



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.

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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 sub-clause (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 sub-clause (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:

$$\frac{r}{\sum r_n} \times t$$

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
- $\sum r_n$ 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 indus-

try 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.

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These regulations are administered by the Ministry of Economic Development.