



Vector Limited
101 Carlton Gore Road
PO Box 99882, Newmarket
Auckland 1149, New Zealand
www.vector.co.nz
Corporate Telephone
+64-9-978 7788
Corporate Facsimile
+64-9-978 7799

15 April 2011

Pamela Caird
Gas Industry Company
PO Box 10-646
Wellington

Dear Pamela

**Submission on the Gas Governance (Insolvent Retailers)
Regulations 2010 – Statement of Proposal**

Vector Limited ("Vector") welcomes the opportunity to make this submission on the Gas Industry Company's ("GIC") Statement of Proposal on the Gas Governance (Insolvent Retailers) Regulations 2010 ("the Regulations"). The GIC considers that the Regulations do not provide a set of transition arrangements that would be suitable in all instances of retailer insolvency and should therefore be allowed to expire.

Vector submits that the Regulations should be replaced with permanent regulations to address any future retailer insolvencies. Permanent regulations will provide regulatory and commercial certainty for gas market participants and ensure continuity of supply to customers.

Vector's view has been informed by the E-Gas insolvency last year, which highlighted the risks that market participants are exposed to in the absence of backstop regulations. Vector faces significant financial risks while the transfer of all the insolvent retailer's customers to other retailers is not completed.

We would support the development of permanent regulations that would ensure the complete and timely transfer of an insolvent retailer's customers to other retailers. We are happy to engage with the GIC in the development of these regulations.

Thank you for considering Vector's views. We note the very short submission period. For future consultations, we would like to request that ample time be given for interested parties to make submissions on important issues such as addressing future retailer insolvencies (at least six weeks from our experience with various regulators).

Our responses to specific questions in the consultation document are indicated in Appendix A. If you have any questions, or require further information, please contact Luz Rose at 04 803 9051 or Luz.Rose@vector.co.nz.

Kind regards

A handwritten signature in blue ink that reads "B Girdwood". The signature is cursive and includes a small flourish at the end.

Bruce Girdwood
Manager Regulatory Affairs

Appendix A. Responses to Specific Questions

Submission prepared by: Vector Limited

Contact: Luz Rose, 04 803 9051 or Luz.Rose@vector.co.nz

Question	Vector's 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>Vector agrees that the Regulations should be revoked under Regulation 19, but only on the basis that they are promptly replaced with permanent regulations to provide regulatory and commercial certainty to market participants and ensure continuity of supply to customers.</p> <p><i>Risks</i></p> <p>Vector's experience with the E-Gas liquidation last year highlighted the risks that Vector is exposed to in the absence of backstop regulations and the practical difficulties of simply terminating the supply of services to an insolvent retailer.</p> <p>As a significant provider of transmission, distribution, retail, and metering services in the gas sector, among other services, Vector is exposed to the following risks in the event of a retailer insolvency:</p> <ul style="list-style-type: none"> • considerable credit risk (even with cash bonds or other credit support in place); • inability to bill the insolvent retailer's customers, who have not been transferred to another retailer, but who cannot be easily disconnected and who therefore continue to consume gas; • inability to recover the costs of site visits to check the insolvent retailer's "inactive" sites and/or to disconnect or reconnect supply or ensure equipment safety, as required; • inability to recover balancing costs up front (should balancing gas need to be bought due to non-allocated consumption) with no certainty of full recovery; and • risk of disputes with retailer(s) when attempting to recover part or all of the Unaccounted-for-Gas or balancing costs.

Question	Vector's Comment
	<p data-bbox="835 277 1144 304"><i>Permanent regulations</i></p> <p data-bbox="835 341 2051 437">The above risks could be minimised, if not avoided, through the complete transfer of the insolvent retailer's customers to other retailers within the shortest time possible. We believe this can be provided and can only be achieved through permanent regulations.</p> <p data-bbox="835 474 2051 596">Importantly, permanent regulations would protect customers by ensuring continuity of supply and avoiding the possibility of "bill shocks". This would support the Gas Act objective of ensuring that gas is delivered to customers in an "...efficient and reliable manner".</p> <p data-bbox="835 633 2051 692">The permanent regulations could be based on the current Regulations, but amended to ensure that:</p> <ul data-bbox="887 729 2051 1023" style="list-style-type: none"> <li data-bbox="887 729 2051 825">• all customers of the insolvent retailer (including those with an "inactive" status in the Gas Registry) are transferred to other retailers expeditiously (i.e. within a certain timeframe); <li data-bbox="887 829 2051 920">• the meaning of insolvency is broadened to capture receiverships and liquidations and the trigger provisions are amended so that they are not specific to the E-Gas liquidation; and <li data-bbox="887 925 2051 1023">• where a receiver/liquidator endeavours to sell some or all of the customer contracts, any customer contracts that are not sold are transferred to other retailers expeditiously. <p data-bbox="835 1059 2051 1219">In relation to the transfer of customers (first point above), we propose that the permanent regulations provide for a process which gives customers the chance to choose a retailer before they are automatically transferred. This would reduce the number of customers that need to be transferred eventually and the burden on retailers whose capacity to absorb additional customers may be limited.</p> <p data-bbox="835 1256 2051 1347">We do not consider the shortcomings outlined in paragraph 2.2 of the Statement of Proposal to be of such a nature that they would prevent permanent regulations to be put in place:</p>

Question	Vector's Comment
	<ul style="list-style-type: none"> • <i>Potential scale of insolvency.</i> The current regulations require a recipient retailer to have at least 10% of the total ICPs. This could be further developed to require recipient retailers to have more than 10% of the relevant load group. • <i>Potential timing of insolvency.</i> We believe it is essential to consider this against the counterfactual of no regulations and customers continuing to draw gas, in which case, market participants would bear the costs of the customers drawing gas, but with no ability to recover these costs. Permanent regulations can be drafted to address the recovery of costs, including any additional transmission/balancing charges. <p>The permanent regulations should require a high degree of co-operation between the GIC and the liquidators throughout the liquidation process to ensure a timely transfer of all the insolvent retailer's customers (whether through a sale by the receiver/liquidator and/or regulation).</p>
<p>Q2: Do you have any comments on the provisions of the Regulations themselves?</p>	<p>The Regulations need to be made more general to capture different circumstances during liquidation rather than being tailored to the E-Gas liquidation.</p> <p>The Regulations need to clearly provide for the situation where some but not all of an insolvent retailer's customers are sold by the liquidator. Regulations 8 and 9 should provide arrangements to deal with "inactive" customers in the Gas Registry, including giving the GIC the power to allocate these customers to retailers where it is not clear if they have been properly disconnected and are truly "inactive".</p> <p>The Regulations also need to allow for co-operation between the GIC and the receiver/liquidator to ensure that customer transfers are timely. Regulation 10 should provide clear timeframes for the transfer of all the insolvent retailer's customers. The timeframes will need to be set to ensure that costs to relevant market participants are minimised. We propose that customers be transferred from the date a receiver/liquidator ceases to trade the insolvent retailer's business and the date the relevant customers' contracts are disclaimed by the liquidator.</p>

Question	Vector's Comment
	<p>As indicated above, we propose that permanent regulations provide for a process by which customers are given the chance to choose a retailer before they are automatically transferred.</p> <p>Vector would further support certainty in the allocation of costs related to Unaccounted-for-Gas during the customer transfer period. Vector's exposure to retailer disputes in this regard could be clarified and minimised.</p> <p>We propose that the above amendments be included in the development of permanent regulations.</p>
<p>Q3: In your view, is some form of regulatory intervention required to deal with cases of retailer insolvency?</p>	<p>Vector strongly believes that regulatory intervention, in the form of permanent regulations, is required to deal with cases of retailer insolvency. We note that the current Regulations, made under urgency following the liquidation of E-Gas last year, effectively served as backstop regulations, which greatly facilitated the sale of E-Gas customers to Nova Gas.</p> <p>However, we note that enormous costs, including Vector staff time and external legal cost, were incurred in endeavouring to get the Regulations passed and in planning for actions that could be taken had the Regulations not been passed. Having permanent regulations in place would provide certainty and would no doubt minimise costs for market participants.</p> <p>We are happy to engage with the GIC in the development of permanent insolvency regulations.</p>
<p>Q4: Are there factors to consider that have not been mentioned?</p>	<p>It is important not to lose sight of the fact that Vector has very few practical options in the event of a retailer insolvency. It is not physically possible to simply "cut off" the supply of services to the insolvent retailer (or its customers) with the flick of a switch. If the insolvent retailer ceases to inject gas into the transmission system, Vector would need to provide balancing gas to preserve the integrity of the pipeline (or else a critical contingency could arise). To stop the insolvent retailer's customers from drawing gas,</p>

Question	Vector's Comment
	<p>each customer site would need to be visited.</p> <p>Aside from the practical difficulty of visiting properties, disconnecting customers as a result of retailer insolvency is not a desirable outcome for the gas industry in general. Disconnections on short notice could have a negative impact on customers' attitude towards natural gas as a fuel of choice.</p> <p>Many affected customers may not be up to date with the latest developments in the gas market. Having permanent regulations that automatically allocate these customers (inactive and active) will ensure they receive continuous gas supply and avoid the cost and hassle of having to make fuel or retailer choices. In some instances, the party who chooses the retailer is not the customer/end user (e.g. a landlord and tenant) and it could be time-consuming for a customer to get the landlord to make decisions, further adding to the uncertainty surrounding supply.</p> <p>As a matter for practical consideration, we propose that the GIC take into account how asset owners may be able to access the properties of an insolvent retailer's customers to disconnect or reconnect supply or ensure equipment safety. This issue will be largely mitigated if regulations provide for the expeditious and complete transfer of all the affected customers.</p> <p>As a consequential commercial consideration, we suggest that the GIC make the distinction between "distribution" and "metering" functions, which involve separate contracts. Distributors and meter owners face different risks in the event of a retailer becoming insolvent and may respond to the situation in different ways.</p>
<p>Q5: Do you agree that the objectives addressed by the Regulations were appropriate?</p>	<p>Vector generally agrees that the objectives addressed by the Regulations (continuity of supply, customer protection, protection of other market participants, and the provision of information by the insolvent retailer to the industry body) were appropriate. However, we do not consider that the existing provisions are sufficient to ensure that all customers are transferred in a timely manner.</p> <p>Regulations made in urgency do not provide a stable solution or comfort to affected</p>

Question	Vector's Comment
	<p>parties.</p> <p>Permanent regulations that ensure the efficient and timely transfer of customers not only provide certainty for affected market participants but support the objective of protecting customers by ensuring continuity of supply and preserving their ability to switch to other retailers (i.e. customers are free to switch to other retailers once they have been transferred).</p> <p>Our view is informed by our experience with the E-Gas insolvency, where we faced and continue to face the risks we identified above.</p>
<p>Q6: Are there others that an insolvent retailer policy should address?</p>	<p>Vector believes that lessons have been learned from the E-Gas insolvency. It would be unfortunate if these lessons and the current Regulations were not utilised to the fullest extent to form the basis of a robust set of amended permanent regulations.</p> <p>In addition to the proposals identified above, permanent regulations should cover the prospect of added complications that would occur in the case of a large retailer becoming insolvent (i.e. capacity of other retailers to absorb customers) and over peak periods such as winter.</p> <p>We further propose that the GIC prioritise its work on improving the integrity of the Gas Registry, including ensuring that the Registry accurately reflects the on-site status of ICPs. This will ensure a smooth transfer of the insolvent retailer's customers to other retailers.</p>
<p>Q7: 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>A desirable outcome would be an alignment between the insolvency regulations for the gas market and the default arrangements being developed by the Electricity Authority ("EA").</p> <p>We note that the issue of retailer defaults has been a long-standing item on the EA's work plan. Although the EA recognises the "low probability of occurrence" of retailer defaults and that retailers exiting the electricity market in the past have all involved</p>

Question	Vector's Comment
	<p>orderly customer transfer between retailers, Vector would encourage the GIC to proactively seek harmonisation with the EA on this subject, which is important to both industries. The EA has recognised that the Electricity Industry Participation Code could be amended relatively quickly to allow for such default arrangements.</p> <p>The lack of insolvency regulations for electricity, however, should not prevent the GIC from developing permanent regulations that address the unique needs and features of the gas market and its participants.</p>