Final Decision Paper - Framework for Gas Retailer Insolvency Arrangements

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GAS INDUSTRY COMPANY LIMITED

About Gas Industry Co.

Gas Industry Co is the gas industry body and co-regulator under the Gas Act. Its role is to:

- develop arrangements, including regulations where appropriate, which improve:
  - the operation of gas markets;
  - access to infrastructure; and
  - consumer outcomes;
- develop these arrangements with the principal objective to ensure that gas is delivered to existing and new customers in a safe, efficient, reliable, fair and environmentally sustainable manner; and
- oversee compliance with, and review such arrangements.

Gas Industry Co is required to have regard to the Government's policy objectives for the gas sector, and to report on the achievement of those objectives and on the state of the New Zealand gas industry.

Gas Industry Co's corporate strategy is to 'optimise the contribution of gas to New Zealand'.

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1 Introduction

The purpose of this Final Decision Paper is to set out Gas Industry Co's final decisions regarding a framework for gas retailer insolvency arrangements (Insolvency Framework). It sets out the process that Gas Industry Co will follow in the event of a retailer insolvency and the regulatory arrangements that can be put in place to support that process. The paper is deliberately brief, as its primary purpose is to provide operational guidance to industry stakeholders in the event of a retailer insolvency. For a description of the policy process leading up to this Final Decision Paper, please refer to *Draft Decision Paper: Framework for gas retailer insolvency arrangements* (Draft Decision Paper) published 15 October 2014, and related information on the Gas Industry Co website.[1]

1.1 Background

Gas Industry Co has previously determined that a gas retailer becoming insolvent will only lead to a market failure in limited circumstances, as normal insolvency processes should be sufficient to produce acceptable outcomes in most cases. Accordingly, there is no need for permanent backstop regulation such as a *retailer of last resort* scheme.

GIC consulted on arrangements that would see it managing a specific retailer insolvency by:

- monitoring the progress of any retailer insolvency;
- where necessary:
  - tailoring pre-existing drafting instructions to the situation;
  - making a recommendation for urgent regulations; and
  - activating those regulations; and
- cleaning-up after the event.

Because any regulations would be made under urgency, there would also be a requirement to consult retrospectively on those regulations.

[1] Available at http://www.gasindustry.co.nz/work-programmes/insolvent-retailers/

The detail of this development is set out in the following documents:

- *Insolvent Retailers workstream: Castalia Strategic Advisors report*, published 22 June 2012
- Draft Decision Paper[2]

Gas Industry Co's approach has enjoyed broad support from stakeholders as evidenced by their submissions. The Minister of Energy and Resources has also endorsed the approach.

This Final Decision Paper:

- responds to submissions received regarding the drafting instructions;
- provides a template for drafting instructions that can be tailored to the specific circumstances of a retailer insolvency; and
- sets out the steps that Gas Industry Co will take should a retailer insolvency occur, including steps that have been enabled by amendments to the Gas (Switching Arrangements) Rules 2008 (Switching Rules) and the Gas (Downstream Reconciliation) Rules 2008 (Downstream Reconciliation Rules).[3]

This paper completes the policy development process for this work stream. Gas Industry Co anticipates that any further policy work will be limited to reviews of the Insolvency Framework from time to time to ensure that it remains current.

[2] Both papers are available from links on this page: http://www.gasindustry.co.nz/work-programmes/insolvent-retailers/

[3] At the time of writing the amendments to both sets of rules have been approved by the Minister but will not become effective until completion of the gas registry amendment project. The go-live date for that project is expected to be mid-September 2015.

2 Insolvency Framework

There are three aspects to the Insolvency Framework:

1. Arrangements regarding notification to Gas Industry Co of a retailer insolvency and provision of customer information.

2. Arrangements for the orderly transfer of customers from an insolvent retailer that has ceased trading to another retailer (this step depends on regulations being made using the urgent provisions of section 43P of the Gas Act).

3. Arrangements to ensure the integrity of registry data and allocation processes.

These three aspects are discussed in detail below. Note that all three aspects will not necessarily be required in the event of a retailer insolvency.

2.1 Notification of a retailer insolvency and provision of customer information

Regulatory changes

The Switching Rules have been amended to facilitate this first aspect of the insolvency framework. The Switching Rules now include:

- a definition for insolvent retailer (rule 5);
- a requirement for a retailer that becomes an insolvent retailer to notify the industry body of that fact (rule 98);
- a requirement for a gas producer or gas wholesaler to notify the industry body if a retailer is in default of its financial obligations under a contract (rule 99);
- a requirement for the allocation agent to notify the industry body if a retailer fails to provide consumption information under the Downstream Reconciliation Rules (rule 100); and
- a requirement for an insolvent retailer to provide to the industry body information about each of its customers (rules 101-103).

Early notification

From Gas Industry Co's point of view, the first step in our involvement with a retailer insolvency is finding out about the insolvency. The definition in the Switching Rules provides clarity about what an insolvent retailer is, and the fact that multiple parties have a responsibility for alerting the industry body in the event of a retailer insolvency means that we should receive notice early in the insolvency.

Information provision

Consistent with Gas Industry Co's twin objectives of protecting consumers and managing the liabilities of other gas retailers in the event of a retailer insolvency, Gas Industry Co needs to ensure that each of the insolvent retailer's customers is transferred to another retailer. To this end, the Switching Rules provide that an insolvent retailer must provide to the industry body information on its customers as soon as practicable after becoming insolvent, and in any case, within three days of a written request. With this information, Gas Industry Co will:

- Monitor any transfers of customers from the insolvent retailer to another retailer, whether because of a sale of the customer base or another reason; and
- Determine whether some or all of the insolvent retailer's customers have not been sold or otherwise transferred to another retailer.

If the insolvent retailer ceases trading, any customers who have not been transferred to another retailer through the sale of the customer base or other means become orphan consumers: gas consumers who do not have a customer contract with a retailer.

Where there are a handful of orphan consumers, Gas Industry Co may be able to work directly with them to help them find another retailer. This was the case with the E-Gas insolvency in 2010: most of the customer base was sold, and the few customers not included in the sale were relatively large gas consumers who were able to find alternate retailers relatively quickly.

On the other hand, it may be the case that there are large numbers of orphan consumers that need to be transferred to alternate retailers. In this case, Gas Industry Co needs an orderly way to effect this transfer. This is where the ability to recommend urgent regulations comes in.

2.2 Arrangements for the orderly transfer of customers from an insolvent retailer to another retailer

Drafting instructions

A drafting instructions template for regulations that prescribe a system of transition arrangements for orphan consumers is attached as Appendix A. It provides for the:

- identification of retailers to which orphan consumers can be transferred (recipient retailers), (based on having market share over a particular threshold);
- development of an allocation methodology by the industry body that reflects, to the extent possible, the recipient retailers' relative market share of large and small consumers;
- transfer of orphan consumers to recipient retailers;
- notification of the transfer to the transferred consumer; and
- ability of recipient retailers to obtain a proportion of the capacity previously held by the insolvent retailer and, where available, to obtain uncontracted capacity at a pro rata price.

Tailoring the instructions

The drafting instructions provide a template for the regulations that may be needed in a retailer insolvency and cover the matters that need to be considered. But it is highly likely that they will not, as written, be perfectly suitable for a particular insolvency event. A retailer insolvency may affect only a certain type of consumer, for example, or only a particular geographical region. It is therefore expected that the drafting instructions in the template will need to be tailored to the specifics of the situation that the regulations need to manage.

For Gas Industry Co, the provision of information about the insolvent retailer's customers will allow us to:

- Consider how many orphan consumers have occurred or are likely to occur;
- Tailor the drafting instructions to the specific situation;
- If necessary, prepare a plan for transferring orphan consumers using the regulations; and
- Where consumers have been transferred under regulation, provide information to recipient retailers about their transferred consumers, including address information and meter readings.

If it is likely that a large number of orphan consumers will result from a retailer insolvency, Gas Industry Co will move quickly to tailor the drafting instructions and send a recommendation to the Minister of Energy and Resources that urgent regulations are necessary to be able to manage the transfer of orphan consumers.

2.3 Arrangements to ensure the integrity of registry data and allocation processes

Switching Rules amendments

Orphan consumers are not the only concern regarding a retailer insolvency. Retailers who are exiting the market are almost certain to be listed as the responsible retailer for a number of vacant and inactive ICPs on the gas registry, and it is important that these ICPs also be transferred to an ongoing retailer. Doing so ensures that the ICPs will be monitored for gas usage and that normal processes can apply for converting them back to active contracted sites.

The Switching Rules have been amended to include provisions that allow the industry body to:

- Transfer vacant and inactive ICPs without a valid retailer (stranded ICPs) either to retailers who request them or to retailers in proportion to their market shares (rule 104); and
- Arrange meter readings for ICPs with status Active-Contracted but no valid retailer and apparently no consumer (indeterminate ICPs). If consumption is found, then efforts will be made to move the consumer to a retailer; if not, it will be treated as a stranded ICP (rule 105).

Gas Industry Co will work to ensure that, following a retailer insolvency, stranded ICPs and indeterminate ICPs are taken care of as quickly as practicable.

Reconciliation Rules amendments

Amendments to the Reconciliation Rules clarify that insolvent retailers (and other retailers who cease trading) have obligations to submit consumption data to the allocation agent for the periods during which they were trading. The insolvent retailer can either follow the usual timeframes in providing the data (one, four and thirteen months following the consumption month) or can provide all remaining required data to the allocation agent at one time. Because a retailer who has stopped trading is no longer an industry participant, and therefore may no longer be subject to the Gas Governance (Compliance) Regulations 2008, the Reconciliation Rules include an offence provision for failing to provide the required data.

Gas Industry Co will liaise with an insolvent retailer to ensure that its key personnel are aware of this requirement and that arrangements are made to provide the data to the allocation agent in advance of the insolvent retailer's computer system being decommissioned.

3 Keeping the framework current

There are two aspects to industry readiness for a retailer insolvency: making sure retailers can respond appropriately and keeping the drafting instructions current.

Retailer readiness

The Switching Rules require Gas Industry Co to consult on and publish a file format for the customer data required to be provided in the case of a retailer insolvency. Retailers must be capable of producing the report twelve months later.

Once these arrangements are in place, Gas Industry Co intends to test retailers' ability to produce the required data in the specified file format during regular performance audits commissioned under the Switching Rules. This regular testing should ensure that retailers develop and maintain the ability to produce the required report.

Currency of the drafting instructions

Gas Industry Co intends to review the drafting instructions template from time to time to make sure that it still accurately reflects current gas market arrangements. If this internal review process discovers that more than minor changes are needed to the drafting instructions template, then Gas Industry Co will conduct a more formal review, along with industry consultation, to update the drafting instructions template.

Appendix A: Drafting instructions

Insolvent Retailers Drafting Instructions

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.

Contents

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~~3~~, aggregate by transmission pipeline; and

(b) for orphan consumers in allocation groups 3~~4~~-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—

~~*Option A*~~

~~retailers with a total volume market share of more than [5% or 10%] for allocation group 1-3 customers; and~~

~~retailers with a total customer market share of more than [5% or 10%] of allocation group 4-6 customers; and~~

~~any other retailer that notifies the industry body not later than 1 full working day after the notification date described in regulation 4.~~

~~*Option B*~~

(a) each retailer, except that

(b) retailers with less than 10~~5~~% of the total number of ICPs for which the registry shows the status "active contracted" ~~and~~ or with less than ~~5~~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~~4~~-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~~3~~, 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

~~i.~~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—

(b) For consumers in allocation groups 3~~4~~-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

(c) For consumers in allocation groups 1-2~~3~~, 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;

(d) that the recipient retailer will supply gas to the transferred consumer unless and until the consumer switches to another retailer;

(e) 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.

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

Σr_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).

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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):

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

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.

Appendix B: Summary of consultation

The *Draft Decision Paper: Framework for gas retailer insolvency arrangement* (Draft Decision Paper) was released for consultation on 15 October 2014. It Gas Industry Co received seven submissions on it.[4]

The Draft Decision Paper proposed a set of drafting instructions for insolvent retailer regulations, as well as minor and technical amendments to the Switching Rules and Reconciliation Rules. The rules amendments have been progressed in conjunction with amendments arising from the gas registry amendments project.[5]

The table below focusses on the drafting instructions consultation. It summarises the consultation questions the Draft Decision Document posed about the drafting instructions, submitters' responses, and, where appropriate, Gas Industry Co's reply. For convenience, the issue topics used below are the same as those used in the Draft Decision Document.

Issue	**Draft Decision Document proposed…**	**Submitters' responses**	**GIC reply**
Trigger for the transfer of orphan consumers	• The existence of orphan consumers be the trigger for commencing the customer transfer process.	Supported	

[4] From Contact Energy, Genesis Energy, Greymouth Gas, Meridian Energy, Mighty River Power, Powerco, and Vector. Submissions are available on the Gas Industry Co website at http://www.gasindustry.co.nz/work-programmes/insolvent-retailers/

[5] The Recommendation to the Minister proposing these changes can be found on the Gas Industry Co website at http://www.gasindustry.co.nz/work-programmes/switching-and-registry/policy-development/. The Minister has approved the recommendation, but the amended rules will not come into effect until necessary changes are implemented to the gas registry.

Issue	Draft Decision Document proposed…	Submitters' responses	GIC reply
System for transferring ICPs	• That the transfer of orphan consumers would follow either the customer contracts being disclaimed by the insolvent retailer or the contract no longer being performed. The transfers would be ICP by ICP; that is, allocated independently.	Supported. Vector suggested that clarification was needed regarding the meaning of 'contract no longer being performed.'	The wording 'contract no longer being performed' was used in the consultation document but not in the drafting instructions. The drafting instructions use the term <u>orphan consumer</u>, defined as 'a gas consumer associated with a particular ICP who does not have a customer contract with a solvent gas retailer'.

Issue	Draft Decision Document proposed…	Submitters' responses	GIC reply
Recipient retailers	• That recipient retailers (those to whom orphan consumers would be transferred) have a volume market share of greater than 10% (or 5%) of allocation group (AG) 1-2 customers, to receive AG 1-2 orphan consumers; and • Retailers with a customer market share of more than 10% (or 5%) of AG 3-6 customers would receive orphan consumers in AG 3-6. • An approach where retailers below the threshold could opt in, but also asked about the opposite method: all retailers included, but those below the threshold could opt out.	• Largely supported the proposal, saying that the separate allocation of large (AG 1-2) and small (AG 3-6) consumers made sense. • There was support for a 10% de minimus threshold, but a split on how it should operate. Contact, Genesis, and Greymouth preferred a scheme that included all retailers but allowed small ones to opt out of receiving orphan consumers. MRP preferred the opt-in scheme. • Greymouth recommended allowing one week for retailers to opt out.	Gas Industry Co notes that the end result of a *de minimus* market share threshold and an opt-out option for small retailers is the same: that small retailers who may be unduly burdened by receiving orphan consumers are excluded from the transfer. As the opt-out scheme enjoyed more support, that is the option in the drafting instructions (though the choice can be reviewed again if regulations are ever needed). Gas Industry Co does not think that it is realistic to allow one week for retailers' responses. It is important that transfers of orphan consumers occur as expeditiously as possible to minimise disruption to the gas market.

Random allocation of orphan consumers	• Generally, allocation of AG 1-3 consumers will be based on volume market share of recipient retailers in the same transmission pipeline; and • AG 4-6 consumers will be based on recipient retailers' market share of active contracted ICPs, within network pricing categories and gas gates. • Industry body must publish proposed allocation methodology in advance of the transfer.	Supported the separate allocation of large and small customers, though a number noted that it should be the ToU customers in AG 1-2 that are allocated separately from the non-ToU in AG 3-6. As to the methodology used in a particular situation, it may depend on the numbers of orphan consumers to transfer. Genesis noted, for example, that some situations may call for distribution of orphan consumers at the gate level, and others at the pipeline level. Vector asked for clarification of the treatment of direct connect consumers.	Gas Industry Co agrees that the large and small customers should be categorised as AG1-2 and AG3-6, respectively. Gas Industry Co agrees that different methodologies will be appropriate in different circumstances. This is why we anticipate that, should regulations be required, the drafting instructions will be tailored to the circumstances of the insolvency event. In most circumstances, we expect that direct connect consumers can be treated the same as other ToU customers and allocated amongst retailers operating in the same transmission pipeline.
Terms and conditions of supply of transferred consumers	• Recipient retailers required to supply transferred customers on standard terms or better	Support. Vector noted that OnGas does not have standard terms and conditions, but prices could be set at market rates	

	• For large (AG 1-2)customers, recipient retailers would be required to supply either on the same terms as similarly-sized customers or on terms agreed between the recipient retailer and the transferred consumer	Largely agree. Greymouth noted that it may be unrealistic to expect retailers to supply at a previous market price. Mighty River Power suggested that the recipient retailer may require the transferred consumer to stay until the end of the gas year, to justify the purchase of additional capacity. Powerco suggested a default arrangement in case recipient retailer and transferred consumer cannot agree terms.	Gas Industry Co notes that the drafting instructions give the option of either the same terms as other customers or agreed terms, so no retailer should be forced to supply on terms it finds unreasonable. Similarly, the agreed terms could include a length of contract. Equally, no customer would be forced to sign a contract with a recipient retailer. If a large customer could not agree terms with its recipient retailer, it would be free to enter a supply agreement with another retailer.

Information to be supplied to transferred customers and other transitional matters	• Recipient retailer must notify transferred consumers about transfer and related matters • Recipient retailer must not charge any fee or penalty relating to cancellation of the switch • Any dispute between a customer and an insolvent retailer must be dealt with between those parties	Supported/no comment	
Transmission capacity	• Recipient retailer may request reserved capacity formerly held by the insolvent retailer, in proportion to the demand of transferred consumers	Agree/no comment	

	• Recipient retailer may request reserved capacity from Vector, and Vector must offer that capacity for a prorated fee according to the days left in the gas year	Largely agree. Vector suggested that the clause was not needed, as these terms were set in the VTC and shipper agreements. Genesis suggested that the provision should also apply to supplementary agreements.	Gas Industry Co accepts that pricing for reserved capacity under the current VTC is on a daily basis. It may be that this provision is not needed if and when urgent regulations are passed. However, we intend to keep the provision as a placeholder in the drafting instructions, to be used in the event that the VTC has changed its pricing structure in the intervening time period. Gas Industry Co agrees that, in some cases, it may be appropriate for the recipient retailer to obtain extra supplementary capacity.

		Vector suggested references to 'Vector' should be replaced by the more generic 'the TSO'.	Gas Industry Co does not consider the change to be necessary. The regulations, should they be needed, would be for the transfer of orphan consumers largely served through gas gates on the Vector transmission system, and references to capacity in the drafting instructions refer to provisions in the Vector Transmission Code. If those things change, then the references can be updated when the instructions are tailored for use.