Insolvent Retailers Workstream: Castalia Report - Analysis of Submissions

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About Gas Industry Co.

Gas Industry Co is the gas industry body and co-regulator under the Gas Act. Its role is to:

- develop arrangements, including regulations where appropriate, which improve:
  - the operation of gas markets;
  - access to infrastructure; and
  - consumer outcomes;
- develop these arrangements with the principal objective to ensure that gas is delivered to existing and new customers in a safe, efficient, reliable, fair and environmentally sustainable manner; and
- oversee compliance with, and review such arrangements.

Gas Industry Co is required to have regard to the Government's policy objectives for the gas sector, and to report on the achievement of those objectives and on the state of the New Zealand gas industry.

Gas Industry Co's corporate strategy is to 'optimise the contribution of gas to New Zealand'.

Authorship

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1 Introduction

1.1 Background

In late 2010 the E-Gas group of companies went into liquidation. At the time, E-Gas' market share was approximately 3% of all gas customers and 9% by allocated volumes. Due to concerns at the time, Gas Industry Co worked with the Ministry of Economic Development and the Parliamentary Counsel Office to develop the Gas Governance (Insolvent Retailer) Regulations 2010 ('the Regulations'). The Regulations would have transferred the E-Gas customers to viable retailers if the liquidator had been unable to complete a sale process. The outcome was that the liquidator was able to sell the E-Gas customer base and the Regulations did not need to be used. In terms of gas governance arrangements, the E-Gas event has now been fully resolved.

The Regulations were made using the urgent regulation-making provisions of the Gas Act 1992 (section 43P). Section 43P requires[1] the recommending body[2], within six months of making urgent regulations, to consult with the persons substantially affected by urgently made regulations and to make a recommendation to the Minister of Energy and Resources as to whether those regulations should be revoked, replaced, or amended. In March 2011, Gas Industry Co issued a Statement of Proposal seeking submissions on the Regulations. That consultation process culminated in a recommendation to the Minister of Energy and Resources ('the Minister') in May 2011 that the Regulations should be allowed to expire (revoked) and that Gas Industry Co would establish a workstream to consider whether a generic regulatory solution is required, and if so the form of that regulatory solution, to address retailer insolvency.[3]

The Minister accepted Gas Industry Co's recommendation and endorsed further work being undertaken on the issue of retailer insolvency.

1.2 Castalia's Report

As a first step in considering whether to develop a regulatory backstop for gas retailer insolvency, Gas Industry Co engaged Castalia Strategic Advisors (Castalia) to provide independent advice on whether normal insolvency processes can be relied upon to produce acceptable outcomes when a gas retailer becomes insolvent. Castalia was asked to consider in particular whether there are any market failures present when a gas retailer becomes insolvent and whether those market failures are exceptional when compared with 'normal' insolvency processes.

[1] By reference to section 43L and 43N of the Gas Act.
[2] Although Gas Industry Co did not recommend the Regulations, the (then) Minister requested that we fulfil the requirements in the Gas Act to consult retrospectively on the Regulations.
[3] Relevant background documents are available at the Insolvent Retailer section of Gas Industry Co's website: http://gasindustry.co.nz/work-programme/insolvent-retailers

Gas Industry Co released the Castalia report for public consultation. This document summarises the submissions received on the Castalia report, analyses the issues that were raised by submitters and proposes the next steps for the workstream.

1.3 Submissions received

A total of five submissions were received from:

- Contact Energy Limited (‘Contact’);
- Genesis Power Limited (‘Genesis’);
- Maui Development Limited (‘MDL’);
- Powerco Limited (‘Powerco’); and
- Vector Limited (‘Vector’).

1.4 Summary and Next steps

Overall, there was general agreement that the market failure of orphaned customers was correctly identified by Castalia.

Submitters believed that some form of regulatory intervention is required to manage the identified market failure, including the option to use the urgent regulation making powers as used in the E-Gas event, but disagreed on what the form of such an intervention should be. Given the Castalia report did not seek to consider options for regulatory interventions, the preferred regulatory solutions proffered by submitters will be considered at the next stage of this workstream.

Having considered the Castalia report and the submissions received on it, we are now able to conclude that the market failure which may result from a retailer’s insolvency is that of orphaned customers consuming gas. It is important to note that this outcome is a sub-set of the possible outcomes that may result from an insolvency and is likely determined by the insolvency practitioner’s decision. The failure of the retailer is itself not necessarily a market failure.

Gas Industry Co will publish a paper by the end of 2012 which will work through the recommendations in the Castalia report to assess whether the risks of orphaned customer gas consumption warrant some form of regulatory intervention.

If it decides that a regulatory solution is necessary, Gas Industry Co will present the options available for managing this market failure along with Gas Industry Co’s preferred approach.

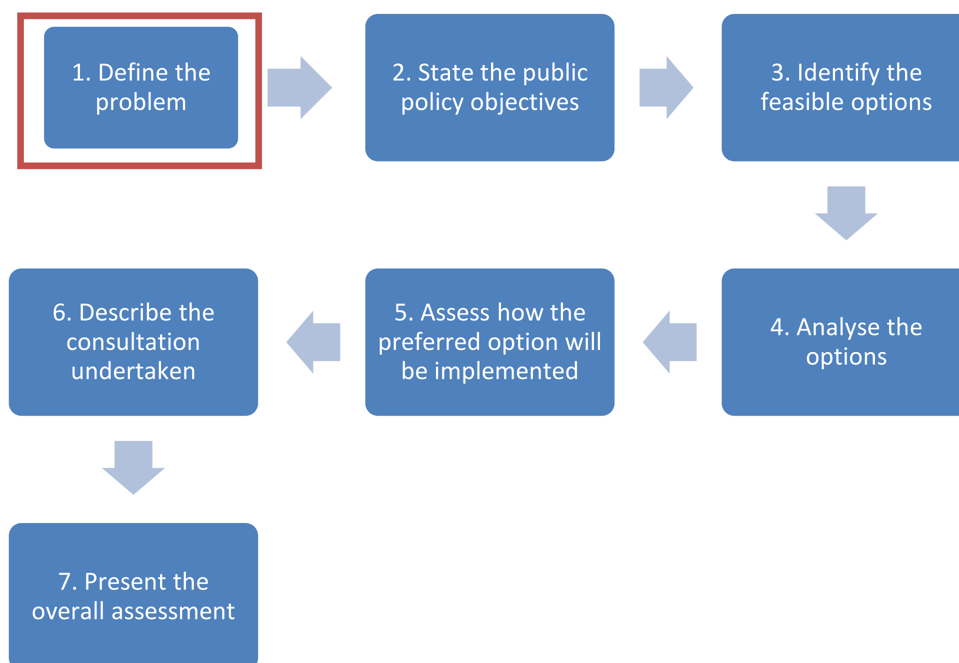
1.5 Regulatory limitation

If Gas Industry Co does decide to proceed with a regulatory option then it will have to meet its usual Gas Act 1992 objectives. It will also be constrained by the scope of the empowering provision in the Gas Act 1992 which limits any transition arrangement to the objective of protecting consumers or managing the liabilities of other gas retailers (section 43G(2)(d) of the Gas Act).

2 A summary of the Castalia report

2.1 Standard policy processes

Figure 1 displays a typical policy process[4] and where Gas Industry Co's Insolvent Retailer workstream is placed in this process. As noted in the Introduction, the Regulations were developed under urgency. This meant that there was no time to conduct a typical policy process.



It is standard practice in the design of policy to define a problem in terms of a market failure where 'market failure' is an economic concept used to describe a range of situations when market outcomes are sub-optimal. It is this step that the Castalia report responds to. If, based on the Castalia report and the submissions received on it, Gas Industry Co decides that there is a market failure present when a gas retailer becomes insolvent, then the subsequent steps in the process above will be pursued.

2.2 What does the Castalia report say?

The Castalia report begins by establishing a typical insolvency benchmark and notes that standard insolvency arrangements do not eliminate risk or inconvenience for suppliers and customers of an

[4] New Zealand Treasury (2005), 'Cost Benefit Analysis Primer', Business Analysis Team, The Treasury, www.treasury.govt.nz

insolvent party. The benchmark of a normal insolvency may, though is not guaranteed to, break down in some markets where the following features may be present:

- monopoly network characteristics; and/or
- the products or services provided are considered to be 'essential'; and/or
- an insolvency creates systemic consequences.

The Castalia report then contrasts these standard insolvency arrangements with what is likely to happen in a gas retailer's insolvency so as to identify whether the conditions may be present in the gas market for normal insolvency processes to deliver sub-optimal outcomes. Crucially, and owing to the prevalence of bilateral contracts in the gas market, the Castalia report identifies that unlike most markets, once a gas retailer becomes insolvent, that retailer's customers may still be physically connected to the gas distribution system. Thus, they are able to physically consume gas despite no longer having a contracted party to pay for the use of that gas. Because this consumption of gas is treated as unaccounted-for-gas (UFG) under the Gas (Downstream Reconciliation) Rules 2008 ('Downstream Reconciliation Rules'), the consumption of gas by 'orphaned customers' is a market failure as it imposes costs on remaining retailers who have no contractual relationship with the orphaned customers.

Having established that market failures may occur as the result of a gas retailer's insolvency, the Castalia report then moves on to consider the likelihood of such market failures occurring. A key point to note is that the occurrence of gas retailer insolvencies are themselves rare events. The chance of there being orphaned customers depends on what happens during an insolvency process and, more specifically, on the actions taken by an insolvency practitioner. There are three possible outcomes of an insolvency process:

1. the insolvency practitioner disclaims some/all contracts as onerous property;
2. the insolvency practitioner trades on and carries out a sale of some/all of the insolvent retailer's customers; and
3. the insolvency practitioner winds up the business.

It is possible that some customers will be orphaned in each of these outcomes although in the case of the second outcome, this will only occur if some customers are not sold and their contracts are subsequently disclaimed or cancelled. None of the outcomes above are unique to the gas market. They are considered normal outcomes of any insolvency event. The market failure for the gas market occurs because customers may still be physically connected if they are orphaned as a result of the outcomes above.

For an insolvency process in the gas market there is no evidence to suggest that customers are unreasonably inconvenienced, certainly no more so than in normal insolvencies in other markets. Gas market customers are able to switch to another supplier whenever they wish by making a single toll-free phone call. The fact that customers are unlikely to be automatically disconnected from their supply point means that if their retailer does become insolvent then they will have time to arrange a switch to a viable retailer. Based on the industry's experience during the E-Gas event, it is likely that a customer who is not transferred to an acquiring retailer or who does not voluntarily switch will receive several notices advising them to switch before a disconnection will be carried out.

Given the conditions are present for there to be orphaned customers, albeit as a subset of outcomes of a rare event, Castalia then analyses the economic incentives of each party in the supply chain when a retailer becomes insolvent to assess what is the most likely outcome of a gas retailer's insolvency. Given the importance of the insolvency practitioner in an insolvency process, it is important to note that their incentive is to either maximise the value of the business, most likely by carrying out a sale of the customer base, or to minimise losses to the business by winding it up. In either case, remaining viable retailers have aligned incentives – they will want to acquire customers in order to expand their business if the insolvency practitioner decides to conduct a sale process; or they will want to acquire customers to avoid the possibility of having to pay for orphaned customers' gas consumption in the form of UFG. Other supply chain parties are relatively unaffected if the insolvency practitioner decides to continue trading in the hope of conducting a sales process – at that point, the insolvency practitioner must meet the costs of operating the business including all costs relating to transmission, distribution, metering, and gas procurement.

Therefore, based on the identified economic incentives of supply chain parties and given that gas retailer insolvencies are themselves rare events, Castalia reports the possibility of there being orphaned customers is a low probability outcome of a rare event.

Castalia was also asked to examine whether existing contractual arrangements were sufficient to manage the identified market failures. This was deemed to be an important piece of analysis owing to the prevalence of bilateral contracting in the gas market. In many markets, contracts are commonly used to manage the risks of insolvency. There are a range of common contractual provisions available to parties to manage the risks of a counter-party insolvency including the use of prudential requirements and ongoing financial monitoring. For example, contracts governed by the Vector Transmission Code (VTC) require Shippers to meet one of a selection of prudential requirements.

While the terms of many bilateral contracts are confidential, the publicly available prudential requirements under the VTC provide a useful yardstick by which to measure contractual protections in the gas industry. Assuming distribution contracts contain relatively similar provisions, shippers and retailers without investment grade credit ratings are required to provide three months of prudential cover. This cover seems to provide transmission and distribution counterparties with ample time to identify the risk of payment default, provide notices of appropriate actions to be taken and, ultimately,

to limit their exposure to a prolonged period of default by calling on standard insolvency processes. Castalia concludes that existing contractual arrangements appear to provide at least some ability for gas industry participants to manage the costs they might bear if one of their counterparties becomes insolvent.

The final step in Castalia's report is to recommend whether there is a case for regulatory intervention based on the orphaned customer market failure risk identified in the report. Castalia cautions that solving the orphaned customer risk may not improve overall outcomes, particularly if the 'solution' selected imposes costs that exceed the benefits to having permanent backstop arrangements in place. Castalia uses a low-cost retailer of last resort (ROLR) scheme as an example to show how permanent backstop regulations can pose risks to two important objectives when an insolvency occurs. One is to minimise the overall costs of the insolvency: interventions such as ROLR schemes weaken the incentives for supply chain participants to partake in a sales process. The second risk is that the flexibility required to deal with specific facts of an insolvency may be lost: while a ROLR scheme may work well if a small retailer became insolvent, the same scheme parameters may not be able to cope with the failure of a large retailer.

Castalia concludes with a number of recommendations, which are that before Gas Industry Co recommends a regulatory solution it:

- is able to establish a clear purpose for regulating the orphaned customer risk;
- is satisfied the gas industry's existing bilateral contracts are insufficient to manage these risks;
- tailors regulatory responses so that they are commensurate with the rare event/low probability outcome of these market failures occurring;
- ensures any proposed regulations will not interfere with normal insolvency processes; and
- is satisfied that the benefits of regulating outweigh the costs of regulating.

3 Summary of submissions received

Gas Industry Co called for submissions on the Castalia report by 30 July 2012. Five submissions were received, one each from:

- Contact Energy;
- Genesis Energy;
- Maui Development Limited;
- Powerco; and
- Vector Limited.

This section summarises what submitters said in response to the consultation questions asked throughout Castalia's document. Section 4 then analyses any substantive issues raised by submitters.

3.1 General comments

The following table summarises the points made by submitters in their submission cover letters.

Submitter	Response
Genesis	Believes that standard insolvency processes can be relied on but suggest that further investigation is required to consider the risks posed by orphaned customers. Propose a regulatory option of providing customers with sufficient time to arrange a switch coupled with a credible threat of disconnection where disconnection costs are shared by the industry. RoLR schemes are not a proportionate solution to the scale of the orphaned customer problem and can pose risks to normal insolvency arrangements.
Powerco	Believes that retailer insolvency is a potential risk to confidence of ongoing quality of service in the gas industry. While it is recognised not all risks or inconveniences can be eliminated, regulatory backstop arrangements provide certainty of process to industry participants and the general public. Suggests that there is a requirement for regulatory intervention because parties may impose costs on distributors while having no motivation or incentive to avoid creating them. One consideration for regulatory intervention is to set an appropriate level of prudential requirements which are an important tool for distributors to manage retailer-related risks. Considers that a two to three month prudential is appropriate.

Submitter	Response
Vector	Believes that gas retailer insolvencies create market failures and risks over and above those in most other markets because cessation of supply would be highly costly and time-consuming. Residual risks experienced in gas retailer insolvencies are not covered in standard insolvency legislation. Suggest industry participants sought regulatory clarity following the Gas Governance (Insolvent Retailer) Regulations 2010 and their positions were aligned in seeking some form of backstop regulatory arrangement. Believe permanent insolvency arrangements are warranted for a variety of reasons and that any arrangement should be aligned closely to the Electricity Authority's insolvent retailer workstream.

Gas Industry Co's response

Gas Industry Co accepts that additional analysis to consider the risks posed by orphaned customers is necessary. This is considered further in section 4 of this paper.

We agree with Powerco that insolvency arrangements ought to provide a level of clarity for industry participants but it does not follow that backstop regulations are required in order to achieve this. For example, clarity would be achieved if, in the event of an insolvency practitioner being unable to sell a customer base, distributors disconnected all orphaned customers. This could be achieved using bilateral contracts between distributors and retailers and between retailers and their customers.

Gas Industry Co notes that distributors may face some costs as a result of a retailer's insolvency. What is not clear is whether distributors are best placed to manage such risks. One view is the risks created by orphaned customer consumption could be mitigated by disconnecting their supply. Distributors in that case are the only likely parties able to manage those risks.

Gas Industry Co notes Vector's concerns on the risks of gas retailer insolvencies and the potential market failures involved. However, as pointed out in the Castalia report, not all retailer insolvencies will lead to these market failures. The orphaned customer risk is an outcome dependent on the actions taken by an insolvency practitioner or if an acquiring retailer does not purchase all of the customers of the insolvent retailer. Any regulatory options to be considered must have this in mind.

Points made by submitters regarding the form of regulatory solutions will be considered in due course but are not relevant at this point in the workstream. For the same reason, Gas Industry Co does not find it necessary to align itself with the Electricity Authority's workstream. This is further considered in section 4.

3.2 Standard insolvency arrangements (Q1)

The Castalia report presents a summary of standard insolvency arrangements. Standard insolvency arrangements do not eliminate risk or inconvenience for suppliers and customers of an insolvent party though the benchmark of a standard insolvency may break down in some markets.

What submitters said

Submitter	Response
Contact	Agreed with Castalia's summary.
Genesis	Agreed with Castalia's summary.
MDL	Normal insolvency arrangements may not work because of multilateral transmission arrangements. Costs incurred as a result of insolvency by one retailer may spread to other parties who do not have any contractual relationship with the insolvent party.
Powerco	Agree with Castalia's summary.
Vector	Agree with Castalia's summary. Note that sector-specific interventions have been carried out in the banking and insurance industries and cite this as a reason to not be cautious in regulating given the causers of residual risks do not bear the costs of their actions in the gas market. Suggests that the limbs of a normal insolvency identified by Castalia can break down in the gas market.

Gas Industry Co's response

The relevant market failure identified by Castalia is the presence of orphaned customers. As stated by MDL, this market failure manifests if the costs of a retailer's insolvency spread to other parties. However, regardless of whether transmission contracts are multilateral, the primary issue is that orphaned customer gas consumption can impose costs on others.

Vector's points are noted. The next step in this workstream will consider whether the identified market failure warrants a policy response. Vector also raised a point related to the nature of contracting in the gas market which will be addressed in section 4.

3.3 Unique features of the gas industry (Q2)

Castalia provides an outline of the New Zealand gas industry and notes that unlike most other markets which have matching physical and contractual flows, the physical and contractual flows are different in the gas market because retailers act as the financial intermediary between distributors and customers.

What submitters said

Submitter	Response
Contact	Agree with Castalia's summary
Genesis	Would have been helpful if this section discussed the physical and contractual arrangements for allocating pipeline capacity as this may have implications for a retailer's ability to compete for an insolvent retailer's customers.
MDL	Wishes to clarify that a pipeline owner cannot require producers to inject gas into a pipeline. The owner must buy or sell balancing gas from willing sellers or buyers. The introduction of back-to-back balancing will enable MDL to directly charge parties the costs of balancing gas. Current arrangements mean that eventual cost recoveries can be different to the actual costs incurred in making a balancing action.

Submitter	Response
Powerco	Agree with Castalia's summary.
Vector	Agree with Castalia's summary and suggest one minor change to the text. Processes for reconciling gas consumption and ensuring pipelines remain in balance could lead to additional spill-over effects necessitating sector-specific regulatory intervention.

Gas Industry Co's response

Section 4 will discuss any issues related to insolvent retailers and pipeline capacity. Gas Industry Co notes the clarifications raised by MDL and Vector.

While we agree with Vector that reconciliation and balancing arrangements may be affected as a result of a retailer's insolvency, the proximate cause in those cases will be the consumption of gas by orphaned customers. The effects of orphaned customer gas consumption represent a market failure but it is reasonable in the development of this workstream to firstly consider the causes of those market failures and whether it would be more efficient to design a policy solution (if any) based on the cause of, or the effects of, the identified market failure. This will form the crux of Gas Industry Co's next step in this workstream.

A key point to note is that these risks may be overstated. There are the risks of losses by creditors of the failing retailer until that retailer enters liquidation. Gas Industry Co has limited ability to intervene in that process and would likely require a change to the Gas Act in order to do so. Once the insolvency practitioner is engaged, that party assumes responsibility for the costs of the failed business – in other words, the risks to counterparties reduce considerably. Thus, the only remaining risk is that associated with the insolvency practitioner failing to sell, or otherwise transfer, the customer base to one or more other retailers and there are significant numbers of orphan customers as a result. History suggests that this has a very low probability of occurring.

3.4 The impacts of gas retailer insolvencies (Q3, Q4, Q5)

Section 4 of Castalia's report addresses a number of issues. The first issue is to identify a list of reasons why a gas retailer may become insolvent. The second issue is the likely process that will ensue once a retailer becomes insolvent—this step can be influenced by the actions of other supply chain participants and/or the insolvency practitioner. The third issue is how physical and contractual relationships may affect outcomes—customers are unlikely to be automatically disconnected; distributors continue to have a physical connection with customers of a failed retailer; and energy and pipeline balancing costs may be socialised amongst other retailers. The fourth issue is whether customers know about the risk of their retailer becoming insolvent and the likely impact to customers of their retailer becoming insolvent—in essence, even if customers are unaware of that risk they are able to switch at any time to a competing retailer by making a single toll-free phone call if their retailer becomes insolvent. Customers are likely to receive several indications that their retailer had failed. Any customers who were not acquired in a trade sale or who did not voluntarily switch on their own

accord may remain physically connected to the gas system thereby consuming gas that would be paid for by other parties. The presence of such orphaned customers is a market failure.

Submitters were asked three questions relating to the above, which related to:

- reasons why a gas retailer may become insolvent;
- how gas retailer insolvencies are likely to play out; and
- whether customers know about the risks of gas retailer insolvency.

What submitters said

Submitter	Response
Contact	There is an additional cash-flow risk for some retailers if they are over-exposed to customers with poor credit ratings.
Genesis	Dual-fuel retailers are exposed to electricity-market risks. The case of dual-fuel retailer insolvency requires further testing. Possibly unlike domestic customers, commercial users of gas are likely to place a high value on continuity of gas supply so will go to greater efforts to manage the risk of insolvency.
MDL	MDL can terminate a TSA held by any party that is insolvent with the effect being that nominations could no longer be made by that party. Any outstanding liabilities at that point would likely be covered by prudential requirements. Taking of gas by an insolvent retailer or their former customers may manifest as Operational Imbalance at the relevant Welded Point. MDL could charge the Welded Point the costs of eliminating Accumulated Excess Operational Imbalance in the form of a sale of gas at the Negative Mismatch Price. If the relevant Welded Point connected to Vector's transmission system then Vector would seek to recover those costs as a purchase of balancing gas under the VTC.
Powerco	Agree with Castalia's summary of why a retailer might become insolvent. Note that each supply chain party will react different during a retailer's insolvency and also according to the circumstances of the insolvency such as the size of the insolvent party and the prudential requirements in place. Any regulations should therefore be flexible enough to address all potential scenarios. Believe that customers are not sufficiently aware of the risks of their retailer becoming insolvent. Further, commercial users may be unclear about their switching rights if their retailer becomes insolvent.
Vector	Offer some alternate reasons why gas retailers could become insolvent including poor business judgments and non-compliance with regulations. Suggest that 3 months prudential cover is insufficient protection for gas distributors in the event of a retailer's insolvency and that Gas Industry Co's upcoming independently commissioned assessment of gas distribution contracts should consider this matter. That assessment should also consider the ability of distributors and meter owners to enter the premises of an insolvent retailer's customers for the purpose of disconnection, reconnection or ensuring safety. The costs to Vector's distribution business of the E-Gas insolvency extended to contacting E-Gas customers not purchased by Nova and any acquired customers who had not switched. These costs may not be recoverable under Part 4 of the Commerce Act 1986.

Gas Industry Co's response

Gas Industry Co notes the additional reasons why a gas retailer could become insolvent however none of the reasons given, including those in the Castalia report, are indicative of a failure or inefficiencies in gas market arrangements. As a general rule, it is normal in capitalist economies for firms to fail. Gas Industry Co would be concerned if gas market arrangements were causing firms to fail but based on the reasons identified on why gas market firms may fail this would seem unlikely.

Genesis' point on dual-fuel retailers will be analysed further in section 4. Gas Industry Co agrees that commercial users of gas are likely to expend effort arranging an alternate retailer if their retailer becomes insolvent.

We note the information provided by MDL on how a gas retailer's insolvency is likely to play out. These inputs will be used in section 4.

We agree with Powerco that flexible arrangements are essential for dealing with all cases of retailer insolvency. This was a key rationale in Gas Industry Co recommending the Gas Governance (Insolvent Retailer) Regulations 2010 lapse, a decision which was largely supported by industry participants. As identified by Castalia, this is one of the risks in having a single regulatory backstop in place: it cannot be tailored to all circumstances as and when required.

Gas Industry Co is not in a position to assess whether three months prudential cover provides sufficient protection for gas distributors in the event of a retailer's insolvency because the level of prudential requirements is a commercial matter decided between distributors and retailers. We note that Powerco's cover letter states two to three months prudential cover should be sufficient to cover retailer related insolvency risks. One possible option stemming from this work is to include a specific clause in Gas Industry Co's Gas Distribution Principles Oversight Scheme regarding the level of prudential cover required as a result of potential retailer insolvency. This would enable Gas Industry Co to consult on the form of such a principle and to make an assessment against it on a regular basis. However, such matters are more appropriately dealt with during the next step in the workstream. The same is true of contracts specifying access to property for distributors and meter owners in the event of a retailer's insolvency.

If Powerco are correct that customers are insufficiently aware of the risks of their retailer becoming insolvent then there would appear to be an informational gap between retailers and their customers. Most retailers hold standard retail contracts on their websites. This possible information asymmetry will be considered during the next step of the workstream. Targeted measure to improve the information gap may be required, for example by including an 'insolvency' clause in standard retail contracts.

We note that Vector was exposed to some residual costs as a result of the E-Gas event. However, a distinction needs to be drawn between those customers that were disclaimed by the liquidator (all of which found themselves new retailers within a matter of days) and those that did not transfer as part

of the sale due to having been lost from the E-Gas books. That latter group were orphaned well before E-Gas went into liquidation. Given that once a retailer becomes insolvent the only party remaining with a connection to the insolvent's customers are distributors, the issue is which party is best placed to manage such residual costs. This is an important issue that will be deferred to section 4.

3.5 Incentives of industry participants in gas retailer insolvencies (Q6, Q7, Q8)

Section 5 of the Castalia report considers the incentives of different parties across the supply chain when a gas retailer becomes insolvent. The relevant incentives will differ depending on the reaction of the insolvency practitioner. If the insolvency practitioner continues trading then there is minimal disruption to other supply chain participants. However, the incentives of supply chain parties are different if the insolvency practitioner disclaims some or all of the customers. Of the three likely outcomes of a gas retailer's insolvency—the insolvency practitioner decides to trade on; the insolvency practitioner decides to sell the assets; or the insolvency practitioner disclaims contracts—it is the third instance which may differentiate the gas market from other typical markets with regards to insolvency processes because unlike most markets, disclaimed gas customers may still be in a position to use the end product by being physically connected to a network. A similar outcome can occur if an acquiring retailer does not acquire the whole customer base in a sale process.

Submitters were asked three questions relating to the above which were:

- whether they agreed with the discussion of the incentives;
- whether they agreed with the market failures identified; and
- whether the market failures identified will only eventuate as a sub-set of outcomes from a decision made by an insolvency practitioner.

What submitters said

Submitter	Response
Contact	Agree with Castalia on all points.
Genesis	Agree with Castalia on all points but add that the incentives that apply in an insolvency event will be affected by the allocation of pipeline capacity.
MDL	Suggests that MDL has no incentive to deal with an insolvency practitioner. The TSA of any insolvent party is likely to be terminated and MDL would be unlikely to enter into any new TSA with an insolvency practitioner. If the insolvency practitioner wished to ship gas then it would have to enter an agreement with a third party shipper.

Submitter	Response
Powerco	Regulatory solutions should be flexible enough to encourage cooperation—there is a shared incentive in the industry to ensure the ongoing reputation of the gas market and to minimise disruption. Raise concerns regarding the splitting of customers from an insolvent retailer resulting either from 'cherry-picking' or from a business wind-up leading to orphaned customers. Believe that a split customer base is more likely to prolong the insolvency event (or the effects of it) and create more UFG.
Vector	The Castalia report does not sufficiently highlight that a retailer's insolvency is a highly stressful and disruptive period. Note that every day the E-Gas insolvency went unresolved imposed costs on the industry—this is a reason for addressing a retailer failure as expeditiously as possible. Gas distributors face ongoing exposure to credit risk during an insolvency which businesses in workably competitive markets do not normally face. Distributors cannot simply cut off supply as this would require en masse disconnections. Agree with Castalia that residual market failures and risks are likely to eventuate when customer contracts are disclaimed or customers are not acquired by the recipient retailer. Recommends the development of permanent regulations as backstop arrangements in the event that a sale does not eventuate.

Gas Industry Co's response

We note MDL's point that it has no incentive to deal with an insolvency practitioner and that the Transmission Services Agreement of an insolvent party is likely to be terminated. This is an expected response to an insolvency from MDL but we disagree that MDL would have no incentive to deal with an insolvency practitioner. As stated in the Castalia report, if an insolvency practitioner decides to continue trading the insolvent business then it would be expected to meet the ongoing costs of trading the business, including the payment of transmission charges.

Powerco identifies that minimal disruption is sought by most industry participants during a retailer's insolvency. This process can be facilitated, though it is not required, by the insolvency practitioner. Regulatory arrangements can play a role but Gas Industry Co is keen to ensure they would not interfere with standard insolvency processes, as recommended in the Castalia report.

Gas Industry Co disagrees that 'cherry-picking' customers of an insolvent retailer is a market failure. This could be a necessary condition in the creation of a market failure but the sufficient condition of orphaned customers would also have to eventuate. An insolvency practitioner may make more than one sale of an insolvent retailer's customer base which could be rational decisions both for the acquiring retailers and the insolvency practitioner.

Gas Industry Co agrees with Vector that a retailer's insolvency can be a stressful time but this alone is not a reason to regulate. It is incorrect that '…distributors face ongoing exposure to credit risk during an insolvency…'. Once a liquidator is appointed that party assumes responsibility for the costs of continuing to trade the business. Costs to distributors that arise directly from managing an insolvency may be recoverable through a liquidation process or realised after a receivership sale of the firm's

assets. Neither of these scenarios precludes the possibility that if it is distributors who are best placed to manage the risks of an insolvency that they should reasonably expect such costs to accrue to them as a normal business risk.

Whether permanent backstop regulations are required to address the identified market failures remains to be seen and will form the next step in Gas Industry Co's Insolvent Retailer workstream. However, given that retailer insolvency events are not predictable, there are risks associated with installing permanent backstop arrangements. Use of the urgent regulation-making provisions does have the advantage that the urgent regulations can be tailored to the situation at hand. By contrast, permanent backstop regulations will have limited flexibility to address unanticipated circumstances (and it would be extremely challenging to change such regulations under urgency).

3.6 How contracts address insolvency risks (Q9)

Section 6 of the Castalia report describes that contracts are often used to mitigate insolvency risks. Tools available include requiring the posting of performance bonds, prudential requirements, financial monitoring and step-in rights. Given the prevalence of bilateral contracting in the New Zealand gas market, the use of contracts to manage insolvency risks is an appropriate starting point if a solution to the orphaned customer problem is desired.

What submitters said

Submitter	Response
Contact	Agrees that contracts provide a level of protection when a retailer becomes insolvent but unsecured creditors may not be able to access any funds.
Genesis	Agree with Castalia.
MDL	An insolvent party will have its TSA cancelled and prudential requirements should cover any outstanding transmission charges.
Powerco	Highlight that prudential requirements are a mechanism to manage the risk of retailer insolvency.
Vector	Agrees with Castalia that commercial contracts provide some ability for parties to manage the costs arising from retailer insolvencies but only to a certain extent. Multilateral contracts and other existing arrangements limit parties' ability to manage the residual risks identified in the Castalia Report such as the arrangements for UFG (handled via the Gas (Downstream Reconciliation) Rules 2008) and obligations under the VTC and/or MPOC. Recommends that Gas Industry Co's assessment of distribution contracts in early 2013 take into consideration whether prudential requirements are appropriate at present levels (suggest changing the level from 3 months to 6 months) and the ability of distributors and meter service providers to enter the premises of a customer.

Gas Industry Co's response

Contact's point is noted: unsecured creditors may not be able to access any residual funds when a retailer becomes insolvent. Gas Industry Co considers that as a result of an insolvency in any market that there will be disruption and some creditors may incur bad debts.

The extent to which the multilateral components of the MPOC and VTC limit parties' ability to manage residual risks is addressed in section 4.

3.7 Conclusions on market failures and the case for regulatory intervention (Q10)

The final section of the Castalia report summarises the paper and offers some general conclusions on the case for regulatory intervention. It cautions that attempts to solve the market failures identified may not improve overall outcomes and could pose risks to two important objectives when an insolvency occurs: the minimisation of the overall costs of the insolvency and maintaining flexibility to deal with the specific facts of the insolvency.

What submitters said

Submitter	Response
Contact	Satisfied that the use of urgent regulation-making powers is an acceptable regulatory intervention. Does not consider a ROLR scheme to be required at this time.
Genesis	Suggest investigating an option to give orphaned customers a set time to switch before disconnection occurs. Costs of disconnection will be shared by all participants.
MDL	Regulatory intervention should be considered for the continued consumption of gas by orphaned customers. Vector will attempt to recover from its shippers any costs that MDL pass to it if orphaned customer consumption manifests to the Maui pipeline. These costs are likely to exceed the prudential requirements that Vector may have for transmission charges.
Powerco	Recognise that non-regulatory solutions could address the problems identified but that greater certainty can be achieved through regulation.
Vector	Considers there is a need for regulatory intervention beyond those provided in the urgent regulation-making powers in the Gas Act 1992. Such an intervention should transfer an insolvent retailer's customers to another retailer—this would solve the orphaned customer problem. The benefits of such a scheme would outweigh the costs because the costs would be minimal (they should not interfere with the insolvency process). The benefit of such regulation is the confidence and predictability offered to all participants of knowing how orphaned customer will be treated. Outlines nine provisions that permanent insolvent retailer regulations should cover.

Gas Industry Co's response

We agree that the market failures identified by Castalia warrant further consideration, including whether regulatory intervention is required. Whether regulatory intervention is required, and the form of such an intervention, will form the next step in this workstream.

Although this is a similar conclusion to the one reached in Gas Industry Co's recommendation to the Minister in May 2011, we are now in a clearer position as to the reason why a regulatory intervention might be sought. The market failure to be 'solved' is that of the consumption of gas by orphaned customers. Castalia advises that before deciding to make a regulatory intervention, Gas Industry Co:

- is able to establish a clear purpose for regulating these market failures;

- is satisfied the gas industry's existing bilateral contracts are insufficient to manage these risks;
- tailors any regulatory responses so that they are commensurate with the rare event/low probability outcome of these market failures occurring;
- ensures regulations will not interfere with normal insolvency processes; and
- are satisfied that the benefits of regulating outweigh the costs of regulating.

4 Analysis of issues raised in submissions

The Gas Governance (Insolvent Retailer) Regulations 2010 were made under urgency which meant that Gas Industry Co's usual policy making processes could not be followed. Having initiated that process with the Castalia report and having considered it and the submissions received on it, we are now able to conclude that the market failure which may result from a retailer's insolvency is that of orphaned customers consuming gas. It is important to note that this outcome is a sub-set of the possible outcomes that may result from an insolvency and is likely determined by the insolvency practitioner's decision. The failure of the retailer is itself not necessarily a market failure.

At this point it is unclear whether a regulatory solution is required to address this market failure. The analysis required to address that point will be carried out as part of Gas Industry Co's next step in this workstream. We propose considering a range of options against a set of criteria in a paper to be published by the end of 2012. Regulations will not be pursued until we are convinced there are no non-regulatory solutions available and only if the benefits of regulating outweigh the costs of regulating.

The remainder of this section considers some of the issues raised in submissions in more detail.

4.1 What exactly are the risks posed by orphaned customers?

The risks posed by orphaned customer gas consumption are:

- the creation of UFG; and
- the creation of the need for a balancing action.

Current industry arrangements for reconciling downstream gas consumption by consumers are provided for under the Downstream Reconciliation Rules. If orphaned customers continue consuming gas then it is likely their gas consumption will be treated as UFG under those Rules because, while the gas gate meter will measure the gas entering the network, there will be no retailer submitting consumption data to the allocation agent for such customers. The UFG will be allocated amongst other retailers trading at the gas gate(s) serving the orphaned customers and ultimately borne by those remaining retailers.

Because the insolvent retailer of orphaned customers has exited the market, no party will be purchasing upstream gas for consumption by these orphaned customers. The effect will be that orphaned customers extract other purchaser's gas from transmission and distribution pipelines or they consume linepack which may result in pipeline balancing actions being made. The costs of any balancing actions would be passed on to Vector Transmission who would attempt to recover these costs from its shippers based on their daily allocations that were inflated due to the additional UFG.

The effect of these risks on third-parties will differ depending on the type (volume) and on the number of orphaned customers. For example, a small number of orphaned residential customers will have minimal effect on pipeline conditions vis-à-vis a small number of orphaned commercial or industrial customers, and that latter group are likely to be snapped up very quickly by competing retailers as was the case in 2010/11.

A key message regarding these risks is that they are but one possible outcome of a low probability event. As stated in Gas Industry Co's Recommendation to the Minister in May 2011 there have been a number of energy retailers exit New Zealand markets since 1998. While financial distress was the reason for only two of these exits, customers in all cases were acquired and transferred to different retailers. Therefore, based on the historical evidence available, it would seem that a more likely outcome of an insolvency is that a sale of customers would be carried out.

4.2 Who is best placed to manage these risks?

If for any reason an insolvency practitioner is unable to carry out the sale of a customer base and it decides to wind-up the business, or if some customers are not purchased in a sale and subsequently become orphaned, then the question for the next step in this process is who is best placed to handle the risks of orphaned customers? Based on current industry arrangements, other retailers are likely to face the costs of orphaned customer gas consumption. However, these retailers have no tools available to manage these costs beyond contacting these customers to encourage them to switch – and that may be problematic as they will have no way to identify the customer sites. Distributors on the other hand maintain a physical connection to the orphaned customers and could manage these third party costs by disconnecting orphaned customers (and are able to identify the orphan customer sites through their registry reports). Based on the submissions received on the Castalia report, distributors are not keen to disconnect any customers because they may not be able to recover the costs of carrying out disconnections—in essence, distributors would incur direct costs themselves in alleviating costs to others. This is not necessarily an unreasonable outcome given distributors provide ongoing access for orphaned customers to consume gas. A better option may be for distributors to identify such sites and provide address lists to the retailers to encourage targeted marketing.

At first glance, there is no reason why distributors and retailers cannot negotiate a commercial solution to this problem. Distributors and retailers have contracts in place with one another and retailers also have standard contracts with their customers. Powerco states in their submission, though it would prefer the certainty of a regulated solution, it sees no reason non-regulatory arrangements

cannot be relied upon to solve the problems identified. Gas Industry Co will give this issue further consideration in its next step.

Balancing

MDL and Vector pointed out in their submissions that multilateral transmission contracts could mean standard insolvency arrangements may not work for the gas market in some circumstances. Neither submitter specifies precisely what they mean and it is not immediately obvious whether this point is material. Although the MPOC and VTC have multilateral terms, Maui and Vector respectively enter into bilateral arrangements with their shippers. It is this bilateral feature which enables the TSO to cancel the contract of an insolvent retailer or, as a creditor to a shipper, to petition to have the insolvent or financially distressed party placed in liquidation/receivership.

As MDL notes, if the consumption of gas by orphaned customers results in MDL having to purchase balancing gas then Welded Points with Accumulated Excess Operational Imbalance ('AEOI') will be issued an Imbalance Limit Overrun Notice ('ILON'). To the (likely) extent that this occurred at a Welded Point connecting the Maui and Vector transmission pipelines then MDL could charge Vector for eliminating the AEOI at that Welded Point in the form of a sale of gas at the Negative Mismatch Price. Vector would then attempt to recover these costs under the VTC.

MDL's balancing arrangements will likely change in mid-2013 as the result of a Gas Industry Co approved MPOC Change Request. The current ILON process makes it difficult for MDL to target the costs of balancing gas to causers. From mid-2013, a 'back-to-back' balancing regime will take the place of the ILON process. If pipeline conditions are stressed and balancing actions are taken, Welded Parties with AEOI will receive balancing gas invoices and they will not have a grace period to correct their position as with the current ILON process.

Against this background, in December 2011 Gas Industry Co received from Vector a VTC Appeal which contained a new provision that would smear any balancing costs allocated to Vector arising from an insolvency to remaining viable shippers. Vector would then attempt to recover from the insolvency process as much of these costs as possible. Based on submissions received, this was not supported by Vector's shippers because:

- it is Vector, not its shippers, who have the means to control retailer default risk particularly through its prudential requirements; and
- Vector, not its shippers, is the party with rights under the VTC in relation to invoicing, payment, dispute resolution and prudential supervision so is therefore the appropriate party to bear retailer default risk.

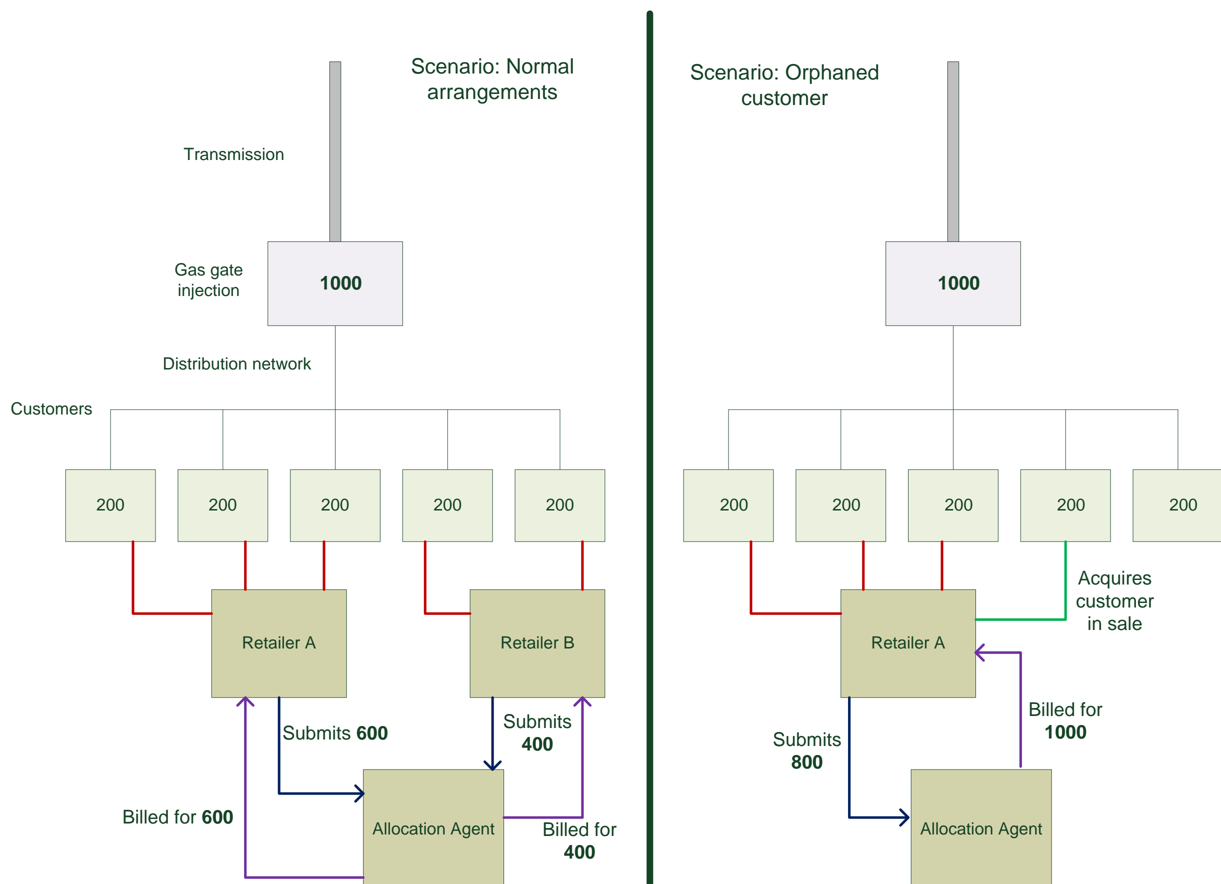
Gas Industry Co agreed with the points above and rejected the Change Request. We agreed that it is Vector, not its shippers, who are best placed to manage the risks of insolvency.

That said, there is nothing to stop Vector and its shippers making arrangements between themselves seeking a change to the VTC to specifically manage the risks that orphaned customers or retailer insolvencies may present. While Vector states that '[i]nitiating VTC amendments can be costly and time-consuming', the alternative is that Gas Industry Co introduces regulations which are not unanimously supported by Vector and VTC shippers.

UFG

Vector states that other existing arrangements can limit parties' ability to manage the risks identified in the Castalia report and it cites the Downstream Reconciliation Rules as an example.

The Downstream Reconciliation Rules set out the process for reconciling downstream gas consumption with gas quantities entering each gas gate. It seems that the current arrangements would treat any orphaned customer gas consumption as UFG. The diagram below is a stylised example which contrasts normal arrangements with what is likely to happen in an orphaned customer scenario. Basically, retailer A (and ultimately its customers) may receive the bill for orphaned customer gas consumption. This is because the orphaned customer will no longer have a retailer submitting consumption data to the allocation agent. When the allocation agent reconciles the quantity of gas entering the network (1000 units), it then deducts the quantities submitted by retailers (800 units) and allocates the residual quantity (200 units) as UFG amongst the other retailers trading at the gas gate.



While this arrangement may appear to be unfair, particularly for the viable retailer(s) and their customers, it is not clear that these arrangements limit the ability for parties to manage insolvency risks. In fact, they may encourage retailers in particular to seek avenues for managing insolvency risks such as acquiring orphaned customers or lobbying distributors to disconnect economically unattractive customers where the costs may be shared amongst the relevant parties. As stated earlier, beyond encouraging customers to switch, retailers have minimal tools available to manage orphaned customer risks. Distributors can manage this risk by disconnecting such customers. These are matters which can be negotiated between distributors and retailers regardless of the arrangements for UFG. Indeed, that retailers bear the costs of UFG arising from orphaned customers could be expected to make them more amenable to sharing the costs of disconnections.

Discussion

Based on our analysis, there does not appear to be anything about multilateral contracts or the Downstream Reconciliation Rules which constrains the ability of parties to seek contractual remedies to the orphaned customer problem. While this does not preclude the development of a regulatory solution *per se*, Gas Industry Co is required under the Gas Act to firstly ensure the objective of any regulation is unlikely to be satisfied by non-regulatory means.

4.3 Transmission pipeline capacity

In its submission, Genesis states that it would have been helpful for there to have been a discussion on the physical and contractual arrangements for allocating pipeline capacity as this may have implications for a retailer's ability to compete for an insolvent retailer's customers.

In short, the arrangements for pipeline capacity on an insolvency event depend on a range of circumstances, including whether the acquiring retailer wishes to purchase the entire customer base and possibly depending on whether the pipeline is 'constrained.'

Some industry participants have suggested that they might have been unable to acquire the E-Gas customer base at certain gas gates because there was insufficient pipeline capacity available. Gas Industry Co expects that most insolvency practitioners would bundle an insolvent retailer's transmission capacity with the customer base when seeking to sell a customer base. This might make 'cherry-picking' of the insolvent retailer's customers inevitable if, for instance, the acquiring shipper has no plans to acquire customers in geographically different areas from those it usually operates in. This is not necessarily a problem because the insolvency practitioner could then focus on selling the remaining customer base. However, in a constraint situation there is an opportunity for a pipeline owner to attempt to recover losses arising from the insolvency simply by requiring that a premium be paid for any pipeline capacity that it approves to be transferred to an acquirer of the customer base.

If capacity was unconstrained on a pipeline then there is no reason for these products to be bundled. An acquiring retailer should to be able to purchase the whole or a part of the customer base with or without the transmission capacity attached. If the capacity was not included then the shipper would need to make a separate arrangement with Vector for it. Vector would need to give its consent to the transmission capacity transferred if the products were bundled because this would represent a capacity trade under the VTC. Although there is no requirement to bundle these products on a (un)constrained pipeline, Gas Industry Co expects that this would be discussed at any initial meetings between relevant parties called by an insolvency practitioner.

Vector will not issue capacity if it deems that in doing so it would breach its obligations to be a reasonable and prudent operator and if operational limits may be exceeded.

Although unlikely, a viable shipper could seek to purchase only the transmission capacity of the insolvent retailer. Such a purchase would need to be consented to by Vector as this would represent a capacity trade under the VTC. Under such a scenario, the insolvency practitioner would no longer have a right to ship gas on behalf of the insolvent retailer unless it arranged for a subsequent capacity purchase which makes such a sale unlikely in the first case. Transmission capacity is more likely to be sold as a separate asset, provided Vector consents, following a completed sale of customers without capacity attached.

4.4 Dual-fuel retailers

Several submitters raised concerns that the case of dual-fuel retailer insolvencies required further consideration, particularly if an electricity spot price shock tipped the dual-fuel retailer into insolvency. Vector stated that an E-Gas-type insolvency would have been more complex to resolve had E-Gas been a dual-fuel provider (and that this is a reason for aligning the Electricity Authority and Gas Industry Co arrangements).

Gas Industry Co does not see any compelling reason why standard insolvency arrangements could not work for a dual-fuel retailer insolvency. It could be the case that two separate sales are carried out—one sale of the insolvent retailer's electricity customers and one of its gas customers. It could also be the case that a new entrant is encouraged to enter the market as a dual-fuel retailer and acquires the assets of the insolvent retailer. In fact, the establishment of a compulsory transfer scheme (e.g. ROLR) would have the effect of not allowing a new entrant access to the market by way of acquiring a customer base.

Gas Industry Co has no statutory authority over electricity market arrangements. While aligning retailer insolvency processes is a worthy aspirational goal, this ought not to preclude tailoring processes so they are efficient and appropriate for the market in question. At the time of writing, the Electricity Authority is considering a retailer backstop arrangement for the purpose of managing risks in the electricity wholesale market. A number of those risks do not apply to the gas market. We will

nevertheless continue to consider issues raised by dual fuel retailers and liaise with the Electricity Authority.

5 Conclusion

5.1 Summary

Overall, there was general agreement that the market failure of orphaned customers was correctly identified by Castalia. There was no evidence in submissions to suggest there are any additional market failures when a retailer becomes insolvent.

Submitters agreed that some form of regulatory intervention is required to manage the identified market failure but disagree on what the form of such an intervention should be. The preferred regulatory solutions proffered by submitters will not be considered at this stage of the workstream given Castalia was not asked to consider the form of a regulatory intervention and submitters were requested to focus only on the issues in the Castalia report.

5.2 Next steps

Gas Industry Co will publish a paper by the end of 2012 which will work through the recommendations in the Castalia report to assess whether the risks of orphaned customer gas consumption warrant some form of regulatory intervention.

If it decides that a regulatory solution is necessary, Gas Industry Co will present the options available for managing this market failure along with Gas Industry Co's preferred approach.

Appendix A. Compiled submissions

Question 1: Do you have any comments or concerns on the summary of standard insolvency arrangements provided in this section?	
Submitter	**Submitter's comments**
Contact	No.
Genesis Energy	No.
MDL	A key reason why "normal" insolvency arrangements are not sufficient is the multilateral nature of gas transmission arrangements. Costs incurred as a result of insolvency by one retailer may be spread to other parties who do not otherwise have any contractual relationship with the insolvent party.
Powerco	No. We agree with the summary, it is well written and the covers the key points, including that standard insolvency arrangements do not eliminate risk or inconvenience and that normal insolvency may break down in monopoly markets.
Vector	*Residual risks* Vector agrees with the Castalia Report that while standard insolvency arrangements clearly define the rights of different parties, there are additional or residual risks created in the gas market when a gas retailer becomes insolvent. The Castalia Report identifies that the standard benchmarks for insolvency may break down (ie there are externalities over and above standard insolvencies) in the case of gas retailer insolvencies due to the presence of: 1. monopoly network characteristics; 2. products or services that are considered to be "essential", ie where a normal amount of customer inconvenience will not be tolerated. While there is debate whether gas is an "essential" or a "discretionary" fuel, the use of gas by some users can definitely be considered essential, for example, its use by critical care services and where interrupted supply would result in critical environmental damage. Gas is also increasingly being relied on for water heating; and 3. systemic consequences. Vector agrees with the Castalia Report that the interrelated nature of industry participants means it is not possible to manage consequences solely through bilateral contracts. Vector agrees that the above clearly causes additional market failures (eg increased moral hazards) and risks in the case of gas retailer insolvencies. These are manifested through: 1. the cost of supply to orphaned customers who continue to use gas and the cost of disconnecting them en masse, which gas pipeline businesses regulated under Part 4 of the Commerce Act have very limited ability to recover. Vector agrees with the scenario described by the Castalia Report that "[w]hen a retailer becomes insolvent, distributors and transmission providers are unlikely to be paid for continuing to provide capacity"; 2. the increased costs of Unaccounted-for-Gas ("UFG") that are socialised amongst market participants; 3. pipeline balancing costs (and risk of subsequent disputes). Vector agrees with the Castalia Report that "in a situation where the company has been dissolved, it is likely that the cost of the balancing gas would be socialised as UFG" and that "[t]his creates tension among remaining retailers who are saddled with the costs especially as UFG was not

Question 1: Do you have any comments or concerns on the summary of standard insolvency arrangements provided in this section?	
Submitter	**Submitter's comments**
	intended to be used for this purpose"; 4. the costs borne by „third" parties such as meter service providers who had to visit customers" premises to check the connection status of their meters; and 5. additional credit risk. *Form of contracting and other constraints* While Vector agrees with the Castalia Report that "the gas market is made up of a series of bilateral contracts that include risk management provisions...", the Castalia Report fails to highlight existing multilateral contractual arrangements that constrain industry participants" ability to manage insolvency risks bilaterally. For example, parties to the Vector Transmission Code ("VTC") could be liable for the balancing costs of other parties" actions. Initiating VTC amendments can be costly and time-consuming, with uncertain outcomes, as they require agreement by 75% of the retailers/shippers. The Castalia Report points out that there is little potential for spot price shocks in gas, unlike in electricity. Vector does not totally agree, as critical contingencies in the gas sector could just as well have a similar impact on the supply, and potentially on the price, of gas (or the cost of procuring alternative fuel sources). Vector agrees with the Castalia Report that well-functioning switching arrangements are a good thing, but considers these to be insufficient to address the residual risks identified above. *Sector-specific intervention* The presence of specific interventions in sectors such as banking and insurance, provided as examples in the Castalia Report, suggests they are not uncommonly used in addressing sector-specific risks. As identified by the Castalia Report, interventions take place "when parties other than shareholders and creditors are substantially affected by the insolvency". The causers of the identified residual risks in gas retailer insolvencies do not bear the costs of their actions. There is a compelling case for sector-specific intervention where such intervention would mitigate these residual risks, for example, by ensuring that subsequent processes are efficient and do not create more market distortions, or correct these distortions (even if only to some extent). Our response to Q10 recommends specific provisions that could address some of these inefficiencies. Vector disagrees with the Castalia Report that "responses from industry participants varied" on how to approach retailer insolvencies. The outcome of the GIC"s April 2011 consultation clearly reflected an overwhelming desire by industry participants for more enduring insolvency arrangements that would ensure the process would be resolved as smoothly as possible, with minimal costs. This would provide greater certainty and confidence to the market. As a matter of preference, industry participants do not seek to be regulated and would explore commercial solutions in the first instance, even in circumstances where invoking existing regulations is an option. The issue of retailer insolvency is one of those rare cases where there is overwhelming desire by industry participants for greater certainty and predictability during a highly disruptive event. While Vector agrees with the Castalia Report that retailer insolvencies are rare, there is no reason why the industry and the GIC could not ensure that residual risks created by these events are more permanently addressed (and

Question 1: Do you have any comments or concerns on the summary of standard insolvency arrangements provided in this section?	
Submitter	**Submitter's comments**
	considered without haste), to quickly restore market confidence when they occur. This is desirable given that the development of these arrangements would not require significant additional costs, and once established, would require very little to maintain.

Question 2: Do you have any comments on the summary of physical and contractual characteristics of the New Zealand gas market set out above?	
Submitter	**Submitter's comments**
Contact	No.
Genesis Energy	It would be helpful if this part of the paper discussed the physical and contractual arrangements for allocating pipeline capacity in the New Zealand gas market. This has implications for a retailer's ability to compete for an insolvent retailer's customers.
MDL	The statement on page 11 of the Castalia report that "the pipeline operator can exercise options that require producers to inject more gas into the pipeline" is incorrect. Neither MDL nor anyone else can require producers to inject gas into a pipeline. MDL's only option to manage pipeline pressure is to buy or sell balancing gas from or to parties willing to offer such a transaction. The current balancing regime in the Maui Pipeline Operating Code (MPOC) does not allow MDL to charge other parties for the actual costs of balancing gas. (The introduction of a Back-to-Back balancing regime would do so.) MDL's current balancing regime is significantly more complex and indirect. The costs that MDL may eventually be able to recover after expiry of an Imbalance Limit Overrun Notice (ILON) for Accumulated Excess Operational Imbalance (AEOI) at a Welded Point owned by a Transmission Pipeline Welded Party may be significantly different from the costs that MDL itself incurred for taking a balancing action.
Powerco	No, both the physical and contractual characteristics have been described accurately.
Vector	Vector agrees with the Castalia Report that "the supply of gas to customers has a physical path that differs from the contractual relationships used to provide services, allocate risks, and ensure payment". Vector further agrees that the "processes for reconciling gas consumption and ensuring that gas pipelines remain in balance...create unique industry dynamics". This specific feature of the gas market could lead to additional spill-over effects that, as indicated in our response to Q1, would necessitate sector-specific intervention. Page 10, first bullet, 3rd sentence should be amended, as follows: "...may contain "take or pay" provisions for ~~maximum~~ MINIMUM demand quantities..."

Question 3: Are you aware of any reason(s) why a gas retailer may become insolvent in addition to those mentioned in this section?	
Submitter	**Submitter's comments**

Question 3: Are you aware of any reason(s) why a gas retailer may become insolvent in addition to those mentioned in this section?	
Submitter	**Submitter's comments**
Contact	Contact would add to this that it is possible that a retailer's customer book may contain a large number of customers who are a poor credit risk (an expansion of cash flow risks described in the paper).
Genesis Energy	Other reasons, not discussed, could include: Exposure in other markets: a dual-fuel retailer could become insolvent because of financial stress in its electricity business. As noted in the paper "most gas retailers in New Zealand are dual-fuel retailers". The risk of insolvency in the electricity market is therefore relevant. Regional specific risks: Retailers may also face risks related to the location of their customer base. For example it is plausible that an event like the Christchurch earthquake could have caused a retailer with major users in this area to become insolvent.
MDL	Yes, we can think of other reasons why a gas retailer may become insolvent. Fraud and incompetency would be listed among those.
Powerco	No, we agree that the three main risks have been identified.
Vector	In addition to the reasons identified in the Castalia Report, and as have occurred in many other industries, gas retailers could also become insolvent due to: 1. poor business judgments; 2. non-compliance with existing regulations (resulting in financial penalties or litigation); 3. company mismanagement; or 4. fraudulent activities.

Question 4: Are there other likely scenarios of how a gas retailer insolvency might play out that have not been discussed above?	
Submitter	**Submitter's comments**
Contact	Contact agrees with the scenarios set out in this paper and has no additional scenarios to add at this time.
Genesis Energy	The scenarios discussed might play out differently in the case of a dual-fuel retailer insolvency. This is an issue that needs to be investigated further.

Question 4: Are there other likely scenarios of how a gas retailer insolvency might play out that have not been discussed above?	
Submitter	**Submitter's comments**
MDL	MDL can terminate a Transmission Services Agreement (TSA) held by any party that is insolvent. An insolvent retailer that had a TSA would therefore no longer be able to make new nominations for transporting gas on the Maui pipeline. To the extent it would have liabilities to MDL for transmission charges from past nominations those should be covered by the prudential requirements arranged with MDL. MDL cannot stop an insolvent retailer, or its customers, from taking gas. If such takings of gas were to flow up through the distribution network, to the Vector transmission system, and on to the Maui pipeline, and if nobody were to make a nomination for the physical flow from the Maui pipeline, then they would manifest as an Operational Imbalance at the Welded Point connecting the Vector and Maui pipelines. If such imbalances accumulate to the extent that they exceed Vector's Running Operational Imbalance Limit at that Welded Point then MDL could eventually charge Vector for the costs of eliminating AEOI at that point. Those costs would consist of a sale of gas by MDL to Vector at the Negative Mismatch Price. Vector would then seek to recover those costs, which would represent a purchase of balancing gas by Vector, under the Vector Transmission Code (VTC).
Powerco	In general we agree that the scenario described is how retailer insolvency might play out. However, it is important to recognise that each party involved will respond differently to each insolvency scenario. Factors such as the size of the retailer, the contractual agreements in place (prudential requirements & customer agreements) and operating situations of other parties will affect responses. This could include a distributor triggering retailer insolvency by requesting payment to be made rather than hold off. Reasons for this occurring could be that a distributor perceives a retailer is a greater risk due to low prudential, high volume or how small business customers with contractual agreements understand their switching rights. An additional factor that should be considered is the type of customers that a retailer has, if they have a high number of large volume commercial customers they could be considered more attractive. While these contacts would be easily switched it could leave residential customers orphaned. The introduction of any regulation has to be flexible enough to address all the potential scenarios while providing anadequate framework.
Vector	*Prudential requirements* While the Castalia Report states that "prudential requirements of around three-months provide some protection for gas distributors to recover on-going costs" (emphasis added), three months would be insufficient to provide full protection. Taking into account billing cycles, the retailer would have been two months in default by the time gas pipeline businesses can take action. Vector considers that prudential requirements of six months would be more appropriate. Vector recommends that the independent assessment of gas distribution contracts, which the GIC intends to commission in early 2013, ensure that distribution contracts sufficiently provide for the above risk. *Transfer of customers* Vector‟s gas distribution business has had first-hand experience of the impact of the E-Gas liquidation. The process of addressing orphaned customers was lengthier and costlier than is generally reflected in the Castalia Report. Vector had to contact the affected customers (requiring site visits in some cases), explain their options, and persuade them to change retailers. As described in Vector‟s submission of March 2012 on retailer default to the

Question 4: Are there other likely scenarios of how a gas retailer insolvency might play out that have not been discussed above?	
Submitter	**Submitter's comments**
	Retail Advisory Group of the Electricity Authority: …there were customers on the Vector network that were not purchased by Nova as they were viewed as being unprofitable. Vector was then required to enter into a lengthy process of personally contacting and visiting each one to persuade them to change retailers. This took time, during which the customers continued to use gas. … Further, Vector originally believed all customers switched to the purchaser after 42 days, except those that Nova considered unprofitable. Later, after conducting a spot check, we discovered that further customers were actively consuming gas but had been considered inactive by E-Gas. It took Vector several months to follow-up with a further 167 customers and ensure all of these customers were switched to a new retailer or had stopped using gas. This type of situation is relatively more likely to arise with insolvent retailers as they are the retailers most likely to have inefficient systems which allow customers to use energy without being billed. *Meter service providers* In addition to transmission system operators ("TSOs"), distributors and retailers, Vector would include meter service providers amongst those who suffer from retailer non-payment. Vector agrees with the Castalia Report's statement that there is "some uncertainty about the rights of distributors to enter customer premises to read meters and process switches". This equally applies to meter service providers. Vector recommends that, in addition to prudential requirements, the GIC‟s assessment of distribution contracts also ensure that the contracts provide for the ability of distributors and meter owners to enter the premises of an insolvent retailer‟s customers for the purpose of disconnection or reconnection, or ensuring safety. *Cost recovery* In workably competitive markets, costs imposed on parties as a result of retailer insolvency may be able to be recovered through their pricing mechanisms. This is not the case for gas pipeline businesses that are subject to default price path ("DPP") under Part 4 of the Commerce Act 1986. Under a DPP, a distributor may not be able to increase its prices in subsequent regulatory periods to offset losses from retailer insolvency. While the distributor could alternatively apply for a customised price path ("CPP") and make the case to the Commerce Commission to include an allowance for any future bad debt, this would not allow for the recovery of costs already incurred. There is also no certainty that a provision for bad debt would be approved as part of a CPP application as it would be very difficult to demonstrate with the necessary degree of robustness what the bad debt costs to the company would be over the CPP period. A CPP, which involves the Commerce Commission reviewing the distributor's business, is a time-consuming and costly undertaking. The gas distributor or TSO is not guaranteed a better outcome under a CPP than under a DPP. Once applied for, regulated businesses are precluded from making another CPP application for the rest of the regulatory period. The CPP is not a suitable mechanism for addressing bad debt risk. As references to consultation papers on the underlying policy and the relevant Parliamentary debates show, the intention of Parliament was that CPPs would mainly be used to fund "step-changes" in investment by a regulated business.

Question 5: Do you agree with the description of customers' perceptions of the risk of insolvency, and the likely customer experience when their retailer becomes insolvent?	
Submitter	**Submitter's comments**
Contact	Yes.
Genesis Energy	The description is not accurate for commercial users of gas. These customers place a much higher value on continuity of gas supply and will go to greater efforts to manage the risk of insolvency.
MDL	No comment.
Powerco	Yes. The high stability and low cases of retailer insolvency in the energy market meansthat the risk of insolvency is not of great importance to a customer when considering an energy retailer. The report aggregates residential and commercial customers within the report. This is fine when they are on equivalent contracts, but this is not always the case. The E-gas insolvency provided evidence that small commercial customers were unclear of their switching rights due to clauses in their contracts around length of agreements and when the agreements were no longer binding. Ensuring clarity around insolvency in these agreements and increasing the understanding of the risk should be more of a priority for residential customers.
Vector	Vector agrees with the Castalia Report that the automatic disconnection of customers during a retailer insolvency is unlikely. Vector also agrees that the "time involved in disconnecting all customers of the insolvent retailer has the potential to impose large costs on the distributor". Vector further agrees that "[d]isconnecting customers may also generate negative perceptions of gas as a viable energy source", which would give rise to the "...prospect that retailer default may result in...damage to the credibility of the industry". In the case of the E-Gas insolvency, Vector understands that E-Gas customers received a letter from the liquidator effectively stating they would be disconnected in four days if they did not find a new retailer, and that some of the larger customers felt they were given little choice in their gas supplier. The limited ability to disconnect customers en masse for the above reasons is an additional risk that gas distributors and meter service providers face. In contrast, businesses in workably competitive markets can easily cease supply without significant financial repercussions. Despite the above reasons, gas distributors should not be incentivised to disconnect customers as a matter of principle. Permanent arrangements that ensure the efficient transfer of an insolvent retailer's customers to another retailer would diminish, if not, remove any incentive to disconnect. For customers, the risk of uncertainty is less magnified if such arrangements are in place.

Question 6: Do you agree with this discussion of the incentives that apply in an insolvency event?	
Submitter	**Submitter's comments**
Contact	Yes.
Genesis Energy	Yes, however, it should be noted that the incentives that apply in an insolvency event will be affected by the allocation of pipeline capacity.

Question 6: Do you agree with this discussion of the incentives that apply in an insolvency event?	
Submitter	**Submitter's comments**
MDL	MDL does not have any incentives to deal with an insolvency practitioner. As mentioned before, MDL can terminate the TSA of any insolvent party and should usually be able to recover any outstanding transmission charges from the prudential requirements. MDL would be unlikely to enter into any new TSA with an insolvency practitioner. If an insolvency practitioner would need to make nominations for gas transmission on the Maui pipeline it would most likely need to enter into an arrangement with a third party shipper.
Powerco	Yes. Additionally, the gas industry cannot afford reputational damage; therefore there is a strong incentive by all parties to reach a positive conclusion with as little disruption as possible. The E-gas insolvency demonstrated the industry's desire to work together and make compromises to resolve the situation. Any regulatory solution should be flexible enough for this to occur and encourage cooperation.
Vector	While the Castalia Report generally captures the incentives of various parties during a retailer insolvency, it does not sufficiently highlight that it is a highly stressful and disruptive period, where events could transpire very quickly. Decisions are made in a less considered and less informed manner than under "business as usual" circumstances. As experienced during the E-Gas insolvency and expressed in the April 2011 submissions to the GIC, many parties shared the incentive of addressing the issue as expeditiously as possible at minimum cost. Every day that the insolvency was not resolved was costing them. The parties" desire for urgent resolution and active engagement with the GIC and other market participants during the event made the development of the Gas (Insolvent Retailer) Regulations 2010 under urgency possible. TSOs have the additional incentive to minimise transmission costs; and TSOs and retailers, the incentive to minimise the costs of UFG. The Government, regulators, and consumers also have the incentive to restore normalcy in the market as expeditiously as possible. Vector disagrees with the Castalia Report's statement that "[t]he gas distributor should be able to recover the costs of subsequent reconnections, although possibly not the initial disconnection". As indicated in our response to Q4, the ability of gas pipeline businesses regulated under Part 4 of the Commerce Act to recover insolvency costs is limited.

Question 7: Do you agree with the market failures identified?	
Submitter	**Submitter's comments**
Contact	Contact agrees with the externalities identified.
Genesis Energy	Yes.

Question 7: Do you agree with the market failures identified?	
Submitter	**Submitter's comments**
MDL	No. A gas retailer, or an insolvency practitioner taking control of it, is unlikely to have any contractual arrangement with MDL that covers costs of taking gas. As discussed before, it if takes gas from the Maui pipeline without nominations this will manifest as an operational imbalance at a Vector Welded Point. Any resulting charges for sales of gas will be made by MDL to Vector and by Vector to parties to the VTC. This happens regardless of any intentions that the insolvency practitioner may have for the retailer, and may occur even before it has decided what to do. Those costs can be incurred by parties that do not have any contractual relationship with the insolvent retailer. This is the main market failure problem that needs to be addressed.
Powerco	Yes.
Vector	Vector strongly agrees with the Castalia Report that "standard insolvency arrangements may not achieve all of the features of efficient markets when a gas retailer becomes insolvent". The E-Gas insolvency illustrated that other gas market participants had very limited opportunities to manage the residual risks and significant costs arising from the actions of the insolvent party, including the ability to prevent those costs from escalating. In particular, gas distributors face ongoing exposure to credit risk during an insolvency which businesses in workably competitive markets do not normally face. As stated above, a gas distributor cannot simply cut off supply to the insolvent retailer as this would effectively require en masse disconnection of that retailer's customers. Vector argues that residual market failures that cannot be addressed through standard insolvency legislation or regulations should be resolved through sector-specific intervention or regulations.

Question 8: Do you agree that the market failures identified will only eventuate if an insolvency practitioner disclaims customer contracts or if an acquiring retailer does not acquire the whole customer base in a sale process?	
Submitter	**Submitter's comments**
Contact	Yes.
Genesis Energy	Yes.
MDL	It will not make any difference to MDL. The TSA of an insolvent party is likely to be terminated immediately in all circumstances. If an acquiring party needs a TSA (and does not have one) it will have to enter into a new agreement with MDL and meet prudential requirements.
Powerco	We agree that any scenario that leads to one or more customer being split from the customer base of an insolvent retailer is going to lead to market failure. We believe that ensuring customers are not handpicked from a customer base or orphaned is essential to the insolvency process. While there will be a desire by retailers to move quickly to attract consumers to switch and maximise the value of certain customers, any regulation should provide a framework to ensure that this does not happen from the beginning of insolvency proceedings. If a customer base is split it is more likely to take longer to resolve the transferring of all customers, create higher UFG and increase chances of orphaned customers. While all parties experience additional costs, distributors often end up shouldering the greater burden of managing orphaned customers and the workload associated with disconnections.

Question 8: Do you agree that the market failures identified will only eventuate if an insolvency practitioner disclaims customer contracts or if an acquiring retailer does not acquire the whole customer base in a sale process?	
Submitter	**Submitter's comments**
Vector	The residual market failures and risks identified in the Castalia Report are likely to eventuate when customer contracts are disclaimed or customers are not acquired by the recipient retailer. Vector identified the same risks in its April 2011 submission to the GIC. To address these risks, Vector recommended the development of permanent regulations as backstop arrangements in the event that a sale does not eventuate. The main purpose of said regulations would be to enable the efficient transfer of orphaned customers and minimise the costs this would otherwise impose on industry participants and ultimately, customers. Vector maintains this view.

Question 9: Do you agree that contracts provide some ability for gas industry participants to manage the costs that they might bear if their counterparty becomes insolvent?	
Submitter	**Submitter's comments**
Contact	In Contact's view contracts in the gas industry provide some level of protection for gas distributors where a counter party becomes insolvent. However, as the paper notes, as an unsecured creditor, the funds may simply not be there in the case of liquidation.
Genesis Energy	Yes.
MDL	With respect to transmission arrangements we expect the status quo to be adequate. If an insolvent retailer is a shipper under the MPOC we expect its TSA will be terminated and its prudential requirements should be adequate to cover outstanding charges. This need not affect any other party.
Powerco	Yes, prudential requirements in contracts are a mechanism to manage the risk of retailer insolvency. Allowing retailers and distributors to negotiate the level of prudential requirements that is acceptable for both parties is important to encouraging new entrants and mitigating distributor risk.
Vector	Vector agrees that commercial contracts provide some ability for parties to manage the costs arising from retailer insolvencies, but only to a certain extent. As indicated above, multilateral contracts and other existing arrangements limit parties‟ ability to manage the residual risks identified in the Castalia Report. The residual risk of increased UFG is socialised across industry participants through the downstream reconciliation system, which is primarily governed by the Gas (Downstream Reconciliation) Rules 2008 and the Gas Governance (Compliance) Regulations 2008. Industry participants also have obligations under the VTC and Maui Pipeline Operating Code ("MPOC") which constrain their actions, to some extent. For the reason stated in our response to Q4, Vector considers prudential requirements of six months (rather than three months) to be more appropriate. Vector recommends that the GIC‟s independent assessment of distribution contracts in early 2013 take into consideration the ability of contracts to address some of the above issues. These would include the appropriate level of prudential requirements and the ability of distributors and meter service providers to enter the premises of an insolvent retailer's customers.

Question 10: Based on the issues discussed above and for the market failures identified, do you consider that there is a need for regulatory intervention beyond using the urgent regulation-making powers in the Gas Act?	
Submitter	**Submitter's comments**
Contact	Contact considers that the GIC needs to be prepared for retailer insolvency, but does not believe a retailer of last resort, or regulatory intervention beyond using the urgent regulation-making powers in the Gas Act regime is required at this time.
Genesis Energy	Please refer to our cover letter.
MDL	With respect to continued taking of gas by customers from an insolvent retailer, however, we believe regulatory intervention should be considered. If effects from taking gas without nominations manifest on the Maui pipeline then MDL will charge Vector (at a Negative Imbalance Price for gas). Vector will seek to recover those costs, but they are likely to exceed prudential requirements that Vector may have for transmission charges. The cost of gas can be an order of magnitude higher than the transmission charge. In the absence of prudential requirements for such a level of costs, which are not covered in bilateral contracts, we believe that issue deserves further consideration.
Powerco	Yes. We recognise that developing regulation would be complex and could be potentially addressed by non-regulatory solutions but believe that greater certainty can be achieved through regulation. While the industry has proved that itcan work together to resolve retailer insolvency, this may not always be the case. As the first few days of insolvency are critical we believe it is necessary to have regulatory back stop powers in place to ensure a process that will deliver the best outcome for the industry. We agree with the report's recommendations and encourage the GIC to consider these when progressing the retailer insolvency workstream.
Vector	Vector considers there is a need for regulatory intervention beyond those provided in urgent regulation-making powers in the Gas Act 1992, to address the residual risks faced by businesses across the gas supply chain in the event of a retailer insolvency. *Backstop regulations* In particular, arrangements that ensure the efficient transfer of an insolvent retailer's customers to another retailer would address the issue of orphaned customers that is proven to exist in the gas market. Such arrangements would ensure that costs are allocated to causers and recovered, to the extent possible. Vector believes the benefits of developing permanent insolvency regulations would certainly outweigh the costs, which would be minimal. As backstop regulations, they would not interfere with the insolvency process and should not be intended to, but would ensure an efficient transfer of customers should a sale not eventuate. They would also create greater certainty for retailers and other industry participants. While backstop regulations may not be used for every case of retailer insolvency, or may never be, the confidence and predictability they provide to industry participants and customers would make their development worthwhile. This shared incentive was clearly exemplified by market participants" cooperative behaviour during the E-Gas liquidation, and widely expressed in the April 2011 submissions. Importantly, the development of permanent regulations would ensure that

Question 10: Based on the issues discussed above and for the market failures identified, do you consider that there is a need for regulatory intervention beyond using the urgent regulation-making powers in the Gas Act?	
Submitter	**Submitter's comments**
	the regulations are robust, as they would be subject to meaningful consultation and would be more considered than under urgency. Vector considers the additional cost to the GIC of developing permanent insolvency regulations would not be significant and would not require a new work stream or project. The GIC and industry would not be starting from scratch; the insolvency regulations developed during the E-Gas liquidation could serve as a starting point for this work. Once permanent insolvency regulations are established, there would be very little ongoing costs. *Meeting the Castalia Report's thresholds for regulation* Vector considers the development of permanent insolvency regulations would meet the thresholds for regulation suggested by the Castalia Report, in the sense that: 1. Regulations would address the residual risks that are unique or more pronounced in gas retailer insolvencies. 2. The ability of parties to address the residual risks through bilateral contracts is constrained by multilateral contractual arrangements in the gas sector. As indicated in our response to Q1, the actions that TSOs and retailers can take are constrained by provisions in the VTC and MPOC. 3. The regulations would be tailored to address the specific residual risks and inefficiencies in gas retailer insolvencies. Vector recommends below some provisions that could be considered in the development of permanent insolvency regulations. 4. The backstop regulations will not interfere with the normal insolvency process (which by itself, is already a „managed" process, ie an intervention in the market). 5. The benefits of having regulations aimed to mitigate market distortions and restore confidence outweigh the minimal costs involved (as pointed out above). *Recommended provisions* Any development of permanent retailer insolvency regulations should consider the following provisions (some of which Vector also recommended in a letter to the Electricity Authority Chief Executive in May 2011). These would ensure a more efficient transfer of customers and improve the availability of information to industry participants, providing the certainty they desire during the insolvency period: 1. Provision that any or all customers are switched to alternative retailers with effect from the date of receivership/liquidation. This is beneficial to both retailers and distributors as retailers will acquire the right to invoice the customer for charges from that date instead of those customers continuing to take gas and potentially not paying for that gas. Customers would also have no incentive to delay switching retailers to reduce their gas bills. 2. Provision that inactive customers are also allocated a new retailer on the basis that sometimes the Registry records are not correct and inactive customers are still consuming gas. 3. A requirement for the GIC to acquire information, including meter reading information, from the insolvent retailer and pass this information on to whichever industry participants require it to give

Question 10: Based on the issues discussed above and for the market failures identified, do you consider that there is a need for regulatory intervention beyond using the urgent regulation-making powers in the Gas Act?	
Submitter	**Submitter's comments**
	effect to the transfer of customers. 4. Retaining the provision in the Gas (Insolvent Retailer) Regulations 2010 requiring recipient retailers to have at least 10% of the number of ICPs in the Gas Registry. 5. Clarification of the status of the transferred customer contract (including contract terms), and provision to allow for a transitional period, during which customers can switch to an alternative retailer, and after which the recipient retailer can put the customers onto the recipient retailer‟s contract. 6. Clarification of what happens if a customer switches before the transfer date but the switch has not been completed. 7. Clarification of the status of contracts that a liquidator has disclaimed. 8. Provision allowing asset owners such as meter owners to access a property to recover equipment, check connections and, if required, disconnect sites that are not active. 9. Recognition of transmission capacity restraints and VTC obligations, and gas supply constraints/risks, and the necessary provisions to address these constraints. The insolvent retailer‟s customers could be transferred to a retailer that could not meet or fully meet the supply requirements of these customers.