

# Insolvent Retailers Drafting Instructions

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## Explanatory note

These drafting instructions —

- define the circumstances that must be present for the industry body to initiate the transfer of gas consumers who no longer have a customer contract with a solvent gas retailer (termed “orphan consumers” in this document) to an alternate retailer;
- set out the procedures and methods by which the industry body must allocate orphan consumers to other retailers, which involves a random allocation customer load groups or subcategories, apportioned by retailers’ relative market shares;
- provide for the transmission capacity of the insolvent retailer to be provided to any retailer that requires extra capacity in order to supply its new customers; and allow such retailers to acquire additional transmission capacity at pro rata reservation rates;
- require the insolvent retailer to provide certain information to the industry body for consumer billing purposes and consumption reconciliation purposes; and
- provide for various transitional matters associated with the transfer of orphan consumers, including where orphan consumers are part-way through the process of switching to an alternative retailer.

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## 1 Purpose

The purpose of these drafting instructions is to aid in implementing regulations under urgency in the rare circumstance that they may be needed to manage the consequences of a gas retailer insolvency. They provide a system of transition arrangements for consumers who no longer have customer contracts with a solvent gas retailer (involving the transfer of such consumers to other gas retailers) in order to provide protection for all gas customers and to provide certainty and reduce risk for industry participants.

## 2 Interpretation

(1) In these drafting instructions, unless the context otherwise requires,—

**Act** means the Gas Act 1992

**customer contract** means a contract between a retailer and a customer for the supply of gas

**industry body** means the body approved by Order in Council under section 43ZL of the Act

**insolvency practitioner** means any of the following: administrator, liquidator or receiver and is registered under Section 316H of the Insolvency Practitioners Bill 2010 (2011 No 141-2)

**insolvent retailer** means a retailer for which an insolvency practitioner has been appointed

**network tariff code means** the load group code of the gas network, a combination of the area code and the function code determined by distribution services providers

**notification date** means the date on which the notice referred to in paragraph 5 is given

**orphan consumer** means a gas consumer associated with a particular ICP who does not have a customer contract with a solvent gas retailer

**recipient retailers** means those retailers to whom orphan consumers are or will be transferred

**retailer** means a gas retailer

**switching rules** means the Gas (Switching Arrangements) Rules 2008 made under section 43Q of the Act

**transfer time** means the date and time, as determined by the industry body, at which an insolvent retailer's ICPs are transferred or deemed to be transferred to recipient retailers

**transferred orphan consumer** means an orphan consumer transferred to a recipient retailer by the operation of regulation 7

**transition period** means a period starting at the transfer time and continuing for a period specified by the retailer of at least 30 days from the date on which the recipient retailer gives the notice to the transferred orphan consumer that it has been transferred to the recipient retailer.

**Vector** means Vector Gas Limited or any successor or assignee of Vector Gas Limited

- (2) A term that is used but not defined in these drafting instructions, but that is defined in the Act, has the meaning given in the Act.
- (3) A term that is used but not defined in these drafting instructions or the Act, but that is defined in the switching rules, has the meaning given in those rules.
- (4) A term that is used but not defined in these drafting instructions, but that is defined in the Gas (Downstream Reconciliation) Rules 2008, has the meaning set out in those rules.

#### *System for transferring orphan consumers*

### **3 Transfer by industry body of orphan consumers**

- (1) The industry body may transfer, in accordance with the arrangements set out below, any orphan consumer to any other retailer.
- (2) The industry body may exercise the power in paragraph 3(1) only if—
  - (a) the ICPs are not transferred to other retailers, there is a real risk that gas supplied to those consumers will not be supplied under a valid contract with any retailer; and
  - (b) the liquidator of the insolvent retailer has disclaimed these ICPs or the insolvent retailer has ceased trading as a gas retailer. [note that these criteria may need to be modified to fit the actual situation]

#### **4 Notice to retailers of proposed transfer**

If the industry body proposes to exercise the power to transfer orphan consumers, it must first notify the insolvent retailer and all other retailers of the proposal and the proposed transfer time.

#### **5 Industry participants to co-operate with industry body**

After the notification date, every industry participant must co-operate with the industry body in order to ensure that the industry body can effect the transfer of orphan consumers, including by providing any information specified by the industry body that the industry body requires for that purpose.

#### **6 Process for transferring orphan consumers**

- (1) The industry body must classify the orphan consumers by allocation group and –
  - (a) for orphan consumers in allocation groups 1-2, aggregate by transmission pipeline; and
  - (b) for orphan consumers in allocation groups 3-6, aggregate by network tariff codes and gas gates–as at the day after the notification date.
- (2) The industry body must identify the recipient retailers, who must be—  
each retailer, except that
  - (a) retailers with less than 10% of the total number of ICPs for which the registry shows the status “active contracted” or with less than 10% of volume market share may elect not to be a recipient retailer, by notice to the industry body not later than 1 full working day after the notification date described in regulation 4.
  - (3) The methodology that the industry body uses to determine which orphan consumers are transferred to which recipient retailers must be a system of allocation based on—
    - (a) the orphan consumer’s classification as in paragraph 6(1); and
    - (b) a pro rata allocation to recipient retailers that reflects, to the extent possible, the recipient retailers’ relative market share (among the pool of recipient retailers) within each classification category, of –
      - (i) allocation group 3-6 ICPs for which the registry shows that the status is “active-contracted” as at the day after the notification date; and
      - (ii) allocated volumes for allocation groups 1 to 2, calculated using the latest available 12 consumption months of allocation information.
  - (4) Within each classification category, the allocation of orphan consumers to recipient retailers must be random.
  - (5) At least 48 hours before the proposed transfer time, the industry body must—
    - (a) publish on its Internet site a description of the methodology used to allocate orphan consumers to recipient retailers; and

- (b) notify each recipient retailer of the number of orphan consumers within each classification category that, as a result of applying that methodology, it proposes to transfer to the recipient retailer.

## **7 Transfer of orphan consumers**

- (1) At the transfer time, each orphan consumer is transferred to the recipient retailer allocated by the industry body to receive that orphan consumer.
- (2) The industry body must provide a schedule of transfers to the registry operator and the registry operator must update the data in the registry to reflect each transfer to a recipient retailer, despite anything to the contrary that may be stated in the switching rules.
- (3) The industry body must pass on whatever information it has received from the orphan consumer's previous retailer to whichever other industry participants require that information for the purpose of giving effect to the transfer of orphan consumers.
- (4) After the transfer time, a customer contract is deemed to have been formed and applies as if it were a contract freely entered into between the transferred orphan consumer and the recipient retailer, until the earlier of—
  - (a) the end of the transition period; or
  - (b) the date on which the transferred orphan consumer either:
    - i. ceases using gas and cancels the contract; or
    - ii. switches to another retailer.

### *Effect of transfer on orphan consumers*

## **8 Recipient retailers to supply gas and give notice to transferred orphan consumer**

- (1) A recipient retailer to whom an orphan consumer is transferred must—
  - (a) For consumers in allocation groups 3-6, supply gas to the transferred orphan consumer during the transition period on either:
    - i. the standard terms that the recipient retailer would normally have offered to the consumer immediately before the transfer occurred; or
    - ii. such other terms that are more advantageous to the consumer than the recipient retailer's standard terms; and
  - (b) For consumers in allocation groups 1-2, supply gas to the transferred consumer during the transition period on either
    - i. The same terms on which the recipient retailer supplies similarly-sized customers; or
    - ii. Other terms as agreed between the recipient retailer and the transferred consumer; and
- (c) give written notice to the transferred orphan consumer of the matters set out in paragraph 8(2) as soon as practicable after the transfer time.

- (2) The notice to the transferred orphan consumer must set out the following information:
  - (a) that the consumer has been transferred to the recipient retailer;
  - (b) the transfer time, and the date when the transition period ends;
  - (c) that the recipient retailer will supply gas to the transferred consumer unless and until the consumer switches to another retailer;
  - (d) the terms and conditions that will apply to the transferred consumer's supply of gas;
  - (e) that the transferred consumer may at any time during the transition period cancel the contract or switch to an alternative retailer and that, if the consumer does so during the transition period, no fee or penalty will be imposed in respect of the cancellation or switch.
- (3) The notice must also include—
  - (a) a copy of the contract that will apply to the transferred consumer as described in paragraph 8(2)(d); and
  - (b) a list, supplied by the industry body, of alternative retailers, along with contact details for those retailers.

## **9 Right of transferred orphan consumer to switch without penalty**

If, during the transition period, a transferred orphan consumer cancels the contract with the recipient retailer or switches to an alternative retailer, the recipient retailer must not charge the transferred consumer any fee or penalty relating to the cancellation or switch.

## **10 Transitional issues relating to transferred orphan consumer**

- (1) After the transfer time, any dispute that a transferred orphan consumer has or had with its previous retailer must be dealt with between the consumer and the previous retailer or the liquidator of the previous retailer under the contract between the consumer and the previous retailer.
- (2) During the transition period, a recipient retailer need not continue or commence any review processes that are required or authorised under the transferred orphan consumer's contract with the previous retailer.

## **11 Switches sought before transfer time**

- (1) After the notification date, no switch request to or from the insolvent retailer may be entered on the registry by any retailer, including the insolvent retailer.
- (2) Subclause (3) applies, if, before the close of the notification date,—
  - (a) an orphan consumer has sought a switch; and
  - (b) the switch has been entered on the registry; but
  - (c) the switch has not been completed.
- (3) If subclause (2) applies —

- (a) the industry body must take whatever steps necessary to ensure that the orphan consumer is moved, as soon as practicable, to the orphan consumer’s chosen retailer, and may determine the date on which the move is deemed to take effect; and
  - (b) to the extent that it is necessary or desirable, in order to ensure that the orphan consumer is moved as soon as practicable to the orphan consumer’s chosen retailer, the industry body and every industry participant may modify, or need not apply, the switching rules.
- (4) If, before the close of the notification date, a customer has sought a switch to the insolvent retailer and that switch has been entered on the registry but has not been completed, the switch must be cancelled by the registry operator.

*Transmission capacity*

**12 Transmission capacity of insolvent retailer**

- (1) A recipient retailer may require Vector to allocate to it some proportion of the reserved transmission capacity held by an insolvent retailer as at the notification date for a specific Receipt-Delivery Point, or, if the transmission services agreement is terminated or disclaimed before the notification date, the date of termination or disclamation.
- (2) The reserved transmission capacity must be apportioned by the aggregate gas volumes sold under all of the insolvent retailer’s contracts in respect of a specific Receipt-Delivery Point (excluding those (if any) that rely on a supplementary agreement to provide gas transmission). Each recipient retailer is entitled to the proportion of such reserved transmission capacity calculated by the following formula:

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

where—

t is the total reserved transmission capacity held by the insolvent retailer for a specific Receipt-Delivery Point as at the date referred to in subclause (1);

r is the aggregate gas quantity (GJ) sold by the insolvent retailer over the past 12 billing cycles in respect of a specific Receipt-Delivery Point to the consumers that have been transferred to the recipient retailer (excluding those (if any) that rely on a supplementary agreement to provide gas transmission); and

$\sum r_n$  is the aggregate gas quantity (GJ) sold by the insolvent retailer over the past 12 billing cycles in respect of a specific Receipt-Delivery Point to all consumers that have been transferred to all (n) recipient retailers that request transmission capacity for that Receipt-Delivery Point within 14 days after the transfer time (excluding those (if any) that rely on a supplementary agreement to provide gas transmission) .

- (3) Vector must comply with a request by a recipient retailer within 15 business days after the transfer time.
- (4) Vector must promptly provide the industry body with a schedule of reserved transmission capacity held by the insolvent retailer for each Receipt-Delivery Point on the transmission system as at the notification date and must provide all practical assistance to allocate the insolvent retailer’s reserved transmission capacity as at the notification date to recipient retailers.

- (5) Any allocation of reserved transmission capacity is deemed to have occurred at the transfer time.
- (6) Any reserved transmission capacity allocated to a recipient retailer in respect of a Receipt-Delivery Point must be provided on the same terms that apply to the reserved transmission capacity already being provided to the recipient retailer, or any other retailer, at that Receipt-Delivery Point (being the terms of the Vector Transmission Code).
- (7) If a recipient retailer receives a transferred consumer whose previous retailer relied on a supplementary transmission capacity agreement, then the recipient retailer may request, and be allocated, a proportion of that supplementary capacity in a similar manner as that described in subclauses (1) through (6).

### 13 Additional transmission capacity

- (1) A recipient retailer may request reserved transmission capacity from Vector in order to manage its obligations to serve transferred consumers.
- (2) To the extent that Vector has capacity available at the requested Receipt-Delivery Point(s), it must offer that capacity to the recipient retailer for a capacity reservation fee that is calculated as (in \$/GJ):

$$\frac{(\text{number of days remaining in gas year})}{365} \times (\text{posted capacity reservation fee for that Receipt – Delivery Point})$$

where:

number of days remaining in gas year is the number of days from the notification date until 30 September, inclusive; and

the posted capacity reservation fee is as per the schedule published by Vector.

- (3) The recipient retailer and Vector may agree that the additional transmission capacity is to be provided under a supplementary transmission capacity agreement.