

# Benchmark Assessment Report – 2015

A report on the level of alignment of retail gas supply arrangements with Gas Industry Company's Benchmarks

## INTRODUCTION

1. I have been appointed by the Gas Industry Company (GIC) as the independent assessor to undertake the 2015 assessment of the alignment of gas retail supply arrangements against the GIC Retail Gas Contracts Oversight Scheme Benchmarks. The Benchmarks are those published by GIC as at April 2014, and they are available on the GIC website.<sup>1</sup> A copy of the Benchmarks is attached to this report as Attachment 1.
2. This is the second full assessment of the alignment of gas retail contracts against the Benchmarks, and where appropriate this report references the first full assessment from 2012. The report follows the general approach of the 2012 assessment report and includes the following sections,
  - Key findings
  - Scope
  - Methodology
  - Individual retailer results
  - Issues of particular concern
  - Comments on compliance with the GIC Reasonable Consumer Expectations
  - Trends
3. This assessment report has been prepared as an independent report for GIC and it does not bind GIC. Neither does this assessment report constitute legal advice to the retailers, or anyone else.
4. A key feature of the Retail Gas Contracts Oversight Scheme is that it is voluntary and there are no direct consequences for retailers from poor (or good) alignment of their retail contracts with the Benchmarks. The forms of the retail contracts being used by the gas retailers and the positive tone of their engagement with the assessment process suggest high levels of cooperation, goodwill and compliance with the process. All retailers are commended for this.

## KEY FINDINGS

5. The 2012 assessment measured alignment with the Benchmarks on a scale of

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<sup>1</sup> [www.gasindustry.co.nz/work-programmes/retail-gas-contracts-oversight-scheme/policy-development](http://www.gasindustry.co.nz/work-programmes/retail-gas-contracts-oversight-scheme/policy-development)

"full", "substantial", "moderate", "low", or "none". The 2015 assessment uses the same measures, although I decided the distinction between "low" and "none" was not useful for present purposes.<sup>2</sup>

6. The overall result of the 2015 assessment of alignment of the retail arrangements with the Benchmarks is that,
  - 9 arrangements have been assessed as substantially aligned, and
  - 1 arrangement has been assessed as moderately aligned.
  
7. The following table summarises the extent of the overall alignment of each of the retailer arrangements under the 2015 assessment.

Retailer	Average alignment
Contact	Substantial
Genesis	Substantial
Energy Online	Substantial
Mercury – Residential	Substantial
Mercury – Business	Moderate
Nova – Residential	Substantial
Nova – Commercial	Substantial
Pulse Energy/Greypower	Substantial
Trustpower	Substantial
Energy Direct	Substantial

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<sup>2</sup> The Methodology section below includes a more detailed explanation of how this scale has been applied.

8. The assessment of all the retail arrangements in their entirety is that there is "substantial" alignment across-the-board. This is notionally the same overall result as from the 2012 assessment, but the 2015 result is much stronger than the 2012 result. The improvement is illustrated by the following comparison of the arrangements assessed in the 2011 transitional assessment and the full assessments from 2012 and 2015.

Extent of alignment	2015	2012	2011
Full	-	-	-
Substantial	9	6	3
Moderate	1	3	4
Low	-	1	3
Total	10	10	10

9. While there have been 10 arrangements assessed each year, there has been some churn among the retailers, and no retailer is using the same contract that was assessed in 2012. This includes the retailers which have been in the gas retail market since the start of the Retail Gas Contracts Oversight Scheme.
10. The details of the alignment of each of the retailers and their separate arrangements with the 18 different Benchmark areas are shown in the Alignment Table attached to this report as Attachment 2. The changes among the 18 Benchmarks averaged across all retailers between 2012 and 2015 include,
- None of the Benchmarks were assessed as having "Full" alignment among all the retailers in 2012. 8 Benchmarks assessed as having "Substantial" alignment overall in 2012 now have "Full" alignment among all the retailers.
  - 4 Benchmarks assessed as having "Substantial" alignment overall in 2012 still have "Substantial" alignment among the retailers.
  - 3 Benchmarks assessed as having "Moderate" alignment overall in 2012 now have "Substantial" alignment among the retailers.
  - 2 Benchmarks assessed as having "Moderate" alignment overall in 2012 still have "Moderate" alignment among the retailers.

- The 1 Benchmark assessed as having "Low" alignment overall in 2012 now has "Moderate" alignment among the retailers (this is Benchmark 2 - Clear safety information).
11. The Alignment Table shows that 5 Benchmarks have full alignment by all retailers (Benchmarks 6, 7, 11, 17 and 18). A further 5 Benchmarks have full alignment by all but 1 or 2 retailers (Benchmarks 1, 3, 4, 12 and 14).
  12. This high level of overall alignment is further illustrated by another key measure shown in Attachment 2 which is the total number of issues across all the arrangements. These have fallen to 72 in 2015, from 166 in 2012 and 271 in 2011.
  13. The number of issues identified as being "of concern" has actually increased to 23 in 2015 from 12 in 2012. This obviously indicates variation in the assessment of which issues are "of concern". It may also indicate that the remaining issues are potentially more controversial than many of those that have been eliminated since 2012, even though there are a relatively small number of them.
  14. For example, even the most highly aligned agreements still have a small number of quite significant alignment issues that can be regarded as being of concern. Contact has the best arrangement in terms of the overall number of issues, and it is in fact very nearly fully aligned with mainly very minor discrepancies. However the most serious issue is that it does not publish its Pricing Plans sufficiently, which is a fairly fundamental point. Similarly Genesis and Mercury have highly compliant arrangements, but each of them reserves the right to change material non-price terms of its contract without directly notifying its customers. The Trustpower and Energy Direct arrangements have alignment issues in relation to disconnection and termination.
  15. Where the arrangements do not fully align with the Benchmarks it seems to have either been an oversight on matters of detail, or because of a deliberate decision by the retailer that a particular requirement in the Benchmarks is inappropriate or unnecessary. There are some general observations that can be made about the Benchmarks where the retailers' arrangements are most commonly not fully aligned, and these are discussed in the "Issues of Particular Concern" section below.

## SCOPE

### Benchmarks and interpretations

16. The 2015 assessment of retail gas arrangements is based on the current Benchmarks and the GIC interpretations of the Benchmarks from April 2014 which are included in Attachment 1.
17. The Benchmarks and interpretations were reviewed by GIC in 2013, and the review included consultation with retailers. Many of the smaller changes to the Benchmarks and interpretations have been clarifications (e.g. Benchmark 9). Some of the changes to the Benchmarks and interpretations have made compliance easier for retailers (e.g. Benchmarks 2, 7 and 13). In other cases the amendments have introduced new elements to the Benchmarks (e.g. Benchmark 4(d)). Benchmark 16 (Clear description of liability and redress) has been completely rewritten.
18. The amendments made as a result of the review have ironed-out many of the technical difficulties with the previous version of the Benchmarks, so compliance would have improved over the 2012 assessment even if the retail contracts had not been amended.
19. As it happens, all of the retailers seem to have reviewed their retail contracts to take into account the April 2014 version of Benchmarks. Those efforts by retailers are no doubt the reason for the step-up in compliance with the Benchmarks identified in the 2015 assessment.

### Retailers

20. The following retailers were included in the 2015 assessment,
  - Contact Energy
  - Genesis Energy
  - Energy Online
  - Mercury Energy
  - Nova Energy
  - Pulse Energy/Greypower Electricity
  - Trustpower
  - Energy Direct

21. Pulse Energy/Greypower Electricity and Trustpower are new additions from 2012. Trustpower effectively sits alongside Energy Direct, which accounts for the order in which they are listed. Genesis Energy and Energy Online are listed together on the same basis.
22. Where retailers use one contract for residential and business customers, that contract has been assessed. Mercury and Nova use separate residential and business customer contracts, and for those retailers both contracts have been assessed.
23. The Genesis and Energy Online contracts, and the Trustpower and Energy Direct contracts, are very similar but there are sufficient differences in detail to justify assessing them separately. The difference between the Genesis and Energy Online arrangements is that Genesis offers fixed term contracts while Energy Online does not seem to. There are also subtle differences in the disconnection and termination provisions between the Trustpower and Energy Direct agreements.
24. The Pulse Energy and Greypower Electricity contracts are identical apart from the name of the retailer, so they have been assessed as one.
25. The contracts that have been assessed were provided by the retailers as being the contracts that were current as at 1 July 2015. All of the contracts have also been accessed on the retailers' websites. The contracts are,
  - (1) Contact Energy Terms and Conditions (17 March 2015)
  - (2) Genesis Energy Terms and Conditions (16 January 2014)
  - (3) Energy Online Terms and Conditions (16 January 2014)
  - (4) Mercury Energy Standard Terms (Residential) (18 January 2015)
  - (5) Mercury Energy Standard Terms (Business Gas) (18 January 2015)
  - (6) Nova Energy General Terms for Residential Customers (17 March 2015)

- (7) Nova Energy General Terms for Commercial Customers (17 March 2015)
  - (8) Pulse Energy and Grey Power Electricity - All Energy (undated)
  - (9) Trustpower Customer Service Agreement (1 May 2015)
  - (10) Energy Direct Customer Supplier Agreement (3 March 2014)
26. Where the contracts refer to Pricing Plans, Fees Schedules or Privacy Policies on the retailers' websites, those documents have also been taken into account. Other documents that are not readily accessible on the various websites (such as "Welcome Packs") have not been assessed as part of the arrangements. This is consistent with the approach in the previous assessment reports.

## **METHODOLOGY**

27. The approach to carrying out the assessment has been to extract the text from each retail gas contract that is relevant to the Benchmarks and include it in the Detailed Assessment Report. The Detailed Assessment Report is presented separately from this Benchmark Assessment Report. It contains a full assessment report for each arrangement.
28. The Detailed Assessment Report identifies how each Benchmark (and each element of each Benchmark) is addressed in the relevant contract. The Detailed Assessment Report differs from the 2012 report in that it is organised around each contract separately, rather than being organised around the Benchmarks with each contract being sliced-up among the Benchmarks. Hopefully having a separate section of the Detailed Assessment Report for each contract will provide a useful reference for the retailers.
29. The retail contracts that have been assessed comply with two thirds of the Benchmarks, and there is no further comment necessary in relation to those contract terms or Benchmarks. The Detailed Assessment Report includes some explanation and commentary where the contract clauses meet the Benchmarks, but this is only for the sake of transparency (and, hopefully, clarity).



30. The Detailed Assessment Report also identifies where the contracts fail to meet the Benchmarks. There is also some explanation and commentary in those cases.
31. Draft assessment reports were provided to the affected retailers on 7 August 2015, and most of the retailers provided submissions on their drafts. These submissions are reflected in the final Detailed Assessment Report. In some cases retailers identified mistakes or omissions in the draft assessment reports, or I have otherwise been persuaded that the particular Benchmarks have been met.
32. It is more common for retailers to have undertaken to correct minor inconsistencies that I have identified, or for retailers to explain why they consider particular Benchmarks are unreasonable or unrealistic. These cases are all noted in the Detailed Assessment Report.
33. The assessment process requires judgements to be made as to whether the retailers' arrangements are aligned with each Benchmark in Full, Substantially or Moderately, or whether there is Low alignment. These are the standards from the previous Benchmark assessments.
34. I have applied these standards on the following basis,
  - Full alignment is where there are no issues with the relevant Benchmark, or any element of the Benchmark.
  - Substantial alignment is where there is only one issue with the Benchmark if it has more than two elements.
  - Moderate alignment is where there are two or more issues with a Benchmark that has more than two elements, or if there is one issue when the Benchmark only has two elements. I have assessed the alignment to be substantial in a couple of cases where a third issue is obviously technical or minor and there are a large number of elements to the particular Benchmark (e.g. Benchmark 9 - Clear pricing information and Benchmark 13 - Clear disconnection process).
  - Low alignment is where there is no alignment with a majority of the elements of a Benchmark, or where the contract does not address the issue at all (e.g. where no safety information is provided for the purposes of Benchmark 2).

35. The outcomes from applying these standards are shown on the Alignment Table attached as Attachment 2.
36. I have assessed the overall average rating of each arrangement by referring to the results from the 2012 assessment and counting the total number of issues identified. In 2012 arrangements with up to 10 issues were assessed as being Substantially aligned, and arrangements with over 18 issues were assessed as being Moderately aligned.
37. I have decided there is merit in maintaining consistency with the overall average ratings from 2012. Otherwise there would be no meaningful comparison with that assessment.<sup>3</sup> It would also be understandably frustrating for retailers if the bar was raised as the alignment of their arrangements improves over time.
38. The following section of this report includes summaries of the alignment issues that are set out in the Detailed Assessment Report. The Detailed Assessment Report includes specific references to the relevant contract clauses which are not replicated in the summaries. For the purpose of the summaries, I have grouped the issues into two categories; issues of concern and other issues. I have made the distinction on the basis of the significance of the non-alignments and their potential impact on consumers.
39. Obviously some issues are more significant than others, and I have attempted to be consistent in identifying issues of concern between the arrangements. I have not attempted to weight the issues when considering the alignment of the retailers with each Benchmark, or the overall alignment of each arrangement. The Alignment Table (Attachment 2) does identify the number of "issues of concern" for each arrangement, and there is an average for each arrangement of 2.3.

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<sup>3</sup> The comparability of the 2012 and 2015 assessment results is already compromised by the improvements made to the Benchmarks following the GIC's 2013 review. Alignment could be expected to improve with those changes. I have made no attempt to adjust the standards or the raw comparison of the results to take into account the changes to the Benchmarks.

## INDIVIDUAL RETAILER RESULTS

### Contact Energy

40. The current Contact terms and conditions apply to residential and business customers from 17 March 2015. The terms and conditions apply to gas and electricity supplies.
41. The Contact agreement is very nearly fully aligned with the Benchmarks. There are 4 areas of non-compliance, and only one of them can be regarded as an issue of concern. The one issue of concern is sufficiently serious that it would be anomalous to assess Contact's arrangement as fully aligned with the Benchmarks.
42. Contact made a submission on the draft assessment provided to them, and their comments are reflected in the final assessment and in the descriptions of the issues that are referred to below.

Issue of concern

#### Benchmark 9 – Clear pricing information

43. The most significant issue is that Pricing Plans and Service Fees are referred to, but no actual details are provided in the agreement. The Pricing Plans are not available on the Contact website, but they are available to customers who call the Contact call centre.
44. In its submission on the draft assessment Contact says that customers receive a copy of their Pricing Plan with their Welcome Pack, and that having the Pricing Plans available through the Contact call centre is sufficient for the Pricing Plans to be "publicly available" in terms of Benchmark 9.1(a).
45. I do not agree that having the Pricing Plans available through the call centre and with the Welcome Pack meets the test for the Pricing Plans to be publicly available. The GIC interpretation of Benchmark 9.1(a) indicates that the Pricing Plans should be available on the retailer's website, or otherwise be publicly available.
46. Contact's Pricing Plans were available on its website for the 2012 review, so the decision has since been made to remove them.

47. The Service Fees are available on the Contact website, although they are in the FAQ section, which is not an obvious location. Contact has said it will reconsider the current location of the Fees Schedule to make it easier for customers to find on its website.

#### Other issues

48. Benchmark 13.4 – disconnection actions must be delayed pending any dispute resolution process being concluded in relation to disputed invoices. However the agreement does not provide for any delay in disconnection actions for dispute resolution processes in relation to issues other than disputed invoices.
49. Benchmark 13.5 – the disconnection fees and charges are not disclosed in the agreement, and the relevant clause does not say where they may be found. In its submission on the draft assessment, Contact correctly pointed out that the disconnection fees and charges are available in its Schedule of Fees on its website. This is a marginal point, but it would be preferable if the disconnection fees and charges were referenced more transparently in the agreement.
50. Benchmark 15(b) – there is no reference in the agreement to personal information being accessed or corrected by the customer. There is a reference in the agreement to Contact’s privacy policy which does contain this information, and Contact’s submission on the draft assessment says the reference to the privacy policy is sufficient to comply with this Benchmark. This is also a marginal point, but simply referring to the privacy policy does not provide customers with an indication of their rights under the Privacy Act.

#### Genesis Energy

51. The current Genesis terms and conditions apply to residential and business customers from 16 January 2014 (and 16 February 2014 for existing customers). The terms and conditions apply to electricity and reticulated gas supplies.
52. The Genesis agreement is substantially aligned with the Benchmarks. There are 5 areas of non-compliance, 2 of which can be regarded as issues of concern. Genesis did not respond on the draft assessment provided to it. The issues arising are referred to below.

Issues of concern

Benchmark 5.2 – Clear contract variation procedures (non-price)

53. There is no provision in the agreement requiring Genesis to directly or individually notify customers of material (non-price) changes. The 30 day notice required from Genesis may be given by public notice in newspapers or on the Genesis website, or by various forms of direct communication to customers. Genesis may provide direct communications to its customers in practice (I have no information on this), but it is not required to do so under the terms of the agreement.

Benchmark 16.1 – Clear description of liability and redress

54. The agreement provides that network companies do not have any liability to customers for any amount exceeding \$10,000 (which is a common limit among the gas retailer contracts). The agreement additionally provides that a network company's aggregate liability to all customers for an event or series of related events related to the network is also limited to \$10,000.
55. This means that if 10 customers are affected by a single event for which the network company is liable, then the liability limit would potentially be \$1,000 each.
56. It is not clear whether the aggregate liability limit would have any practical effect, because network companies are not parties to the agreement, and the primary liability for the acceptable quality of gas supplies lies with the retailer under the Consumer Guarantees Act 1993 (CGA). Despite this, the potential effect of the \$10,000 aggregate limit would be to practically eliminate any network company liability for any negligence that causes physical loss or damage to the property of groups of customers. In my view this is an unreasonable exclusion of liability.
57. If there are loss allocation arrangements between Genesis and the network companies then it is a matter for them, and should not necessarily affect the rights customers might have.
58. I also note that it is unclear what the practical effect of the \$10,000 limit on Genesis' own liability is when its primary liability is likely to be under the CGA.

There is no limit on liability under the CGA, and consequential losses are also potentially recoverable.

59. The assumptions in the agreement that the CGA only applies to energy supplied for personal, domestic or household use or consumption, and that business consumers are necessarily excluded from coverage under the CGA, are not strictly correct.

#### Other issues

60. Benchmark 4(d) – customers are supposed to have the right to exit fixed term agreements if the retailer makes a material change to the terms and conditions. There is no such right under the Genesis agreement.
61. Benchmark 8(b) – retailers are required to provide 30 days notice by individual communication to customers if their prices increase by more than 5%. The Genesis agreement says the individual notice is only required for increases to the fees or service charges of more than 5% if “the increase is reasonably likely to have a material effect on the customer.”
62. This extra condition to the requirement for individual notices does not comply with this Benchmark.
63. Benchmark 13.4 - disconnection actions must be delayed pending any dispute resolution process being concluded in relation to disputed invoices. However the agreement does not provide for any delay in disconnection actions for dispute resolution processes in relation to issues other than disputed invoices.
64. The Agreement also only refers to disputes that have been escalated to the EGCC. Benchmark 13.4 also applies to disputes with the retailer directly which have not been escalated to the EGCC.

#### Energy Online

65. The Energy Online terms and conditions closely match the Genesis terms and conditions, including the date they came into effect (16 January 2014).
66. The only difference between the analysis of the Genesis and Energy Online arrangements is that the Genesis pricing plans available on its website include fixed term options, while Energy Online does not seem to have a fixed term

offering. This means Benchmark 4 (Clear consumer exit rights – fixed term) applies to Genesis, but it does not apply to Energy Online.

67. One of the compliance issues that applies to Genesis is in relation to Benchmark 4(d), and this issue does not apply to Energy Online. The assessment for Genesis otherwise fully applies to Energy Online. Both are substantially aligned with the Benchmarks.

### **Mercury Residential**

68. The Mercury Energy standard terms for residential customers came into effect on 18 January 2015. The standard terms apply to gas and electricity supplies.
69. The Mercury Residential agreement is substantially aligned with the Benchmarks. There are only 5 areas of non-compliance, and 2 of those can be regarded as issues of concern. Mercury made a submission on the draft assessment provided to them, and the comments are reflected in the final assessment and in the descriptions of the areas of non-compliance below.

Issues of concern

#### Benchmark 5.2 - Clear contract variation procedures (non-price)

70. Retailers are expected to individually notify customers of material non-price changes to the agreement, but the Mercury Residential agreement includes the option for Mercury to notify its customers of these changes through public notices in a local newspaper.
71. In its submission on the draft assessment, Mercury says it disagrees with this Benchmark. They also recommend that GIC should amend this Benchmark to better align it with the approach of the Electricity Authority.

#### Benchmark 16 - Clear description of liability and redress

72. The Mercury Residential agreement provides that Mercury's liability (other than under the CGA - which is not limited) is limited to \$10,000 for any single event or series of related events on the network, including if the event affects more than one consumer.

73. This is similar to the Genesis and Energy Online agreements, although in the case of the Mercury Residential agreement the exclusion applies to Mercury itself, rather than just applying to the network operator. The Mercury Residential provision means that if 10 customers are affected by a single event (or a series of related events) on the network, then any liability of Mercury (other than under the CGA) would be limited to \$1,000 each. If this limit applies in practice it would practically eliminate any liability of Mercury to groups of customers who might have suffered losses. In my view this is an unreasonable exclusion of liability.
74. It is not clear what the practical effect of the aggregate liability limit will be because Mercury's primary liability as the retailer is under the acceptable quality guarantee in the CGA. There is no liability limit on energy retailers under the CGA, and consequential losses are also potentially recoverable.
75. In its submission on the draft assessment, Mercury says the aggregate liability limit in relation to a single event or series of related events is reasonable and necessary, and they make the point that the liability limit does not allow them to aggregate multiple claims for unrelated events. The point remains though that the limit purports to cap Mercury's liability for any single event or series of related events to \$10,000, no matter how many consumers are affected. This limitation means groups of consumers may have minimal rights to make a claim against Mercury in the event of a major event, and it still seems to me that this is unreasonable.

#### Other issues

76. Benchmark 8(c) - notices of price increases from retailers are required to include the reasons for the increase under this Benchmark. The Mercury Residential agreement says Mercury will provide reasons for price increases in the individual notices for price increases of greater than 5%. Benchmark 8(c) seems to apply to all price increases - including increases of less than 5% for which public notices (rather than individual notices) are required.
77. Mercury pointed out in its submission on the draft assessment that this requirement in the GIC Benchmark is inconsistent with the Electricity Authority requirements.
78. Benchmark 13.4 – disconnection actions must be delayed pending any dispute resolution process being concluded in relation to disputed invoices. However



the Mercury Residential agreement does not provide for any delay in disconnection actions for dispute resolution processes in relation to issues other than disputed invoices.

79. In its submission on the draft assessment, Mercury says it will look to amend the relevant clause in its next contract review.
80. Benchmark 15(c) – gas supply arrangements are required to set out where the consumer can get information about how the retailer collects, uses, discloses and stores personal information about the consumer. A lot of information about the collection, use and disclosure of personal information is included in the Mercury Residential agreement, but the information is incomplete in relation to information storage (and, implicitly, access).
81. In its submission on the draft assessment, Mercury says this benchmark goes beyond the requirements of the Privacy Act, and it would be unusual for a company to have processes for specific requests about the use, disclosure and storage of personal information. Mercury also says its customers are aware of how to contact it if they want to inquire about their personal information.

### **Mercury Business**

82. The Mercury Energy standard terms for business customers came into effect on 18 January 2015, which is the same date as the standard terms for residential customers. However there are significantly more compliance issues with the Benchmarks under the Mercury Business agreement than under the Mercury Residential agreement.
83. There are 19 compliance issues under the Mercury Business agreement, and 8 of those can be regarded as being issues of concern. The issues that arise under the Mercury Residential agreement also occur in the Mercury Business agreement, and there are also other issues that are particular to the Mercury Business agreement.
84. Several of the issues are matters of quite fine detail and some of them are similar to issues that were raised in the 2012 review. Interestingly, some of the issues had been adequately covered in 2012 and have emerged in the more recent version of the Mercury Business agreement (e.g. the lack of the second 24 hour disconnection notices). There are more issues under the Mercury Business agreement than under any of the other agreements being reviewed, although

the total number of issues under the Mercury Business agreement is almost identical to the number of issues in 2012.

85. The overall effect is that the Mercury Business agreement is still moderately aligned with the Benchmarks.
86. The submission by Mercury on the draft assessment includes comments on some of the points in relation to the Mercury Business agreement. Where relevant, Mercury's comments are reflected in the final assessment and in the description below of the areas which do not comply with the Benchmarks.

Issues of concern

Benchmark 2 – Clear safety information

87. There are no emergency procedures or safety information set out or referred to in the Mercury Business agreement.

Benchmark 5.2 - Clear contract variation procedures (non-price)

88. This is the same as the point that arises under the Mercury Residential agreement. Retailers are expected to individually notify customers of material non-price changes to the agreement, but the Mercury agreements include the option for Mercury to notify its customers of these changes through public notices in a local newspaper.
89. In its submission on the draft assessment, Mercury says it disagrees with this Benchmark. They also recommend that GIC should amend this Benchmark to better align it with the approach of the Electricity Authority.

Benchmark 9.1(a) - Clear pricing information

90. This Benchmark requires prices to be clear to the consumer, either in the arrangement itself or on the retailer's website or other publicly available place. The Mercury Business agreement refers to Special Terms, but if there are no Special Terms the prices are simply those notified to the customer from time to

time. Unlike the Mercury Residential agreement, the Mercury Business agreement does not refer to any pricing plans.

91. The prices for Mercury Business customers therefore seem to be less transparent than for residential customers; and less transparent than envisaged by this Benchmark. The Mercury Business agreement also provides for Network Operator charges to be passed on without necessarily being specified in advance.

Benchmark 9.1(b) - Clear pricing information

92. This Benchmark requires the agreement to clearly specify the charges for which the consumer will be liable. The Mercury Business agreement does not state that the consumer is liable for charges beyond the scope of the gas supply arrangement, but it does refer to unspecified charges beyond the scope of the Special Terms, and to other (unspecified) services that may relate directly or indirectly to the supply of gas.

Benchmark 13.1(b) - Clear disconnection processes

93. None of the clauses in the Mercury Business agreement that refer to disconnection notices say that the notices should describe the actions consumers can take to avoid disconnection.

Benchmark 13.3(b) - Clear disconnection processes

94. Retailers are required to give customers liable to disconnection a 7 working day disconnection notice, followed by a final 24 hour disconnection notice. There is no reference to the 24 hour disconnection notice under the Mercury Business agreement.
95. There is a reference to one business day's notice in relation to termination (under clause 16.2), but this is different from the requirement for a 24 hour disconnection notice. In its submission on the draft assessment, Mercury made the point that disconnection and termination are separate, and that it will always follow the disconnection requirements whenever it undertakes a disconnection. However the disconnection requirements in the Mercury Business agreement are incomplete for the purposes of this Benchmark.

Benchmark 14.1(b) - Clear supply interruption procedures

96. This Benchmark requires retailers to provide no less than 4 business days' notice of planned interruptions. The Mercury Business agreement only provides for 2 days' notice to be given.

Benchmark 16 - Clear description of liability and redress

97. This is the same issue as under the Mercury Residential agreement. The Mercury agreement provides that Mercury's liability (other than under the CGA - which is not limited) is limited to \$10,000 for any single event or series of related events on the network, including if the event affects more than one consumer.
98. In its submission on the draft assessment, Mercury says the aggregate liability limit in relation to a single event or series of related events is reasonable and necessary, and it makes the point that the liability limit does not allow them to aggregate multiple claims for unrelated events. The point remains though that the limit purports to cap Mercury's liability for any single event or series of related events to \$10,000, no matter how many consumers are affected. This limitation means groups of consumers may have minimal rights to make a claim against Mercury in the event of a major event, and this seems to me to be unreasonable.

Other issues

99. Benchmark 4(d) – customers are supposed to have the right to exit fixed term agreements if the retailer makes a material change to the terms and conditions. There is no such right under the Mercury Business agreement.
100. Benchmark 8(a) – the obligation to provide 30 days' notice of price increases applies generally under the Mercury Business agreement, but there is a possibility under the agreement that Network Operator charges recoverable under the agreement may be increased without the required 30 days' notice.
101. Benchmark 8(c) – notices of price increases from retailers are required to include the reasons for the increase under this Benchmark. There is no reference in the Mercury Business agreement to reasons being given for price increases.

102. Benchmark 9.1(d) – retailers which base their bills on estimates are required to provide a simple explanation of how those estimates will be calculated. There is no such explanation in the Mercury Business agreement.
103. Benchmark 9.1(f) – gas supply arrangements are required to include limits on retailers’ ability to recover amounts which have previously been overcharged. Usually this is a time limit. There is no such limit in the Mercury Business agreement.
104. Benchmark 10.1(a) – gas supply arrangements under which retailers may require bonds from some of their customers are expected to provide for those customers to be given reasons for the retailer requiring the bond. There is no such provision in the Mercury Business agreement.
105. Benchmark 13.3(a) – the first disconnection notice is required to be a 7 working day notice under this Benchmark. The Mercury Business agreement says the disconnection notice is a 7 day notice – which will be at least 2 days less than 7 working days.
106. Benchmark 13.4 – disconnection actions must be delayed pending any dispute resolution process being concluded in relation to disputed invoices. However the agreement does not provide for any delay in disconnection actions for dispute resolution processes in relation to issues other than disputed invoices.
107. This issue also arises under the Mercury Residential agreement, and in its submission on the draft assessment, Mercury says it will look to amend the relevant clause in its next contract review.
108. Benchmark 13.5 – the disconnection fees and charges are not disclosed in the Mercury Business agreement, and the relevant clause does not say where they may be found. There is simply a general obligation to pay the costs incurred on demand.
109. Benchmark 14.2 – this Benchmark requires retailers to provide information in their arrangements about where the consumer can access information about supply interruptions. The Mercury Business agreement is silent on this point. This information is provided in the Mercury Residential agreement.

110. Benchmark 15(c) – this Benchmark requires the arrangement to set out where the customer can get information about how the retailer collects, uses, discloses and stores personal information about the consumer. The same issue arises under the Mercury Residential agreement. See the discussion above at paragraphs 80 and 81 regarding Mercury's submission on this point.

### **Nova Residential**

111. The current Nova Energy terms and conditions for residential customers came into effect on 17 March 2015. The terms and conditions apply to reticulated gas, LPG and electricity supplies.
112. The Nova Residential terms and conditions are substantially aligned with the Benchmarks. There are 8 issues; 2 of which can be characterised as being issues of concern. Nova made a submission on the draft assessment provided to them, and their comments are reflected in the final assessment and in the descriptions of the compliance issues below.

Issues of concern

#### Benchmark 2 – Clear safety information

113. None of the safety information specified in this Benchmark is included in the Nova Residential agreement, or in a document referred to in the agreement. The Nova website includes links to the Energy Safety Service booklet on gas safety and the gas safety website. These resources are not referred to in the agreement.
114. Nova says in its submission on the draft assessment that it includes information about who to call in an emergency on all its invoices. Nova also says it is not helpful to provide information about emergencies in the agreement. However this is what the Benchmark requires. Note also that the Nova Commercial terms and conditions do comply with this Benchmark.

#### Benchmark 13.3 - Clear disconnection processes

115. The circumstances in which disconnection is permitted without notice to customers under Benchmark 13.3 include (among other things) emergency disconnections. The GIC interpretation of emergency disconnections includes disconnections for safety and regulatory reasons.

116. The grounds for disconnection without notice under the Nova Residential agreement include,
- where the customer refuses access to their property
  - where Nova has been asked to disconnect a customer by the Network Operator, and
  - where the customer (or any other person or animal) is intimidating or threatening.
117. These grounds for disconnection without notice are not permitted under the GIC interpretation of this Benchmark. In particular the interpretation specifically refers to an instruction from a lines company to disconnect a customer as a circumstance in which disconnection is not permitted without notice.
118. In its submission on the draft assessment, Nova points out that the network operators have the right to require it to disconnect customers without notice under their Use of System Agreements. Nova says that this means they cannot comply with this Benchmark.

Other issues

119. Benchmark 3 - this Benchmark refers to the customers' right to terminate open term contracts without unnecessary delay. The GIC interpretation says the Benchmark is not met if the retailer can continue to charge daily fixed charges until the gas is actually disconnected. The Nova Residential agreement says the customer continues to be liable to pay for all Energy and Energy Related Services after the contract has been terminated until the supply is disconnected or switched.
120. Nova may recover the price of Energy actually supplied until the gas supply is disconnected, but it may not recover fixed line charges, which are presumably included in Nova's charges for Energy Related Services.
121. In its submission on the draft assessment, Nova disagrees with this Benchmark. It disagrees that the timing of the disconnection (and extent of liability) is outside the control of the consumer, and should therefore be the retailer's risk.

122. Benchmark 8(b) - retailers are required to provide 30 days' notice by individual communication to customers if their prices increase by more than 5%. The Nova Residential agreement says the individual notice is only required for 5% increases in fees where "the increase is reasonably likely to have a material effect on you." The extra condition for individual notification of fee increases does not comply with this Benchmark.
123. Nova's submission on the draft assessment disagrees that fee increases of greater than 5% should be individually notified because the fee increases are unlikely to affect most customers, and customers will be made aware of fees that affect them at the relevant time.
124. Benchmark 9.1(a) - this Benchmark requires prices to be clear to the consumer; either in the arrangement itself or on the retailer's website or other publicly accessible place. The Nova Residential agreement says its rates and fees are published on the Nova website, and this is the case for the pricing plans. However there is no schedule of fees on the Nova website.
125. Nova says in its submission on the draft assessment that it intends to clarify this on its website.
126. Benchmark 10.2(b) - this Benchmark requires the agreement to include information about the refund of bonds. The Nova Residential agreement refers to refunds being made in accordance with Nova's refund policy, but there is no refund policy on the Nova website.
127. Nova says in its submission on the draft assessment that it intends to clarify this on its website.
128. Benchmark 13.5 - disconnection fees are required to be set out in the agreement; or at least the agreement should set out where the information is located. This is not the case under the Nova Residential agreement.
129. Presumably the disconnection fees will be in the fees schedule, which is missing from the Nova website. Nova says in its submission on the draft assessment that it intends to clarify this on its website. Ideally clause 41 of the Nova Residential agreement would also refer expressly to the fees schedule when it is available on the website.
130. Benchmark 15(c) - supply arrangements are required to set out where the consumer can get information about how the retailer collects, uses, discloses



and stores personal information about the consumer. The Nova Residential agreement meets the other privacy requirements under Benchmark 15, but it misses this point.

131. Nova has a privacy policy, but it is not referred to in the agreement. The privacy policy covers some (but not all) of the elements of Benchmark 15(c). In its submission on the draft assessment, Nova says it intends to clarify this on its website. Note however that the agreement should still refer to the privacy policy to comply with this Benchmark.

### **Nova Commercial**

132. The current Nova Energy terms and conditions for commercial customers came into effect at the same time as the Nova Residential agreement (17 March 2015). The form of the Nova Commercial agreement is very similar to the Nova Residential agreement; most of the issues under the Benchmarks with the Nova Residential agreement also apply to the Nova Commercial agreement.
133. There are however some differences. The Nova Commercial agreement complies with Benchmark 2 - Clear safety information. There are also some additional compliance issues under the Nova Commercial agreement; particularly in relation to non-price contract variations.
134. Overall the Nova Commercial agreement is substantially aligned with the Benchmarks. There are 10 issues; 3 of which can be characterised as being issues of concern. Nova made a submission on the draft assessment provided to them, and their comments are reflected in the final assessment and in the descriptions of the compliance issues below. Where the non-compliant clauses in the Nova Commercial agreement are the same as those in the Nova Residential agreement the description below refers to the description relevant to the Benchmark in relation to the Nova Residential agreement.

### Issues of concern

#### Benchmark 5 - Clear contract variation procedures (non-price)

135. The Nova Residential agreement fully complies with this Benchmark, but there are two compliance issues with the Nova Commercial agreement.

136. First, this Benchmark requires all changes to the non-price terms and conditions of the agreement to be made on 30 days notice to the customer. The Nova Commercial agreement provides that Nova can make changes to the terms of the agreement without notice if no pricing plan applies.
137. Is not clear whether there will be any agreements without pricing plans, but Nova does reserve the right to amend any such agreements without notice. The only exception is that Nova cannot amend the clause giving the customer the right to switch suppliers (clause 61(a)).
138. The second issue concerns the requirement for Nova to directly communicate notice of material changes to customers, rather than relying on public notices. The 30 day notice required from Nova may be given by public notice in newspapers or on the Nova website, or by various forms of direct communication to customers. Nova may provide direct communications to its customers in practice (I have no information on this), but it is not required to do so under the terms of the agreement.

#### Benchmark 8 - Clear price increases

139. Nova reserves the right to change its standard Fees Schedule without providing any specific notice. Under this Benchmark, all price increases require 30 days' notice. I have taken this Benchmark to apply to increases in rates and fees. Nova being able to change its Fees Schedule without providing 30 days' notice is therefore a breach of this Benchmark.
140. In Nova's submission on the draft assessment, it says changes to the standard Fees Schedule are unlikely to affect most customers, and customers will be made aware of the changes if they ever incur the fees. Essentially Nova's point is that changes to the standard Fees Schedule are not "material". Nova considers their agreement strikes an appropriate balance between individually notifying price changes which affect customers, and the lesser compliance cost of only notifying other changes by notice on its website.

#### Benchmark 13.3 - Clear disconnection processes

141. This Benchmark sets out the circumstances in which disconnection is permitted without notice to customers. The Nova Residential agreement includes additional grounds for disconnection that are not permitted under this Benchmark, and the same clause is included in the Nova Commercial agreement.

142. See the discussion from paragraph 115 above regarding the grounds for disconnection without notice, and the comments from Nova in its submission on the draft assessment.

Other issues

143. Benchmark 1.2 – where the supply arrangement is entered into after the gas supply commences, this Benchmark requires the agreement to apply retrospectively from the commencement of the supply. The Nova Commercial agreement does not deal with this requirement, although the Nova Residential agreement does.
144. In Nova's submission on the draft assessment, it says it is not appropriate to back date the contract if it is not in place prior to supply commencing. However this is not what the Benchmark requires.
145. Benchmark 8(b) - retailers are required to provide 30 days' notice by individual communication to customers if their prices increase by more than 5%. The Nova Commercial agreement says individual notice is only required for price increases (including rates and fees) where "the increase is reasonably likely to have a material effect on your overall bill." The Nova Residential agreement includes a similar provision, although it is limited to fee increases. The extra condition for price increases being required to have a material effect before individual notification is necessary does not comply with Benchmark 8(b).
146. Nova made a submission on the draft assessment about not individually notifying fee increases of greater than 5%. However this point does not apply to this provision in the Nova Commercial agreement because the extra materiality condition applies to price increases generally, not just fee increases.
147. Benchmark 9.1(a) – this Benchmark requires prices to be clear to the consumer. See the description in paragraph 124 above regarding the lack of a schedule of fees on the Nova website.
148. Benchmark 9.3(a) – this Benchmark requires metering costs to be clear to the consumer. Metering costs are included in the standard Fee Schedule, but (as noted in relation to Benchmark 9.1(a)) the Fees Schedule is not available on the Nova website. Nova advised in its submission on the draft assessment that it intends to clarify this on its website.

149. Benchmark 10.2(b) – this Benchmark requires the agreement to include information about the refund of bonds. See the description in paragraph 126 above regarding the lack of a refund policy on the Nova website.
150. Benchmark 13.5 – this Benchmark requires disconnection fees to be set out in the agreement. See the description in paragraph 128 above regarding the lack of a fees schedule on the Nova website.
151. Benchmark 15(c) - this Benchmark requires the supply arrangements to set out where the consumer can get information about how the retailer collects, uses, discloses and stores personal information about the consumer. See the description in paragraph 130 regarding the lack of this information, and the Nova privacy policy.

#### **Pulse Energy/Greypower Electricity**

152. Pulse Energy is a new gas retailer which has not been part of the previous GIC Retail Gas Contracts Oversight Scheme assessments. It is also offering gas under the Greypower Electricity brand, using an identical form of agreement.
153. The Pulse agreement is substantially compliant with the Benchmarks. There are 7 compliance issues, and 3 of these areas can be regarded as issues of concern.

Issues of concern

#### Benchmark 2 – Clear safety information

154. None of the safety information specified in this Benchmark is included in the Pulse agreement, or in a document referred to in the agreement. The only safety references in the agreement relate exclusively to electricity safety.

#### Benchmark 12(b) - Clear metering obligations

155. This Benchmark requires the agreement to clearly describe the frequency of meter reading. The Pulse agreement is the only gas retail contract which does not specify the minimum or actual frequency of meter reading that the supplier commits to undertake.

156. I have assumed that the general commitment by Pulse to comply with applicable laws, regulations and codes is not sufficient for the purposes of this Benchmark.

Benchmark 16 - Clear description of liability and redress

157. The issue under this Benchmark is whether the exclusions of liability in the agreement are "clearly reasonable". The layered package of exclusions under the Pulse agreement is more extensive and thorough than the exclusions under other gas retail contracts, and the overall effect is to virtually completely exclude Pulse's liability (apart from under the CGA).
158. The starting point of the exclusion clauses is the limit on the liability of Pulse to \$10,000 for physical damage to the customer's property. However the second limb of the limit is that, where the liability of Pulse is the result of the acts or omissions of Pulse's contractors, suppliers, representatives or agents, then that liability is limited to the amount Pulse recovers from those parties.
159. In practice, gas retailers will never cause physical damage to their customers' property; any loss will always be caused by network operators or other third parties. Pulse will therefore never be liable for the \$10,000 under this clause, and the effect of the exclusion is that the amount of any liability of Pulse will always be determined by the amount it recovers from third parties. However the exclusion clause also excludes "to the maximum extent permitted by law" the liability of Pulse and third parties, including distributors, meter owners, lines companies and transmission system owners.
160. This is likely to be a comprehensive exclusion of all liability, and that is unreasonable in terms of the GIC interpretation of this Benchmark.
161. Pulse will still be liable under the CGA, which is likely to be a more significant source of liability than claims under tort or contract. However the exclusion clauses purport to go further than the clauses used by other retailers.

Other issues

162. Benchmark 1.2 – where the supply arrangement is entered into after the gas supply commences, this Benchmark requires the agreement to apply retrospectively from the commencement of the supply. The Pulse agreement does not deal with this requirement.

163. Benchmark 8(b) – retailers are required to provide 30 days’ notice by individual communication to customers if their prices increase by more than 5%. The Pulse agreement says the individual notice is only required for increases to the fees or service charges of more than 5% if “the increase is reasonably likely to have a material effect on You.”
164. This extra condition to the requirement for individual notices does not comply with this Benchmark.
165. Benchmark 8(c) – notices of price increases from retailers are required to include the reasons for the increase under this Benchmark. There is no reference in the Pulse agreement to reasons being given for price increases.
166. Benchmark 13.4 – disconnection actions must be delayed pending any dispute resolution process being concluded in relation to disputed invoices. However the agreement does not provide for any delay in disconnection actions for dispute resolution processes in relation to issues other than disputed invoices.

### **Trustpower**

167. Trustpower's customer service agreement is dated 1 May 2015. The agreement applies to gas and electricity supplies.
168. The Trustpower agreement is substantially aligned with the Benchmarks. There are 5 compliance issues, and 2 of them can be regarded as being issues of concern. Trustpower made a submission on the draft assessment provided to them, and their comments are reflected in the final assessment and in the descriptions of the compliance issues below.

### Issues of concern

#### Benchmark 13 - Clear disconnection process

169. The main issue under this Benchmark is that Trustpower has the ability to terminate the agreement and the supply of energy on "reasonable notice" without the 7 working day and 24 hour disconnection notice provisions necessarily applying.

170. The explicit disconnection rights in the agreement refer to the 7 working day/24 hour disconnection notices, but the termination rights only refer to reasonable notice for material breaches. However the termination right includes the right to terminate the agreement and the supply of energy, so there is an overlap between termination and disconnection.
171. In its submission on the draft assessment, Trustpower says it always follows the normal disconnection process, and in appropriate cases the disconnection notices are issued after reasonable notice of termination is issued. However it is not clear that this is required to be the case under the agreement as it is drafted. The reference to the disconnection rights (and notice obligations) being "in addition to ... the other rights of disconnection under the agreement" is ambiguous.
172. The Trustpower agreement also provides that it may automatically terminate the agreement and the supply may be disconnected (by the network owner) if Trustpower's network agreement ceases. On its face, this automatic termination and disconnection right does not comply with Benchmark 13.3.
173. In its submission on the draft assessment, Trustpower says it is required to include this automatic termination right under its Use of System Agreement with electricity network companies. These clauses are considered compliant by the Electricity Authority. Trustpower also says that the clause has never been invoked, and would be impractical to implement.
174. This issue was considered in the GIC's review of the Benchmarks in 2013, and GIC determined that it was an issue for oversight of gas distribution contracts rather than gas retail contracts.

Benchmark 16 - Clear description of liability and redress

175. Under this Benchmark, the exclusions of liability under the agreement are required to be "clearly reasonable". There are two respects in which the Trustpower exclusion clauses do not seem to be reasonable.

176. First, the mutual \$10,000 liability cap between Trustpower and its customers applies except in relation to the CGA (as required by law, and which cannot be contracted out in the case of non-business customers), and in relation to the customers' indemnity of Trustpower. This means that (putting the CGA to one side) Trustpower's liability for physical damage to its customers is limited to \$10,000, while the customers' liability under their indemnity to Trustpower for physical damage they might have caused is not limited.
177. This issue is probably more material for electricity than gas supplies, and it is not clear how a consumer could actually cause damage to a gas network. However, as a matter of principle, it does not seem reasonable for Trustpower's liability to be limited while the customers' indemnity liability is unlimited.
178. The second problem with the Trustpower liability provisions relates to the potential liability of network companies. In common with most of the other retail contracts, the agreement provides that network companies do not have any liability to customers for any amount exceeding \$10,000. The agreement additionally provides that a network company's aggregate liability to all customers for an event or series of related events related to the network is also limited to \$10,000.
179. This is similar to the Genesis and Energy Online agreements. It means that if 10 customers are affected by a single event for which the network company is liable, then the liability limit would potentially be \$1,000 each.
180. It is not clear whether the aggregate liability limit would have any practical effect, because network companies are not parties to the agreement, and the primary liability for the acceptable quality of gas supplies lies with the retailer under the CGA. Despite this, the potential effect of the \$10,000 aggregate limit would be to practically eliminate any network company liability for any negligence that causes physical loss or damage to the property of groups of customers. In my view this is an unreasonable exclusion of liability.
181. Trustpower says in its submission on the draft assessment that this clause is required by network owners under the existing Use of System Agreements. If there are loss allocation arrangements between Trustpower and the network companies then it is a matter for them, and should not necessarily affect the rights customers might have.



Other issues

182. Benchmark 5.1 – this Benchmark requires all changes to the non-price terms and conditions of the agreement to be made on 30 days’ notice to the customer. The Trustpower agreement provides that changes to align the agreement with industry model agreements or mandated requirements may be made without notice, as long as the changes are beneficial or immaterial to the customer.
183. In its submission on the draft assessment, Trustpower says this clause is a pragmatic approach to compliance that gives effect to the intent behind the Benchmark. It allows changes to be made that are beneficial to customers without unnecessary delay or cost.
184. However the Benchmark is not met if changes can be made without notice to the customers.
185. Benchmark 8(b) – this Benchmark requires retailers to provide 30 days’ notice by individual communication to customers if their prices increase by more than 5%. The Trustpower agreement says individual notice for service fee increases is only required when “that increase is reasonably likely to have a material effect on you.” The extra condition for individual notification of increased fees that have a material effect does not comply with Benchmark 8(b).
186. Benchmark 13.1(b) – the 7 working days’ disconnection notices under the Trustpower agreement are required to include information about what the customer must do to avoid disconnection, but this does not seem to apply to the subsequent 24 hour disconnection notices.
187. Trustpower's submission on the draft assessment says the commitment to include information about preventing disconnection does apply to the 24 hour disconnection notices. In my view this is not a natural reading of the provisions, given the order of the relevant sentences.

**Energy Direct**

188. The Energy Direct Customer Supply Agreement is dated 3 March 2014, so it predates the Trustpower agreement. The two forms are practically identical, so they are both substantially aligned with the Benchmarks.

189. The only differences between the Trustpower and Energy Direct agreements are some subtle wording differences in the disconnection and termination sections. In particular the Energy Direct disconnection provisions that permit disconnection for reasons other than non-payment do not include the initial 7 working day disconnection notice. Otherwise there are no differences between the Trustpower and Energy direct contracts.

#### ISSUES OF PARTICULAR CONCERN

190. The Individual Retailer Results section summarises the non-alignment issues for each arrangement, including those issues identified as being "of concern".
191. This section discusses the Benchmarks where there is relatively low alignment among the arrangements. For example, none of the arrangements are fully aligned with Benchmark 13 (Clear disconnection processes), and only one arrangement is fully aligned with Benchmark 8 (Clear price increases). Benchmark 5 (Clear contract variation procedures - non-price) and Benchmark 16 (Clear description of liability and redress) also have a relatively low alignment rate of 30%.
192. Benchmark 2 (Clear safety information) is also worth commenting on briefly.

#### Benchmark 13 - Clear disconnection processes

193. One of the issues with achieving alignment with Benchmark 13 is that there are 8 distinct elements to the Benchmark. As a matter of sheer arithmetic this Benchmark is more difficult to fully align with than most of the others.
194. Many of the actual alignment issues relevant to Benchmark 13 are not difficult. For example the most common alignment issue (affecting 6 of the arrangements) is that the obligation to delay disconnection for dispute resolution processes to be completed only applies to payment disputes. None of the retailers disputed this point in their submissions on the draft assessment reports, and it seems to be relatively easy to address.
195. The most significant issues are where retailers have rights to disconnect (and/or terminate the agreement) without notice in a wider range of circumstances than contemplated by the Benchmark. One of the issues is whether disconnection without notice may take place at the request of the network company, or if the retailer's contract with the network company is terminated. Some retailers say they cannot comply with the disconnection notice provisions in these cases,

although no examples were given of network companies actually requiring customers to be disconnected.

196. This issue was explicitly considered in GIC's 2013 review of the Benchmarks, and some retailers evidently disagree with the outcome.

#### Benchmark 8 - Clear price increases

197. The main alignment problem with this Benchmark concerns the individual notification required for price increases of greater than 5%. Generally the retailers comply for energy price increases, but alignment is low when it comes to notifying increases in service fees.
198. Many arrangements qualify the requirement to give direct notice of fee increases by adding the condition that the increase must be material to the customer. Most fees are only charged rarely, and in their submissions on the draft assessments the retailers generally made the point that there is little value in advising customers of increases in fees they are unlikely to ever pay.

#### Benchmark 5 - Clear contract variation procedures (non-price)

199. The most common issue with this Benchmark is that retailers reserve the right to only give public notice when they make non-price changes to their contracts. The Benchmark refers to retailers providing individual notice for material changes, but many retailers do not expressly commit to do so in their contracts.
200. Trustpower/Energy Direct is an outlier on this issue because they reserve the right to make beneficial or immaterial changes with no notice at all.
201. The main driver for retailers is obviously reducing compliance costs, together with their impression that most consumers are unlikely to see any value in being individually notified of technical changes to their agreements.

#### Benchmark 16 - Clear description of liability and redress

202. This Benchmark requires that judgement be made as to whether the exclusions of liability included in the contracts are "clearly reasonable". There is obviously scope for uncertainty and disagreement on this standard.

203. Pulse Energy/Greypower Electricity is the only arrangement which I have assessed as overstepping the reasonableness requirements by effectively excluding all liability (except under the Consumer Guarantees Act). The Pulse Energy/Greypower Electricity clauses layer the exclusions until there seems to be no ability left for consumers to seek redress.
204. Another matter I have identified as not being clearly reasonable is retailers applying the usual \$10,000 liability cap as an aggregate limit applying to more than one customer in relation to a single event or related series of events. This provision is used in 6 of the arrangements assessed (Genesis, Energy Online, Mercury Residential, and Mercury Business, Trustpower and Energy Direct).
205. In some cases the aggregate limit only applies to network company liabilities, but in other cases the retailers also claim the benefit of the aggregated limit themselves.
206. The Consumer Guarantees Act is obviously a significant factor in any liability issues between retailers and their customers. The retailers all meet the minimum requirements of not purporting to contract out of the CGA (except in a case of business customers). Interestingly the Pulse Energy/Greypower Electricity agreement is the only one assessed that provides any explanation of the acceptable quality guarantee under the CGA. This is additional to the requirements of the Benchmark, and this point is discussed below in the Reasonable Consumer Expectations section.

#### Benchmark 2 - Clear safety information

207. This Benchmark was substantially revised in the 2013 GIC review, and the 7 arrangements that fully comply seem to do so easily. However 3 of the arrangements have either overlooked this Benchmark, or decided not to comply.
208. It is interesting that Mercury provides the information required in its residential agreement, but does not do so in its business agreement. Nova is opposite, in that it provides the information in its commercial agreement, but does not do so in its residential agreement.
209. This suggests the alignment issue may be a matter of the Benchmark having been overlooked, rather than there being a strong disagreement in principle by the retailers.

**COMMENTS ON COMPLIANCE WITH THE GIC REASONABLE CONSUMER EXPECTATIONS**

210. GIC has asked me to comment on the GIC Reasonable Consumer Expectations (RCEs) in the context of the retail gas contracts I have assessed. The RCEs are attached to this report as Attachment 3.
211. Most of the RCEs relate to market conditions and the actual conduct of market participants, rather than the contents of gas retailers' contracts with their customers.
212. Several of the RCEs are however supported by the Benchmarks. For example, the RCEs about meaningful choice (RCEs 1, 2 and 3) are obviously relevant to Benchmark 9 (Clear pricing information). Generally, pricing information is reasonably available to consumers, and prospective consumers. Only one retailer has made the decision not to have its pricing plans available on its website, and to require prospective consumers to find out pricing information through its call centre (Contact).
213. There are however variations in how accessible pricing information is for consumers. Some retailers are very open with their pricing plans on their websites, while others require prospective customers to enter into an online application process to find out the applicable prices and options. Geographic variations are an obvious reason for pricing information needing to be carefully organised, but this does not explain the different standards of transparency among retailers regarding their prices.
214. Generally information about fees is less transparent than other pricing information; in some cases information about fees is relatively hard to find or is not available at all. Most of the alignment problems with Benchmark 9 on clear pricing information relate to information about fees.
215. The RCEs about meaningful choice go further than Benchmark 9, and this is an area where the performance of several retailers could improve.
216. Disconnections and terminations are dealt with in RCEs 6 and 7. The arrangements reviewed for the purposes of the 2015 assessment have little information about how disconnections occur, but they do have information about the circumstances in which disconnections may occur, and the notice provisions that apply (or not).

217. The general principle that disconnections should only happen with reasonable notice unless they are for safety reasons is supported by all the gas retail arrangements. There are however some arrangements where the principle is eroded at its edges. The circumstances where a right to disconnect without notice is claimed by some retailers go beyond the circumstances contemplated by Benchmark 13, and this is also inconsistent with the RCEs.
218. In terms of the quality of gas supply and related services, section 7A of the Consumer Guarantees Act provides more useful and enforceable remedies than the gas retail contracts. The gas retail contracts are not generally inconsistent with the Consumer Guarantees Act.<sup>4</sup> However, only one retail contract includes any explanation of the acceptable quality guarantee for gas and electricity (Pulse Energy/Greypower Electricity). One of the retailer submissions on the draft assessment reports made the point that it is not the retailers' responsibility to provide information to consumers about the CGA.
219. While this point is technically correct, it does not sit well with RCE 12. This is particularly the case when every retail contract deals at considerable length (some more so than others) with the exclusions and limitation of the liabilities of retailers and other market participants. In fact it is the retailers which are responsible for the acceptable quality of the gas supply and its related services under the CGA, and there is no limitation on that statutory liability.
220. No customer relying on the retailer contracts for information about their rights in relation to the retailer would have any idea of the extent of their rights under the Consumer Guarantees Act. I think this is the most significant gap in terms of the retail gas contracts' compliance with the RCEs.

Roger Palairret  
30 September 2015

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<sup>4</sup> It would be an offence under the Fair Trading Act 1986 for a retailer to contract out of the Consumer Guarantees Act - except in relation to business customers. Some of the retail gas contracts do not deal with contracting out of the CGA for business customers very well, and details are provided in the appropriate parts of the Detailed Assessment Report.

## Attachment 1

# Retail Contracts Scheme Benchmarks

### Benchmark 1 - Clear supply commencement

Benchmark	GIC Interpretation
1.1. The gas supply arrangements must state when the <b>supply</b> of gas is to commence, either by stating a specific commencement date or the circumstances that will determine the commencement date.	<p>This benchmark concerns <b>supply commencement</b> not contract commencement. It must be <b>reasonably clear</b> when supply commences.</p> <p>The benchmark requires the commencement date to be either:</p> <ul style="list-style-type: none"> <li>an actual date agreed between the Retailer and the Consumer;</li> <li>a method for determining a date (e.g. “the earliest possible date” or “the date you move in” or “the date you start taking supply from us” or “as soon as possible following our acceptance of your application”); or</li> <li>a date determined by the switching regulations or rules.</li> </ul> <p>Benchmark is not met by a statement that supply commences when the Consumer starts taking supply.</p> <p>Benchmark not met by the customer stating (eg on an Application Form) when they would “like” supply to occur, but is met by the customer stating when they “require” supply to occur.</p>
1.2. Where the gas supply arrangements are completed after the Retailer has begun supplying gas to the Consumer, the gas supply <b>arrangements</b> will commence from the date that gas is first supplied to the Consumer.	<p>This benchmark concerns <b>contract commencement</b> not supply commencement. Benchmark requires it to be clear that arrangements can be back-dated to the date that supply commenced.</p> <p>Benchmark met by statement that Consumer becomes a customer by:</p> <ul style="list-style-type: none"> <li>continuing to receive and use gas at premises where a previous customer has left</li> <li>arranging for Retailer to turn on gas supply that had been previously turned off.</li> </ul> <p>Benchmark not met if back-dating of contract commencement date is not mentioned.</p>

### Benchmark 2 - Clear safety information

Benchmark	GIC Interpretation
2. The gas supply arrangements must provide information to Consumers on emergency procedures and safety information, or provide a description of where information on emergency procedures and safety information is located.	<p>Benchmark met if the specified safety information and information on emergency procedures is contained in:</p> <ul style="list-style-type: none"> <li>the contract; or</li> <li>a document referred to in the contract, even if the contract does not specify what information is contained in that other document.</li> </ul> <p>Safety issues are also addressed by other industry requirements and Gas Industry Co acknowledges that, in an emergency, safety information recorded in contractual arrangements is unlikely to be immediately at hand. However, contractual arrangements are a mechanism for raising safety awareness.</p> <p>Information on emergency procedures is to include information on how the Consumer can turn off their gas supply in an emergency and information on the procedures for reconnection after the emergency.</p> <p>Safety information is to include information such as:</p> <ul style="list-style-type: none"> <li>when the Consumer must obtain compliance certificates</li> <li>what the Consumer should do to ensure gas safety at the Consumer’s premises, including how to turn off gas supply</li> <li>who the Consumer should call if there is an emergency involving gas at the Consumer’s premises.</li> </ul>

### Benchmark 3 - Clear consumer exit rights (open term)

Benchmark	GIC Interpretation
3. Open term gas supply arrangements must provide the Consumer with the ability to cease gas supply from the existing Retailer:	<p>If an arrangement has an initial fixed term followed by an open term, both benchmark 4 and 3 are relevant respectively.</p> <p>“Cease gas supply” includes provisions dealing with disconnection, discontinuing supply, terminating the agreement, exiting and ceasing being a customer.</p>
(a) at any time without unnecessary delay;	<p>Benchmark not met if:</p> <ul style="list-style-type: none"> <li>there are restrictions on the circumstances in which the Consumer can terminate (the Consumer should be able to terminate at ANY time)</li> <li>following termination, the charges only cease on a date agreed by the Retailer (as the Retailer could unreasonably withhold its agreement, except under the switching rules)</li> <li>the Retailer can continue its daily fixed charge until gas is disconnected or decommissioned (as this is outside the Consumer’s control).</li> </ul> <p>Benchmark may be met where:</p> <ul style="list-style-type: none"> <li>termination is subject to the Consumer allowing the Retailer to perform a final</li> </ul>

	<p>meter reading</p> <ul style="list-style-type: none"> <li>the length of notice that the Consumer must give is specified, but there is not a corresponding obligation on the Retailer to disconnect (one is implied).</li> </ul> <p>There is an <b>unnecessary delay</b> if more than one month's notice of termination is needed.</p>
(b) irrespective of any offer that the existing Retailer may make with respect to price or any other aspect of continued supply from that Retailer; and	Benchmark not met where the Consumer can't switch to an alternative Retailer, unless the current Retailer is unwilling to match the alternative Retailer's offer.
(c) without incurring any charges other than the direct costs related to termination, i.e. without penalty fees or exit fees.	

## Benchmark 4 - Clear consumer exit rights (fixed term)

Benchmark	GIC Interpretation
4. Fixed term gas supply arrangements must clearly state:	If application form or terms and conditions do not specify a fixed term, assume that the arrangement is for open term only and that the benchmark is not applicable.
(a) the expiry date;	<p>Benchmark met if the expiry date can be calculated as provided in the contract.</p> <p>Benchmark not met if:</p> <ul style="list-style-type: none"> <li>arrangement automatically rolls over for the same fixed term, unless prior notice is given. Gas Industry Co considers that roll-overs should be on an open term basis</li> <li>the Consumer can't switch to an alternative Retailer at the end of the term, unless the current Retailer is unwilling to match the alternative Retailer's offer.</li> </ul>
(b) the provisions for early termination (i.e. prior to the expiry date);	<p>Benchmark relates to the <b>Consumer's</b> right to terminate, not the Retailer's.</p> <p>Benchmark is:</p> <ul style="list-style-type: none"> <li>not met by <b>general</b> right to terminate (eg for breach) or if contract is <b>silent</b> on right to convenience termination</li> <li>met by a statement that the Consumer has <b>no right</b> or has <b>limited rights</b> to convenience termination.</li> </ul>
(c) the basis on which any early termination charges will be calculated, if early termination is allowed; and	Benchmark met if no early termination charge is mentioned.
(d) if the Retailer seeks to materially change the terms or conditions during the fixed term period, the Consumer may terminate the arrangement during the notice period before such changes take effect, without paying any charges associated with the early termination.	

## Benchmark 5 - Clear contract variation procedures (non-price)

Benchmark	GIC Interpretation
5.1. Retailers may change the non-price terms and conditions of the gas supply arrangements upon giving the Consumer no less than 30 days' notice of the changes.	<p>If arrangement has separate provisions for price terms, assume that general right to amend contract applies to non-price terms only.</p> <p>Benchmark met if:</p> <ul style="list-style-type: none"> <li>the Retailer has no express right to amend the contract (assume that the Retailer won't change without each Consumer's agreement)</li> <li>one month's notice is given (February is less than 30 days).</li> </ul> <p>Benchmark not met if less than 30 days' notice can be given.</p> <p>Benchmark not failed merely because the Retailer can change the arrangement on shorter notice, in the event of temporary supply emergencies.</p>
5.2. The gas supply arrangements must specifically provide for material changes in the terms of the gas supply arrangements to be directly communicated to Consumers and not through public notices.	<p>This benchmark relates to non-price variations only. Price variations are addressed in benchmark 8.</p> <p>Benchmark met if all non-price variations must be directly communicated to the Consumer.</p>

## Benchmark 6 - Clear supply obligations

Benchmark	GIC Interpretation
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Benchmark	GIC Interpretation
6. Each arrangement should describe the Retailer's obligation to supply gas of an acceptable quality to a specified point.	<p><b>Supply obligation</b></p> <p>Benchmark may be met if:</p> <ul style="list-style-type: none"> <li>the Retailer's obligation is to: <ul style="list-style-type: none"> <li><b>endeavour</b> to supply gas (including "best" and "reasonable" endeavours and "aim to")</li> <li>supply <b>up to a maximum</b> quantity of gas</li> <li>provide an "<b>energy service</b>" or "<b>energy supply</b>" rather than "supply gas"</li> </ul> </li> <li>the Retailer cannot guarantee to provide a <b>continuous supply</b> of gas</li> <li>the arrangement describes the point of supply, but there is <b>no express requirement</b> for the Retailer to supply to that point (the obligation is assumed)</li> <li>supply is subject to the <b>safety</b> of the Consumer's site when connected to the local distribution gas network</li> <li>supply must be <b>exclusively</b> from the Retailer</li> <li>obligations for transporting gas across a distribution network is excluded only where the network operator requires its own agreement with the Consumer.</li> </ul> <p><b>Quality</b></p> <p>Benchmark may be met if:</p> <ul style="list-style-type: none"> <li>the Retailer agrees to comply with all relevant laws; or</li> <li>quality may vary for reasons beyond the Retailer's control</li> </ul> <p><b>Point of supply</b></p> <p>Benchmark may be met if:</p> <ul style="list-style-type: none"> <li>the point of supply is: <ul style="list-style-type: none"> <li><b>as defined by reference to gas regulations (see regulation 5 of the Gas (Safety and Measurement) Regulations 2010)</b></li> <li><b>the point at which gas exits the meter</b></li> <li><b>defined as "all energy past the meter is your responsibility"</b></li> </ul> </li> </ul> <p>Benchmark not met if:</p> <ul style="list-style-type: none"> <li>the arrangement only describes the point of <b>electricity</b> supply</li> <li>the Retailer or network company can <b>determine</b> the point of supply (too general), unless the arrangement also details where the point of supply is usually.</li> <li>the point of supply is described as "<b>the point</b> at which gas flows from a gas network into the Consumer's installation, appliance or reticulation system" as that point itself is unclear.</li> </ul>

## Benchmark 7 - Clear supply restoration procedures

Benchmark	GIC Interpretation
7. The gas supply arrangements must set out how the Retailer will respond to the Consumer where the gas supply is interrupted.	<p>Benchmark relates to how the Retailer <b>responds</b> to interruptions to <b>gas supply</b>, not other service issues. The <b>circumstances</b> in which supply may be interrupted are addressed in benchmark 14.</p> <p>Benchmark not met by a <b>standard complaints procedure</b>. Supply interruptions should be dealt with more promptly.</p> <p>Benchmark met by:</p> <ul style="list-style-type: none"> <li>reasonable endeavours obligation (e.g. by the Retailer using reasonable endeavours to restore supply as soon as reasonably practicable); or</li> <li>the Retailer 'working with the relevant parties to try to minimise any inconvenience'.</li> </ul>

## Benchmark 8 - Clear price increases

Benchmark	GIC Interpretation
8. In order to increase the price of gas supplied under the gas supply arrangements, the gas supply arrangements must state:	
(a) the length of notice that shall be given before the price increase takes effect, which shall be not less than 30 days from the giving of notice;	
(b) the method by which notice shall be given...	<p>Benchmark not met where the method of notice is unclear.</p> <p>Benchmark met by public notice (eg on website or newspaper).</p> <p>Benchmark may be met by a general notice clause specifying how all notices from the Retailer will be given.</p>

Benchmark	GIC Interpretation
...provided that, if the increase in price is more than 5%, a separate notice of the increase must be individually communicated to the Consumer in writing...	<p>Benchmark not met by:</p> <ul style="list-style-type: none"> <li>public notice (eg on website or newspaper)</li> <li>automatic price review (eg annual) that is not notified, despite it being “communicated” in the arrangement.</li> </ul> <p>Benchmark met by:</p> <ul style="list-style-type: none"> <li>emailed notice</li> <li>notice in next invoice.</li> </ul>
(c) that the notice will include the reasons for the increase.	<p>Benchmark met if contract only requires notice of the general reasons for the increase.</p> <p>Benchmark not met by provision that Consumers can request the cause of a price increase.</p>

## Benchmark 9 - Clear pricing information

Benchmark	GIC Interpretation
9.1. The gas supply arrangements must:	
(a) refer to the relevant prices or pricing schedule (as may be produced by the Retailer from time to time) of products and services available to the Consumer;	<p>Without comprehensive analysis and discussion with each Retailer, it will not be possible for the reviewers to assess whether prices are accurately and comprehensively described in any arrangement.</p> <p>The benchmark requires the prices to be clear to the Consumer, whether in the arrangement itself (eg application form) or publically available (eg on the Retailer’s website or in another publically accessible location).</p> <p>Benchmark met if a price plan is referenced to in the arrangement but the arrangement does not describe where Consumers may find the price plan, provided the price plan is in fact available on the Retailer’s website.</p> <p>Benchmark not met:</p> <ul style="list-style-type: none"> <li>if arrangement does not specify <b>where</b> price information can be found</li> <li>if the specified location of price information is not publically available.</li> </ul>
(b) state that the Consumer is liable for the charges, but only for those charges, for all of the services provided under the gas supply arrangements;	<p>Benchmark met if contract <b>clearly specifies</b> the charges that the Consumer will be liable for.</p> <p>Benchmark not met if:</p> <ul style="list-style-type: none"> <li>Consumer liable for <b>unspecified charges</b> (eg “all other costs”)</li> <li>the amount of any charges are open ended (does not apply where the Consumer will receive advance notice of change to these charges).</li> </ul>
(c) state the time from which the Consumer will be liable for the charges;	The intention behind this benchmark is adequately addressed in benchmark 1. No need to assess here.
(d) in the case of bills based on estimates, the Retailer will provide a simple explanation of how the estimate will be calculated...	<p>Benchmark met if the:</p> <ul style="list-style-type: none"> <li>the contract itself explains how the estimate is calculated; or</li> <li>the contract simply provides that the estimate must be “reasonable”.</li> <li>the contract states that an explanation will be given on request (e.g. by calling)</li> </ul>
...and of the process that will be used for correcting any estimates;	<p>Benchmark met:</p> <ul style="list-style-type: none"> <li>if Retailer will invoice according to a meter reading performed by the Consumer</li> <li>even where the Consumer’s right to request a correction is limited (eg because Consumer can only request a test annually).</li> </ul>
(e) provide that if the Retailer makes an error and charges an incorrect amount to the Consumer, then upon becoming aware of the error the Retailer will promptly refund any amount that has been over-charged...	<p>Benchmark met if:</p> <ul style="list-style-type: none"> <li>over-charging will be <b>credited</b> against next invoice</li> <li>an <b>appropriate adjustment</b> will be made.</li> </ul> <p>However, benchmark not met if:</p> <ul style="list-style-type: none"> <li>the time frame is not mentioned (“next invoice” is acceptable)</li> <li>the Consumer can only request metering tests each 12 months and adjustment only extends back to the date of testing (as refund may exclude many months of overcharging).</li> </ul>
...and may invoice the Consumer for any amounts which have been under-charged subject to sub-clause (f); and	<p>Benchmark not met if arrangement does not provide that under-charging may be invoiced.</p> <p>Benchmark met if:</p> <ul style="list-style-type: none"> <li>under-charging can be included in subsequent invoice</li> <li>the under-charged amount is payable after the dispute is resolved, even if the amount is not required to be invoiced.</li> </ul>
(f) the gas supply arrangements must include reasonable limits on the Retailer’s ability to invoice consumers for amounts which have previously been under-charged.	<p>“Reasonable limits” on a Retailer’s ability to invoice Consumers for amounts which have been previously under-charged include provisions to the effect of the following (where the Consumer is not responsible for the lateness of the invoice):</p> <ul style="list-style-type: none"> <li>the Retailer must consider and reasonably take into account whether the Retailer or the Consumer contributed to the error or could reasonably have been expected to know of the error;</li> </ul>

Benchmark	GIC Interpretation
	<ul style="list-style-type: none"> <li>if the bill is sent more than two months after the end of the period to which it relates, the Consumer has at least the length of time covered by the bill to pay it;</li> <li>if a bill is more than three months late, the Company should negotiate an appropriate discount with the Consumer; and</li> <li>no interest will be payable on any incorrect or late bills.</li> <li>The Retailer will not seek to recover amounts for under-charging if an unreasonable period has lapsed (for example 3+ years).</li> </ul>
9.2. If the Retailer offers alternative payment options to Consumers, a simple explanation of how those options operate must be set out in the gas supply arrangements.	Benchmark met if arrangement <b>does not provide</b> for payment options (assumed that Retailer does not offer any).
9.3. Metering: In relation to the metering of gas supply to the Consumer, the gas supply arrangements must clearly describe: (a) any additional costs associated with providing, correcting, changing, or removing metering equipment, which may be listed in a separate schedule;	<p>Benchmark met if the arrangement:</p> <ul style="list-style-type: none"> <li><b>specifies the costs</b> in a separate schedule;</li> <li><b>does not mention</b> any additional costs (assume there are none)</li> <li><b>says costs of an unspecified amount</b> may be payable (eg "inspection, repair and/or replacement costs") <b>and provides that the Consumer will be informed</b> prior to taking any action on a meter which may incur a charge.</li> </ul> <p>Benchmark not met if the arrangement:</p> <ul style="list-style-type: none"> <li><b>says costs of an unspecified amount may be payable, but does NOT provide that the Consumer will be informed</b> prior to taking any action on a meter which may incur a charge.</li> </ul>
(b) the process to be followed in the event that either the Retailer or the Consumer suspects that a meter is recording or reading incorrectly...	
...and the method for correcting previous billed consumption if found to be incorrect.	<p>Benchmark requires the contract to deal with both:</p> <ul style="list-style-type: none"> <li>the <i>quantum</i> of the correction (eg consumption will be reasonably adjusted); and</li> <li>the <i>manner</i> of the correction (eg invoices will be re-issued and/or the customer's account credited).</li> </ul> <p>Benchmark not met by:</p> <ul style="list-style-type: none"> <li>dealing with the method of testing, without describing the quantum or the manner of the correction; ; or</li> <li>providing that consumption will be adjusted, without describing the manner of the correction.</li> </ul>

## Benchmark 10 - Clear bond obligations

Benchmark	GIC Interpretation
10.1. Where the Retailer requires a bond from the Consumer, the gas supply arrangements must state:	Benchmark met in full if arrangement does not reference bonds (assume that bonds are not required). If arrangements provides that "other lending criteria apply" it is assumed that bonds may be required.
(a) the requirement for the Retailer to provide to the Consumer the reasons for requiring a bond;	Benchmark not met if arrangement says "if we have concerns about your ability to pay we may require a bond". The arrangement must oblige the Retailer to give more detailed reasons in each case.
(b) the period of time within which the bond must be paid to the Retailer; and	This benchmark does not need to be scored. It is reasonable for bonds to be paid before supply commences. Any additional time for payment allowed by a Retailer will not prejudice the Consumer.
(c) how long the Retailer will keep the bond.	<p>Benchmark met if arrangement:</p> <ul style="list-style-type: none"> <li>describes the <i>circumstances</i> in which the bond will be released, rather than a specific time period</li> <li>provides an indefinite period for retaining bonds, provided the bond will be returned on <b>termination and payment</b> of outstanding charges.</li> </ul>
10.2. If the Retailer keeps the bond for longer than 12 months, it must provide:	Benchmark not met if arrangement includes no restriction on the time that a bond may be kept (assume it may be kept for longer than 12 months).
(a) its reasons for doing so;	Benchmark met if arrangement provides that the balance of any bond will be repaid after 12 months if you have paid all invoices on time (assume that reason for keeping it is non-payment of invoices on time).
(b) information on how the bond will be refunded; and	
(c) whether or not interest is payable on the bond.	

## Benchmark 11 - Clear consumer site responsibilities

Benchmark	GIC Interpretation
11.1 The gas supply arrangements must:	
(a) explain the Consumer's responsibilities in relation to gas lines, meters and other equipment on the Consumer's premises and for compliance with all safety and technical requirements under regulations and codes of practice;	"On the Consumer's premises" includes both sides of the point of supply. Benchmark not met if the Consumer is required to provide certification in relation to the Retailer's equipment at the Consumer's site.
(b) state the rights of the Retailer and/or their agents to gain access to gas lines and equipment located on the Consumer's premises; and	"On the Consumer's premises" includes both sides of the point of supply.
(c) the consequences the Consumer may face for not granting access.	Benchmark not met by <b>general statement</b> that the Retailer may terminate or suspend the arrangement for breach.
11.2 Metering In relation to the metering of gas supply to the Consumer, the gas supply arrangements must clearly describe the Consumer's responsibility for protecting, not tampering with, and providing access to meter(s) for maintenance and reading purposes.	

## Benchmark 12 - Clear metering obligations

Benchmark	GIC Interpretation
12. In relation to the metering of gas supply to the Consumer, the gas supply arrangements must clearly describe:	See also benchmarks 8 and 11.
(a) the requirements for metering relevant to the pricing options selected by the Consumer;	The arrangement must make it clear who has responsibility for: <ul style="list-style-type: none"> <li>providing the meter</li> <li>maintaining the meter.</li> </ul>
(b) the frequency of meter readings; and	The arrangement must: <ul style="list-style-type: none"> <li>clearly describe the frequency in which the Retailer will read meters</li> <li>be consistent with the Retailer's legal obligations for frequency of meter reading.</li> </ul> <p>Gas Industry Co assumes all TOU (time of use) meters will comply with legal frequency obligations. In terms of Retailer's legal obligations for frequency of non-TOU meters:</p> <ul style="list-style-type: none"> <li>the Gas (Downstream Reconciliation) Rules 2008 require (in general terms) that Retailers <b>must</b> read meters as follows: <ul style="list-style-type: none"> <li>for expected consumption between 250 GJ pa and 10 TJ pa, monthly</li> <li>for all lower expected consumption: <ul style="list-style-type: none"> <li>each individual meter at least once every 12 months, unless exceptional circumstances prevent; and</li> <li>at least 90% of the meters once every 4 months (Gas Industry Co notes that this aggregate obligation cannot be applied at the level of individual arrangements)</li> </ul> </li> </ul> </li> <li>Under the EGCC's Gas Code of Practice meter readings <b>should</b> take place a minimum of four times a year, unless the Consumer agrees individually otherwise or does not provide the Retailer with reasonable access to the meter. For the purpose of this benchmark, the code is not a legal obligation unless the Retailer agrees in the arrangement to comply with it.</li> </ul>

Benchmark	GIC Interpretation								
	<p>Accordingly, arrangements must provide at least the following:</p> <table border="1"> <thead> <tr> <th>Frequency</th> <th>Arrangement Type</th> </tr> </thead> <tbody> <tr> <td>Monthly</td> <td>“Business” or “Business/Residential” (where expected consumption could reasonably be between 250 GJ and 10 TJ pa)</td> </tr> <tr> <td>Four times a year (including “plans to” or “should” do so, but not “several times a year”)</td> <td>“Residential Only” where the Retailer <b>agrees</b> in the arrangement to comply with industry codes of practice (or relevant industry codes of practice)</td> </tr> <tr> <td>Once every 12 months</td> <td>“Residential Only” where Retailer <b>does not</b> agree in the arrangement to comply with industry codes of practice</td> </tr> </tbody> </table> <p>The “individual agreement” noted in the Code of Practice cannot be contained in the Retailer’s standard documentation but must be provided individually (for example a Consumer may agree that the Retailer may miss a meter read where the Consumer recently provided its own estimate).</p> <p>The benchmark is not met if the arrangement states that a longer time between readings is permitted for rural meters.</p>	Frequency	Arrangement Type	Monthly	“Business” or “Business/Residential” (where expected consumption could reasonably be between 250 GJ and 10 TJ pa)	Four times a year (including “plans to” or “should” do so, but not “several times a year”)	“Residential Only” where the Retailer <b>agrees</b> in the arrangement to comply with industry codes of practice (or relevant industry codes of practice)	Once every 12 months	“Residential Only” where Retailer <b>does not</b> agree in the arrangement to comply with industry codes of practice
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Once every 12 months	“Residential Only” where Retailer <b>does not</b> agree in the arrangement to comply with industry codes of practice								
(c) the obligation to ensure metering is conducted in accordance with relevant industry standards and codes of practice.	<p>Relevant standards and codes of practice include:</p> <ul style="list-style-type: none"> <li>NZS5259, which has legal effect under the Gas Act on all meter owners</li> <li>EGCC’s Gas Code of Practice, which is not legally binding in itself.</li> </ul> <p>Benchmark met if:</p> <ul style="list-style-type: none"> <li>Retailer agrees to comply with: <ul style="list-style-type: none"> <li>“relevant” industry standards and codes of practice, rather than all of them.</li> <li>“industry requirements”, rather than “standards and codes of practice”.</li> </ul> </li> <li>The contractual wording implies metering will be in accordance with relevant industry standards and codes of practice (for example, this is implied if the retailer agrees to fix the meter and adjust the customer’s account if the meter doesn’t comply with industry requirements).</li> </ul> <p>Not met if Retailer merely agrees to comply with “laws”, as the EGCC Code of Practice is not a law and NZS5259 is not directly binding on Retailers.</p>								

## Benchmark 13 - Clear disconnection process

Benchmark	GIC Interpretation
13.1. The gas supply arrangements must:	<p>Benchmark addresses <b>disconnection, termination or suspension</b> by the Retailer for the Consumer’s breach. These are distinct to “disconnections” dealt with in other benchmarks:</p> <ul style="list-style-type: none"> <li>Benchmark 3 (How to stop being a Consumer of your current Retailer)</li> <li>Benchmark 14 (Faults and Planned Shutdowns).</li> </ul>
(a) Set out the conditions under which Consumers can be disconnected;	<p>Benchmark met if:</p> <ul style="list-style-type: none"> <li>there is no ability to disconnect other than under benchmark 14</li> <li>a Retailer may disconnect a Consumer for reasons other than non-payment where there has been a material or persistent breach of the gas supply arrangements by the Consumer.</li> </ul>
(b) provide that any notice of such disconnection will describe the actions that the Consumer can take to prevent disconnection.	<p>Benchmark not met if the arrangement is silent on this, even if the actions the Consumer can take to prevent disconnection are notified <b>in practice</b>.</p>
13.2. A Retailer may only disconnect a Consumer for non-payment where the non-payment relates to validly invoiced charges for the supply of gas, gas retail services, line function services, and/or gas related bonds.	<p>Benchmark not met if can discontinue gas supply for non-payment of an invoice for services unrelated to gas supply.</p> <p>However, Benchmark met if the Retailer in a dual fuel contract can discontinue gas supply for non-payment of invoices related to energy supply (with those invoices covering gas and electricity supply).</p>
13.3 Except for emergency disconnections, or in the case of disconnections under the provisions of the Gas Act 1992 or Gas Regulations, or where a Consumer requests disconnection, the gas supply arrangements must provide:	<p>Notice requirements apply regardless of whether the retailer or network company is disconnecting.</p> <p>Notice requirement not met if arrangement:</p> <ul style="list-style-type: none"> <li>merely provides that the Retailer will give notice, without specifying the length of notice</li> <li>allows Retailer to attempt to give the required length of notice (although force majeure clause may apply).</li> </ul> <p>“Emergency disconnections” relate to disconnections for the purpose of protecting health, safety or damage to property. Grounds for disconnection under regulatory arrangements are primarily focused on safety. The benchmark can be met where emergency disconnections include disconnections where the retailer suspects that the metering equipment or other equipment at your premises supplied by the retailer or a network company or meter company has been tampered or interfered with.</p>

Benchmark	GIC Interpretation
	<p>Accordingly, the following wording requires notice be given as it does not meet the carve out (as the wording may extend beyond emergency or safety purposes):</p> <ul style="list-style-type: none"> <li>instructions from a Lines Company or Network Operator to disconnect</li> <li>breach of contract by the Consumer</li> <li>mere suspicion that there has been tampering with a meter, equipment, pipes or fittings</li> <li>failing to advise the Retailer of any damage to metering or network equipment</li> <li>tampering, hacking into, or interfering with any metering network equipment</li> <li>deliberately taking advantage of the fact that the meter was inaccurate or not working properly.</li> <li>restrictions on the availability of gas</li> <li>non-payment.</li> </ul>
(a) for the receipt by the Consumer of at least 7 working days' written notice of warning of disconnection;	<p>See comments above.</p> <p>Benchmark not met if arrangements merely provide that the Retailer:</p> <ul style="list-style-type: none"> <li>will give notice, without specifying the length of notice.</li> <li>will try/attempt to give the required length of notice (although force majeure clause may apply).</li> </ul>
(b) for a further notice to the Consumer at least 24 hours before the disconnection.	<p>See comments above.</p> <p>Benchmark may be met if retailer agrees to take "all reasonable steps" to provide the notice.</p> <p>Benchmark not met if arrangements merely provide that the Retailer:</p> <ul style="list-style-type: none"> <li>will give "notice", without specifying the length of notice.</li> <li>will "try/attempt" to give the required length of notice (although force majeure clause may apply).</li> <li>will take "reasonable steps" to give the required length of notice (this is less than an "all reasonable endeavours" obligation).</li> </ul>
13.4. If a dispute resolution under the gas supply arrangements has been initiated by the Consumer in regard to the cause of any disconnection, then disconnection action specifically related to that cause must be delayed until after the conclusion of the dispute resolution process or when the dispute resolution processes have been exhausted.	<p>Benchmark may be met:</p> <ul style="list-style-type: none"> <li>if Retailer may still disconnect if dispute is not in good faith or is frivolous or vexatious.</li> <li>if disconnection proceeds where undisputed amounts not paid.</li> </ul> <p>Benchmark not met if disconnection only delayed for payment disputes.</p> <p>Benchmark does not require dispute resolution process to have been completed where it is an emergency disconnection or if customer is contesting minor or inconsequential issue.</p>
13.5. The gas supply arrangements must set out the charges that will apply to disconnection and/or connection and where information on those charges is located, and the circumstances under which the charges will apply.	<p>Benchmark not met:</p> <ul style="list-style-type: none"> <li>by the arrangement merely providing that "charges will apply"</li> <li>if prices are available online, but the online price plan is not referenced in the arrangement</li> <li>if an online price plan is referenced in the arrangement, but the online price plan does not specify disconnection and connection charges.</li> </ul> <p>Benchmark met:</p> <ul style="list-style-type: none"> <li>if prices are available online and the price plan is referenced (anywhere) in the arrangement.</li> </ul>

## Benchmark 14 - Clear supply interruption procedures

Benchmark	GIC Interpretation
14.1. The gas supply arrangements must clearly:	
(a) describe the circumstances under which supply may be interrupted without prior warning;	<p>Benchmark met with any description of circumstances (assume the description is comprehensive) including "for reasons beyond our control".</p>
(b) provide a minimum notice period before a planned shutdown, which should be no less than four business days unless agreed otherwise with the Consumer; and	<p>Benchmark not met if arrangement merely provides that the Retailer will:</p> <ul style="list-style-type: none"> <li>"give notice" without specifying any time period</li> <li>"give notice where practical"</li> <li>"try to give notice"</li> <li>"use best endeavours to give advance notice" without specifying any time period.</li> </ul> <p>Benchmark met if Retailer:</p> <ul style="list-style-type: none"> <li>must give "as much notice as is reasonably practicable" as a typical force majeure clause would excuse delays beyond the Retailer's control</li> <li>notice period is subject to the network operator or meter owner (whichever is responsible for the shutdown) giving sufficient notice to do so.</li> </ul> <p>The phrase "unless agreed otherwise with the Consumer" refers to a case specific agreement and thus reference to a shorter notice period in the arrangement itself is insufficient.</p>
(c) describe the Retailer's rights and obligations under special or emergency operating situations.	<p>Specifically, this benchmark addresses "critical contingencies" under the Gas Governance (Critical Contingency Management) Regulations 2008. Under these regulations, Retailers must:</p> <ul style="list-style-type: none"> <li>notify each of their Consumers to apply to the Retailer if the Consumer wishes to be classified as an "essential service provider" or "minimal load Consumer" (regulations 44 and 45). In practice, this classification will not be relevant to the vast majority of Consumers on standard gas supply arrangements and the necessary notice may be covered in an application form, in the gas supply</li> </ul>

Benchmark	GIC Interpretation
	<p>arrangement or elsewhere. Accordingly, compliance with this requirement not been assessed for the purpose of compliance with this benchmark</p> <ul style="list-style-type: none"> <li>during a critical contingency, comply with directions from a transmission system owner given under the regulations (regulation 55(1))</li> <li>on receiving such a direction, urgently notify each of their Consumers affected by the critical contingency to curtail demand in accordance with the direction (regulation 56(1)). Directions for a Consumer to curtail its demand are only of practical relevance for Consumers with very large consumption or agreed “minimum load” requirements. For the purpose of this review, it is assumed that minimum load Consumers are on bespoke agreements. For the Consumers covered by this review it is understood their gas will either be supplied in a contingency or curtailed</li> <li>if applicable, urgently notify each of their Consumers affected by the critical contingency that supply has resumed (regulation 56(1)).</li> </ul> <p>Accordingly, all arrangements (business or residential) must:</p> <ul style="list-style-type: none"> <li>permit the Retailer to curtail supply in a critical contingency situation. The following phrases meet the benchmark: <ul style="list-style-type: none"> <li>the Retailer may curtail supply to the extent required by law</li> <li>the Retailer does not guarantee supply.</li> </ul> </li> <li>require the Retailer to urgently notify the Consumer of supply resumption following a critical contingency situation. A simple statement that the Retailer will “comply with laws” is not sufficient as most Consumers would not be aware of this particular legal requirement. However, it is sufficient to regularly update a fault information line or website.</li> </ul>
<p>14.2. Provision of information to Consumers</p> <p>The gas supply arrangements must provide information to Consumers on where the Consumer may access information about supply interruptions, with this information to be updated by the Retailer as often as is practicable.</p>	<p>Benchmark not met unless the information is referred to in:</p> <ul style="list-style-type: none"> <li>the contract</li> <li>a document referred to in the contract.</li> </ul> <p>The contract does not need to specify what particular information is contained in a referenced document.</p>

## Benchmark 15 - Clear privacy obligations

Benchmark	GIC Interpretation
	<p>Benchmark applies to residential arrangements and to business arrangements (to the extent personal information is held about individuals in that business).</p>
<p>15. The gas supply arrangements must provide that the Retailer will comply with the provisions of the Privacy Act 1993, and accordingly the gas supply arrangements must:</p>	<p>Benchmark met by obligation to comply with relevant privacy laws, without mentioning the Act.</p> <p>Benchmark not met:</p> <ul style="list-style-type: none"> <li>by general obligation to comply with laws</li> <li>if arrangement purports to exclude privacy considerations in relation to personal information obtained from a business.</li> </ul>
<p>(a) set out the purposes for which the Retailer may collect personal information from the Consumer;</p>	<p>Benchmark not met:</p> <ul style="list-style-type: none"> <li>by a right to use the personal information for any purpose</li> <li>by general obligation on the Retailer to comply with privacy laws</li> <li>by arrangement merely providing that the information will be used for the purpose for which it was collected (without having specified that purpose).</li> </ul>
<p>(b) confirm that individuals will be able to access personal information held about them...</p>	<p>Benchmark not met:</p> <ul style="list-style-type: none"> <li>by general obligation on the Retailer to comply with privacy laws</li> <li>by arrangement merely providing that individuals may access telephone recordings of themselves.</li> </ul>
<p>...and have the opportunity to correct this information; and</p>	<p>Benchmark not met by general obligation on the Retailer to comply with privacy laws.</p>
<p>(c) set out where the Consumer can get information about how the Retailer collects, uses, discloses and stores personal information about the Consumer.</p>	<p>Benchmark met if the information is included in the contract.</p> <p>Benchmark not met if the information is in an online privacy statement, unless the privacy statement is referred to in the arrangement.</p>

## Benchmark 16 - Clear description of liability and redress

Benchmark	GIC Interpretation
<p>16.1 Any exclusion of liability in the gas supply arrangements must be clearly described.</p>	<p>Due to the nature of this benchmark, clarity can be assessed in terms of what is likely to be clear to a lawyer, rather than what is likely to be clear to an average consumer. For example, phrases such as “consequential loss”, “direct loss” and “indirect loss” may be assessed as clear as they are likely to be understood by a lawyer (even if not clear to a Consumer and often difficult to apply in practice).</p>

Benchmark	GIC Interpretation
<p>16.1 Any exclusion of liability in the gas supply arrangements must be clearly reasonable. A complete exclusion of all liability would be unreasonable.</p>	<p>The benchmark requires that allocations of financial risk be 'reasonable'. In this case, reasonableness depends on factors such as:</p> <ul style="list-style-type: none"> <li>• what financial risks are involved (their impact and likelihood)</li> <li>• who is best placed to manage the financial risks (including by way of insurance)</li> <li>• what premium has been included in the charges to address the risk.</li> </ul> <p>An exclusion of liability can be assumed to not be unreasonable and to meet the benchmark, except where the contract limits all of the Retailer's liability for all acts or omissions</p> <p>Gas Industry Co considers that a complete exclusion of all liability is clearly unreasonable, and in some cases may even breach the Consumer Guarantees Act 1993.</p> <p>Complete exclusions of liability include express statements that all liability is excluded and include contractual drafting which, in essence, excludes all of the retailer's liability. For example:</p> <ul style="list-style-type: none"> <li>• excluding liability for all of the Retailer's obligations;</li> <li>• excluding liability for all of the Retailer's core obligations;</li> <li>• excluding liability for the acts or omissions of the Retailer's: <ul style="list-style-type: none"> <li>○ officers, employees or agents, as the retailer in practice acts through them; or</li> <li>○ subcontractors, as the core obligations of retailers are usually subcontracted (eg the supply of gas is usually subcontracted to network operators).</li> </ul> </li> </ul> <p>The benchmark may be met where the claim must be lodged within a certain time of the event or damage occurring.</p> <p>As per previous assessments, this benchmark does not address exclusions to the benefit of Consumers.</p>
<p>16.2 The Retailer must not ask the Consumer to indemnify the Retailer from all loss the Retailer may suffer as a result of the gas supply arrangement.</p>	<p>The Benchmark is not met where the Consumer is required to indemnify the Retailer from any loss the Retailer suffers as a result of the gas supply. A very broad indemnity has the potential of making Consumers responsible for loss they did not cause and could not have prevented. For example, a broad indemnity may have the potential of making a Consumer responsible for loss effectively caused by the industry. The Retailer and upstream industry participants are better placed to protect themselves against losses.</p>
<p>16.3 The gas supply arrangement must:</p> <p>(a) describe any payments that will be made to the Consumer as a result of services not being supplied; and</p>	<p>Benchmark met if:</p> <ul style="list-style-type: none"> <li>• arrangements provide there will be no payment;</li> <li>• the contract expressly and clearly excludes all of the retailer's liability for supply interruptions, except any liability under the Consumer Guarantees Act (e.g. "we will not be liable to you for loss or damage in connection with any interruption or reduction in the supply of gas into the gas network, or the quality of that gas, except to the extent (if any) that we are liable under the Consumer Guarantees Act 1993 to compensate you for such loss or damage"); or</li> <li>• the supplier does not guarantee the continuous supply of gas.</li> </ul> <p>"Payment" includes any financial benefit to Consumer (eg discounts).</p> <p>Benchmark not met if the contract is silent as to whether or not payments will be made.</p>
<p>(b) make it clear that any redress offered by the Retailer in relation to services not being supplied as described, is in addition to and does not detract from, the Consumer's rights under the Consumer Guarantees Act 1993.</p>	<p>The objective behind this benchmark is to clearly notify Consumers of their rights.</p> <p>Benchmark not met by:</p> <ul style="list-style-type: none"> <li>• <b>general</b> statement that the Retailer will comply with laws as this does not notify Consumers of this important statutory protection</li> <li>• statement that the Consumer Guarantees Act is <b>excluded to the maximum extent permitted by law</b> as non-business Consumers may wrongly assume they have no Consumer Guarantees Act rights.</li> </ul> <p>Benchmark met by:</p> <ul style="list-style-type: none"> <li>• reference to "Consumer protection legislation" instead of "Consumer Guarantees Act"</li> <li>• statement that arrangement does not exclude or limit rights under the Consumer Guarantees Act</li> <li>• exclusion of the Consumer Guarantees Act as permitted under that Act (i.e. for businesses) an exclusion of liability clause not excluding Consumer Guarantees Act liability eg "except to the extent of any liability arising pursuant to the Consumer Guarantees Act".</li> </ul>



## Benchmark 17 - Clear dispute resolution

Benchmark	GIC Interpretation
17. The gas supply arrangements must:	
(a) advise Consumers, either directly or by reference to other accessible documents, of the process they should follow, including timelines, to bring a complaint to the Retailer, for resolution directly between the Retailer and the Consumer; and	<p>Arrangement not met if:</p> <ul style="list-style-type: none"> <li>Contract procedures inconsistent with internal code of practice</li> <li>Not clear where Consumers should address complaints to.</li> <li>Individual Consumers must appoint person from within their "organisation".</li> </ul> <p>Benchmark met if there is no express timeline for lodging a complaint, as the complaint may then be raised at <b>any</b> time.</p>
(b) advise Consumers that complaints not resolved to their satisfaction may be taken to the Electricity and Gas Complaints Commission scheme approved under the Gas Act 1992.	<p>Benchmark requires reference to:</p> <ul style="list-style-type: none"> <li>"the Electricity and Gas Complaints Commission scheme"</li> <li>"an independent dispute resolution scheme approved under the Gas Act".</li> </ul> <p>Benchmark not met by:</p> <ul style="list-style-type: none"> <li>reference to "any independent complaints resolution process" offered by the Retailer</li> <li>a restriction of the time within which the Consumer may refer the matter to the EGCC for investigation, which is contrary to the rules of the scheme.</li> </ul>

## Benchmark 18 - Clear communication

Benchmark	GIC Interpretation
<p>Consumers to Retailers</p> <p>18.1. The gas supply arrangements must provide advice to the Consumer on practicable and effective means for the Consumer to communicate with the Retailer on any issues over which they have concerns or need information.</p>	<p>Not met by contact information on a website, as the information must be contained in the arrangement.</p>
<p>Retailers to Consumers</p> <p>18.2. The gas supply arrangements must specify how notices from the Retailer will be delivered to the Consumer.</p>	<p>This benchmark relates to general notices, not specifically addressed in other benchmarks.</p>

## Attachment 2

### ALIGNMENT WITH GIC RETAIL GAS CONTRACTS OVERSIGHT SCHEME BENCHMARKS – 2015

Benchmarks	Contact	Genesis	Energy Online	Mercury Residential	Mercury Business	Nova Residential	Nova Commercial	Pulse Energy/ Grey Power	Trustpower	Energy Direct	2015 Overall	2012 Overall	2011 Overall
1. Clear supply Commencement	Full	Full	Full	Full	Full	Full	Moderate	Moderate	Full	Full	Subst.	Substantial	Moderate
2. Clear safety information	Full	Full	Full	Full	Low	Low	Full	Low	Full	Full	Mod.	Low	Low
3. Clear consumer Exit rights (open Term)	Full	Full	Full	Full	Full	Substantial	Full	Full	Full	Full	Full	Substantial	Substantial
4. Clear consumer exit rights (fixed term)	N/a	Substantial	N/a	Full	Substantial	N/a	N/a	Full	N/a	N/a	Subst.	Substantial	Substantial
5. Clear contract variation procedures (non-price)	Full	Moderate	Moderate	Moderate	Moderate	Full	Low	Full	Moderate	Moderate	Mod.	Moderate	Moderate
6. Clear supply obligations	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full	Substantial	Substantial
7. Clear supply restoration procedures	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full	Substantial	Substantial
8. Clear price increases	Full	Substantial	Substantial	Substantial	Moderate	Substantial	Moderate	Substantial	Substantial	Substantial	Subst.	Moderate	Moderate
9. Clear pricing information	Substantial	Full	Full	Full	Moderate	Substantial	Substantial	Full	Full	Full	Subst.	Moderate	Moderate
10. Clear bond obligations	Full	Full	Full	Full	Substantial	Substantial	Substantial	Full	Full	Full	Subst.	Substantial	Moderate
11. Clear consumer site obligations	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full	Substantial	Substantial
12. Clear metering obligations	Full	Full	Full	Full	Full	Full	Full	Moderate	Full	Full	Full	Substantial	Moderate

Benchmarks	Contact	Genesis	Energy Online	Mercury Residential	Mercury Business	Nova Residential	Nova Commercial	Pulse Energy/ Grey Power	Trustpower	Energy Direct	2015 Overall	2012 Overall	2011 Overall
13. Clear disconnection process	Substantial	Substantial	Substantial	Substantial	Low	Moderate	Moderate	Substantial	Moderate	Moderate	Moderate	Moderate	Low
14. Clear supply interruption procedures	Full	Full	Full	Full	Moderate	Full	Full	Full	Full	Full	Full	Substantial	Moderate
15. Clear privacy obligations	Substantial	Full	Full	Substantial	Substantial	Substantial	Substantial	Full	Full	Full	Substantial	Moderate	Moderate
1.6 Clear description of liability and redress	Full	Substantial	Substantial	Substantial	Substantial	Full	Full	Substantial	Substantial	Substantial	Substantial	Substantial	Low
17. Clear dispute resolution	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full	Substantial	Moderate
18. Clear communication	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full	Substantial	Moderate
Arrangement average rating	Substantial	Substantial	Substantial	Substantial	Moderate	Substantial	Substantial	Substantial	Substantial	Substantial	Substantial	Substantial	Moderate
Issues of concern	1	2	2	2	4	2	3	3	2	2	23	12	18
Total Issues	4	5	4	5	19	8	10	7	5	5	72	166	271

# Reasonable Consumer Expectations for the Retail Gas Contracts Oversight Scheme

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## A. MEANINGFUL CHOICE

**RCE 1.** There is a range of pricing plans, products and services available for consumers to consider and make informed decisions

**RCE 2.** There is ready access to good quality, comprehensive and easy to understand information on gas options, gas suppliers and alternatives to gas

**RCE 3.** From the options available in the market, consumers are readily able to choose between gas suppliers, products and services, and pricing plans, and to change their choice

**RCE 4.** [Deleted]

## B. SUPPLY CONNECTIONS AND DISCONNECTIONS, AND CONTRACT TERMINATION

**RCE 5.** The connection process is timely and well managed

**RCE 6.** Arrangements for supply disconnections and terminations of the consumer contracts are reasonable, and disconnections are undertaken safely and in a timely and well-managed way

**RCE 7.** Apart from safety, maintenance and similar actions under Gas Regulations (such as the Gas (Safety and Measurement) Regulations 2010) , the company does not take any action to alter or terminate the supply of gas without providing reasonable notice to the consumer and an opportunity for the consumer to remedy any failing on their part which may have triggered that action

## C. GAS SUPPLY AND RELATED SERVICES

**RCE 8.** The supply of gas is safe, reliable and 'fit for purpose'

**RCE 9.** The consumer has access to a good standard of information in a supply interruption situation, and supply is restored within a reasonable timeframe

**RCE 10.** Other services reasonably required as part of receiving gas supply (such as metering services) are readily available and 'fit for purpose'

## D. CONTRACTUAL TERMS AND CONDITIONS

**RCE 11.** The contractual terms and conditions of supply of gas to the consumer are lawful, fair and reasonable, while accurately reflecting any reasonable upstream conditions or constraints

**RCE 12. The contractual terms and conditions are complete, easy to understand, and clearly set out the respective obligations of the company and the consumer**

#### **E. COSTS**

**RCE 13. The delivered price for gas supply is fair and reasonable, and is reflective of the cost of supply**

**RCE 14. The company does not impose unexpected costs on the consumer**

#### **F. BILLING AND PAYMENT**

**RCE 15. Consumers have access to timely and accurate billing and payment information for gas and associated services, and that information is easy to understand and check**

**RCE 16. Consumers have access to appropriate mechanisms for making payment that take account of consumer circumstances**

#### **G. TREATMENT BY THE COMPANY**

**RCE 17. The company is honest and open, and acts with integrity in all its dealings with the consumer.**

**RCE 18. The company will either directly answer where possible, or otherwise assist in obtaining an answer, to consumers' enquiries about all aspects of their supply, billing and contracting arrangements in a timely, courteous and accurate manner.**

#### **H. ACCESS TO PROPERTY**

**RCE 19. The company will act courteously, considerately and professionally at all times when requiring access to consumers' property**

**RCE 20. The company or any third parties will, except in routine situations (such as, for example, reading or inspecting a meter that is located on the outside of a building) or emergency situations, give the consumer reasonable notice of its requirement to access the consumer's property, including the intended timing, nature and purpose**

#### **I. ACCESS TO REMEDIES**

**RCE 21. Consumers have access to suitable arrangements for dealing with any complaints in a timely manner, and for obtaining appropriate remedies**

**RCE 22. Consumers have access to the information necessary to help resolve complaints**