



Gas Industry Co

Retail Gas Contract
Benchmarks

(Restatement 2011)

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Introduction

1.1 Overview

Gas Industry Co was formed to be the co-regulator of the gas industry under the Gas Act 1992. 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.

Gas has made a key, and often underestimated, contribution to New Zealand since the development of the industry from the 1960's. By its nature, the gas industry is complex and ever-changing. Its success relies on a number of interdependent players: upstream explorers and producers, customers, retailers participating in competitive markets, and those willing to consider ongoing investment at all stages.

1.2 Consumer Outcomes

The Government's policy objectives are set out in the Government Policy Statement on Gas Governance (GPS) issued in April 2008. With respect to achieving positive outcomes for consumers, one of the key objectives for Gas Industry Co is to ensure contractual arrangements between gas retailers and small consumers adequately protect the long-term interest of long-term users.

On 12 May 2010, the Associate Minister of Energy and Resources endorsed the oversight arrangements set out in Gas Industry Co's Recommendation to the Associate Minister of Energy and Resources on the endorsement of arrangements for the oversight of gas retail contracts dated March

2010 (the Recommendation). A “baseline review” of gas supply arrangements was undertaken as at 15 June 2010 (the Baseline Review). As part of that process, Gas Industry Co provided the Independent Assessor with guidance on how the retail contract terms benchmarks set out in the Recommendation should be interpreted.

Following the Baseline Review, the Independent Assessor and Gas Industry Co reviewed the process and determined that the Benchmarks, as originally consulted upon, would benefit from a reorganisation or ‘restatement’. The restatement of the benchmarks contained in this document does not substantially alter them. Rather they have been reordered and reframed, duplication and irrelevant statements have been removed, and clarity has been enhanced.

1.3 Objectives of the benchmarks

The objectives of the benchmarks are set out in the Recommendation and can be summarised as follows (the Benchmark Objectives):

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.

The benchmarks are also intended to support the following Government objectives for the entire gas industry as set out in the Government Policy Statement on Gas Governance 2008 (the Government’s Objectives), including the following:

Principal Government Objective

To ensure that gas is delivered to existing and new customers in a safe, efficient, fair, reliable and environmentally sustainable manner.

Other Government Objectives

Barriers to competition in the gas industry are minimized.

Delivered gas costs and prices are subject to sustained downward pressure.

Risks relating to security of supply, including transport arrangements, are properly and efficiently managed by all parties.

Consistency with the Government’s gas safety regime is maintained.

Energy and other resources used to deliver gas to Consumers are used efficiently.
The full costs of producing and transporting gas are signalled to Consumers.

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Our interpretation following consultation

Gas Industry Co's interpretation of the benchmarks addresses the following types of issue:

- Clarity – What do the benchmarks mean in practice?
- Structure – What order and arrangement of the benchmarks is easiest for assessment purposes?
- Duplication – Where benchmarks effectively address the same issue, should one be deleted?
- Application – How the benchmarks should be applied to specific contract wording?

The benchmarks have been taken at “face value” and their plain meaning interpreted. This 2011 Restatement does not seek to amend the benchmarks in any substantive way (see section 3).

The purpose of this restatement is to clarify benchmarks. In doing so, Gas Industry Co has had regard to the original objectives of the Benchmark and the Government's GPS objectives, especially the GPS goal of promoting positive outcomes for small consumers. Gas Industry Co has reorganised the benchmarks in a way that better reflect their intended scope and are easier for assessment purposes. To avoid duplication, to the extent the scope of two benchmarks overlapped, the baseline review will only score any overlap under one benchmark.

When applying the benchmarks to retail gas contracts, Gas Industry Co has instructed the Independent Assessor to consider the extent to which the intent of a benchmark is achieved by particular wording. A variety of different wordings could be equally effective in this. The wording should be drafted in a way that is reasonably clear to a Consumer rather than wording that only a lawyer or industry technical expert interpreting the contract would be expected to understand. In determining whether particular wording meets a benchmark, Gas Industry Co has asked the Independent Assessor to consider whether the contract was intended for business or retail Consumers, or both.

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Gas Industry Co's benchmarks

As noted earlier, the retail gas contract benchmarks have been reviewed and revised following the implementation of the Baseline Review in June 2010 and after considering feedback from industry participants. As well as the revised benchmarks, we have included some suggested 'good practice' guidelines with respect to gas supply arrangements and definitions for terms used in the benchmarks.

Good Practice Guidelines

The benchmarks include the following best practice guidelines, which are not scored as part of the benchmark assessment.

Good Practice Guidelines
The following guidelines describe good practice in relation to gas supply arrangements:
1. When setting up gas supply arrangements, there must be a reasonable opportunity for the Consumer to agree to the terms being offered by the Retailer.
2. The Retailer should make information available to Consumers setting out all the regulatory and technical requirements necessary for supply to occur, or refer Consumers to where they can obtain information about those requirements.
3. The Retailer should advise the Consumer that the establishment and commencement of gas supply arrangements may be conditional upon the Consumer's property meeting all the necessary regulatory requirements for supply to occur and the reasonable technical requirements of the Distributor.
4. The Retailer should take reasonable steps to ensure that the Consumer understands any restrictions on the Consumer's ability to terminate their gas supply arrangements with the Retailer before the Consumer enters into the gas supply arrangements.

Definitions

The benchmarks include the following definitions.

Term	Interpretation
Consumer – a person who is supplied, or who applies to be supplied, with gas and associated services by a Retailer. For completeness the term "Consumer" is deemed to include other parties such as	Only includes Consumers who are a <i>party</i> to the gas supply arrangement, rather than all end users who may be supplied gas. Excludes persons who are supplied for the purpose of resupply by that person.

Term	Interpretation
residential property owners who may need to give permissions or be otherwise involved in setting up, operating or terminating gas supply arrangements.	
Contract	The Retailer's application form and standard terms and conditions that are part of the gas supply arrangement.
Distributor - has the same meaning as 'Gas Distributor' as set out in s 2(1) of the Gas Act 1992.	For the purpose of assessments, operators of bypass networks are not considered to be Distributors, given the May 2010 decision of the Rulings Panel.
Gas supply arrangements – includes all documents relevant to the supply of gas to the Consumer including the contract and other publications (e.g. application for supply, pamphlets containing supporting information) so long as these other documents are identified in the contract and are either publically available or accessible for monitoring purposes. Such documents may be in hard copy form or in electronic form, e.g. available for downloading from a website.	<p>The benchmark arrangements do not apply to published contracts that are only used for Consumers taking over 10TJ of gas per annum.</p> <p>For the initial benchmark assessments, gas supply arrangements to be reviewed are limited to the most recent version of the Retailer's standard contract(s) and associated publications.</p> <p>For future benchmark assessments, Gas Industry Co may wish to compare the most recent gas supply arrangements against:</p> <ul style="list-style-type: none"> • earlier versions of standard contracts (ie legacy contracts), or • non standard contracts <p>To avoid doubt, if a document is not referred to in the contract it is not part of the gas supply arrangement.</p>
Line function services – has the same meaning as set out in s 2(1) of the Gas Act 1992	
Retailer – any person who supplies gas and associated services to a Consumer or Consumers.	Only includes Retailers who are a <i>party</i> to the gas supply arrangement.

Benchmarks

1. Clear supply commencement

Benchmark
1.1 The gas supply arrangements must state when supply is to commence, with this to be agreed between the Retailer and the Consumer unless the date is determined by the processes under any relevant regulations or rules governing switching; and
1.2 Where the gas supply arrangements are completed after the Retailer has begun supplying gas to the Consumer, the gas supply arrangements will commence from the date that gas is first supplied to the Consumer.

2. Clear safety information

Benchmark
2. The gas supply arrangements must provide information to Consumers on the following aspects of gas supply and the interruption of gas supply:
(a) the responsibilities of the parties involved in the supply of gas, which may include all or any of the Retailer, Distributors, and meter owners;
(b) where information on emergency procedures is located, including how the Consumer can turn off their gas supply in an emergency and how information on and procedures for reconnection after the emergency will be provided; and
(c) where the Consumer may access information about supply interruptions, with this information to be updated by the Retailer as often as is practicable.

3. Clear Consumer exit rights (open term)

Benchmark
3. Open term gas supply arrangements must provide the Consumer with the ability to cease gas supply from the existing Retailer:
(a) at any time without unnecessary delay;
(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
(c) without incurring any charges other than the direct costs related to termination, i.e. without penalty fees or exit fees.

4. Clear Consumer exit rights (fixed term)

Benchmark
4. Fixed term gas supply arrangements must clearly state:
(a) the expiry date;
(b) whether or not there are provisions for early termination (i.e. prior to the expiry date); and
(c) the basis on which any early termination charges will be calculated, if early termination is allowed.

5. Clear contract variation procedures (non-price)

Benchmark
5.1 Open term contracts may permit the Retailer to 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.
5.2 The gas supply arrangements must specifically provide for material changes in the terms of the gas supply arrangements or price to be directly communicated to Consumers and not through public notices.

6. Clear supply obligations

Benchmark
6. The gas supply arrangements must describe the services to be provided to the Consumer.

7. Clear procedures for supply restoration

Benchmark
7. Where services are not provided as described, the gas supply arrangements must:
(a) set out how the Retailer will respond to the Consumer where services are not supplied as described;
(b) whether any payments will be made to the Consumer as a result of services not being supplied; and
(c) 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.

8. Clear price increases

Benchmark
8. Prices, bills and payment
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, 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 as soon as possible; and
(c) that the notice will include the reasons for the increase.

9. Clear pricing information

Benchmark
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;
(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;
(c) state the time from which the Consumer will be liable for the charges;
(d) in the case of bills based on estimates, include a simple explanation of how the estimate will be calculated and of the process that will be used for correcting any estimates;
(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 overcharged and may invoice the Consumer for any underpayments subject to sub-clause (f); and
(f) the gas supply arrangements will state the term limitations that will apply for the recovery of underpayments.

Benchmark
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.
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;
(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.

10. Clear bond obligations

Benchmark
10.1 Where the Retailer requires a bond from the Consumer, the gas supply arrangements must state:
(a) the requirement for the Retailer to provide to the Consumer the reasons for requiring a bond;
(b) the period of time within which the bond must be paid to the Retailer; and
(c) how long the Retailer will keep the bond.
10.2 If the Retailer keeps the bond for longer than 12 months, it must provide:
(a) its reasons for doing so;
(b) information on how the bond will be refunded; and
(c) whether or not interest is payable on the bond.

11. Clear Consumer site responsibilities

Benchmark
11.1 The gas supply arrangements must:
(a) describe the physical point at which the Consumer's responsibility begins;
(b) 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;
(c) 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
(d) the consequences the Consumer may face for not granting access.
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.

12. Clear metering obligations

Benchmark
12. In relation to the metering of gas supply to the Consumer, the gas supply arrangements must clearly describe:
(a) the requirements for metering relevant to the pricing options selected by the Consumer;
(b) the frequency of meter readings; and
(c) the obligation to ensure metering is conducted in accordance with relevant industry standards and codes of practice.

13. Clear disconnection process

Benchmark
13.1 The gas supply arrangements must:
(a) Set out the conditions under which Consumers can be disconnected other than in accordance with clause 13.2 below;
(b) provide that any notice of such disconnection will describe the actions that the Consumer can take to prevent disconnection.
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.
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:
(a) for the receipt by the Consumer of at least 7 working days' written notice of warning of disconnection after allowing 3 days for the delivery of the notice;
(b) for the receipt of a final warning by the Consumer, no less than 24 hours before disconnection and after allowing for a reasonable period of time between the receipt of the written warning under (a) and the final warning.
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.
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.

14. Clear supply interruption procedures

Benchmark
14.1 The gas supply arrangements must clearly:
(a) describe the circumstances under which supply may be interrupted without prior warning;
(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
(c) describe the Retailer's rights and obligations under special or emergency operating situations.

Benchmark
<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>

15. Clear privacy obligations

Benchmark
<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>(a) set out the purposes for which the Retailer may collect personal information from the Consumer;</p>
<p>(b) confirm that individuals will be able to access personal information held about them and have the opportunity to correct this information; and</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>

16. Reasonable Retailer liability limitations

Benchmark
<p>16. Any exclusion of liability in the gas supply arrangements must be clearly specified and reasonable.</p>

17. Clear dispute resolution

Benchmark
<p>17. The gas supply arrangements must:</p>
<p>(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>
<p>(b) advise Consumers that complaints not resolved to their satisfaction may be taken to the scheme approved under the Gas Act 1992.</p>

18. Clear communication

Benchmark
<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>

Benchmark**Retailers to Consumers**

18.2 The gas supply arrangements must specify how notices from the Retailer will be delivered to the Consumer, and must specifically provide for material changes in the terms of the gas supply arrangements or price to be directly communicated and not through public notices.