

Retail Gas Contracts: Review of the Oversight Scheme - Summary of Submissions

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About Gas Industry Co.

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

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

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

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

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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 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.

A total of three submissions have been received on the proposed options¹ from:

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

The purpose of this document is to summarise the submissions received; to respond to the issues they raise; and to highlight next steps.

In summary:

- there appears to be general consensus from Submitters that the Scheme should be revised;
- Gas Industry Co will now commence detailed design work in relation to the new Scheme;
- given the low number of submissions, it may be useful to call a workshop for retailers to consider elements of the design process;
- with detailed work needed to re-design the Scheme, we are aiming to release the Statement of Proposal for consultation by the end of November. We hope to complete this review and provide a recommendation to the Minister by February 2014.

¹ Submissions are available on the Gas Industry Co website at <http://gasindustry.co.nz/work-programme/background/retail-gas-contracts-review-oversight-scheme>

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Summary of submissions received

2.1 Summary

Stakeholders were asked if the Scheme should be kept as-is (status quo), kept with some modifications, or replaced with some form of regulatory arrangement. Overall, Submitters agreed with continuing the Scheme with some modifications. Submitters provided specific comments on the following questions relating to the design of a modified Scheme:

- *Should the Scheme only apply to domestic contracts?*

Submitters were of the view that the Scheme should only apply to residential (domestic) consumers. Gas Industry Co does consider there to be value in continuing to review standard form commercial contracts as well, as some of these consumers may not have the capacity to effectively negotiate with large gas retailers.

- *Should the Scheme cover special terms?*

Contact and Vector recommended, and Gas Industry Co agrees, that the assessment of special terms should be excluded from the Scheme. It is assumed that a special term has been negotiated with the consumer, which indicates that the consumer is aware of and understands the gas supply arrangement they are entering into.

- *Should the Scheme be extended to retail LPG supply contracts?*

Submitters were of the view that the Scheme should not be extended to LPG customer contracts. Gas Industry Co will take into consideration the views of Submitters in determining whether the Scheme should be extended in this way. We note that the leading LPG retailers are also natural gas retailers; thus, it is expected that these retailers would be developing LPG supply arrangements that are similarly as robust in their alignment with the Benchmarks as their natural gas supply arrangements.

- *Should the frequency of assessments be changed?*

- *Should the time period between assessments be increased?*

Submitters agreed that the time period between assessments should be changed to an 'as required' basis. Gas Industry Co agrees with this principle and will carry out further work to determine what factors should trigger assessments and at what frequency.

- *Should agreements only be assessed when they are updated?*

Submitters agreed that agreements should be assessed when they are updated. Gas Industry Co agrees with this, but (as noted above) will carry out further work to determine what other factors should trigger assessments.

- *Reassessment if Benchmarks significantly revised?*

Submitters agreed that reassessment should be necessary where Benchmarks are significantly revised. Gas Industry Co agrees with this.

- *Should retailers be able to request additional reviews?*

Submitters agreed that retailers should be able to request additional reviews, with Contact and Vector noting that where this is the case, the retailer in question should bear the cost of the additional review. Gas Industry Co agrees with Submitters.

- *Should assessment focus on alignment of key benchmarks (with a watching brief on others)?*

Responses from Submitters support further work to align assessments with common standards/benchmarks with the Electricity Authority (EA). Gas Industry Co will co-ordinate with the EA to see how this can best be achieved.

Detailed comments from submitters, and Gas Industry Co's responses, are summarised in Appendix A.

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Conclusion

Overall, there appears to be general consensus for changing the Scheme. Gas Industry Co will now commence detailed design work in relation to the new Scheme. Some of this work may require discussions with the Electricity Authority regarding closer alignment of the assessment schemes for both sectors. As well, given the low number of submissions, it may be useful to call a workshop for retailers and other stakeholders to consider elements of the design process.

With detailed work needed to re-design the Scheme, we are aiming to release the Statement of Proposal for consultation by the end of November. We hope to complete this review and provide a recommendation to the Minister by February 2014.

As well, some elements of the re-design depend on the final form of the Government's consumer law reforms, currently progressing through the House. This Bill is still under consideration, but the expected changes are now clearer and can be incorporated into our reconsideration of the Scheme Benchmarks.

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

RETAIL GAS CONTRACTS: REVIEW OF THE OVERSIGHT SCHEME - ANALYSIS OF SUBMISSIONS RECEIVED					
Question		Vector Limited	Mighty River Power	Contact Energy	Gas Industry Company ('GIC') response
1.	Should the Scheme only apply to domestic contracts?	<ul style="list-style-type: none"> • Vector recommends that only domestic contracts should be covered by the Scheme. This would ensure the Scheme is focused on protecting the smallest, least confident consumers, who have very limited ability to negotiate with their retailer. • Imposing more prescriptive terms on commercial consumers below the 10TJ threshold would inhibit contracting innovation, which requires flexibility in reaching mutually acceptable terms that do not necessarily conform to the Benchmarks. • Small consumers (including commercial consumers) have 		<ul style="list-style-type: none"> • Yes. Commercial contracts should be exempt as they will be subject to a separate process as part of the negotiation of commercial contract terms between the retailer and buyer. 	<ul style="list-style-type: none"> • The Scheme has always excluded bespoke agreements, and only assesses standard, published contracts. • The 10TJ threshold was established to align the Scheme with the GPS which refers to 'small consumers'. The Gas Act 1992 ('The Act') defines a 'small consumer' as one who is supplied with less than 10TJ of gas per year. • The Scheme was designed to apply to small consumers, which can include some small commercial customers on

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Question	Vector Limited	Mighty River Power	Contact Energy	Gas Industry Company ('GIC') response
	<p>recourse to the Electricity and Gas Complaints Commissioner ('EGCC') Scheme, which provides free dispute resolution services for claims with a value of up to \$100,000.</p> <ul style="list-style-type: none"> Limiting the Scheme's coverage to domestic contracts would align with the EA's Minimum Terms. 			<p>standard form agreements. The Scheme is aimed at standard form agreements for small consumers (residential or commercial) that are usually not open to negotiation with the retailer. It does not apply to tailored contracts.</p> <ul style="list-style-type: none"> The EGCC Scheme tries to limit disputes by allowing clarity. We don't want it to get to that point.
2.	<p>Should the Scheme cover special terms?</p> <ul style="list-style-type: none"> Vector recommends that the GIC exclude the assessment of special terms from the Scheme. Variations in contractual terms between commercial parties are often a reflection of dynamic competitive pressures in the market, which benefit consumers. This is consistent with the Scheme's objective of reflecting market structures as far as possible. Practically, it would be costly to 		<ul style="list-style-type: none"> No. Special terms will be subject to negotiation between the retailer and buyer, and therefore should be outside of the scheme. 	<ul style="list-style-type: none"> GIC agrees that the Scheme should only apply to standard, published contracts, and should not cover special terms.

RETAIL GAS CONTRACTS: REVIEW OF THE OVERSIGHT SCHEME - ANALYSIS OF SUBMISSIONS RECEIVED

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	assess special terms.			
<p>3. Should the Scheme be extended to retail LPG supply contracts?</p>	<ul style="list-style-type: none"> • Vector recommends that the GIC does not extend the Scheme to retail LPG supply contracts. • There is no market failure in retail LPG supply that the Scheme would address, while potentially increasing costs for LPG suppliers and customers in the form of an additional GIC levy for LPG retailers, etc. • The LPG market is not rapidly growing and would not benefit from more prescriptive contractual terms. • Consumer complaints in relation to LPG retail services are infinitesimal and can be addressed by the EGCC. • Should the GIC pursue the inclusion of LPG supply contracts in the Scheme, Vector strongly recommends that a lower threshold (e.g. 2TJ) or a separate threshold (e.g. 5 or 10 tonnes, or be residential in nature only – i.e. 	<ul style="list-style-type: none"> • We do not believe that it is appropriate for the GIC to extend their assessment of gas contracts to LPG customer contracts unless either the LPG industry/retailers fund such an assessment or the GIC's authority is extended to include LPG as well as natural gas. If the GIC's authority were to be extended to cover LPG then we would expect the LPG industry to contribute to the GIC's funding for these types of activities in the same way the natural gas industry does. 	<ul style="list-style-type: none"> • No. We do not see any benefit to consumers (or the industry) in extending the scheme to LPG supply contracts. 	<ul style="list-style-type: none"> • GIC will take into consideration the views of submitters in recommending whether the Scheme be extended to retail LPG supply contracts. • GIC agrees that funding would be an issue if the Scheme was extended in this way. Consideration would need to be given to a special levy based on LPG market metrics or a pay-per-use charge for assessments. • GIC's authority under the Gas Act 1992 extends to LPG. As clear in GIC's Statement of Intent, we maintain liaison with the LPGA to monitor the market, and also coordinate with the EGCC to learn if they have received any LPG

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		<p>not commercial) be applied.</p> <ul style="list-style-type: none"> • Vector recommends the GIC engage with LPG suppliers and the LPG Association before making a decision on this matter. 			<p>complaints.</p> <ul style="list-style-type: none"> • The four biggest LPG retailers are also natural gas retailers so they were included in the stakeholder group on this consultation. • GIC agrees that if the Scheme is extended to LPG, that the threshold for supply would need to be considered.
4.	Should the frequency of assessments be changed?	<ul style="list-style-type: none"> • Yes. Vector recommends that retail contracts be assessed only 'as required'. • Vector believes annual assessments would not yield major benefits and are therefore unnecessary. • Assessments could be conducted if there are significant changes to 1) consumer legislation, 2) the regulatory or commercial environment, 3) the Benchmarks, or 4) retailer contracts. 	<ul style="list-style-type: none"> • We agree with the GIC's conclusion that it would be an inefficient use of resources and costs to carry out an annual review of gas retailers' customer contracts when those customer contracts have not changed since the previous review. • If a gas retailer has undertaken a review of their customer 	<ul style="list-style-type: none"> • Yes. Frequency of assessments should be driven by change and not by arbitrary dates. • With the GIC having published assessments of the standard terms and conditions (T&Cs) of all retailers, we would like to see the assessment matrix remain on the GIC's website for the benefit of consumers, 	<ul style="list-style-type: none"> • GIC agrees with the submitters. The Industry responses have confirmed our thoughts. • Expect at this stage to check in with retailers once a year. • Further work will need to be done to consider what should trigger assessments.

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	<ul style="list-style-type: none"> • More targeted reviews would reduce disruption and costs to retail market participants and the GIC, and ultimately, consumers. • Vector does not have any issue with retailers being able to request additional reviews, subject to an initial assessment by the GIC if such reviews are warranted. Retailers whose contracts are being assessed should bear the costs of those assessments. 	<p>contracts and as a result has published a new customer contract for residential and/or small business customers then that gas retailer should be required to advise the GIC of this within 1 month of publishing their new customer contract. The GIC can then arrange for the new contract to be reviewed and assessed against the benchmarks and arrange for the results of the assessment to be published. Otherwise Mighty River Power would suggest that gas retailers only be required to confirm to the GIC annually that their customer contracts have not</p>	<p>and only be changed to reflect the inclusion of mandatory assessments for any new entrant retailers, removal of assessments for any exiting retailers, and mandatory assessments where an existing retailer changes its published T&Cs.</p> <ul style="list-style-type: none"> • Should industry or regulatory change necessitate the need to review and amend one or more benchmark terms, this should trigger an assessment of all retailers' T&Cs with respect to the changed benchmark term(s) only. 	
5.	Should the time period between assessments be		<ul style="list-style-type: none"> • Yes, to a time period driven by change as 	

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Question		Vector Limited	Mighty River Power	Contact Energy	Gas Industry Company ('GIC') response
	increased?		changed.	outlined in our response to Q4.	
6.	Should agreements only be assessed when they are updated?		<ul style="list-style-type: none"> We note that all of the three open access gas network operators are currently consulting on new Use of Systems Agreements for their networks. It is possible that on the conclusion of these negotiations and the implementation of these new agreements that changes may be required to retailers' customer contracts. Should these new Use of Systems Agreements result in all gas retailers amending their customer contracts, this should be a trigger for a full reassessment of all customer contracts by the GIC. 	<ul style="list-style-type: none"> Yes. It is our position that agreements should only be assessed when they are updated, or when a new entrant joins the market. In order to ensure alignment is maintained with the benchmarks, reviews should also be mandatory when a retailer changes its T&Cs. 	
7.	Reassessment if benchmarks significantly revised?				
8.	Should retailers be able to request additional reviews?		<ul style="list-style-type: none"> In regards to the above, we would suggest that unless new legislation is 	<ul style="list-style-type: none"> Yes, but the cost should be borne by the retailer requesting the review. As noted above reviews should be mandatory post the 	

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			<p>introduced which would require changes to existing customer contracts or there is a revision of the benchmarks, then a full review of gas retailers customer contracts should only be conducted by the GIC every 5 years.</p>	<p>publication of new T&Cs by retailers.</p>	
9.	<p>Should assessment focus on alignment of key benchmarks (with a watching brief on others)?</p>	<ul style="list-style-type: none"> • Vector recommends that assessments focus on alignment with key Benchmarks and systemic issues as much as possible. This would ensure resources are targeted to benefit the most disadvantaged consumers, who do not have the wherewithal to negotiate on a 'level playing field' with retailers. • Vector supports the GIC exploring opportunities for improved alignment of the Scheme with the EA's Minimum Terms for domestic contracting 	<ul style="list-style-type: none"> • The GIC has acknowledged that all of the current gas retailers are also electricity retailers. From a retailer's perspective it is therefore important that where there are common issues between gas and electricity that the GIC and the Electricity Authority set common benchmarking targets. Fuel specific issues can then have their own 	<ul style="list-style-type: none"> • Where a change is to a small number of benchmark terms the assessment should focus only on the changed benchmark terms. 	<ul style="list-style-type: none"> • Industry responses support further work to align assessments with common standards/benchmarks with Electricity Authority. • GIC will co-ordinate with the Electricity Authority to see what can be done. • Alignment would seek to optimise assessment around key benchmarks.

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	Question	Vector Limited	Mighty River Power	Contact Energy	Gas Industry Company ('GIC') response
		<p>arrangements for electricity, without compromising benefits to gas consumers. This is consistent with the GPS expectation that the GIC 'work closely with the Electricity Commission [sic] to coordinate...the governance process between the electricity and gas sectors to ensure that the Government's expectations are met'.</p>	<p>specific benchmarking targets. We would therefore support the GIC's proposal that they work with the Electricity Authority to agree and where appropriate set common benchmarking standards for customer contracts.</p>		