

# Assessment Report

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Assessment of First Gas Limited 2023 Use of System Agreement  
against Gas Distribution Contracts Oversight Scheme

**16 September 2024**

## TABLE OF CONTENTS

EXECUTIVE SUMMARY .....	1
1 <b>INTRODUCTION</b> .....	2
1.1 <b>The Scheme</b> .....	2
1.2 <b>Our assessment</b> .....	2
2 <b>METHODOLOGY</b> .....	2
2.1 <b>Distribution Principles</b> .....	2
2.2 <b>Assessment methodology</b> .....	3
2.3 <b>Draft report and industry feedback</b> .....	3
3 <b>CONTEXT</b> .....	4
3.1 <b>First Gas Agreement is based on electricity agreements</b> .....	4
3.2 <b>Other documents and understandings</b> .....	4
3.3 <b>First Gas distribution arrangements: the process to here</b> .....	5
4 <b>KEY FINDINGS</b> .....	6
4.1 <b>Overall alignment</b> .....	6
4.2 <b>Alignment with each Principle</b> .....	6
4.3 <b>First Gas feedback on our assessment</b> .....	7
4.4 <b>Matters for Gas Industry Co to consider</b> .....	7
ATTACHMENT 1 – THE PRINCIPLES .....	9
ATTACHMENT 2 – FURTHER ANALYSIS .....	16

## EXECUTIVE SUMMARY

Greenwood Roche has been engaged as an independent advisor to assess the alignment of the First Gas Limited (*First Gas*) November 2023 Use of System Agreement (the *Agreement*), against the Gas Industry Company Limited (*Gas Industry Co*) Gas Distribution Contracts Oversight Scheme (the *Scheme*).

Our overall assessment of First Gas' Agreement against the principles under the Scheme is "Substantial". This means that it meets the intention of the various principles in most respects, and that only minor amendments would be required in order to achieve full compliance. Our assessment came very close to a "Full" assessment but we feel that to accord the Agreement such absolute top marks does not recognise that there remain some reasonably vexed issues in terms of gas distribution, and which industry participant should be responsible for which failure or mishap, to which there is not necessarily only one right answer.

The alignment of the Agreement against each Principle is summarised in the following table:

Principle	Agreement
1 Similar access terms	Full
2 Parties' interests reasonably represented	Substantial
3 Arrangements current	Full
4 Clear and comprehensive	Full
5 Services and service standards described	Full
6 Services include all aspects under distributor's control	Full
7 Pricing changes subject to consultation and transparency	Full
8 Information to accompany price changes	Full
9 > 40 business days' notice of price changes	Full
10 Line charges and cessation policy described	Full
11 Clear disconnection and reconnection	Full
12 Information exchange protocols	Substantial
13 Information requests limited to distribution purposes	Substantial
14 Information used only for purpose provided	Substantial
15 Planned interruption policy	Full
16 Timely provision of interruption information	Full
17 Effective contingency management	Substantial
18 Publicly available standard contract	Full
<b>Overall</b>	<b>Substantial</b>

## 1 INTRODUCTION

### 1.1 The Scheme

On 3 September 2012, the Minister of Energy and Resources endorsed Gas Industry Co's recommendation for a voluntary, industry-agreed, Gas Distribution Contracts Oversight Scheme. The Scheme aims to ensure:

- the core terms and conditions in distribution contracts are clear and reasonable,
- promote market efficiency, and
- ultimately enhance consumer outcomes.

The Scheme established a set of principles (the *Principles*) against which standard gas distribution service agreements would be measured. The Scheme does not assess negotiated agreements.

The Principles are not intended as a model contract for distribution services. Rather, they operate to provide a high level context for commercial negotiations between distributors and retailers. They also recognise that parties to distribution arrangements are significant commercial entities able to negotiate mutually acceptable terms, as distinct from small retail consumers that depend on the more prescriptive benchmarks of the Gas Retail Contracts Scheme.

### 1.2 Our assessment

Greenwood Roche was appointed by Gas Industry Co to perform an independent assessment of First Gas' Agreement as at November 2023 against the Principles. A different independent assessor, Elwood Law, originally performed two initial assessments against the Principles in 2013 and 2014.

The Agreement we reviewed was that provided to us by Gas Industry Co. We have not independently verified that it is the same as that published on First Gas' website.

This report is the work of Greenwood Roche and does not bind Gas Industry Co.

Capitalised terms used in this assessment report have the meanings given to them in the First Gas Agreement, unless otherwise defined in this report.

## 2 METHODOLOGY

### 2.1 Distribution Principles

Our report is based on the Principles specified in the Scheme. For ease of reference, these Principles are detailed in Attachment 1.

The only distributor we are assessing in respect of the Agreement is First Gas, and the only Agreement we are assessing is First Gas' template Agreement, not any individual contracts entered into with any retailer on the basis of it.

## 2.2 Assessment methodology

The Scheme requires that the Agreement be assessed as a whole against each Principle using the following qualitative scores.

Score	Description
Full	Meets the intention of the Principle in all respects.
Substantial	Meets the intention of the Principle in most respects. Only minor changes are needed to meet 'full' ranking.
Moderate	Meets the intention of the Principle in some respects. More substantive changes are needed to improve the ranking.
Low	Little alignment with the intention of the Principle and substantial changes are needed to improve the ranking.
Nil	No alignment with the intention of the Principle.

We agreed an assessment methodology with Gas Industry Co which was targeted at achieving a cost effective assessment. The agreed methodology recognised that it may be inappropriately time consuming to assess comprehensively every clause in the Agreement against each of the Principles. Rather, our assessment should focus on the clauses and issues of most commercial and industry importance, any problematic clauses, any areas of misalignment identified by industry participants and identify any other issues with the alignment of clauses against the Principles.

It is worth noting that "Full" and "Nil" are essentially absolute measures. A high bar exists to achieve a "full" assessment.

Any failure to meet a Principle means that an arrangement won't be assessed as having "Full" alignment and an arrangement won't be assessed as "Nil" unless there is no alignment with the intention of the Principle at all.

In comparison, "Substantial", "Moderate" and "Low" are more subjective and broad measures. For example, it may be that only a minor drafting change is required on a matter in order to achieve full alignment, but that minor wording change may be commercially significant. Essentially, application of the "Substantial", "Moderate" and "Low" categories are a matter of judgment, exercised not only against the words of the contract but also the industry context and indeed other industry agreements, measures and regulation.

Broadly speaking, our approach was to assess an arrangement which is "pretty much there" as "Substantial", "half way there" as "Moderate", "barely there" as "Low", and "doesn't align with the Principle at all" as "Nil".

## 2.3 Draft report and industry feedback

We received feedback on the First Gas Agreement from only three retailers. Of those, only two retailers had substantive feedback. We also received a response to the retailer feedback from First Gas.

It is tempting to say that our assessment has suffered as a result of lack of meaningful retailer feedback, but that would be unfair to those retailers who did respond and also to those who did not respond because they are reasonably comfortable with the Agreement. In fact, given our view of the overall state of the Agreement as being a reasonably balanced contract, we think that retailers probably are largely comfortable with it (save in respect of a small handful of areas identified by specific retailers) and certainly have had ample opportunity through the consultation process to air their concerns.

A draft of this report was prepared and circulated to relevant industry participants on 9 August 2024. In addition, we discussed a draft of this report with Gas Industry Co.

### 3 **CONTEXT**

#### 3.1 **First Gas Agreement is based on electricity agreements**

We understand that the base document used for the development of the Agreement is the electricity industry's Default Distributor Agreement (*DDA*). Earlier versions of the Gas Use of System Agreements assessed in the previous Elwood Law assessments were based to varying degrees on the predecessor model Electricity Use of System Agreement (*MEUoSA*).

The provisions in the DDA and, before that, the MEUoSA went through substantial consultation and took many years to prepare and confirm. Under the Electricity Industry Participation Code 2010, the DDA is now the default set of terms that can be varied by mutual agreement between each distributor and retailers on that network.

This assessment takes the DDA as a given, noting that as at the date of this report the Electricity Authority is continuing consultation on its terms, and in particular around service interruptions and disconnections<sup>1</sup>. We recommend that First Gas and Gas Industry Co review the outcomes of the current Electricity Authority consultation to assess what further updates may be needed to the Agreement.

We do not propose to assess compliance of the Agreement against the electricity industry's DDA – that was largely done as part of the negotiations between First Gas and retailers. An assessment against the DDA is beyond the scope of this report. It is also important to bear in mind key differences flowing from the different fuel types and how their distribution works, and the industry context and regulation. There are also a number of gas specific requirements (such as odourisation, pressure, quality and contingency arrangements).

Although the DDA may have been aimed at achieving better industry balance between distributors and other electricity retailers, the question of balance is not necessarily the same as regards the gas industry. We therefore assess the Agreement on its merits.

#### 3.2 **Other documents and understandings**

There are a host of documents, policies and industry understandings (documented or otherwise) which are relevant to the obligations in distribution contracts. Some of these documents could be relevant to interpreting contractual obligations in the Agreement.

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<sup>1</sup> See [Follow-up consultation - proposed changes to the default distributor agreement.pdf \(ea.govt.nz\)](https://www.ea.govt.nz/follow-up-consultation-proposed-changes-to-the-default-distributor-agreement.pdf)

For example, First Gas is required to publish an Asset Management Plan under the Commerce Act. These Asset Management Plans provide retailers with increased visibility of each distributor's plans and targets for its network. The service targets described in the Asset Management Plan do not expressly form part of the contractual clauses in the Agreement. However, they do form part of the commercial context and may be relevant to the interpretation of certain clauses.

We have not taken into account all of these other documents and understandings in this assessment process. As a result, it is possible that we have identified aspects of the Agreement that don't appear to align with a Principle where the practice may, on further analysis, align with a Principle if all contextually relevant material was considered. A broader review of industry practices is beyond the scope of this assessment.

### 3.3 **First Gas distribution arrangements: the process to here**

Despite the Agreement being based on the DDA, we recognise in the Agreement elements of the old gas use of system agreement, or network services agreement, in use across different parts of the gas network in the 1990s/early 2000s.

Our understanding from discussions with First Gas is that the intention is to use the Agreement as its template standard distribution agreement for all retailers connected to its distribution network. Specific contracts may be negotiated with individual retailers in special circumstances, as envisaged by the Agreement itself. The end goal, however, is to have the one template Agreement for retailers, noting the ability for retailers to opt to adopt an alternative form of agreement (in whole but not in parts only) if they feel a subsequent version is more attractive to them.

First Gas has consulted extensively with retailers during the development of its template Agreement. We understand that three rounds of consultation have taken place, over the years, starting first with a collective workshop and ending with individual one on one consultation. The third round culminated in the publication of the November 2023 version of the Agreement, which is that under assessment. First Gas has advised that by then, it felt it had achieved as much consensus as it would likely ever achieve, and that most participating retailers were reasonably comfortable with the form of the Agreement.

In February 2024 or thereabouts, we are advised that First Gas had published the final template Agreement and elected then to "draw a line in the sand", effectively declaring that any retailer using its distribution system would henceforth be taking distribution services on the basis of the November 2023 version of the Agreement. This is not the first time this has happened in the gas industry, with the need to move retailers or shippers off one form of distribution/transmission contract and onto another. It recognises the reality that no entity will terminate a contract and cease to provide or use a service, on which end consumers rely, just to enforce commencement of new contract terms or to reject the new contract terms.

This approach to commencement and application of the new Agreement terms is less than satisfactory, however. We understand that, to date, only Pulse Energy has signed on the basis of First Gas' template Agreement. Other retailers are left in the position that they take distribution services on the basis of the published November 2023 terms. It is beyond the scope of this assessment to pass a view on whether this gives rise to any enforceability risk, but from First Gas' and the industry's perspective we think this is certainly less than ideal. It is something that Gas Industry Co may want to review to see if there is any means of ensuring there is an industry-recognised

contract or set of contracts, and all retailers must have a signed contract in order to take distribution services.

## 4 KEY FINDINGS

### 4.1 Overall alignment

In our assessment, the First Gas Agreement has “Substantial” alignment with the Principles. That alignment is very close to “Full” but we are unable to accord the Agreement a score that denotes 100% alignment because in our view there are a few instances where First Gas has taken a view on an on-going industry debate (for example, responsibility for non-specification gas) and drafted accordingly. We are sure that it has certainly considered the consultation feedback, but in the end has elected to pursue a certain position that, to it, is the most appropriate. This may on balance be the most defensible position, yet we are aware that not all retailers will agree and we have some sympathy with them because much depends on one’s role in the gas industry and what is realistically within a retailer’s practical control.

We identify below the precise topics to which this comment is relevant (see section 4.4 below). These are areas in respect of which Gas Industry Co may wish to review further what it can do to try to reach some definitive industry-accepted outcome, or at least issue some guidance .

We also note that the Service Levels for each Service Standard are generally only on a reasonable endeavours basis. This is not a concern that any retailer expressed to us and it may reflect the reality that a distributor cannot commit to 100% performance, all the time. But it does strike us as just a little soft for Service Levels and Service Standards that are key to the operation of the distribution system to need only be met on a reasonable endeavours basis, noting at the same time that under clause 2.4 First Gas is under an obligation to maintain and operate the Network in accordance with Good Gas Industry Practice and in compliance with Law. Service guarantee payments may be claimable in the event Service Levels are not met, but these appear all to be set at nil.

### 4.2 Alignment with each Principle

Our assessment of the alignment of the Agreement with each Principle can be summarised as follows:

Principle		Agreement
1	Similar access terms	Full
2	Parties’ interests reasonably represented	Substantial
3	Arrangements current	Full
4	Clear and comprehensive	Full
5	Services and service standards described	Full
6	Services include all aspects under distributor’s control	Full
7	Pricing changes subject to consultation and transparency	Full
8	Information to accompany price changes	Full
9	> 40 business days’ notice of price changes	Full
10	Line charges and cessation policy described	Full



11	Clear disconnection and reconnection	Full
12	Information exchange protocols	Substantial
13	Information requests limited to distribution purposes	Substantial
14	Information used only for purpose provided	Substantial
15	Planned interruption policy	Full
16	Timely provision of interruption information	Full
17	Effective contingency management	Substantial
18	Publicly available standard contract	Full

Our analysis to support this assessment is provided in Attachment 2.

#### 4.3 First Gas feedback on our assessment

First Gas was offered an opportunity to comment on a draft version of this report. It commented that it was comfortable with the findings and did not have any concerns over the description of the consultation process undertaken. First Gas said it would welcome the release of the report and hopes it encourages further discussion and engagement from retailers. First Gas said it is keen to progress from the current uncontracted position, which isn't ideal for either trading party. With that feedback in mind, we urge the industry to embrace the contract, which is sensible, and provide certainty to all involved that the terms of distribution are understood. No one benefits by retailers holding out.

#### 4.4 Matters for Gas Industry Co to consider

We have included a number of notes in Attachment 2 of Principles which Gas Industry Co may wish to further consider in light of the industry feedback and assessment results.

We have also indicated in Attachment 2 some areas where further clarification from Gas Industry Co would assist with future assessments. For example, in relation to Principle 2 (which requires that "the Distribution Service Arrangement should reasonably represent the interests of the Retailer and the Distributor") we have noted a number of retailer concerns and suggested it would be helpful if Gas Industry Co released guidance on the terms and conditions that it considers would be reasonable. In particular, there are some long-running industry tensions and we do not consider that our assessment is the appropriate forum to consider such matters. For example:

- What prudential requirements (or range of prudential requirements) "reasonably represent the interests of the parties" for the purposes of Principle 2? We note that the Electricity Authority undertook substantial analysis to determine the model prudential requirements in the MEUoSA/DDA. Some gas industry participants suggested to us that the electricity prudential arrangements would not be balanced for the gas industry, due to the different regulation of the industries. There is a need to consider what is the financial risk, and appropriate level of risk, that the prudential requirements are targeted at. This is not the same necessarily as settlement risk in the electricity market, across all participants.
- Who should bear the risks of and liability for non-specification gas entering the system, and who is best placed to manage that risk? As drafted, it strikes us that clauses 14.2 and 14.4 protect First Gas as the distributor (so long as it does

not fail to notify – as per clause 14.2(b)) but appear to leave affected retailers with little remedy (unless the GTAC gives them one, as a shipper) and without necessarily having control over the gas specification contractually (even if there is contractual control, realistically, this means little control, at the time). This can be contrasted with the position regarding exceeding MHQ, where under clause 15.3(c) the indemnity given is for the benefit also of other retailers.

Contractually there appears to be a gap here. The Gas (Safety and Measurement) Regulations 2010, the Transmission Codes and the Gas Quality Requirements and Procedures document published on Gas Industry Co's website are also relevant in relation to the gas specification, in addition to other regulatory provisions under the Gas Act and the Commerce Act, and may work so as to complete the picture. However, they tend to impose obligations rather than deal with liability allocation between different parties. The answer may lie in other industry contracts. A review of the overall fit of the Agreement with this wider regulatory and contractual context is outside the scope of this assessment. We do not comment on whether the clause is appropriately framed to deal with mixing of any biogas injected into the distribution system.

- Elwood Law in 2014 raised the issues around disconnection and reconnection as being controversial. We are aware that a good deal of work has been done since then in refining the position. In our view clause 17 and the connection policies in Schedule 6 of the Agreement are comprehensive and detailed, and strike the right balance, so that at least all parties know where they stand. No retailer has directly raised issues with us regarding these but Gas Industry Co may want to check that the outcomes reflected in Schedule 6 reflect the position finally reached.
- There are differing views held by the industry regarding what limitations on liability are reasonable. In our opinion, the liability caps have always been reasonably arbitrary and we are not confident that they are any less so in the First Gas Agreement (see clauses 14.4, 15.3(b) and 24.7). At least one retailer has expressed to us on-going concern over the liability cap in clause 14.4 (indemnity for non-specification gas), noting there is not the same level of recourse to producers.
- One retailer raised ongoing concern with First Gas' ability to use aggregated and anonymised data for any purpose, saying this creates issues because if First Gas were to become a gas retailer, it could form insights based on this information and gain a competitive advantage. First Gas could also sell the insights derived from this information. The retailer did not explain, however, how exactly that data would remain useful if anonymised and aggregated. In principle we do not understand why First Gas needed to reserve to itself the right to use aggregated and anonymised data, and suggest that in principle if a participant is operating a distribution system, those activities should be segregated from any retail operation it may also be running. In terms of Principle 14, there may be an issue here that Gas Industry Co should understand further. But we expect that no real competitive advantage stands to be gained. The issue was also framed in terms of compliance with Principle 1 (same distribution service for all), but we do not see the issue with that Principle as it only requires sameness of service in terms of the Distribution Services offered.

**ATTACHMENT 1 – THE PRINCIPLES**

<b>Term</b>	<b>Meaning</b>	<b>Gas Industry Co's Explanation (where applicable)</b>
Consumer	A person who uses gas supplied from a gas distribution system.	The definition includes Consumers who are a party to a Distribution Service Arrangement with a retailer.
Distributor	Has the same meaning as 'Gas Distributor' as set out in s 2(1) of the Gas Act 1992.	That is, any person that provides Line Function Services to another.  At this time, in line with the decision of the Rulings Panel <sup>2</sup> , this definition does not include a participant that provides Line Function Services only to itself.
Distribution Services	Includes Line Function Services	Includes the distribution of gas quantities and may include other services the Distributor agrees to provide to the Retailer.
Distribution Service Arrangement	Includes all documents relevant to the agreed relationship between a Distributor and a Retailer for the provision of Distribution Services over a distribution system.	Contractual arrangements are often the sum of the main written agreement along with other documentation that is referred to in the main agreement. For example, policies and procedures, or other information. This term seeks to encompass all information relevant to the relationship.
Line Function Services	Has the same meaning as set out in s 2(1) of the Gas Act 1992: <b>line function services</b> means -  (a) the provision and maintenance of pipelines for the conveyance of gas:  (b) the operation of such pipelines, including the assumption of responsibility for losses of gas	
Line Charges	Refers to any charges imposed by a Distributor for the provision of Line Function Services.	
Retailer	Any person who supplies gas and associated services to a Consumer or Consumers.	

<sup>2</sup> Gas Industry Co's recommendation included the following Note: "Decision of the Rulings Panel in the matter of alleged breach notice 2009-104, 130, 138 etc. (Nova Bypass). See the Gas Industry Co website for more information: [http://www.gasindustry.co.nz/sites/default/files/u24/Nova\\_Bypass\\_Rulings\\_Panel\\_Decision\\_2.pdf](http://www.gasindustry.co.nz/sites/default/files/u24/Nova_Bypass_Rulings_Panel_Decision_2.pdf)." However, the definition of "gas distributor" in the Gas Act 1992 was replaced on 12 December 2012, such that Nova Energy is now a gas distributor. The new definition is "gas distributor means any person who supplies line function services to any gas retailer or other person by means of a distribution system and includes a gas distributor who is also a gas retailer providing line function services to itself".

### General principles

Principle 1	Gas Industry Co's Explanation
<p>All Retailers should receive access to a distribution system on substantially similar terms.</p> <p><b>Note:</b> As far as possible, and without inhibiting innovation and the need to reflect special circumstances, distribution terms of access should be standardised across all distribution systems and Retailers.</p>	<p>This principle recognises that the nature of the market means Distributors do have a degree of market power. As such, it requires that the terms offered to one Retailer should be substantially similar to those offered to other Retailers.</p> <p>However, Gas Industry Co recognises that some aspects of Distribution Service Arrangements may need to be negotiated between the Retailer and Distributor. To the extent possible, we would like to see standardised terms of access.</p>
Principle 2	Gas Industry Co's Explanation
<p>The Distribution Service Arrangement should reasonably represent the interests of the Retailer and the Distributor (as parties to the agreement).</p>	<p>This principle recognises the tendency towards imbalance in leverage between the parties. It seeks to prevent asymmetrical contractual arrangements.</p>
Principle 3	Gas Industry Co's Explanation
<p>The Distribution Service Arrangement should be current and comprehensive; this can be achieved by establishing a process for regular review of the arrangement.</p>	<p>As industry arrangements change, it is important that these changes are reflected in contractual arrangements to provide protection to both parties. Regularly reviewing contracts will help to ensure any necessary changes are identified and made.</p>

### Obligations and rights of the parties

Principle 4	Gas Industry Co's Explanation
<p>The obligations and rights of the parties should be clearly and comprehensively set out in the Distribution Service Arrangement.</p> <p>The Distribution Service Arrangement should be consistent with, and the parties should act in accordance with, the requirements of all relevant legislation, regulations, and rules.</p> <p>Where a Retailer is legally responsible for matters that are physically or practically under the control of the Distributor, or one of the Distributor's service providers, the Distribution Service Arrangement should acknowledge those matters and describe how the Distributor will assist the Retailer to meet the relevant legal responsibilities.</p> <p><b>Note:</b> An example of this is under <i>NZS 5442: 2008 Specification for reticulated natural gas</i>, where the Retailer is legally responsible – but not physically in control of – the gas specification. In this case the Distribution Service Arrangement should include a 'description' of this responsibility. It may be as simple as noting that the Distributor has an agreement with the TSO regarding the management of the quality of gas entering the distribution system, or something similar.</p> <p>The process for amending or varying the Distribution Service Arrangement should be described. There should be not less than 30 days' notice of the changes.</p> <p>The procedures for dispute resolution regarding the Distribution Service Arrangement, including the levels of escalation for discussion of issues arising out of the contractual relationship, should be clearly set out.</p>	<p>Contracts should be clear, especially in relation to the obligations and rights of parties. We consider this is critical for ensuring that arrangements function as intended.</p> <p>Contracts should be up-to-date with respect to relevant legislation. Gas Industry Co considers that clear identification of legal responsibilities is very important because the consequences of non-compliance can extend beyond the distribution contract.</p> <p>If either party wishes to amend the Distribution Service Arrangements, the contract should specify a process for doing so. The notice period for any such changes should be of a reasonable length to allow both parties to fully consider the proposed changes. Where possible, any such changes should be mutually agreed.</p> <p>A process for resolving disputes is a necessary element of any contract. We consider this process should be clearly set out and accessible to both parties.</p>

**Distribution services provided**

<b>Principle 5</b>	<b>Gas Industry Co's Explanation</b>
The Distribution Service Arrangement should describe the Distribution Services to be provided by the Distributor and the service standards for those services.	This principle does not name the specific Distribution Services that should be provided. However, it recognises the expectation that the Distributor will clearly identify all of the services it will provide to a Retailer. This principle also provides that the service standards for those services are identified in the contract.

<b>Principle 6</b>	<b>Gas Industry Co's Explanation</b>
The Distribution Services and service standards should include all those aspects that are under the reasonable control of the Distributor, or a service provider to the Distributor.	This principle ensures that the services and service standards required in principle 5 are under the control of the Distributor, or a service provider to the Distributor. For example, it would be unreasonable to set out services for which the TSO is responsible.

**Pricing including pricing changes<sup>3</sup>**

<b>Principle 7</b>	<b>Gas Industry Co's Explanation</b>
Changes to pricing structures and/or methodology should be subject to meaningful consultation and transparency such that the intention and impact of the proposed changes are easily understood, and responses to Retailers' written comments, including decisions on final structure are transparent and clear to all prior to notification of final prices.	We consider it fair that the Distributor consult with the Retailer on the proposed pricing change.

<sup>3</sup> This principle recognises that First Gas, Vector, Powerco and GasNet are regulated by the Commerce Commission under Part 4 of the Commerce Act 1986. Therefore this principle focuses on how pricing is consulted on and final prices notified, leaving pricing per se to be dealt with under Part 4 of the Commerce Act.

Principle 8	Gas Industry Co's Explanation
A Distributor's notification of price changes to a Retailer should be accompanied by all of the information required to enable the effective implementation of the price changes by the Retailer.	To ensure the proposed pricing change is fully understood by the Retailer, all supporting documentation should be provided to the Retailer on notification.

Principle 9	Gas Industry Co's Explanation
The notice period given by a Distributor for changes in pricing structures or levels should take into account the notice period that Retailers must provide to Consumers for consequential changes in retail prices and the time for preparation of that notice. This period should be no less than 40 business days.	Changes should be notified within a reasonable timeframe. The timeframe is consistent with the Retail Benchmarks.

### Commencement and cessation of line charges

Principle 10	Gas Industry Co's Explanation
The Distribution Service Arrangement should clearly describe the Distributor's policy with respect to the commencement and cessation of line charges for the supply of gas.	The contract should be transparent by providing clear indication of when the Distributor will begin charging line charges and end line charges.

### Disconnection and reconnection

Principle 11	Gas Industry Co's Explanation
The Distribution Service Arrangement should clearly describe the Distributor's policy with respect to the disconnection and reconnection of a supply point on its system.	Gas Industry Co is aware of previous issues in relation to disconnection and reconnection between Retailers and Distributors. We consider that the contract should be clear and set out what the expectations are in terms of a Distributor's policy on disconnection and reconnection.

**Information exchange and use**

<b>Principle 12</b>	<b>Gas Industry Co's Explanation</b>
The Distribution Service Arrangement should set out the amount, type, and format of information required to be exchanged between the parties. Formats should be, as far as possible, standardised and in line with any industry-agreed standard information exchange protocols.	To ensure information is exchanged in the most efficient way, parties should have clearly defined arrangements.

<b>Principle 13</b>	<b>Gas Industry Co's Explanation</b>
Information will only be requested under the Distribution Service Arrangement for the purposes of enabling efficient and effective gas distribution.	Information requested must be reasonable and relate to promoting efficiency in the distribution of gas.

<b>Principle 14</b>	<b>Gas Industry Co's Explanation</b>
Information will only be used for the purpose for which it is provided.	If information is provided to a party for a specific purpose it should not be used for another purpose. This includes confidential and non-confidential information.

**Service interruptions**

<b>Principle 15</b>	<b>Gas Industry Co's Explanation</b>
The Distribution Service Arrangement should explain, or refer the Retailer to, the Distributor's policy for planned interruptions to Distribution Services. It is expected that the policy would take account of the costs of notification for the retailer and whether other lower-cost alternatives can be adopted. The minimum notice period of a planned shutdown should be no less than 10 business days unless agreed otherwise with the Retailer.	The Distribution Service Arrangement should clearly identify how and when it will interrupt a Retailer's service. This will help to minimise risks to the Retailer and Consumer.



Principle 16	Gas Industry Co's Explanation
The Distribution Service Arrangement should describe how the Distributor will provide the Retailer with timely information when an unplanned service interruption occurs. The information to the Retailer is expected to include the cause(s) of the interruption and progress towards reinstatement of line function services.	The Distribution Service Arrangement should clearly identify how and when it will interrupt a Retailer's service. This will help to minimise risks to the Retailer and Consumer.

### Managing critical contingencies

Principle 17	Gas Industry Co's Explanation
Contracts should provide for the effective management of emergencies on the network in accordance with the Gas Governance (Critical Contingency Management) Regulations 2008 where load curtailment is instructed, and coordination of the isolation and restoration of supplies to consumers (and relighting of pilots) to ensure network security and consumer safety is not compromised.	<p>To ensure parties understand their respective roles and responsibilities when a critical contingency event occurs, it is important that contracts align with the Gas Governance (Critical Contingency Management) Regulations 2008.</p> <p>Effective management of critical contingencies could include, where a Retailer contracts a Distributor to perform Consumer usage monitoring and/or disconnection services during a critical contingency, details of these services being specified.</p>

### Publication of the standard distribution agreement

Principle 18	Gas Industry Co's Explanation
The Distributor's most recent standard Distribution Service Agreement should be publicly available on the Distributor's website.	Transparency is an important part of providing for efficient arrangements.

## ATTACHMENT 2 – FURTHER ANALYSIS

### Principles of the Scheme

**Principle 1: All Retailers should receive access to a distribution system on substantially similar terms. Note: As far as possible, and without inhibiting innovation and the need to reflect special circumstances, distribution terms of access should be standardised across all distribution systems and Retailers.**

Our assessment is that Principle 1 is fully met.

Our assessment has focussed on assessing whether the terms offered by First Gas to all Retailers using its networks are substantially similar. We have not been asked to assess whether the contractual terms actually offered are substantially similar.

This is a fundamental principle of the Scheme. It is important to compete on a level playing field. Retailers did not raise concerns about the services provided by First Gas not being provided in an even handed manner, though one retailer has raised a concern that the clause 5.1 equal access and even-handed treatment obligation only extends to Distribution Services.

First Gas' Agreement clarifies that its obligation to treat Retailers in an even-handed manner does not apply to the exercise of any discretion under clauses 10 (Prudential requirements), 12 (General Operational Requirements), 18 (Breaches and events of Default, 19 (Termination), 20 (Confidentiality) and 21 (Force Majeure) or under specified paragraphs of Schedule 9 (Third Party Retailer Relationship). It also does not require First Gas to offer a Retailer the same terms or conditions agreed with another Retailer, except as provided in clauses 5.2 and 5.3.

The latter clauses allow a Retailer, where First Gas has agreed different terms with another retailer, to elect to adopt that alternative agreement in its entirety. Effectively this is a "most favoured nation" concept in terms of ability to adopt wholesale a different (presumably better) agreement. We don't see any issue with this except to the extent that First Gas could end up with multiple different versions of its Agreement in use in the gas distribution market, which at one level is less than ideal if the aim is to have a standardised use of system agreement across all retailers. But there has to be room for customised arrangements to be agreed, so we think the mechanism adopted by First Gas in clauses 5.2 and 5.3 is a good one.

**Principle 2: The Distribution Service Arrangement should reasonably represent the interests of the Retailer and the Distributor (as parties to the agreement).**

Our assessment is that Principle 2 is substantially met.

Overall in our view the Agreement, taken as a whole, is overall reasonably balanced, and certainly far more balanced than gas use of system agreements we have worked with in the past. There is much more transparency, much more operational detail, much more consultation around changes, a commitment to even-handed treatment, clear and detailed disconnection and reconnection policies and pricing is now regulated. At the same time, however, there remain some reasonably vexed industry issues (that have always been difficult issues) such as responsibility for non-specification gas, and liability for exceeding MHQ, though we note the Agreement sits against the whole regulatory Gas Act and Commerce Act regulatory backdrop for gas quality, which operates to support and supplement the Agreement. As the owner of the sole gas network in a given area the Distributor has a good deal of natural ability to best frame its agreement as best protects it. We note that some of the core obligations on First Gas are framed quite softly, or tentatively – there is a lot of “reasonable endeavours” (e.g. clause 2.1 – admittedly, not binding, and Schedule 1), and sometimes only “endeavour” (e.g. clause 14.6). First Gas may have consulted on the Agreement at length, multiple times, but at the end of the day retailers can take it or leave it. That said, we do believe there has been quite significant movement on some issues and a good deal of consultation and transparency. We do not see First Gas advancing positions that are entirely without reason or logic.

We note in addition that the gas regulatory overlay (including Part 4 of the Commerce Act) provides a good measure of protection for retailers and others. The Commerce Commission oversight is particularly important.

**Principle 3: The Distribution Service Arrangement should be current and comprehensive; this can be achieved by establishing a process for regular review of the arrangement.**

Our assessment is that Principle 3 is fully met.

We have not been involved in the drafting or consultation process for the Agreement, but as at November 2023 the Agreement is both current and provides very adequately for its periodic and ad hoc review. We note that as at the date of this assessment the electricity industry DDA is currently being reviewed in some areas and in due course the topics under review may include some that First Gas will want to review too.

The Agreement provides for a built-in change control process for periodic (though not at fixed intervals) and consultative reviews, at the instigation of the specified parties (either First Gas or the Retailer, depending on the topic). For changes dictated by law or mandatory industry rules, and changes dictated by the Commerce Commission following a determination or decision, where the parties cannot agree the change in good faith the Agreement

puts the change in the hands of an arbitrator, to be determined in accordance with what is the most fair, reasonable and consistent with Good Gas Industry Practice (clause 22.3(d)). There is also provision at clause 22.3(e) for First Gas to force a change on the Retailer as a result of law change or Commerce Commission determination, or any change not to do with pricing, billing policies and processes, or any Variable Provision, where it has 85% by ICP support for the change. In other words, a small minority cannot hold out on a change where the equal access and even-handedness principle is not breached. These two mechanisms to facilitate change appear to us sensible and helpful, avoiding commercial impasses, and certainly better than the previous industry “change control” processes that were laborious and protracted.

The ability to adopt an “alternative agreement” under clause 5.3 will also help maintain currency, ensuring that any improved contract is or can be rolled out to the rest of the industry.

**Principle 4: The obligations and rights of the parties should be clearly and comprehensively set out in the Distribution Service Arrangement. The Distribution Service Arrangement should be consistent with, and the parties should act in accordance with, the requirements of all relevant legislation, regulations, and rules. Where a Retailer is legally responsible for matters that are physically or practically under the control of the Distributor, or one of the Distributor’s service providers, the Distribution Service Arrangement should acknowledge those matters and describe how the Distributor will assist the Retailer to meet the relevant legal responsibilities. (Note omitted)**

Our assessment is that Principle 4 is fully met.

The Agreement is clear as to the rights and obligations of the parties, and these are set out in detail (either in the Agreement itself or by incorporation). We find it helpful that in clause 2, the respective obligations of the parties are summarised, but in a non-binding fashion. This helps provide an overview (though one has to be careful about consistency – e.g. clause 2.2(i) says the Distributor has to use reasonable endeavours to comply with the Service Levels for each Service Standard, but then in Schedule 1, paragraph S1.2, the phrase used is “all reasonable endeavours”).

We note that gas industry regulation sits alongside this (for example, First Gas must operate the Network in accordance with Good Gas Industry Practice and in compliance with Law). We see no need to repeat that, or spell it out, by way of specific further obligations under the contract.

In the 2014 assessment, Elwood Law recorded issues raised by some retailers as to lack of clarity in terms of how the distribution contracts then assessed sat with other documents and regulatory requirements applicable to the distributors under assessment or retailers (for example, Asset Management Plans, Safety Management Plans or other gas regulatory requirements). No such issues were raised with us in the course of this assessment but Gas Industry Co may want to look at the overall fit and clarity as between different industry requirements. It is beyond the scope of this assessment to do so.

A clear change process is included, as is a workable dispute resolution process, with fixed timeframes.

**Principle 5: The Distribution Service Arrangement should describe the Distribution Services to be provided by the Distributor and the service standards for those services.**

Our assessment is that Principle 5 is fully met.

The Agreement describes clearly both the Distribution Services and the service standards to be met. No threshold or minimum standard is required to be met for Principle 5 to be satisfied.

No retailer complained of any lack of clarity or comprehensiveness about the Distribution Services or the service standards per se, though whether they agree with the content of them is a different matter.

**Principle 6: The Distribution Services and service standards should include all those aspects that are under the reasonable control of the Distributor, or a service provider to the Distributor.**

Our assessment is that Principle 6 is fully met.

We note that the Principle does not require us to comment on the content or adequacy of the Distribution Services or the service standards. We have noted above that they may be a little soft on the Distributor in some respects. But Principle 6 only requires that the Distribution Services cover everything under the reasonable control of the Distributor or a service provider to it.

One retailer did raise issues about the Retailer's lack of ability practically to control the injection of odorant, notwithstanding that the contractual responsibility is theirs to ensure their gas transported is odourised. The point was made that it could hypothetically be possible for the Distributor to be responsible for odourising gas in the Network, but the fact is this is not a service offered by First Gas as a distributor. It would have to do so in its transmission system owner capacity. Who bears the odourisation obligation on a distribution network is a matter prescribed by the Gas (Safety and Measurement) Regulations. How they fit with the Agreement is beyond the scope of this assessment.

**Principle 7: Changes to pricing structures and/or methodology should be subject to meaningful consultation and transparency such that the intention and impact of the proposed changes are easily understood, and responses to Retailers' written comments, including decisions on final structure are transparent and clear to all prior to notification of final prices.**

Our assessment is that Principle 7 is fully met.

There is already considerable oversight of pricing structures and pricing methodology by the Commerce Commission under the Commerce Act. The Commerce Commission process allows for consultation and disclosure of key information.

Unlike with the 2014 assessment, no retailers raised any issues with us about the Agreement's approach to pricing or pricing changes.

The process for changing prices is set out in clause 7 of the Agreement. The Distributor can change Prices (in general not more than once in any 12 month period), its Pricing Structure and its Price Categories. Clause 7 includes an obligation on First Gas to consult with the Retailer prior to making any change to the Pricing Structure that will materially affect the Retailer, setting out details of, and the rationale for, the proposed change. The minimum time periods stipulated in Principle 9 are also met.

Having regard to the Agreement's provisions and the Commerce Act regulatory context, we consider the Agreement meets this Principle very adequately. Ultimately prices can be changed unilaterally by First Gas, but against the Commerce Act backdrop this does not concern us.

**Principle 8: A Distributor's notification of price changes to a Retailer should be accompanied by all of the information required to enable the effective implementation of the price changes by the Retailer.**

Our assessment is that Principle 8 is fully met.

In proposing a pricing change, First Gas has to provide details of it and the rationale for it. First Gas then has to consider in good faith all submissions made by Retailers, and these could include requests for more or better information to enable effective implementation. At least 40 Working Days' notice has to be given of the price change, unless any Law requires it to be implemented sooner. If the price change results in a change in Price Categories, First Gas must provide a mapping table showing how ICPs or groups of ICPs are affected. And if there is a change to First Gas' Pricing Structure, it must provide a mark-up to ensure transparency for analysts when processing the changes and notifying Customers.

All in all, and given the lack of any adverse Retailer comment on the price change process, we see no issues with satisfaction of Principle 8. We think the information to be provided by First Gas should give Retailers the information they need to effectively implement the price change.

**Principle 9: The notice period given by a Distributor for changes in pricing structures or levels should take into account the notice period that Retailers must provide to Consumers for consequential changes in retail prices and the time for preparation of that notice. This period should be no less than 40 business days.**

Our assessment is that Principle 9 is fully met.

The First Gas Agreement provides for the giving of not less than 40 Working Days' notice to the Retailer of the price change.

**Principle 10: The Distribution Service Arrangement should clearly describe the Distributor's policy with respect to the commencement and cessation of line charges for the supply of gas.**

Our assessment is that Principle 10 is fully met.

This Principle only requires the Distributor's policy in respect to line charges to be "clear". It does not require us to make an assessment on whether we consider that policy is the most appropriate policy and we note in particular the issues that have existed in the past around line charges for vacant properties. No Retailer has raised these again with us for the purposes of this assessment.

Generally the charging arrangements are clearly described, and clause 9.2 and Schedule 2 are clear as to when Distribution Services Charges will commence and cease for each ICP.

**Principle 11: The Distribution Service Arrangement should clearly describe the Distributor's policy with respect to the disconnection and reconnection of a supply point on its system.**

Our assessment is that Principle 11 is fully met.

We understand that the Agreement borrows heavily from the DDA, with changes to reflect the specifics of the gas industry. As a result, the connection policies set out in Schedule 6 are clear and detailed. We are aware there has in the past been debate about liability for network charges at a connection where the customer is not consuming gas. But no Retailer has raised further issues with us about the policies, and we do not pass a view on whether that is because they are satisfied with them or have given up on an impasse reached.

**Principle 12: The Distribution Service Arrangement should set out the amount, type, and format of information required to be exchanged between the parties. Formats should be, as far as possible, standardised and in line with any industry-agreed standard information exchange protocols.**

Our assessment is that Principle 12 is substantially met.

The Agreement requires the parties, when exchanging information to which a GIEP in Schedule 2 relates, to comply with that GIEP. We note that Schedule 2 covers all the GIEPs posted on Gas Industry Co's website (but for some reason gives them different names). However, where Gas Industry Co publishes other GIEPs, First Gas and the Retailer are only required to use that GIEP as soon as reasonably practicable if they so agree. Where information is exchanged regularly and there is no appropriate GIEP, the parties must just use reasonable endeavours to agree a standard format for the exchange of such information.

In our view these latter two additions tend to undermine somewhat the full compliance with the stated Principle, though we can see why the parties would not necessarily want to agree outright to adhere to some future GIEP or format without being completely satisfied with it. Also if Gas Industry Co publishes a new GIEP it is not clear whether this will be an industry-agreed protocol or not.

**Principle 13: Information will only be requested under the Distribution Service Arrangement for the purposes of enabling efficient and effective gas distribution.**

Our assessment is that this Principle is substantially met.

The Agreement contains multiple clauses enabling First Gas to require information. For example clause 31.2 requires the Retailer to provide First Gas with such Customer Information as is reasonably available to the Retailer and necessary to enable First Gas to fulfil its obligations under the Agreement (and First Gas must keep that information confidential). First Gas can use this information to develop its pricing methodology and Price Categories and Prices, to plan and manage the Network, and otherwise perform its obligations and exercise its rights under the Agreement. Yet nothing in that says that the information will be used for the purposes of enabling efficient and effective distribution of gas. Whilst it is likely that information would only be required for efficiency or effectiveness purposes, this is not what the contract requires and accordingly we are unable to rate Principle 13 as having been fully met.



That said, Retailers have not raised any commercial concerns with the clauses in the Agreement relating to information provision (as distinct from those relating to use of information by First Gas). In light of this feedback, Gas Industry Co may wish to consider the framing of this Principle and its Explanation.

**Principle 14: Information will only be used for the purpose for which it is provided.**

Our assessment is that this Principle is substantially met.

The Agreement limits the use of confidential and consumer information provided by the Retailer. However that restriction generally only applies to Confidential Information.

Retailers have raised with us concerns about clause 20.6, to the extent that First Gas has reserved to itself the ability to use aggregated and anonymised information, and does not preclude it being used for purposes beyond the Agreement.

We expect First Gas would only use information for the broader purposes of the Agreement, but given the wording of the Principle we do not think there is full alignment here. If Gas Industry Co thinks the differences are innocuous, it may want to look at the wording of the Principle and see if it can be better refined.

**Principle 15: The Distribution Service Arrangement should explain, or refer the Retailer to, the Distributor's policy for planned interruptions to Distribution Services. It is expected that the policy would take account of the costs of notification for the Retailer and whether other lower-cost alternatives can be adopted. The minimum notice period of a planned shutdown should be no less than 10 business days unless agreed otherwise with the Retailer.**

Our assessment is that this Principle is fully met.

The Agreement contains a policy for planned interruptions. However, it does not specifically require the policy to take into account whether lower cost options for notifications can be adopted. That said, we do not know whether the policy as enunciated by First Gas takes into account lower cost options. We note Retailers did not raise any concerns on this point and we see no issue with it.

Planned service interruptions require at least 10 Working Days' notice under the Agreement.

**Principle 16: The Distribution Service Arrangement should describe how the Distributor will provide the Retailer with timely information when an unplanned service interruption occurs. The information to the Retailer is expected to include the cause(s) of the interruption and progress towards reinstatement of line function services**

Our assessment is that this Principle is fully met.

The Agreement contains a detailed schedule on service interruption communication requirements. This includes appropriate timeframes and details of the causes (if known) and progress towards reinstatement. There is a qualitative measure about how many consumers are affected but we think this is entirely appropriate. Schedule 5 appears to envisage prompt and regular update communications about key information.

**Principle 17: Contracts should provide for the effective management of emergencies on the network in accordance with the Gas Governance (Critical Contingency Management) Regulations 2008 where load curtailment is instructed, and coordination of the isolation and restoration of supplies to consumers (and relighting of pilots) to ensure network security and consumer safety is not compromised.**

Our assessment is that this Principle is substantially met.

Clause 4.3 of the Agreement requires each party to use reasonable endeavours in accordance with Good Gas Industry Practice to comply with First Gas' Emergency Event management policy in Schedule 4 and the Critical Contingency Regulations. Despite the overall Agreement requirement to comply with Law, we are surprised that the Critical Contingency Regulations obligation is expressed only on a reasonable endeavours to comply basis.

Schedule 4 sets out the requirements in terms of system emergency event management but we have not assessed how these requirements sit with the Critical Contingency Regulations as that is out of scope for this assessment.

**Principle 18: The Distributor's most recent standard Distribution Service Agreement should be publicly available on the Distributor's website.**

Our assessment is that this Principle is fully met.

The November 2013 Agreement is available on First Gas' website but we have not independently verified that it is the same as the copy provided to us by Gas Industry Co.