



**Submission to the Gas Industry Company
on the FY2010 Industry Levy: January 2009**

From

Contact Energy Limited

5 February 2009

Introduction

Contact Energy Limited (“Contact”) welcomes the opportunity to provide feedback to the Gas Industry Company Limited (“GIC”) on the “FY2010 Levy for Gas Industry Co” consultation paper.

General Comments

Contact sees the work being done by the GIC as very valuable to the gas industry. However, we have some concerns, especially considering the current poor global economic situation, a time when most companies are cutting back their expenditure, about the size and scope of the GIC’s proposed work programme for FY2010.

The GIC’s proposed work programme is very extensive and we question whether it is viable and achievable within the proposed timeframes. The GIC should consider whether some of the initiatives proposed should be deferred for the time being. We submit that the GIC should carefully prioritise, and weigh up the benefits of, the initiatives proposed in its work programme, including against their costs (which are to be recovered through the FY2010 levy). In some situations we consider that an initiative could be deferred until FY2011 (or later) without any substantial loss in benefit to either consumers or industry participants, particularly if that would better ensure completion of high priority work. A large part of the GIC’s budget is related to governance of implemented regulations and corporate costs. Contact believes the GIC should also continuously seek means of reducing those costs and improving the efficiency of those activities.

We note that the GIC’s work programme is in response to the April 2008 government policy statement of gas governance (“the GPS”). However, exact timeframes are not stipulated by the GPS and, in any event, it is not expected by Government that every aspect of it will or can be resolved immediately. Given this we see no reason why the GPS prevents the GIC from deferring some of its work programme

Gas Act and Regulation amendments

Contact would also like to draw the GIC’s attention to issues relating to the obligation to pay the GIC wholesale gas levy set out in the Gas Act 1992 (“Act”) and the Gas (Levy of Industry Participants) Regulations 2008 (“the Regulations”).

“Gas Producer” definition under the Regulations

Contact understands that the intention is for the wholesale gas levy to be paid only once on each GJ of gas consumed. However, this intention is not clearly expressed in the way the obligation to pay the wholesale gas levy is set out in the Act and the Regulations.

Under regulation 4(1) of the Regulations, **Gas Producer** has the same meaning as in section 43D(1) of the Gas Act 1992, which states that “Gas Producer” means a person who supplies gas that is transmitted on the gas transmission or distribution pipelines. Taken literally this definition could mean that the obligation to pay the wholesale gas levy arises each time gas is sold as it travels through gas transmission or distribution pipelines. Our understanding is that, like Contact, the GIC does not believe this to be the intended result or the way in which the Regulations should operate.

Liability to pay the Levy limited to Gas Purchases

In addition, under regulation 5 of the Regulations, liability to pay the wholesale levy only arises in respect of each GJ of gas that was **purchased** by the industry participant. This means that there is no obligation to pay the levy on gas where the producer of the gas and the consumer of that gas is the same person or entity. For example, gas consumed in a power station that is sourced from the power station owner’s gas field is not subject to the wholesale gas levy. Contact understands that it is intended such gas should be subject to the wholesale gas levy.

These issues that arise from the current drafting of the Regulations should be addressed so that there is clarity around the overriding intention that the GIC only recovers the wholesale levy on each GJ of gas once.

Contact acknowledges that it is not straight forward to set out a payment obligation mechanism that would ensure the wholesale gas levy is paid once only on each GJ of gas consumed. This requires establishment of a set of points where all gas that is consumed is measured and establishment of the person or entity who has the obligation to make the levy payment. Contact believes the payment obligation should not arise on gas consumed in processing, transportation or sent to storage. Hence the preferred point of measuring gas subject to the wholesale gas levy is probably gas transmission delivery points excluding delivery points connected to downstream transmission systems and downstream storage facilities. The party responsible to pay the levy should be the shipper’s allocated gas at those points. Such an approach should assist verification of returns. The definition of transmission systems would require careful review to ensure appropriate capture of gas consumption.

Feedstock

As the GIC is aware, Contact is also concerned that gas used as a feedstock is excluded from the Act and, as a result, from being counted for the purposes of the levy regulations. Contact notes that an application is currently before government under the Regulatory Improvement Bill 2008 (Part 5, section 20) which clarifies that feedstock is treated as gas for the purposes of the levy regulations.

For any questions related to this submission, please contact:

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QUESTION	COMMENT
Q 1: Do you agree with the proposal not to alter the structure of the levy for the 2010 financial year?	Contact believes the structure of the levy should be changed to accommodate other levies so as to avoid classifying these other costs as “Market Fees”. See question 3 below.
Q 2: Do you agree with the proposal to recover the establishment costs of the Gas (Downstream Reconciliation) Rules 2008 by way of a one-off Special Purpose Levy, calculated on the same basis used to allocate the ongoing operational costs?	Contact supports the set of general principles covering levy setting developed by the GIC and set out in section 4.1 of its discussion paper. Contact believes, consistent with these principles, that development costs should be capitalised and allocated over the economic life of the development. It is inconsistent with these principles to allocate establishment costs for the Gas (Downstream Reconciliation) Rules 2008 through a one-off Special Purpose Levy which would result in recovery of those costs in a single year. As indicated in its response to question 3, Contact believes the GIC should establish both a volume-based and an ICP-based retail levy. The Downstream Reconciliation Regulation establishment costs should be recovered under the volume based retail levy consistent with the recovery of the on going operating costs relating to these regulations.
Q 3: Do you agree with the proposed policy for funding the establishment, implementation and ongoing administration costs of gas governance arrangements?	<p>Contact does not agree with the proposed policy for funding establishment and ongoing administrative costs of gas governance arrangements. Contact believes they should either be recovered under the current levy system or a separate levy should be introduced. The method of using market fees has a number of deficiencies as follows:</p> <ul style="list-style-type: none"> (a) the need to justify and pass on multiple levies to consumers; (b) the lack of transparency to consumers of costs passed to them in respect of the GIC; (c) the increased difficulty in making meaningful comparisons of GIC costs year on year using only the changes in levies; and (d) the increased risk that the obligation to pay particular fees may be challenged resulting in the GIC being unable to recover some costs. <p>As indicated in its response to question 2, Contact supports the set of general principles covering levy setting set out in section 4.1 of the discussion paper. In setting multiple “Market Fees” the GIC is establishing a complex levy structure that is contrary to the principles of simplicity and beneficiary/causer pays.</p> <p>Contact believes that each of the four classifications of market fees (i.e. Switching; Reconciliation; Compliance; and Critical Contingency Management) could be incorporated into</p>

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	the current levy structure. To the extent this is not appropriate, a new levy, based on downstream reconciled volumes, could be implemented.
Q4: Do you consider there to be any other items in the external work programme which should be included in the Company's strategic priorities for FY2010?	Contact does not believe there are other items that should be included in the work programme. Instead, Contact would like to see a more rigorous prioritisation of the work currently programmed so that a deferral of some work can be made. Contact believes that in the current economic climate there should be a more prudent approach. Given that the funding of the GIC is made by the industry it would be worthwhile seeking formal input from industry participants as to the work-streams they consider important and that should be given priority.
Q5: Do you have any comment on the levy funding requirement for FY2010?	See comments provided under 2 and 3 above.
Q6: Do you have any comment on the proposed levy for FY2010?	<p>As stated in response to question 3 above, Contact considers it is incorrect to make comparisons of the Retail and Wholesale Levy with previous years. There are now increasing costs payable by industry that sit outside of these levies which should also be included when making comparisons. If one was to include all market fees and one off payments as well, then the comparison would look more like \$18.68/ICP for 2010 compared to \$7.42/ICP in 2009 (a 152 per cent increase rather than the reported 6.6 per cent increase) and 2.50 cents/GJ for 2010 compared with 1.79 cents/GJ in 2009 (a 40 per cent increase rather than the reported 1 per cent reduction).</p> <p>The funding should be transparent so that the industry has the ability to assess and attribute value to the work being done by the GIC. Contact would like to see a clearer comparison of the costs of the GIC's proposed work programme with the previous year's work programme and a clearer comparison proposed levies with the previous year's levies.</p>