPS expectation that the GIC "work closely with the Electricity Commission [sic] to coordinate...the governance process between the electricity and gas sectors to ensure that the Government's expectations are met".</p>
<p>Other issues/suggestions</p>	<p>As stated above, the GIC could consider whether there is any useful purpose in retaining the Scheme, given the competitive nature of the gas retail market.</p>

Yours sincerely



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Manager Regulatory Affairs