



# Retail Gas Contracts - Consolidated Baseline Assessment

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## **About Gas Industry Co.**

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

As such, its role is to:

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

## **Authorship**

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# Executive summary

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Gas Industry Company Limited ('Gas Industry Co') is the co-regulator of the gas industry in New Zealand with the power to make recommendations for regulations, rules, or other governance arrangements to ensure that gas is delivered safely, efficiently and reliably.

## Background

In March 2010, Gas Industry Co submitted a recommendation to the Associate Minister for a scheme to monitor retail gas contracts. The scheme assesses gas supply arrangements annually for their alignment with benchmark outcomes and objectives. The Associate Minister announced on 12 May that she had endorsed the retail gas contracts oversight scheme as recommended.

Elwood Law was appointed as the Independent Assessor.

## Objectives

The objective for the work is to ensure that consumer contracts for gas supply:

- are sufficiently complete, accessible, and balanced to support the long term interests of gas consumers;
- clearly set out the respective obligations of the retailer and consumer, including any obligations the consumer has to meter or network owners;
- reflect as far as possible market structures; and
- support the achievement of an effective complaints resolution scheme for consumers.

## Findings

The Assessor identified certain areas of concern where retail gas contracts were poorly aligned with the benchmarks. However, it was also found that, in practice, the gas retailers' operations would appear to achieve the intent of the benchmarks. It is thus concluded that greater alignment could be achieved through better general descriptions of practice in the gas supply arrangements.

The Assessor identified certain areas of particular concern, including:

- no clear right to exit contractual arrangement (that is, 'lock-in' provisions if a matching offer can be made);
- no requirement on retailers to state reasons for a price increase (over 5%) when notifying that change;
- at least half of the arrangements were unclear as to metering obligations (especially regarding frequency of readings);

- a lack of clarity regarding disconnection processes;
- no clear information about where customers may access information about supply interruptions;

## **Assessment**

Overall, the industry's alignment of their retail gas supply arrangements with the benchmarks approved by the Associate Minister is: **Moderate.**



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# 1

## Introduction

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Gas Industry Company Limited ('Gas Industry Co') is the co-regulator of the gas industry in New Zealand with the power to make recommendations for regulations, rules, or other governance arrangements to ensure that gas is delivered safely, efficiently, and reliably.

Other outcomes and objectives are set for Gas Industry Co by the April 2008 Government Policy Statement on Gas (the 'GPS'). The GPS expects that the Company will consider whether contractual arrangements between gas retailers and small consumers adequately protect the long-term interests of those consumers.

### 1.1 Background

Gas Industry Co has given this subject much consideration. Following consultation work in 2008 on a range of consumer issues, the Company worked with industry and consumer representatives to develop a set of benchmark terms for gas supply arrangements. These terms were not prescriptive model clauses; rather, they established the outcomes that a fair and reasonable gas contract should seek to achieve.

A scheme was developed for the assessment of gas retail contracts against these benchmarks and feedback was sought on the scheme from the industry and consumers.

In March 2010, Gas Industry Co submitted a recommendation to the Associate Minister for a scheme to monitor retail gas contracts. The scheme assesses gas supply arrangements annually for their alignment with outcomes and objectives sought by the retail contract.

The Associate Minister announced on 12 May that she had endorsed the retail gas contracts oversight scheme as recommended.

Elwood Law is conversant with the benchmarks and the overall scheme and was appointed as the Independent Assessor.

## **1.2 Objectives**

The objectives of this work are to ensure that consumer contracts for gas supply:

- are sufficiently complete, accessible, and balanced to support the long term interests of gas consumers;
- clearly set out the respective obligations of the retailer and consumer, including any obligations the consumer has to meter or network owners;
- reflect as far as possible market structures; and
- support the achievement of an effective complaints resolution scheme for consumers.

# 2

## Process for assessment

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Prior to the 15 June 2010 assessment date, Elwood Law reviewed the information that was publicly available on retailer websites with respect to their gas supply arrangements. Each retailer was contacted and asked to confirm whether the identified documents comprised the relevant materials to be included in a customer's gas supply arrangement.

Gas Industry Co developed guidelines for the interpretation of the benchmarks. These guidelines would assist the Assessor and retailers in understanding how contract terms would be compared with the benchmarks.

The Assessor reviewed the residential and business gas supply arrangements for eight retailers (a total of 12 agreements) and sent each retailer:

- a draft assessment of that retailer's arrangements;
- a copy of the draft consolidated assessment for the industry; and
- a draft copy of the interpretation guidelines for comment.

Retailers were invited to respond to the draft assessment and to provide comments on the interpretation guidelines. Only one comment was received regarding the interpretation guidelines (see Section 4).

# 3

## Consolidated Assessment

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The Independent Assessor has submitted the final consolidated industry assessment, which includes consideration of retailer feedback (where applicable).

Overall, the industry's alignment of their retail gas supply arrangements with the benchmarks approved by the Associate Minister is: **Moderate.**

### 3.1 Key findings

The review of the contract documents found several areas where retailers were substantially out of alignment with the benchmarks. Yet, in their responses, retailers described practices that could be assessed as achieving the benchmark objectives.

It would seem that a great deal of the misalignment could be rectified by simply providing, in the relevant gas supply arrangement documentation, the same information given in response to the assessment.

The Assessor identified certain areas of particular concern, including:

- lack of clear safety information regarding turning off the gas during an emergency;
- no clear right to exit contractual arrangement (that is, 'lock-in' provisions if a matching offer can be made);
- not sufficiently clear that material contract variations would be communicated directly to the consumer;
- no clear description in half of the arrangements of the point to which gas will be supplied<sup>1</sup>;

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<sup>1</sup> As well as pursuing arrangements to oversee retail gas contracts, the GPS also includes an objective to promote a clear understanding in the market place about the demarcation of responsibilities between consumers and industry participants.

- no requirement on retailers to state reasons for a price increase (over 5%) when notifying that change;
- at least half of the arrangements were unclear as to metering obligations (especially regarding frequency of readings);
- a lack of clarity regarding disconnection processes;
- no clear information about where customers may access information about supply interruptions;
- arrangements did not meet the benchmark that any exclusion of liability must be clearly specified and reasonable;
- half of the arrangements did not refer to the Electricity and Gas Complaints Commission<sup>2</sup>;

It may be that retailers provide clarity about these matters through other communication practices. However, at present, the benchmarks require this information to be part of the gas supply arrangements. We will be seeking further engagement from retailers during the planned review of the assessment process in order to refine the scheme.

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<sup>2</sup> Note: since developing the benchmarks, the EGCC has been declared an 'approved consumer complaints scheme' under s43E of the Gas Act. As such, retailers who are members of the scheme are obliged to provide information about the EGCC on their bills. The continued requirement for this benchmark will be subject to review.

# 4

## Feedback

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Five retailers provided feedback on the draft assessments. One retailer made a specific comment about the interpretation guidelines. Comments with respect to the detailed analysis of individual clauses in each draft assessment were addressed directly by the Independent Assessor with the relevant retailer. General comments are summarised under the following headings; retailer comments are indented and followed by Gas Industry Co's response.

### **Practice meets objective**

Retailers noted that the objectives of a benchmark were often met by the practices of their customer service teams and other service departments. One retailer remarked that their customer supply agreements reflect 'minimum terms' and, often, customers receive 'more favourable terms' through customer service practice.

The oversight scheme aims to assess how well the contract terms describe, at face value, the level of service that consumers will receive. While it may not be possible to itemise all operational practices in the gas contract, Gas Industry Co considers that many of the practices described by retailers could be included in the gas supply arrangements in a generalised fashion, without limiting the flexibility of the retailer's operations.

### **Changing contracts takes time**

Several retailers remarked that the process for altering or updating gas contract terms can be lengthy and complex. One retailer commented that it has been waiting for Gas Industry Co and the Electricity Commission to finalise their assessment process before it updated its contracts.

Gas Industry Co appreciates the time needed for revising gas supply arrangements. The development of the benchmark terms has itself been a long process, and the oversight scheme was designed to allow retailers sufficient time to respond to this Baseline Assessment. The ongoing assessments will take place annually, and Gas Industry Co expects that retailers will show improvement over the next several assessments.

### **Interplay between gas and electricity**

One retailer noted that they received different scores from the Electricity Commission and Gas Industry Co for similar terms. Another felt that, as a dual-fuel retailer, it was being

discriminated against due to the gas focus of the Baseline Assessment. The difference in presentation between each regulator was also noted, and a retailer reported that responding to the two assessments placed pressure on its internal resources.

The different nature and requirements of the two fuels mean that different approaches have been taken in assessing retailer obligations and determining the fairness of supply arrangements. Gas is considered a discretionary choice, while electricity is considered an essential service.

Both assessment schemes evolved from the Achievement Standards that form the basis for the EGCC Code of Practice for retail contracts. However, the size and nature of the industries led each regulator to adopt a different approach. A common review date of 15 June was agreed for the 'Baseline Assessments', with reports due around September, so that retailers would only have to review their contracts once. A common timeframe was seen to be in line with submissions received during the design of the scheme.

Gas Industry Co and the Electricity Commission signalled in their respective consultation processes that there would not be a fully-integrated approach to reviewing consumer contracts; each would be running similar but separate assessment schemes. Gas Industry Co assessed contracts against benchmarks that set outcomes or objectives, whereas the Electricity Commission assessed against prescribed minimum terms. This has predictably led to differences in some areas of the assessments.

The Electricity Commission and Gas Industry Co will discuss further opportunities for closer coordination of assessment processes.

### **Benchmark content**

Comments were received concerning the rationale behind some of the benchmarks.

There has been an extensive consultation effort with respect to the development of the benchmarks. The benchmarks are based on the EGCC Achievement Standards and previous work on model contracts, and all of this information has been available to the industry during consultation.

### **Assessment of liability exclusions**

One retailer expressed concern with the approach taken to assessing the use of caps on retailer liability.

The benchmarks require that retailer liability is not unreasonably limited or excluded. The interpretation guidelines presented a 'straw man' matrix of proposed liabilities and a suggested sensitivity to how 'unreasonable' each level of exclusion or capping might be. Gas Industry Co sought comments from retailers as to the suitability and reasonableness of this matrix. Aside from the general expression of concern, no other comments were received on this issue.

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## Next steps

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### 5.1 Publication

This report provides the Consolidated Baseline Assessment to the Associate Minister for her review, as promised in the recommendation for the oversight scheme, and will be published on the Gas Industry Co website.

The 2010 assessment will provide the baseline for future assessments. By the next review, in June 2011, it is expected that gas retailers will have had time to make improvements to their gas supply arrangements. As such, from 2011, individual retailer assessments will also be published along with the consolidated assessment. The two reports should provide consumers with a comparative tool by which they can measure a retailer's position within the industry and any movement in alignment as against this Baseline Assessment.

### 5.2 Process Review

The implementation of the oversight scheme has revealed some minor areas in the design of the benchmarks and the monitoring process that need to be reviewed to ensure that the scheme has an efficient structure (for example, reduce overlapping benchmarks) and continued relevance (for example, the reference to the EGCC).

Gas Industry Co will work with the Independent Assessor to identify areas for review and these will be discussed with retailers. The Company will aim to develop improvements to any aspects of the benchmarks or the assessment process that require change. Where the change is substantial, especially to the benchmarks themselves and the interpretation of their application, the Company may need to conduct formal consultation with the industry and seek renewed endorsement of the scheme from the Associate Minister.

# **Appendix A Consolidated Baseline Assessment of Retail Gas Contracts**