



Summary of Submissions: Statement of Proposal - Retail Gas Contracts Oversight Scheme Review

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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'.

Contents

1	Introduction	6
1.1	Background	6
<hr/>		
2	Summary of submissions received	8
2.1	Summary	8
<hr/>		
3	Conclusion	10
	Appendix A	11

1

Introduction

1.1 Background

Gas Industry Company Limited (Gas Industry Co) is the co-regulator of the gas industry in New Zealand. As the 'industry body' approved under the Gas Act 1992, it has the power to make recommendations for regulations, rules, or other governance arrangements to ensure that gas is delivered to existing and new consumers safely, efficiently and reliably. In doing so, Gas Industry Co seeks to achieve the principal objective of Part 4A of the Gas Act 1992, which is that gas is delivered safely, efficiently, and reliably to existing and new consumers.

One clear representation of the delivery of gas to a consumer is their gas supply arrangement with a gas retailer. A key measure of standard form agreements is how clearly the contract sets out the rights and obligations of each party.

The Minister of Energy and Resources has endorsed, and Gas Industry Co has implemented, a Retail Gas Contracts Oversight Scheme (the Scheme), under which an Independent Assessor reviews each standard published consumer gas retail contract against a set of principle-based Benchmarks (Benchmarks). The Scheme was initiated in 2010, with a two year transition period (comprising baseline and interim assessments). The results of the first full assessment (being actually the third assessment undertaken) were published in October 2012.

To date, retailers have taken significant steps to improve the alignment of their retail contracts with the Benchmarks. There has also been commendable industry involvement in the voluntary Scheme. The overall average alignment of all standard published retail gas contracts (for both residential and small commercial consumers) has improved from moderate alignment in 2010 and 2011, to substantial alignment in 2012.

In recommending the Scheme, Gas Industry Co suggested that a review should occur following the two interim and first full assessments. On the understanding that few amendments (if any) to retail contracts are likely to occur in the near future, and with the greatly improved industry alignment to the Benchmarks, Gas Industry Co advised the Minister that 2013 would be an appropriate time to suspend assessments of the Scheme and conduct this review.

On 13 June 2013 Gas Industry Co issued a paper setting out a number of options for the future of the Scheme. After receiving and analysing submissions, and undertaking considerable work redesigning

the Scheme, on 6 January 2014, Gas Industry Co issued a Statement of Proposal summarising why Gas Industry Co believed that the original reasons for implementing the Scheme were still valid, and outlining suggested changes to the Scheme.

In summary, Gas Industry Co supported the continuation of an oversight scheme broadly similar to the current Scheme, with some key changes to the assessment process. Gas Industry Co proposed that the Scheme should have the following key aspects:

- The Scheme should be voluntary, industry led, and non-regulated;
- Gas Industry Co would be responsible for the on-going development of a clear statement of matters that should be included in a retail gas contract (Reasonable Customer Expectations and Benchmarks);
- Published standard gas contracts for reticulated natural gas (including contracts for domestic consumers and small business consumers) would be independently assessed against the Benchmarks;
- Assessments would occur as appropriate, with a full assessment taking place at least every 3 years;
- Gas Industry Co would maintain a watching brief on consumer issues and would consider whether additional arrangements are required to achieve the purpose of the Scheme; and
- Gas Industry Co would report to MBIE and the Minister on progress against the Scheme, including performing a review of the Scheme after each 3 yearly assessment, and confirming whether the Scheme remains fit for purpose (and the supported means of achieving the purpose).

A total of five submissions were received on the Proposal from:

- Contact Energy Limited (Contact);
- Genesis Energy Limited (Genesis);
- Mighty River Power Limited (MRP);
- Trust Power; and
- Vector Limited (Vector).

The purpose of this document is to summarise the submissions received, and to respond to the issues they raise.

2

Summary of submissions received

2.1 Summary

The Statement of Proposal asked a number of questions. Those questions, and the answers provided to them by Submitters, are outlined below, with detailed comments from Submitters, and Gas Industry Co's responses being summarised in Appendix A:

1. *Do you agree with the proposed purposes of the Oversight Scheme?*

All Submitters agreed with the proposed purposes of the Oversight Scheme.

2. *Do you agree with the Scope of the Scheme?*

All Submitters agreed with the Scope of the Scheme.

3. *Do you support the proposed RCEs?*

Four of the five Submitters supported the proposed Reasonable Consumer Expectations (RCEs), with Genesis suggesting a minor amendment to RCE-13. Further detail of this is provided in Appendix A.

4. *Do you support the proposed arrangement of outcome based Benchmarks and Interpretations sitting under the RCEs? Or would you prefer Principles and Minimum Terms? Why?*

Each of the five Submitters supported the proposed arrangement of outcome based Benchmarks and Interpretations sitting under the RCEs, rather than Principles and Minimum Terms

5. *Do you agree that there should be scope for Gas Industry Co and Industry to amend the Benchmarks under the Scheme and provided the Benchmarks support the RCEs?*

There was consensus by all Submitters that there should be scope for Gas Industry Co and Industry to amend the Benchmarks under the Scheme, provided the Benchmarks support the RCEs.

6. *Do you have any comments on the proposed amendments to the Benchmarks and Interpretations?*

Trust Power was the only Submitter to specifically comment on the proposed amendments to the Benchmarks and Interpretations. These comments are detailed in Appendix A.

7. *Do you have any comment on the proposed amendments to the scheme operation?*

A number of Submitters provided comments on the proposed amendments to the scheme operation. These comments are generally supportive of the proposed amendments, and are summarised in Appendix A.

3

Conclusion

Next steps:

- Gas Industry Co is currently progressing delivery of its advice to the Minister. It is planned for this advice to be made by the end of April 2014.
- Gas Industry Co has considered submissions on the proposed amendments to the Benchmarks and Interpretations, and given that these are only minor in nature, considers that the Industry is supportive of the proposed changes. As such, Gas Industry Co does not intend to further consult on these changes.

This timeline remains consistent with the expectation set out in the FY2014-16 Statement of Intent that Gas Industry Co will complete the review and make a recommendation to the Minister prior to the next scheduled assessment date of 1 July 2014.

Appendix A

Summary of submissions and Gas Industry Co Comments

Q1: Do you agree with the proposed purposes of the Oversight Scheme?		
Submitter	Response	Gas Industry Co comment
Contact Energy Limited	Yes	
Genesis	Yes	
Trustpower	1.1 Yes, Trustpower agrees with the proposed purpose of the Oversight Scheme. 1.2 We agree 'fair' should be used in place of 'balance' for consistency. 1.3 We agree specific reference to supporting an effective complaints scheme is no longer required. 1.4 We agree the purpose statement should also support future market structures.	
Mighty River Power	Yes	
Vector	Vector has no objection to the proposed purpose of the Scheme. We particularly note that one of the Scheme's purpose is to "[r]eflect and respond to current and future market structures". We believe this would ensure that contracting innovation is not stifled, enabling retailers to provide more competitive services to consumers.	

Q2: Do you agree with the Scope of the Scheme?		
Submitter	Response	Gas Industry Co comment
Contact Energy Limited	<p>Contacts agrees:</p> <ul style="list-style-type: none"> - that the scheme should not cover LPG contracts; - that the scheme should only apply to gas supply arrangements under standard published contracts. Contact recommends that gas supply agreements contracted on the new gas markets should be exempted from the requirements of Scheme. 	<p>Gas Industry Co notes these comments, and agrees that the Scheme at present should only relate to retail contracts.</p> <p>Noted.</p>
Genesis	<p>Yes</p> <p>We encourage the GIC to maintain a watching brief over the LPG retail market, as we consider that this market will continue to evolve over the next few years.</p>	
Trustpower	<p>2.1 Yes, Trustpower agrees with the Scope of the Scheme.</p> <p>2.2 We agree it should apply to all published standard-form gas supply arrangements, whether for the supply of domestic or small business consumers.</p> <p>2.3 We agree the Scheme will not cover LPG contracts, including contracts for LPG supplied over reticulated LPG networks, on the basis that there is nothing to prevent LPG retailers voluntarily aligning with the Scheme.</p> <p>2.4 We agree the Benchmarks and proposed RCEs of the Scheme will apply to contracts with special or promotional terms, where relevant. We also note and agree it is not necessary for special terms to be formally assessed by the Scheme.</p>	

	2.5 We agree the assessment of the Scheme will be limited to standard form published arrangements.	
Mighty River Power Limited	Yes	
Vector	<p>Vector agrees with the GIC’s proposal not to extend the Scheme’s coverage to LPG contracts, including contracts for LPG supplied over reticulated networks. We agree with the GIC’s assessment that a “the vast majority of LPG retailers are covered by the Scheme and typically these retailers want a degree of consistency between their electricity, gas and LPG terms”.</p> <p>We agree that the Scheme need not expressly state a 10TJ limit, given that the ‘effective limit’ of the Scheme is much lower than this level. The experience of our retail business, OnGas, is consistent with the GIC’s observation that many consumers approaching the 10TJ threshold are not on standard contracts (i.e. they are on negotiated contracts) and are therefore not covered by the Scheme.</p> <p>Consistent with the GIC’s view, we do not consider it necessary for special terms to be formally assessed under the Scheme. The GIC considers that the assessor “can comment on special terms which it considers would be of interest to the GIC given the purpose of the Scheme”. We suggest that the final SoP make it clearer that the purpose of those comments is to provide the relevant retailer guidance on how it could further align its standard contracts with the retail contract benchmarks developed by the GIC (“the Benchmarks”). And that they are in no way binding on that retailer.</p> <p>We further agree that the Scheme should not cover “limited time offers”. As the GIC indicated, by the time the assessment results are published, these offers would no longer be available. This would make their inclusion in the Scheme impractical and costly without any overriding benefits to consumers.</p>	Noted.

Q3: Do you support the proposed RCEs?		
Submitter	Response	Gas Industry Co comment
Contact Energy Limited	Yes	
Genesis	<p>We support all of the proposed Reasonable Consumer Expectations (RCEs) except for RCE 13: "The delivered price for gas supply is fair and reasonable, and is reflective of the cost of supply".</p> <p>The delivered price for gas is determined by the market. We agree that overtime and across consumers, the gas price will be reflective of the cost of supply. However, at any one point of time, the gas price may be above or below the cost of supply for a range of customers. It is misleading to suggest it will always be reflective.</p> <p>Secondly, to meet this expectation, gas retailers would need to constantly update the retail gas price to take into account the current market dynamics. This would introduce unnecessary cost and volatility into gas pricing.</p> <p>We therefore recommend that RCE 13 be amended as follows:</p> <p>"The delivered price for gas supply is fair and reasonable." and is reflective of the cost of supply"</p>	Gas Industry Co agrees with the recommended change to RCE-13.
Trustpower	3.1 Yes, Trustpower supports the proposed RCEs.	

	3.2 We believe that alignment of RCEs (those matters which a consumer should expect to see in a contract) by the GIC to those set by the Electricity Authority sets a consistent framework for multi-product offerings.	Noted.
Mighty River Power Limited	Yes, however it is important to be clear RCE's 1-3 can only be met by the industry as a whole.	
Vector	Vector has no objection to the proposed high-level Reasonable Consumer Expectations ("RCEs") which are based on the Electricity Authority's RCEs and are intended to sit above the Benchmarks. We continue to encourage the GIC to align the Scheme, as well as its other initiatives, with those of the Authority and other regulators to ensure regulatory consistency and avoid unnecessary implementation and compliance costs.	

Q4: Do you support the proposed arrangement of outcome based Benchmarks and Interpretations sitting under the RCEs? Or would you prefer Principles and Minimum Terms? Why?

Submitter	Response	Gas Industry Co comment
Contact Energy Limited	Yes, Contact supports the proposed arrangement of outcome based Benchmarks and Interpretations sitting under the RCEs.	
Genesis	We support the use of outcome-based Benchmarks and Interpretations sitting under the RCEs. This approach enables retailers to best meet customer expectations in varying and innovative ways.	
Trustpower	<p>4.1 Yes, Trustpower supports the proposed arrangement of outcome based Benchmarks and Interpretations sitting under the RCEs.</p> <p>4.2 We agree with the GIC that alignment should occur to the extent reasonably practicable.</p> <p>4.3 We agree the differences between the industries mean full alignment is not practicable.</p> <p>4.4 We agree this is an approach that enables the GIC to improve alignment with the Electricity Authority's regime and also continue to support and monitor a separate gas Scheme.</p>	
Mighty River Power Limited	We support the proposed arrangement of outcome based Benchmarks and Interpretations sitting below a set of Reasonable Customer Expectations.	
Vector	We prefer the adoption of RCEs rather than the alternative of setting more prescriptive minimum terms. Adopting RCEs is more consistent with the voluntary nature of the Scheme.	

Q5: Do you agree that there should be scope for Gas Industry Co and industry to amend the Benchmarks under the Scheme and provided the Benchmarks support the RCEs?

Submitter	Response	Gas Industry Co comment
Contact Energy Limited	Yes	
Genesis	We are comfortable with the GIC having scope to amend the Benchmarks under the Scheme, as long as adequate consultation is undertaken and any changes are well-signalled to retailers.	
Trustpower	<p>5.1 Yes, Trustpower agrees that there should be scope for GIC and industry to amend the Benchmarks under the Scheme and provided the Benchmarks support the RCEs.</p> <p>5.2 We recognise the need for amendments to be responsive to relevant and material market changes.</p> <p>5.3 We agree consultation with industry should be required.</p> <p>5.4 A reasonable transitional period should be agreed with industry, so that consistent application of material changes is enabled across industry.</p> <p>5.5 Thorough and transparent consideration is demonstrated to include both the benefits and compliance costs of any proposed amendments in light of the purpose of the Scheme.</p>	
Mighty River Power	Yes	
Vector	We have no issues with the Benchmarks being amended in the future to align more closely with the proposed RCEs, but any future amendments should be subject to stakeholder consultation(s).	

Q6: Do you have any comments on the proposed amendments to the Benchmarks and Interpretations?		
Submitter	Response	Gas Industry Co comment
Contact Energy Limited	No	
Genesis	No	<p>Benchmark 5.2 has been discussed numerous times in the past – during forums, policy development, and assessments. The rationale for not allowing public notices has not changed. Gas Industry Co will separately provide background information in relation to Benchmark 5.2 to Trustpower (as a new entrant).</p> <p>Gas Industry Co notes this comment and will review the interpretation and explanation of Benchmark 9.1 to see if stronger guidance can be provided.</p>
Mighty River Power	No	
Trustpower	<p>6.1 Our comments are as follows:</p> <p>a) Benchmark 5.2 - Contract variation procedures should allow the option of a public notice; and</p> <p>b) Benchmark 9.1 - It would be beneficial to define what is a reasonable period to recover undercharges.</p>	
Vector		

Q7: Do you have any comment on the proposed amendments to the scheme operation?		
Submitter	Response	Gas Industry Co comment
Contact Energy Limited	<p>Contact supports the GIC's proposal to increase flexibility in the current assessment and monitoring regimes subject to the following comments:</p> <ul style="list-style-type: none"> - Contact supports the GIC seeking confirmation every year from retailers as to whether they have amended their standard published gas contracts. Contact recommends the certification should be sought from management and not the Board. Management certification will ensure that those with responsibility for the issue consider it and give the confirmation. Requiring the Board to give this confirmation would be overly burdensome and in our view unnecessary. - Contact has submitted previously that the frequency of assessments should be driven by change and not by arbitrary dates. Whilst we appreciate the move to a 3 yearly full assessment/scheme review this could equally be 5 years, another arbitrary period. We encourage the GIC to adopt assessments only on an 'as required' or 'ad hoc' basis as described on page 34 of the consultation document and remove the requirement for a hard wired review. 	<p>GIC agrees with this recommendation.</p> <p>GIC intends to proceed with 3 yearly full assessments.</p>
Genesis	No	
Trustpower	<p>7.1 Our comments are as follows:</p> <ul style="list-style-type: none"> a) We believe proposed amendments are practical and consistent with the principle of optimal alignment between industries to support a consistent framework for multiproduct offerings. 	
Mighty River Power	We agree with the proposed changes to operation of the scheme.	

<p>Vector</p>	<p>Vector agrees that the current assessment process should not be 'hard wired' into the Scheme. This would provide the GIC and industry participants the flexibility to adjust to future regulatory and market developments in a timely manner. It would remove the need to make major amendments to the Scheme, which could involve lengthy consultations, unnecessarily. However, it is our expectation that the GIC will not change its interpretation of any of the RCEs in the future without stakeholder consultation(s), i.e. we expect clarity and certainty in relation to any RCE amendments.</p> <p>We agree that a full independent assessment does not have to be undertaken annually. All contracts under the Scheme have now been assessed to be in "substantial alignment" with the Benchmarks, following three annual assessments. And as indicated in the SoP, substantive amendments to retail contracts are unlikely to occur in the next few years. Any future annual assessments would therefore not deliver significant benefits to consumers.</p> <p>A full assessment every three years (instead of annually), with the GIC conducting a review after each full assessment, is appropriate. This approach is consistent with the non-regulated nature of the Scheme.</p> <p>We have no issues with the GIC undertaking assessments in between full assessments on an 'as required' basis, for example, to take into account major changes in legislative and market settings. Again, these should be subject to stakeholder consultation(s).</p>	
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