

Gas Governance (Insolvent Retailers) Regulations 2010—Statement of Proposal

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About Gas Industry Co.

Gas Industry Co was formed to be the co-regulator under the Gas Act.

As such, its role is to:

- recommend arrangements, including rules and regulations where appropriate, which improve:
 - the operation of gas markets;
 - access to infrastructure; and
 - consumer outcomes;
- administer, oversee compliance with, and review such arrangements; and
- report regularly to the Minister of Energy and Resources on the performance and present state of the New Zealand gas industry, and the achievement of Government's policy objectives for the gas sector.

Authorship

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Executive summary

In late 2010 a gas retailer went into liquidation. That retailer, E-Gas, had around 7,000 customers comprising 9% of load at shared gas gates. The liquidator continued to operate the Company's business whilst conducting a sale process. At the same time, a number of events were set in train:

- a number of other retailers set about winning customers away from E-Gas (as an alternative to purchasing customers from the liquidator);
- gas distributors set up arrangements to deal with the possibility a sale might not occur, that customers might become uncontracted, and distributors would need to disconnect them; and
- the Gas Governance (Insolvent Retailers) Regulations 2010 ('Regulations') were prepared and made under urgency. The purpose of the Regulations was to provide protection for customers as well as to provide certainty and reduce risk for industry participants.

This statement of proposal is issued to meet the requirement in the Gas Act 1992 ('Act') to consult, retrospectively, on urgent regulations and recommend whether the Regulations should be revoked, amended or replaced. This document also seeks feedback on the need for regulations to address retailer insolvency.

Design of the Regulations

The Regulations were designed for the circumstances that existed at the time, i.e. they were designed to facilitate the transfer to a number of other retailers of the customer base of a small, insolvent gas retailer.

The Regulations can only be invoked if two conditions are met: the liquidator's sale process has been unsuccessful; and Gas Industry Co is satisfied that the insolvent retailer's customers will find themselves without a gas retailer. Once invoked, the Regulations provide for the customers to be transferred to other retailers ('recipient retailers'). Every gas retailer with a market share of 10% or more automatically becomes a recipient retailer. Smaller retailers can opt-in to become recipient retailers.

Under the Regulations, customers are transferred to recipient retailers in proportion with their respective market shares. Recipient retailers are required, for a period, to supply transferred customers at the same price, terms and conditions those customers received from the insolvent retailer. After a transition period, transferred customers can be moved to the price, terms and conditions offered by the recipient retailer (unless they switch away in the meantime).

The Regulations expire six months after coming into force.

Do the Regulations offer a general-purpose solution to retailer insolvency?

Gas Industry Co does not consider the Regulations provide a general purpose ongoing solution. This is for three key reasons.

First, compelling retailers to become recipient retailers may not be prudent where the insolvent retailer is larger. The assumption underpinning the Regulations was that each of the recipient retailers could absorb a further 10% of load without threatening their viability.

Secondly, the trigger for invoking the Regulations requires that a liquidator be appointed and that the liquidator attempts to conduct a sale of the customer base. If no sale were attempted, then the Regulations would not be able to be invoked.

Finally, these events were occurring at a time of the year when demand was relatively low. This would further reduce the short-term strain on recipient retailers of having to assimilate the E-Gas customers into their businesses. At other times of the year, the compulsory nature of the recipient retailer provisions could place some retailers in financial difficulty and that would be an unacceptable risk.

This Statement of Proposal therefore proposes that the Regulations should be allowed to expire, as they do not provide a set of transition arrangements that would be suitable in all instances of retailer insolvency. Submitters are asked their views on this proposal.

Is retailer insolvency an issue that requires regulatory intervention?

Gas Industry Co has also been asked by the Minister of Energy and Resources to provide advice on the "*form and content of backstop regulations*" to address retailer insolvency. The scope and scale of such arrangements in other jurisdictions is such that the design and implementation of a general purpose set of backstop regulations would require further detailed work.

A number of gas and electricity retailers have exited the market in New Zealand over the past decade. Whilst these exits have been for a range of reasons, including insolvency, it is noteworthy that in every case the customers were acquired voluntarily by other retailers. This evidence, together with the ability to create urgent regulations as in the E-Gas case, does raise a question whether a general-purpose regulatory solution is needed to address retailer insolvency.

Consultation

This Statement of Proposal seeks responses to a number of high-level questions, including whether retailer insolvency is an issue that warrants regulatory intervention and, if warranted, possible forms of such intervention. To assist submitters, information is provided on the types of regulation found in other jurisdictions and the objectives of such arrangements. Although the Regulations have a degree of commonality with so-called 'retailer of last resort' schemes overseas, the compulsory aspect of designating recipient retailers is atypical of such schemes.¹

¹ And was regarded as acceptable in this case due to the time of year and the relatively small size of the E-Gas customer base.

Submissions on the questions relating to regulatory intervention will be used to inform a response to the Minister and the next phase of work, if any, on ongoing regulation for retailer insolvency.

Submissions on this statement of proposal must be provided no later than **5.00 PM on Friday, 15 April 2011**.

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1

Introduction

The Gas Governance (Insolvent Retailers) Regulations 2010 ('Regulations') were made under urgency on 15 November 2010, and they expire after six months. The Gas Act 1992 ('Act') requires that where regulations are created in reliance on section 43P of the Act, the recommending body must: fulfil the requirements of sections 43L and 43N of the Act; make a recommendation to the Minister of Energy and Resources ('Minister') on whether the urgent regulations should be revoked, replaced or amended; and, no later than ten days after making the recommendation, must publicise the recommendation and the assessment completed under section 43N.

This statement of proposal is the first step in Gas Industry Co fulfilling the requirements of section 43P of the Act in respect of the Regulations.

This paper is organised as follows:

- This Section 1 outlines the reasons urgent regulations were considered necessary, the provisions the Regulations contain, and the requirements for consultation;
- Section 2 provides an assessment of the Regulations, as required under section 43P of the Act. That section concludes that, as the Regulations were tailored for a specific set of circumstances, they do not represent a feasible solution for all cases of retailer insolvency. Therefore, the Regulations should be revoked in accordance with regulation 19.
- Section 3 asks for initial feedback on the broader questions of whether permanent regulations are required to manage cases of retailer insolvency; and if so, what objectives the regulations should strive to achieve. It also outlines options for regulatory intervention. This feedback will be used by Gas Industry Co as a means of scoping a future programme of work on this issue.

1.1 Circumstances leading to urgent regulations

On 18 October 2010 the E-Gas group of companies entered voluntary liquidation. BDO New Zealand was appointed as the liquidator.² E-Gas at the time had a market share of about 3% of gas customers and about 10% of allocated gas volumes. Its customer base was largely made up of small commercial customers, such as restaurants, bars, and motels; about one quarter of the customers were residential. These factors were influential in the development of the Regulations.

² See http://www.bdo.co.nz/content/our-services/business-recovery/E_Gas_Group.aspx

If BDO had reached the point where E-Gas was forced to cease trading, then it would no longer have been able to continue its obligations to supply gas under the various contracts with the E-Gas customers. In this situation, E-Gas's customer contracts could have been considered "onerous property" and disclaimed by the liquidator, as provided under the Companies Act 1993. Such a situation could have led to considerable disruption for E-Gas customers and other participants in the gas industry, as, if the E-Gas customers had continued to use gas without a valid supply contract, then:

- the gas they used would not have been measured and reconciled as required by the existing gas governance arrangements; and
- the gas that those customers used would, therefore, have appeared to be "unaccounted for gas" (UFG), the cost of which would have been borne by other gas retailers; and
- gas distributors would have been concerned that, unless they disconnected the uncontracted E-Gas customers, the other gas retailers would look to them to recover the costs of that UFG ; and
- those gas distributors would, most likely, have moved to disconnect the E-Gas customers so as to manage their risk.

The Regulations addressed these issues by putting in place a regime to transfer E-Gas's customers to other retailers, thereby ensuring that those customers remained contracted and with a gas supplier.

1.2 Scope of empowering provision

The Act provides for regulations to be made specifying transition arrangements for insolvent retailers. Section 43G provides that the purposes for which regulations may be made include:

Transition arrangements for insolvent gas retailers

providing a system of transition arrangements for consumers in the event of a gas retailer becoming insolvent, and requiring industry participants to comply with that system, with the objective of protecting consumers or managing the liabilities of other gas retailers:³

Note that although the empowering provision is relatively wide in its scope, it does clearly limit the situations for which regulations may be made to cases of retailer insolvency. That is, the Gas Act does not provide powers for transition arrangements in other cases where a retailer may wish to or need to dispose of its customer base. Nor does the Gas Act cover situations where another party in the gas supply chain goes into liquidation.

1.3 What the Regulations provide

The Regulations provide for the industry body (Gas Industry Co) to transfer the customer contracts of an insolvent retailer to other retailers. The new retailers must continue to supply gas under the

³ Section 43G(2)(d).

transferred contracts for a transition period of a minimum of 30 days. The transferred customers may switch to another retailer, without any fee or penalty, during the transition period, and otherwise will roll over into a contract with the new retailer at the end of that period.

Under the Regulations, transferred customers are apportioned to recipient retailers by market share. Recipient retailers include large gas retailers (those with more than 10% customer market share), who are required to take on a share of the insolvent retailer's customers, and smaller retailers who opt-in. The Regulations also provide for a transfer of transmission capacity for those recipient retailers who request it.

The Gas Governance (Insolvent Retailers) Regulations 2010 were gazetted and came into force on 16 November 2010. The Regulations include a provision that revokes the Regulations 6 months after they come into force (that is, on 16 May 2011). This provision reflects the view that the Regulations were drafted for a specific set of circumstances and would not be appropriate in all circumstances of retailer insolvency.

The full text of the Regulations can be found in Appendix 2.

1.4 Consultation requirements

As noted above, where a recommendation for urgent regulations is made, the recommending body is required to fulfil the requirements of section 43L and 43N of the Act. Section 43N requires an evaluation of proposed gas governance regulations, including an identification of all reasonably practicable options to achieve the objective of the regulations and an assessment of those options, including their costs and benefits. Section 43L requires the recommending body to undertake an assessment under section 43N and to consult with persons likely to be substantially affected by the proposed regulations.⁴

The Minister requested Gas Industry Co to conduct the required evaluation and consultation on the regulations. On 16 November 2010, the Minister of Energy and Resources wrote to the Chair of Gas Industry Co noting that the Regulations had been made under urgency and that they had not undergone the usual consultation and assessment procedures. The Minister requested that Gas Industry Co to provide advice as to the "*form and content of backstop regulations should other gas retailers go into liquidation or receivership*".

Gas Industry Co proposes (subject to submissions on this Statement of Proposal) to comply with these requirements in two stages: first with an assessment of the Regulations, as required by the Gas Act; and secondly, with a work stream that assesses the desirability and possible content of a generic, long-term regulatory solution.

⁴ The full text of sections 43L and 43N are provided in Appendix 1.

1.5 Submissions

Submissions on this statement of proposal must be provided no later than **5.00 PM on Friday, 15 April 2011**. Given the time constraint of the 16 May 2011 deadline for a recommendation to the Minister, late submissions will not be able to be considered.

Submissions can be made by registering on Gas Industry Co's website and uploading your submission, preferably in the form of the submissions template attached to the consultation document. All submissions will be published on this website after the closing date. Submissions may be amended up to closure date.

All submissions will be published on the website after the closing date. Submitters intending to provide confidential information as part of their submission should discuss this with Gas Industry Co prior to submitting the information.

2

Assessment of Gas Governance (Insolvent Retailers) Regulations 2010

This section addresses the objective of the Regulations and analyses the transfer provisions of the Regulations. It concludes that the Regulations would not be suitable in all cases of retailer insolvency and recommends that the Regulations should be revoked in accordance with regulation 19.

2.1 Objective of the Regulations

The Regulations were made to ensure that E-Gas customers would continue to be supplied by a retailer in the wake of E-Gas's liquidation. Under the Regulations, if the liquidator had been able to find a buyer of the E-Gas customer base, then the Regulations could not have been invoked; the regulated transfer of customers would no longer have been necessary. If, on the other hand, the liquidator had been unable to make a sale, despite reasonable efforts to do so, then Gas Industry Co would have been empowered to transfer the customer contracts, provided it was satisfied that there had been a real risk that the gas supplied to those customers would not have been supplied under a valid contract with any retailer.⁵

As it turned out, BDO was able to sell the E-Gas customer base to Nova Energy, and the provisions of the Regulations did not need to be invoked. The objective of the Regulations has been achieved: gas customers formerly with E-Gas are now supplied by a different retailer.

The question, then, is whether the Regulations should be revoked (as provided for in regulation 19), as they have fulfilled their purpose, or whether they could serve to protect consumers in the event of any future liquidations (in which case they would need to be amended to prevent automatic revocation six months after they came into affect). That is, do the Regulations provide transition arrangements that would be suitable in all potential cases of retailer insolvency? The next section addresses this question.

⁵ Clause 5 of the Regulations.

2.2 Do the Regulations provide a set of transition arrangements that would be suitable in all cases of retailer insolvency?

Analysis of transition arrangements

As noted above, the Regulations were specifically drafted to manage the transfer of the E-Gas customer base in the event that the liquidator was unable to find a buyer for E-Gas's customer contracts.

Under the transfer process prescribed in the Regulations, if the industry body proposes to exercise the power to transfer customer contracts, then it must, among other things:

- Identify the "recipient retailers", who must be:
 - those retailers with more than 10% of "active-contracted" ICPs recorded on the gas registry; and
 - any other gas retailer that has notified the industry body that it wishes to be a recipient retailer.
- Devise, and publish on its website, a process for assigning customer contracts to recipient retailers. That process must:
 - classify the insolvent customer's customers into load groups or subcategories ('classification category') within each transmission pipeline;
 - apportion customer contracts within each classification category pro rata with retailer's respective market shares; and
 - assign, within any given classification category, those customer contracts on a random basis.

The process of identifying recipient retailers was designed to ensure that customers went to retailers that were large enough to, or were otherwise willing to, absorb additional customers. The parameters that defined the industry body's approach to allocating customers were designed to ensure that recipient retailers received customers in areas where they already had customers (and, therefore, transmission and distribution arrangements).

Underlying these arrangements was the assumption that recipient retailers would be able to absorb a proportion of the insolvent retailer's customers and associated gas volumes, at least in the short term. This assumption seemed reasonable in the case of E-Gas, with its relatively small market shares. For example, if the transfer of customers had gone ahead, and none of the smaller retailers had opted to become a recipient retailer, then the customers would have been divided among Genesis, Contact, and Mercury, all of whom had more than 10% market share of total customers at the time. Each

would have received a number of customer transfers that represented about a 3% increase in its customer base. If other retailers had opted to join, the percentages would have been slightly lower.

Identified issues

There are a number of issues that suggest these transfer provisions would not be suitable in all circumstances:

Potential scale of insolvency

It is not clear that other retailers would be able to absorb an insolvent retailer's customer base in all situations. If the insolvent retailer happened to be one of the largest gas retailers, the transfer process outlined above would require the recipient retailers to accept an additional number of customers that would more than double their original customer base. An increase of this scale is clearly outside the marginal increases that would have been brought about by the transfer of E-Gas customers. Although recipient retailers may be able to gear up to be able to service such an increased number of customers, it would likely be extremely difficult to achieve in the relatively short timeframe envisioned by the Regulations.

Potential timing of insolvency

Another pertinent factor in the development of the Regulations was the time of year that the transfer provisions of the Regulations would be used. The Regulations came into force on 16 November, and it was anticipated that, if the transfer provisions were invoked, the transfer of customers would take place either in November or December. These months are associated with relatively low gas consumption. It therefore seemed reasonable that recipient retailers would be able to provide delivered gas for their transferred E-Gas customers within their existing gas wholesale, transmission, and distribution arrangements. Had the liquidation taken place during the winter, in contrast, it is likely that additional customer volume would have had a greater chance of incurring transmission overrun and balancing charges.

Compulsory nature of Regulations

Large retailers are required to take on a proportion of the customers of an insolvent retailer under the Regulations. In this, they differ from many overseas jurisdictions, where regulations to transfer the customers of an insolvent retailer generally consider both the willingness and the capacity of the remaining retailers to take on the affected customers. As noted above, the scale and the timing of any future retailer insolvencies could be such that recipient retailers would be required to take on a large number of new customers, or at a time when gas prices are particularly high (or both). It is not clear that the imposition of such costs on other retailers would be the best way to manage all instances of retailer insolvency. As an extreme example, any insolvent retailer regulations should take care not to cause any other retailers such a degree of financial distress that they themselves become insolvent.

Tailored trigger provisions

Regulation 5 requires that, before Gas Industry Co can transfer the customer contracts of an insolvent retailer, it must be satisfied on reasonable grounds:

- (a) that, if the customer contracts are not transferred to other retailers, there is a real risk that gas supplied to those customers will not be supplied under a valid contract with any retailer; and
- (b) that the liquidator of the insolvent retailer has made reasonable efforts to sell or otherwise dispose of the customer contracts.

Again, the wording reflects the circumstances surrounding the E-Gas liquidation, when BDO was actively engaged in seeking a buyer for the E-Gas customer base. In a future liquidation, the liquidator may choose not to sell the customer base and simply disclaim the retail contracts. Similarly, there may be instances of retailer insolvency that involve a receiver rather than a liquidator.

Conclusion

Gas Industry Co concludes that the Regulations do not represent a system of transition arrangements that would be feasible or desirable in the wide range of possible situations of retailer insolvency. The transfer provisions contained in the Regulations may be unworkable in the case of a large retailer going insolvent or if the insolvency occurred in a period of high gas demand. The transfer requirement would fall on all large retailers, even those who potentially are unable to manage the cost associated with the transfer. Finally, the Regulations cover only a subset of insolvency scenarios, due to the restrictive trigger provisions. In addition, there is no information that Gas Industry Co is aware of that would indicate any likelihood of a gas retailer becoming insolvent in the foreseeable future.

Gas Industry Co therefore proposes that the Regulations should not be renewed, but rather regulation 19 should remain to be triggered at the expiry of the six month timeframe.

Q1 Do you agree that the Regulations should be revoked under regulation 19? If not, what suggestions do you have for overcoming the shortcomings outlined above?

Q2 Do you have any comments on the provisions of the Regulations themselves?

2.3 Assessment of costs and benefits

The Act requires an assessment of costs and benefits to be provided as part of the Statement of Proposal. There are two ways to approach this requirement:

- using a present-day approach requires consideration of the cost of revoking the Regulations (essentially a costless option) compared with the present value net benefits of having those Regulations continue in force; or

- taking the perspective that existed at the time the Regulations were being prepared, i.e. forward-looking from the position of November 2010.

The first approach is correct with regard to making a present-day decision. However, the second approach is likely to be more informative with regard to the general question of regulatory approaches to dealing with retailer insolvency. The second approach also assists with a key piece of information that will be required to assess the future costs and benefits from using the present day approach. Accordingly, we first assess the costs and benefits from the historical perspective of November 2010.

November 2010 perspective

As noted earlier, at the time the Regulations were being drafted there were a number of activities taking place – increased rates of switching away from E-Gas, distributors preparing plans for addressing uncontracted customers (including disconnection), and the liquidator endeavouring to sell the customer base.

At that time, there were two questions to consider:

1. what was the probability that the liquidator could not achieve a sale; and
2. if a sale did not take place, how long would it take for the customers to re-contract with other gas retailers?

The table below postulates a scenario where, through a combination of retailer competition and pressure from distributors, the E-Gas customers progressively re-contract over a four-month period. When reconciling November consumption volumes, 90% of the gas that would otherwise have been allocated to E-Gas becomes UFG that is apportioned among the other gas retailers. The cost of that to those retailers will depend on:

- wholesale costs of gas;
- transmissions capacity bookings and the risk of overrun charges;
- transmission throughput charges; and
- distribution charges.

For the purpose of this analysis, the cost is estimated, conservatively, at \$10 per GJ to cover energy and transport charges.

It is assumed that, by the end of February 2011, all of the E-Gas customers would have been claimed and there would have been no E-Gas-related UFG after February 2011. Based on the profile in the table, the cost to other retailers of unclaimed E-Gas customer volumes totals \$3.66 million. That equates to \$488 per E-Gas customer (based on 7,500 customers). The remaining retailers in the

market are paying the supply costs of the uncontracted E-Gas customers (through the allocation of UFG) but do not receive any revenue from those customers.

Table 1 Estimated UFG costs

	Nov-10	Dec-10	Jan-11	Feb-11
E-Gas customer volume	214,305	179,505	166,051	168,070
% of E-Gas volume unclaimed	90%	50%	30%	20%
Unclaimed E-Gas volume	192,874	89,752	49,815	33,614
@\$10/GJ	\$1,928,743	\$897,524	\$498,154	\$336,139

By contrast, the Regulations would have avoided the “gap” that would otherwise exist between the liquidator disclaiming a customer’s contract and the time at which the customer contracts with a new retailer. The above table assumes that any consumption in the gap period appears as UFG and is unable to be recovered from the customer (as there is no contractual basis for that).

Under the Regulations, recipient retailers become responsible for the supply costs – i.e. the “unclaimed E-Gas volumes” in the table above would be submitted to the allocation agent as consumption volumes for the customers transferred to each of the recipient retailers. This insulates other retailers from costs associated with those customers.

The next question is whether the revenue from the transferred contracts outweighs the costs? Recipient retailers will receive the income under the transferred contracts during the transition period based on E-Gas’ pricing. Once the transition period has ended, recipient retailers would receive income based on their own tariff structures. When the sale to Nova took place, a small number of customer contracts were not acquired by Nova. Gas Industry Co understands that Nova regarded those customer contracts as loss-making.

However, given the intense competition over the years between E-Gas and at least one other retailer, it seems reasonable to assume that the niche that these retailers occupied was fundamentally profitable. The fact that at least one other retailer was able to operate in E-Gas’s market niche without the manual data adjustment that was a feature of the E-Gas operation, it seems reasonable to conclude that there would be a positive margin over the supply costs tabulated above. It should be remembered that the maximum exposure would be one month of E-Gas prices on any out-of-the-money contracts.

Table 2 Costs and benefits to retailers

Item	Regulated option	Market option
E-Gas customer supply charges	Paid by recipient retailers	Creates UFG paid by all retailers
Revenue from E-Gas customers – Nov-10 through Feb-11	Receive income for all transferred customer contracts in two ways: - at E-Gas prices for transition period - at retailer’s own prices	Only receive income from those customers signed-up. Significantly less than regulated option for first four months

Item	Regulated option	Market option
	subsequently	
Revenue from E-Gas customers – after Feb-11	Revenue based on retailer's own tariffs	Revenue based on retailer's own tariffs
Costs associated with loading customers into retailer system	May be a requirement for temporary staff to handle short-term overload	Less requirement for overload due to slower rate of acquisition – but increased activity compared with business as usual
Acquisition costs	Nil	Commissions paid to salespersons on a portion of customers won
Access to customer records	Provided by Regulations	Dependent on liquidator cooperation
Transmission capacity	Rights to proportionate share of capacity reserved by E-Gas	Applications processed through the queuing process – outcome indeterminate as there may already be other bids in the queue

The key difference between the regulated and market options in the above table is that, under the regulated option, the recipient retailers get access to the income stream from the entire E-Gas customer base from the time the contracts are disclaimed. Under the market option there is a slower rate of customer transfer and, therefore, unrecoverable costs from the UFG caused by uncontracted customers prior to their eventual acquisition by another retailer. It seems reasonable to conclude that, had the necessary conditions existed for the Regulations to be invoked, the regulated option would have exhibited net benefits to retailers compared with the market option. (Note that because the wholesale and delivery costs of gas used by E-Gas's customers are paid by retailers under both options – either as UFG or as supply costs – other parts of the supply chain are unaffected by the Regulations.)

However, creating the Regulations has caused costs to be incurred: staff from Gas Industry Co, MED and PCO were involved in that process. Assuming that four persons were involved, full-time, for two weeks, the cost of creating those Regulations was of the order of \$30,000. Compared with a net cost to the market option of \$3.66 million, provided the probability of requiring the Regulations was not less than 0.82%, the regulated option would have shown a net benefit at the time. Of course, the Regulations were not required to be invoked.⁶

Present day costs and benefits

As noted above, allowing regulation 19 to revoke the Regulations is, of itself, a costless option. If nothing is done to prevent it, Regulation 19 will cause the Regulations to be revoked as from 16 May 2011. The more difficult question to answer is what net costs/benefits might accrue if the Regulations were extended indefinitely?

⁶ However, there is anecdotal evidence suggesting the existence of the Regulations was of assistance to the liquidator in being able to conclude a deal for the sale of the E-Gas customer base.

From the previous analysis of a known, near-term situation it was concluded that there only needed to be a small probability of the Regulations being required to justify the cost of their creation.

However, as of today, there is no information that Gas Industry Co is aware of that would indicate any likelihood of a gas retailer becoming insolvent in the foreseeable future. That being the case, the reduction in present value benefits due to discounting and the identified shortcomings in the current Regulations as a longer-term solution combine to suggest that there is a low likelihood of there being net benefit in retaining those Regulations.⁷

⁷ The next section deals with the question of whether an alternative solution should be pursued, i.e. a set of general purpose regulations.

3

Will the market best handle retailer insolvency?

This section seeks initial feedback on more general questions of regulations to address retailer insolvency. It begins with the question of whether retailer insolvency needs some sort of regulatory intervention, suggests objectives such intervention could achieve, and presents options that such intervention could encompass.

3.1 What concerns does retailer insolvency present? Are they issues needing regulatory intervention?

The nature of the gas transportation system – many gas industry participants using common pipelines to transport and distribute gas – means that a system for allocating costs to those users is needed. Under the Gas (Downstream Reconciliation) Rules 2008 – as well as under the reconciliation arrangements that preceded them – the amount of gas used by consumers is subtracted from the total amount of gas put into the system. The difference is UFG, the cost of which is allocated to retailers. If a retailer exits the market, so that its customers' volumes are not submitted for allocation, then that consumption will become UFG. This risk of liability for UFG costs is what prompts other industry participants to disconnect uncontracted customers.

These issues of UFG being caused by retailer insolvency and uncontracted customers being disconnected are not unique to the E-Gas situation, nor even to the New Zealand market. In other countries, similar concerns have prompted the establishment of retailer of last resort schemes. These schemes provide a framework by which retailers are appointed to take on the customers of an insolvent retailer. In terms of general intent, they are similar to the Regulations passed at the time of the E-Gas liquidation. There are differences between jurisdictions in terms of the details of the schemes, as the manner of retailer appointment, definition of trigger event, and obligations of retailers can differ. However, all have a similar aim: to ensure the continued supply to customers and to ensure the integrity of the wholesale market settlement procedures.

There may be other factors, unique to the New Zealand market, that suggest some sort of regulatory solution to retailer insolvency is required. It became clear following E-Gas's liquidation that one obstacle to retailers, in terms of bidding for E-Gas customers, was uncertainty regarding the availability of transmission capacity. Gas Industry Co understands that potential bidders were unsure of whether

they could obtain the transmission capacity they would need to serve the E-Gas customer base and at what price.

On the other hand, it can be argued that retailer insolvency is a relatively rare occurrence that may not need regulatory intervention. Prior to the E-Gas liquidation, there were a number of occasions where gas and electricity retailers have exited the market, as shown in the table below. Although not all of these cases were clearly linked with retailer insolvency, they still provide examples of customer transfers caused by retailer exit. In all of these cases, customers were transferred without the need for special regulatory intervention.⁸ In the case of the E-Gas liquidation, the Regulations did not need to be invoked, although Gas Industry Co understands that some market participants welcomed the certainty that they brought to the market over a process that was fraught with unknowns.

Table 3 Exiting gas and electricity retailers, 1998 to present

Energy sector	Exiting retailer	Acquiring retailer	Date	Reason
Gas	Enerco Gas	Contact Energy	1998 (residential customers) 2000 (industrial customers)	Restructuring
Gas	Trans Alta	On Energy / NGC	2000	Exiting New Zealand
Gas	NGC	Genesis Energy	2002	Restructuring
Gas	Fresh Start	Genesis Energy	2003	Not announced
Gas	E-Gas	Nova Gas	2010	Retailer liquidation
Electricity	Empower	Contact Energy	2000	Access to capital
Electricity	Trans Alta	On Energy / NGC	2000	Exiting New Zealand
Electricity	On Energy / NGC	Genesis Energy (North Island customers) Meridian Energy (South Island customers)	2001	Financial distress
Electricity	Energy Online	Genesis Energy	2002	Restructuring
Electricity	Fresh Start	Genesis Energy	2003	Not announced

⁸ Note that some of the takeovers listed above obtained clearance from the Commerce Commission under section 66 of the Commerce Act 1986. However, this regulatory action concerns the competitiveness of markets after the proposed transfer, rather than assuring continuity of supply to customers and the integrity of the wholesale market settlement process, which are concerns relevant prior to the transfer of customers.

As is clear from this brief overview of issues regarding retailer insolvency, there are a number of factors to consider in determining if regulatory intervention is required in the New Zealand context. Retailer insolvency can bring uncertainty to the industry and impose costs on other participants, and it can exacerbate issues of asymmetric information. These are factors that suggest some form of regulatory intervention would be desirable. On the other hand, retailer insolvency is a relatively rare occurrence; no examples of retailers exiting the market have needed regulatory intervention to ensure continued supply to customers. These factors tend to argue against regulatory intervention.

Q3 In your view, is some form of regulatory intervention required to deal with cases of retailer insolvency?

Q4 Are there other factors to consider that have not been mentioned?

3.2 Possible objectives of an insolvent retailer policy

In 2008, the Australian Ministerial Council on Energy collated a list of regulatory objectives⁹ from a number of jurisdictions that have retailer of last resort regulations. The review found that, where objectives of the regulations have been expressed, they addressed one or more of the following matters:

1. Ensuring continuity of energy supply to all customers;
2. Protecting customer interests with regard to price and other terms of supply;
3. Protecting interests of other market participants and their customers, by reducing their liability to pay for energy consumed by a failed retailer's customers;
4. Facilitating the provision of information and other necessary arrangements between retailers, retailers of last resort, distributors, market operators, and others to ensure the smooth transfer of affected customers in the market;
5. Ensuring compatibility of the scheme with legislative, market and commercial frameworks;
6. Enabling customers and other affected parties to make informed decisions on future energy supply; and
7. Achieving other objectives without encouraging retailers or customers to engage in overly speculative, high risk or reckless behaviour.

⁹ "Retailer of Last Resort – Review of Current Jurisdictional Arrangements and Development of a National Policy Framework," report prepared for the MCE Retail Policy working Group. NERA Economic Consulting (Sydney) and Allens Arthur Robinson (Melbourne), 20 September 2008. Available at http://www.nera.com/67_5438.htm

The Regulations explicitly included provisions that incorporated the first four of the objectives on that list. They:

1. Ensured the continuity of energy supply to all customers, by prescribing a means of transferring customers from insolvent retailers to recipient retailers;
2. Protected customer interests with regard to price and terms of supply, by requiring recipient retailers to supply gas on the terms and conditions set out in the transferred customer contract for at least 30 days;
3. Protected the interests of other market participants, by ensuring that customers had a responsible retailer, and therefore that their consumption volumes would be appropriately allocated (and not end up as UFG); and
4. Facilitated the provision of information, by requiring that the insolvent retailer provide information to the industry body, which in turn must pass it on to industry participants, in order to give effect to the transfer of customer contracts, and to recipient retailers, to allow them to bill their new customers accurately.

Further, the Regulations included a provision that addressed an identified barrier to the ability of recipient retailers being able to serve newly transferred customers. There was significant uncertainty regarding the availability of unassigned transmission capacity and the ability of retailers to secure additional capacity. Accordingly, the Regulations provided for transmission capacity to be transferred to the recipient retailers to allow them to supply the transferred customers.

Q5 Do you agree that the objectives addressed by the Regulations were appropriate?

Q6 Are there others that an insolvent retailer policy should address?

3.3 Possible options for an insolvent retailer policy

Retailer of last resort option

A number of overseas jurisdictions have arrangements that provide for a retailer (or retailers) of last resort. Such schemes vary in their precise arrangements, but the common features are:

- one or more retailers designated as the retailer of last resort (RoLR), i.e. in the event of a retailer failing, customers transfer to a RoLR;
- predefined tariffs;

- funding arrangements to defray the costs to the RoLR in supplying the insolvent retailer's customers (or simply in the processing requirements for absorbing that customer base in a hurry).

Typically, there is some level of ongoing cost associated with RoLR schemes even without an insolvency event, and this would need to be weighed against the likelihood of actually invoking such arrangements. One potential advantage of such a scheme is the certainty that it would bring to industry: having standing arrangements would make it clear to industry participants how an instance of retailer insolvency would be managed.

Urgent regulations option

In the E-Gas situation, it took approximately two weeks from a standing start to put regulations in place. Because of the urgency of the regulations, they came into force the day after they were made; the usual waiting time of 28 days following publication in the New Zealand Gazette was waived in this case.

The Regulations essentially put into place a RoLR scheme: they empowered Gas Industry Co to assign the customers of the insolvent retailer to other retailers, and they specified that the terms and conditions of supply by the recipient retailers were to be the same as under the insolvent retailer's contracts for at least 30 days. Additionally, the Regulations provided for transmission capacity to be transferred to the recipient retailers to allow them to supply the transferred customers. As noted above, this provision was included as there was significant uncertainty regarding the availability of unassigned transmission capacity and the ability of retailers to secure additional capacity.

All of this suggests that urgent regulations can be a feasible back-stop option, provided the government of the day is supportive. In addition, the form of such regulations can be tailored to the particular situation. A potential drawback of this option is the regulatory uncertainty that reliance on it would introduce to an insolvency situation.

Q7 Are there any other options that Gas Industry Co should consider?

3.4 Timing of development of any insolvent retailer regulations

Gas Industry Co notes that the Electricity Authority is also undertaking work related to retailer insolvency. Many of the gas retailers are also electricity retailers, so at first blush there would seem to be value in harmonising insolvent retailer requirements between the two markets. However, the breadth and depth of regulatory powers are quite different between the gas and electricity governance regimes. The table below summarises the differences:

Table 4 Insolvency provisions: differences between gas and electricity regimes

	Gas	Electricity
Market participants	Gas retailers (as per Section 43G(2)(d) of the Gas Act)	Retailers Generators
Event	Insolvency	Default: <ul style="list-style-type: none"> • Failing to provide security • Failing to meet settlement obligations • Having financial difficulty (unable to pay debts or is placed into receivership or liquidation)
Power	Governor-General may make Regulations to provide a system of transition arrangements for consumers, and to require industry participants to comply with that system, with the objective of protecting consumers or managing the liabilities of other gas retailers	Authority may suspend a generator's or purchaser's right to trade in the case of insolvency (section 49 of the Electricity Industry Act 2010) Electricity Industry Participation Code 2010 does not provide the Authority with any direct role in managing a default. The clearing manager has some remedies in terms of non-payment of settlement obligations Ability to make urgent Code amendments

In short, the Gas Act provides for regulations that would assist in transferring customers to other retailers, in the case of retailer insolvency. There is no equivalent provision in the electricity governance arrangements; rather, those provisions are primarily concerned with the integrity of the settlement process.

However, the Electricity Authority does have the ability to make urgent amendments to the Code. In the absence of a permanent policy on retailer insolvency, the Electricity Authority has stated¹⁰ that it would use this ability to manage a situation where there is a serious event of default by the retailer or an event of default is imminent. The Electricity Authority has published draft Code amendments that could be enacted in such a situation to provide it with the ability to require the insolvent retailer to transfer its customers, recipient retailers to accept the customers, and industry participants to provide the information necessary to effect the transfer. These provisions are similar to the ones in the Regulations for the transfer of gas customers.

¹⁰ "Guidelines for Managing Retailer Default Situations," Electricity Authority, 19 January 2011. Available at <http://www.ea.govt.nz/our-work/programmes/market/consumer-rights-policy/assuring-supply/>

In the longer term, the Electricity Authority intends to commence a work programme to develop a more permanent set of arrangements to manage retailer insolvency. The timing of that work and Gas Industry Co's work on retailer insolvency suggests that the two work programmes could proceed in parallel. Gas Industry Co would like to hear from industry participants on whether they think there is value in harmonising retailer insolvency arrangements between gas and electricity, taking into consideration the differences in the markets and the empowering provisions.

Q8 What are your views concerning alignment with the default arrangements being developed by the Electricity Authority? Are there opportunities for harmonisation that we have not identified?

Appendix 1: Cited provisions from the Gas Act 1992

43L Consultation before making recommendation for gas governance regulations

- (1) Before making a recommendation for any gas governance regulations, the recommending body must—
 - (a) undertake an assessment under section 43N; and
 - (b) consult with persons that the recommending body thinks are representative of the interests of persons likely to be substantially affected by the proposed regulations; and
 - (c) give those persons the opportunity to make submissions; and
 - (d) consider those submissions.
- (2) However, subsection (1) does not apply to the Minister if the Minister's recommendation—
 - (a) implements the effect of a recommendation of the industry body or the Commission; and
 - (b) does not differ from that recommendation in any material way (for example, other than in matters of drafting style or minor detail).
- (3) Before making a recommendation concerning regulations under section 43G(2)(a) to (h) or section 43H, the Minister must consult with the Minister of Consumer Affairs.
- (4) This section is subject to section 43P in the case of urgent regulations.
- (5) A regulation that is found by a court to be invalid solely because of a contravention of this section may not be declared to be invalid with effect earlier than 6 months after the date of the declaration.

43N Assessment of proposed gas governance regulations

- (1) Before making a recommendation to the Minister for a gas governance regulation, the industry body or the Commission must—
 - (a) seek to identify all reasonably practicable options for achieving the objective of the regulation; and
 - (b) assess those options by considering—
 - (i) the benefits and costs of each option; and
 - (ii) the extent to which the objective would be promoted or achieved by each option; and
 - (iii) any other matters that the industry body or the Commission considers relevant; and

- (c) ensure that the objective of the regulation is unlikely to be satisfactorily achieved by any reasonably practicable means other than the making of the regulation (for example, by education, information, or voluntary compliance) ; and
 - (d) prepare a statement of the proposal for the purpose of consultation under section 43L(1).
- (2) The statement of the proposal referred to in subsection (1)(d) must contain—
- (a) a detailed statement of the proposal; and
 - (b) a statement of the reasons for the proposal; and
 - (c) an assessment of the reasonably practicable options, including the proposal, identified under subsection (1); and
 - (d) other information that the industry body or the Commission considers relevant.
- (3) The industry body or the Commission is not required to comply with subsection (1) if it is satisfied that the effect of the recommendation is minor and will not adversely affect the interests of any person in a substantial way.

43P Urgent regulations

Sections 43L and 43N (which relate to consultation and assessments) do not apply if the recommending body considers that it is necessary or desirable in the public interest that the proposed regulations be made urgently and, in this case, the recommendation must state that it is made in reliance on this section and then, within 6 months of those regulations being made,—

- (a) the recommending body must—
 - (i) comply with sections 43L and 43N; and
 - (ii) make a recommendation to the Minister on whether the regulations should be revoked, replaced, or amended; and
 - (iii) no later than 10 working days after making the recommendation, publicise the recommendation and the assessment completed under section 43N; and
- (b) after receiving that recommendation, the Minister must publish a notice in the *Gazette* stating whether or not he or she decides to recommend the revocation, replacement, or amendment of the regulations and explaining the reasons for that decision, or stating where copies of that explanation may be obtained,— and then, within a further 6 months, the Minister must make that recommendation.

Appendix 2: Gas Governance (Insolvent Retailers) Regulations 2010

Anand Satyanand, Governor-General

Order in Council

At Wellington this 15th day of November 2010

Present:

His Excellency the Governor-General in Council

Pursuant to sections 43G and 43S of the Gas Act 1992, and in reliance on section 43P of that Act, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Energy and Resources, makes the following regulations.

Contents

- 1 Title
- 2 Commencement
- 3 Purpose
- 4 Interpretation
- System for transferring customer contracts*
- 5 Transfer by industry body of insolvent retailer's customer contracts
- 6 Notice to retailers of proposed transfer
- 7 Industry participants to co-operate with industry body
- 8 Process for transferring contracts
- 9 Transfer of contracts
- 10 What happens if liquidator disclaims customer contracts
- Effect of transfer on customers*
- 11 Recipient retailers to supply gas and give notice to transferred customers
- 12 Right of customer to switch without penalty
- 13 Transitional issues relating to customers
- 14 Switches sought before transfer time
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- 15 Meter reading information to be provided by insolvent retailer
- 16 Consumption information to be provided by insolvent retailer
- Transmission capacity*
- 17 Transmission capacity of insolvent retailer

Enforcement

18 Enforcement of regulations

Revocation of regulations

19 Regulations revoked

Regulations

1 Title

These regulations are the Gas Governance (Insolvent Retailers) Regulations 2010.

2 Commencement

These regulations come into force on the day after the date on which they are made.

3 Purpose

The purpose of these regulations is to provide a system of transition arrangements for consumers (involving the transfer of the customer contracts of insolvent gas retailers to other gas retailers) in order to provide protection for customers and to provide certainty and reduce risk for industry participants.

4 Interpretation

(1) In these regulations, unless the context otherwise requires,—

Act means the Gas Act 1992

customer contract means a contract between a retailer and a customer for the supply of gas

industry body means the body approved by Order in Council under section 43ZL of the Act

insolvent retailer means a retailer for which a liquidator has been appointed

notification date means the date on which the notice referred to in regulation 6(1)(a) is given

recipient retailers means those retailers to whom an insolvent retailer's customer contracts are or will be transferred, as determined under regulation 8(2)

retailer means a gas retailer

switching rules means the Gas (Switching Arrangements) Rules 2008 made under section 43Q of the Act

transfer time means the date and time, as determined by the industry body, at which an insolvent retailer's customer contracts are transferred or deemed to be transferred to recipient retailers (but subject to regulation 10(1)(b))

transition period means a period starting at the transfer time and continuing for a period specified by the retailer of at least 30 days from the date on which the retailer gives the notice to customers required by regulation 11(1)(b).

- (2) A term that is used but not defined in these regulations, but that is defined in the Act, has the meaning given in the Act.
- (3) A term that is used but not defined in these regulations or the Act, but that is defined in the switching rules, has the meaning given in those rules.

System for transferring customer contracts

5 Transfer by industry body of insolvent retailer's customer contracts

- (1) The industry body may transfer, in accordance with these regulations, any customer contract of an insolvent retailer to any other retailer.
- (2) The industry body may exercise the power in subclause (1) only if the industry body is satisfied on reasonable grounds—
 - (a) that, if the customer contracts are not transferred to other retailers, there is a real risk that gas supplied to those customers will not be supplied under a valid contract with any retailer; and
 - (b) that the liquidator of the insolvent retailer has made reasonable efforts to sell or otherwise dispose of the customer contracts.

6 Notice to retailers of proposed transfer

- (1) If the industry body proposes to exercise the power in regulation 5 to transfer an insolvent retailer's customer contracts, it must first—
 - (a) notify the insolvent retailer and all other retailers of the proposal and the proposed transfer time; and
 - (b) specify to the insolvent retailer—
 - (i) the information it requires in order to effect the transfer in accordance with these regulations, which must include details of each of its customer contracts; and
 - (ii) the time within which that information must be provided; and
 - (iii) any requirements concerning the form in which the information must be provided (which must be reasonable in the circumstances); and
 - (iv) any requirements concerning the quality of the information supplied (such as a requirement that the information is based on the best available data, or that it complies with industry best practice).
- (2) The insolvent retailer must—
 - (a) provide the industry body with all the information required by the industry body, within the time and in accordance with any requirements relating to the information; and
 - (b) co-operate as required with the industry body in order to ensure that the industry body can effect the transfer of customer contracts at the proposed transfer time.

- (3) Any retailer (other than a retailer described in regulation 8(2)(a)) that wishes to be a recipient retailer must notify the industry body of that fact by the time specified by the industry body, which must be at least 1 full working day after the notification date.

7 Industry participants to co-operate with industry body

After the notification date, every industry participant must co-operate with the industry body in order to ensure that the industry body can deal with the customer contracts of the insolvent retailer in accordance with these regulations, including by providing any information, specified by the industry body, that the industry body requires for that purpose.

8 Process for transferring contracts

- (1) The industry body must classify the insolvent retailer's customers into load groups or subcategories, aggregated by transmission pipeline (as those terms are defined by the industry body and set out in the methodology published under subclause (5)), as at the day after the notification date.
- (2) The industry body must identify the recipient retailers, who must be—
 - (a) each retailer that, on the day after the notification date, has more than 10% of the total number of ICPs for which the registry shows the status "active-contracted"; and
 - (b) any other retailer that has notified the industry body, within the time specified by the industry body under regulation 6(3), that it wishes to be a recipient retailer.
- (3) The methodology that the industry body uses to determine which customer contracts are transferred to which recipient retailers must be a system of allocation based on—
 - (a) the customer's classification as determined under subclause (1); and
 - (b) a pro rata allocation to recipient retailers that reflects the retailer's relative market share (within the pool of recipient retailers) of each classification category, as at the day after the notification date, of ICPs for which the registry shows that the status is "active-contracted".
- (4) Within each classification category, the allocation of customer contracts to recipient retailers must be random.
- (5) At least 48 hours before the proposed transfer time, the industry body must—
 - (a) publish on its Internet site a description of the methodology used to allocate customer contracts to recipient retailers; and
 - (b) notify each recipient retailer of the number of customer contracts within each classification category that, as a result of applying that methodology, it proposes to transfer to the recipient retailer.

9 Transfer of contracts

- (1) By operation of this regulation, at the transfer time each customer contract of the insolvent retailer is transferred to the recipient retailer allocated by the industry body to receive that customer contract.
- (2) Subclause (1) overrides anything to the contrary in the customer contract.

- (3) The registry operator must update the data in the registry to reflect each transfer to a recipient retailer, despite anything to the contrary in the switching rules.
- (4) The industry body must pass on whatever information it has received from the insolvent retailer to whichever other industry participants require that information for the purpose of giving effect to the transfer of customer contracts in accordance with these regulations.
- (5) After the transfer time, the customer contract applies, subject to these regulations, as if it were a contract freely entered into between the customer and the recipient retailer, until the earlier of—
 - (a) the end of the transition period; or
 - (b) the date on which the customer cancels the contract or switches to another retailer.

10 What happens if liquidator disclaims customer contracts

- (1) If the liquidator of an insolvent retailer disclaims a customer contract as a result of exercising a power under section 269 of the Companies Act 1993, and the industry body gives a notice referred to in regulation 6,—
 - (a) the contract, for the purpose of its transfer to a recipient retailer in accordance with these regulations, is deemed not to have been disclaimed; but
 - (b) the transfer time for that contract is deemed to be the close of the date on which it was disclaimed, despite regulation 9(1).
- (2) Subclause (1) applies to a contract that is disclaimed either before or after these regulations come into force.

Effect of transfer on customers

11 Recipient retailers to supply gas and give notice to transferred customers

- (1) A recipient retailer to whom a customer contract is transferred must—
 - (a) supply gas to the transferred customer, on the terms and conditions set out in the transferred customer contract, during the transition period; and
 - (b) give written notice to the customer of the matters set out in subclause (2) as soon as practicable after the transfer time.
- (2) The notice to the transferred customer must set out the following information:
 - (a) that the customer's contract with the insolvent retailer has been transferred to the recipient retailer; and
 - (b) the transfer time, and the date when the transition period ends; and
 - (c) that the recipient retailer will continue to supply gas to the customer on the terms and conditions set out in the transferred customer contract during the transition period; and

- (d) that the customer may at any time during the transition period cancel the contract or switch to an alternative retailer and that, if the customer does so during the transition period, no fee or penalty will be imposed in respect of the cancellation or switch; and
 - (e) that if the customer does not switch or cancel, at the end of the transition period the existing contract will be deemed to be replaced by a contract between the customer and the recipient retailer.
- (3) The notice must also include—
- (a) a copy of the replacement contract between the customer and the recipient retailer that will apply if the customer does not switch or cancel; and
 - (b) a list, supplied by the industry body, of alternative retailers, along with contact details for those retailers.

12 Right of customer to switch without penalty

If, during the transition period, a transferred customer cancels the transferred contract or switches to an alternative retailer, the recipient retailer must not charge the customer any fee or penalty relating to the cancellation or switch.

13 Transitional issues relating to customers

- (1) After the transfer time, any dispute that a former customer of the insolvent retailer has or had with the insolvent retailer must be dealt with between the customer and the insolvent retailer under the contract that the customer had with the insolvent retailer.
- (2) During the transition period, a recipient retailer need not continue or commence any review processes that are required or authorised under customer contracts transferred to it.

14 Switches sought before transfer time

- (1) After the notification date, no switch request to or from the insolvent retailer may be entered on the registry by any retailer, including the insolvent retailer.
- (2) Subclause (3) applies if, before the close of the notification date,—
 - (a) a customer of the insolvent retailer has sought a switch; and
 - (b) the switch has been entered on the registry; but (c) the switch has not been completed.
- (3) If subclause (2) applies, the customer's contract must not be transferred to a recipient retailer under regulation 9, but instead—
 - (a) the industry body must take whatever steps are necessary to ensure that the customer is moved, as soon as practicable, to the customer's chosen retailer, and may determine the date on which the move is deemed to take effect; and
 - (b) to the extent that it is necessary or desirable, in order to ensure that the customer is moved as soon as practicable to the customer's chosen retailer, the industry body and every industry participant may modify, or need not apply, the switching rules.

- (4) If, before the close of the notification date, a customer has sought a switch to the insolvent retailer and that switch has been entered on the registry but has not been completed, the switch must be cancelled by the registry operator.

Information to be provided after transfer time

15 Meter reading information to be provided by insolvent retailer

(1) As soon as practicable after the transfer time, the insolvent retailer must provide to the industry body a meter reading history covering the last 12 billing cycles for each transferred customer.

(2) The industry body must pass on the information it receives under subclause (1) to the relevant recipient retailer of each customer contract as soon as practicable, and must not retain copies of the information.

16 Consumption information to be provided by insolvent retailer

(1) As soon as practicable after the transfer time, the insolvent retailer must provide to the allocation agent—

(a) consumption information, in accordance with rules 29 to 40 of the Gas (Downstream Reconciliation) Rules 2008, for the consumption periods and ICPs for which the insolvent retailer was the responsible retailer, for the allocation stages for which it has not yet provided the required data; and

(b) billing information, in accordance with rule 52 of those rules, for the invoice months for which it has not yet provided the required data.

(2) The information must be produced from the insolvent retailer's system as at the transfer time (or as near as practicable to it).

(3) Any term used but not defined in this regulation, but that is defined in the Gas (Downstream Reconciliation) Rules 2008, has the meaning set out in those rules.

Transmission capacity

17 Transmission capacity of insolvent retailer

(1) A recipient retailer may require Vector to allocate to it some proportion of the transmission capacity held by an insolvent retailer as at the notification date, or, if the transmission services agreement is terminated or disclaimed before the notification date, the date of termination or disclaimer.

(2) The transmission capacity must be apportioned by the gas volumes sold under the insolvent retailer's contracts, and each recipient retailer is entitled to the proportion of transmission capacity calculated by the following formula:

—

where—

t is the total transmission capacity held by the insolvent retailer as at the date referred to in subclause (1)

r is gas volumes sold over the past 12 billing cycles under customer contracts transferred to the recipient retailer

Σr_n is the sum of gas volumes sold over the past 12 billing cycles under customer contracts transferred to all (n) recipient retailers that request transmission capacity within 14 days after the transfer time.

- (3) Vector must comply with a request by a recipient retailer under this regulation within 30 days after the transfer time.
- (4) Vector must provide every assistance to allocate the transmission capacity to recipient retailers and must provide the industry body with a schedule of transmission capacity held by the insolvent retailer as at the date referred to in subclause (1).
- (5) Any allocation of transmission capacity is deemed to have occurred at the transfer time.
- (6) Any transmission capacity allocated to a recipient retailer must be supplied on the same terms that apply to the transmission capacity already being supplied to the recipient retailer.
- (7) In this regulation, Vector means Vector Gas Limited or any successor or assignee of Vector Gas Limited.

Enforcement

18 Enforcement of regulations

These regulations are enforceable under the Gas Governance (Compliance) Regulations 2008 as if they were listed in the definition of rules in regulation 4(1) of those regulations.

Revocation of regulations

19 Regulations revoked

These regulations are revoked on the date that is 6 months after the date on which they come into force.

Michael Webster,
for Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on the day after the date on which they are made, are urgent regulations made to address potential difficulties for gas consumers and gas retailers arising from the liquidation of the gas retailers in the E-Gas group of companies (**E-Gas**). The regulations are revoked 6 months after they come into force.

If the liquidator of an insolvent retailer, such as E-Gas, were to disclaim the retailer's contracts with its customers, gas would be supplied to those customers otherwise than under a valid contract. This would result in expense to, and disputes among, other gas industry participants, and could lead to customers being disconnected from a supply of gas.

In order to avoid these outcomes, these regulations provide for the industry body (currently the Gas Industry Company Limited) to transfer the customer contracts of an insolvent retailer to other retailers. The new retailers must continue to supply gas under the transferred contracts for a transition period of a minimum of 30 days. The transferred customers may switch to another retailer, without any fee or penalty, during the transition period, and otherwise will roll over into a contract with the new retailer at the end of that period.

The regulations also—

- set out the procedures and methods by which the industry body must allocate customer contracts to other retailers, which involves a random allocation of customer contracts within customer load groups or subcategories, apportioned by retailers' relative market shares; and
- provide for the transmission capacity of the insolvent retailer to be provided to any retailer that requires extra capacity in order to supply its new customers; and
- require the insolvent retailer to provide certain information to the industry body for consumer billing purposes and consumption reconciliation purposes; and
- provide for various transitional matters associated with the transfer of customer contracts, including where customers are part-way through the process of switching to an alternative retailer.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 16 November 2010.

These regulations are administered by the Ministry of Economic Development.

Appendix 3: Consultation template – Gas Governance (Insolvent Retailers) Regulations 2010—Statement of Proposal

Submission prepared by:..... (company name and contact)

QUESTION	COMMENT
Q1: Do you agree that the Regulations should be revoked under regulation 19? If not, what suggestions do you have for overcoming the shortcomings outlined above?	
Q2: Do you have any comments on the provisions of the Regulations themselves?	
Q3: In your view, is some form of regulatory intervention required to deal with cases of retailer insolvency?	
Q4: Are there other factors to consider that have not been mentioned?	
Q5: Do you agree that the objectives addressed by the Regulations were appropriate?	

QUESTION	COMMENT
Q6: Are there others that an insolvent retailer policy should address?	
Q7: Are there any other options that Gas Industry Co should consider?	
Q8: What are your views concerning alignment with the default arrangements being developed by the Electricity Authority? Are there opportunities for harmonisation that we have not identified?	