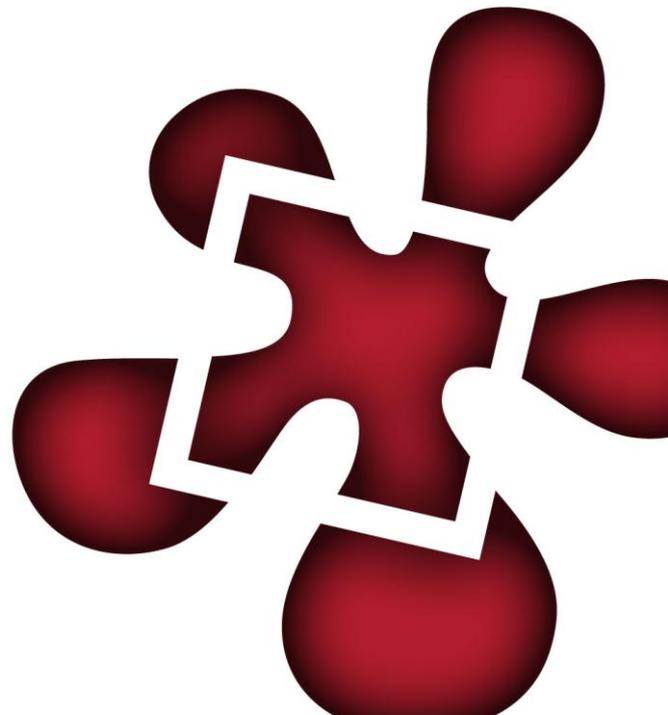


2011 Assessment Report

A review of retail gas supply arrangements as at 1 July 2011 against Gas Industry Co's contract benchmarks

Dated 30 September 2011



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1 Introduction

Elwood Law was asked to assess published retail gas contracts, as at 1 July 2011, against the contract benchmarks 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 Recommendations") as restated by Gas Industry Co in June 2011.

This report presents our assessment. It contains the following sections:

- Summary of **key findings**
- **Scope** of assessment
- **Methodology** for assessment
- **Results** of assessment
- **Issues** arising from assessment
- **Trends** from previous assessments

2 Key findings

The overall compliance of published gas supply arrangements at 1 July 2011 with the benchmarks is "moderate". For a breakdown of compliance by arrangement and benchmark, see Attachment 4.

This assessment identified 66 distinct compliance "issues", where one or more of the retailers' arrangements failed to meet a benchmark. 26 of these issues were widespread (found in more than 50% of the arrangements), which compares with 29 widespread issues in the 2010 assessment and 9 issues were assessed as being of particular concern by Elwood Law. On average, each gas supply arrangement included 25 compliance issues (compared with an average of 27 compliance issues in the 2010 assessment).

Of the 10 gas supply arrangements reviewed, three arrangements were assessed as being in "substantial" compliance with the benchmarks (an improvement from two arrangements in the 2010 assessment), four arrangements had "moderate" compliance and three arrangements had "low" compliance (an improvement from four arrangements in the 2010 assessment).

The removal of E-Gas from the retail market has influenced the level of compliance with the benchmarks.

While the overall level of compliance (ie "moderate") is the same level of overall compliance identified in the 2010 assessment, there are a number of signs that retailers are taking active steps to improve compliance. These signs include:

- One retailer has substantially amended and improved their gas supply arrangement. The amended arrangement has "substantial" compliance.
- All of the other retailers have advised Elwood Law that they are planning to update their gas supply arrangements and will take into account the feedback provided in this assessment.
- Retailers engaged in this assessment process. Most retailers provided comprehensive feedback to their draft Individual Assessments and demonstrated that they are taking steps to improve their compliance with the benchmarks.

It is expected that the naming of retailers in future assessments is likely to act as a strong incentive for additional steps towards alignment to be taken prior to the next assessment.

3 Scope

We understand Gas Industry Co will consider the findings of this assessment report when considering the assessment requirements and process going forward.

3.1 Benchmarks

The benchmarks in the Recommendations were reviewed and restated by Gas Industry Co in June 2011. The restated benchmarks are included in Attachment 1. Gas Industry Co's restatement did not substantially alter the benchmarks. Rather, the restatement reordered the benchmarks, removed some duplicated statements and made other minor clarifications.

To assist with this assessment, Gas Industry Co provided its interpretation of a number of the benchmarks. These interpretations are included in Attachment 1 alongside the relevant benchmark.

3.2 Gas Supply Arrangements

This assessment is limited to *published* gas supply arrangements as at 1 July 2011 for consumers (whether retail or business) whose consumption is less than 10 TJ per annum.

In the process of confirming the arrangements for this assessment, two retailers questioned whether the assessment should include retail contracts for the supply of LPG. One of those retailers provided its supply arrangement for the purpose of the assessment. Gas Industry Co has advised that LPG supply arrangements were not to be included in this assessment.

The Recommendation notes that subsequent assessments may include further gas supply arrangements, for example if significant contracting is not done on standard published terms. Retailers have indicated to us that there is minimal contracting on non-standard terms for customers whose consumption is less than 10 TJ per annum.

3.3 Retailers

Based on the above definition of gas supply arrangements, the following retailers are included in this assessment:

- Bay of Plenty Energy
- Contact Energy
- Energy Direct NZ
- Energy Online
- Genesis Energy
- Mercury Energy (Mighty River Power)
- Nova Energy

Notably, the following retailers are not included in this assessment:

- E-Gas
E-Gas's published gas supply arrangement was assessed last year. However, E-Gas has since stopped supplying gas and is in liquidation. "Nova Energy" purchased the E-Gas customer database from the liquidator and supplies many previous E-Gas customers. These customers are supplied gas by "Nova Energy", but the legal entity that holds the contracts with the customers is The Wellington Gas Company Limited (a subsidiary of Nova Gas Limited). Some of these customers may be supplied gas under the terms of the E-Gas supply arrangement, which is no longer published. We understand that in time Nova Energy intends to

migrate these customers on to Nova Energy's standard terms and conditions.

- OnGas
We understand that OnGas only supplies industrial and commercial customers who consume more than 10 TJ of gas per annum. These customers are outside the scope of this assessment.
- Greymouth Gas
Greymouth Gas supplies retail customers, but does not publish a gas supply arrangement. Elwood Law understands each Greymouth Gas customer is on bespoke contract terms and that the customers are usually large industrial and commercial customers. Accordingly these arrangements are believed to be outside the scope of this assessment.

3.4 Assessed documents

Each retailer included in the assessment was asked by Gas Industry Co to confirm all documentation comprising their gas supply arrangements. The full list of documentation included in this assessment is set out in Attachment 2.

Some of the assessed retailers publish a single standard contract, and others publish one contract for residential consumers and another contract for business consumers. Where a retailer has more than one standard contract, each contract has been separately assessed.

In total, 10 gas supply arrangements were assessed across 7 retailers. Most of the gas supply arrangements comprise various documents, such as an application form, standard terms and conditions, pricing plan and dispute resolution procedures.

For the majority of the gas supply arrangements there were only a small number of amendments made to the arrangements that were assessed last year. However:

- One retailer had issued a new supply arrangement, which included a number of amendments and replaced previously separate arrangements for business customers and residential customers; and
- The other six retailers advised that significant amendments to their supply arrangements are being progressed, many of which are likely to be rolled out later in 2011. Many of the retailers noted that their amendments would take into account the feedback provided from this assessment, in addition to feedback provided in the electricity review process and the recent changes to the electricity requirements (announced by the Electricity Authority in June 2011).

Because the oversight arrangement is voluntary, retailers were not *obliged* to provide documents to Elwood Law for the purpose of this assessment. Accordingly, documents that are not publically available from a retailer's website have not been assessed unless specifically provided by a retailer for assessment.

Further, documents (other than the contract) were only included in the assessment where the document was "identified in the contract". Where a document was not referenced in the contract (eg a "welcome pack" letter) it was, for the purpose of this assessment, interpreted as not forming part of the gas supply arrangement.

4 Methodology

4.1 Independence

Elwood Law was engaged by Gas Industry Co to perform this assessment. Elwood Law has performed its assessment independently of Gas Industry Co,

but consistently with Gas Industry Co’s interpretation of the benchmarks in Attachment 1.

This report does not bind Gas Industry Co.

4.2 Timetable

This assessment proceeded in accordance with the following timetable:

Step	When
Published terms and conditions downloaded from websites.	1 July 2011
Draft assessment of each retailer’s gas supply arrangement provided to each retailer for information and feedback.	29 July 2011
Feedback on draft assessment provided by retailers.	By 24 August 2011
Individual retailer assessments and assessment report finalised.	30 September 2011

4.3 Confidentiality

The Recommendation noted that “Individual retailer reports will be provided only to the retailer concerned” (page 25) and that individual retailer ratings would be provided on a “confidential basis initially” (page 41). Accordingly, this report does not identify the compliance of each retailer.

Elwood Law understands the intent of this process is to give each retailer an opportunity to bring its standard contract in line with the benchmarks prior to that retailer’s non-compliance being publicly attributable to that retailer.

The results of the next assessment will, for the first time, identify each retailer by name – so that each retailer’s individual level of compliance with the benchmarks will be made public.

4.4 Retailer feedback

Each assessed retailer was provided with a draft copy of its confidential assessment, showing its departures from the benchmarks, and a draft version of this report. Each retailer was provided an opportunity (of approximately four weeks) to comment on the draft assessment. This report has considered all feedback received.

The more common themes arising from retailer feedback, and Elwood Law’s response to them, are as follows:

Common Feedback	Common Response
We disagree with the benchmarks and/or Gas Industry Co’s interpretation of the benchmarks.	Gas Industry Co has not amended its interpretation of the benchmarks during the 2011 assessment process. Elwood Law understands that Gas Industry Co plans to review the benchmarks and interpretations in time for the next assessment, and that retailer feedback provided during this 2011 assessment will be taken into account by Gas Industry Co.
Our arrangement meets the benchmarks.	Some arrangements fail simply because of insufficient clarity. To meet the benchmark the contract needs to be drafted in a way that is reasonably clear to a reasonable consumer.

Common Feedback	Common Response
This is covered in our XYZ document.	The scope of our assessment is limited to the contract (including documents that are referenced in the contract). For the XYZ document to be taken into account, it needs to be appropriately referenced in the contract so that it is clearly part of the gas supply arrangement.
In practice we meet the benchmark.	We have been asked to assess the content of a retailer's gas supply arrangement against the benchmarks, not to assess the retailer's practices against the benchmarks. Numerous retailers have advised us of examples where their practice meets the benchmark, and asked us to change our assessment in response. These examples typically occur where the contractual wording gives the retailer a broad discretion, but in practice the retailer only exercises that discretion consistently with the benchmark. In order to comply with the benchmark the wording of the contract would need to be updated to reflect the stated practice.

4.5 Consistency across retailers

While care has been taken in performing each assessment, there were some fine lines to be drawn when considering whether particular wording met or failed to meet a benchmark. We helped achieve consistency by assessing one benchmark at a time across all of the gas supply arrangements, rather than scoring one arrangement at a time across all of the benchmarks.

Feedback from retailers has been considered for impact on other retailers.

4.6 Consistency with last year

Last year's assessment identified a discrete number of "issues" in retailer compliance with the benchmarks (eg issue 8.1 "length of notice of price increases is less than 30 days"). To ensure consistency with last year, this year's assessment uses the same issues as last year. A full list of these issues is contained in Attachment 3.

Some compliance issues with a benchmark may be more severe than others. As with last year, our scoring weights some issues more heavily than others but a consistent approach is adopted across all retailers. This means that retailers whose arrangements include the same issues will receive the same score.

As noted on page 21 of the Recommendation, Gas Industry Co requires each retailer's overall compliance with each benchmark to be given a broad qualitative assessment (i.e. "Full", "Substantial", "Moderate", "Low" or "None") rather than a detailed quantitative score. Accordingly, the scores derived for each benchmark have been translated into a qualitative assessment on a basis agreed with Gas Industry Co. Again, this translation process has been the same as last year.

4.7 Assessment documents

In addition to this report, our assessment comprises the following documents:

- An "Individual Detailed Assessment" for each retailer. This document contains the following information for each benchmark and a draft of the document was provided to each retailer for the purpose of obtaining

feedback:

- text pasted from the relevant gas supply arrangement (where text is relevant to multiple benchmarks, we included that text for each relevant benchmark);
- our initial assessment of the relevant text against that benchmark, including any specific issues with the retailer's compliance with that benchmark;
- feedback from the retailer on our initial assessment (if any); and
- our response to the retailer's feedback (if any).

This document is confidential to Gas Industry Co and the retailer concerned.

- A "Composite Detailed Assessment" that collates together in a single document all information contained in the Individual Detailed Assessments. This document was useful for the purpose of checking consistency across retailers. This document is confidential to Gas Industry Co.
- A "Scoring Spreadsheet" that translates issues identified in the Detailed Assessment into qualitative scores. This spreadsheet is confidential to Gas Industry Co.

While these additional documents are confidential in this year's assessment. It is likely that the content of the detailed assessments will be published for future assessments (see page 25 of the Recommendation).

4.8 Electricity review process

The Electricity Authority is performing a similar review exercise in relation to domestic electricity supply arrangements with the same assessment date. Elwood Law has not been asked to comment in this assessment report on any similarities between the findings of the separate review processes.

5 Results

5.1 Overall compliance

The overall degree of alignment, when averaged across all assessed arrangements and all benchmarks, is MODERATE based on a scale of "Full", "Substantial", "Moderate", "Low" and "None". This overall degree of alignment is the same as the result of the 2010 assessment.

For a breakdown of compliance by arrangement and benchmark, see the "Compliance Landscape" in Attachment 4.

5.2 Results differ from last year

The results of this assessment are different from the results of last year's assessment and an analysis of trends is included in section 7. If you wish to compare this year's results against last year's results, please note that this assessment has considered fewer arrangements, which has influenced the average results. In particular:

- the removal of the published E-Gas supply arrangement from the assessment process has affected the levels of compliance – generally increasing the average level of compliance; and
- one retailer updated its published business and residential supply arrangement with a new single arrangement – increasing its overall level of compliance in the process.

5.3 Most common issues

The following compliance issues were particularly wide-spread – being found

in 50% or more of the arrangements. Some benchmarks (e.g. benchmark 10 relating to bonds) were not relevant for all gas supply arrangements. For such benchmarks the percentage is based on the number of gas supply arrangements *applicable* to the issue concerned.

Issue	Percentage of arrangements with the issue
7.2. No clear mention of payments (if any) to the consumer for service disruption.	100%
13.3. Retailer can disconnect a consumer's gas supply for non-payment of non-gas invoices.	100%
14.4. No clear obligation for the retailer to urgently notify the consumer to curtail demand during a critical contingency situation, or of supply resumption afterwards.	100%
13.5. No clear obligation, except for emergency disconnections, to provide final warning no less than 24 hours or more than 7 days before disconnection.	90%
14.5. No clear information about where the consumer may access information about supply interruptions and no obligation that this information will be updated by the retailer as often as is practicable.	80%
16.3. Retailer liability excluded (low compliance).	80%
2.1. No clear description of how consumers can turn off their gas supply in an emergency.	70%
2.2. No clear information on and procedures for reconnection after the emergency will be provided.	70%
5.3. No clear requirement that material changes in terms of the arrangement will be directly communicated to the consumer, not through public notice.	70%
8.4. No clear requirement to state reasons for a price increase when providing notice of the increase.	70%
9.7. No clear statement of the term limits applying to the recovery of previous under charging.	70%
13.4. No clear obligation, except for emergency disconnections, to give 7 days' warning of disconnection, allowing a further 3 days for delivery.	70%
13.2. No clear requirement for disconnection notices to state the actions consumers can take to avoid disconnection.	60%
13.6. No clear obligation to delay disconnection for dispute resolution relating to the disconnection.	60%
15.1. No clear express requirement that retailer will comply with the Privacy Act or relevant privacy laws.	60%

Issue	Percentage of arrangements with the issue
15.2. The purposes for which the retailer may collect personal information are not set out.	60%
15.6. Not clear where the consumer can obtain information about how the Retailer collects, uses, discloses and stores his/her personal information.	60%
3.1. There are restrictions on the circumstances in which the consumer can terminate an open term arrangement.	57%
3.2. Following termination of an open term arrangement, the charges only cease on a date agreed by the retailer.	57%
10.1. The retailer is not required, in each case, to give reasons for requiring bonds.	57%
8.3. Where a price increase is more than 5%, no clear requirement to send separate notice of the increase to the consumer.	50%
9.4. No clear explanation of the process that will be used for correcting estimates.	50%
9.11. No clear method for correcting incorrect readings.	50%
11.4. No clear consequences stated for consumer for not granting access to their premises.	50%
12.4. Frequency of meter reading not consistent with the retailer's legal obligations.	50%
16.7. Retailer liability capped (low compliance).	50%

5.4 Compliance by arrangement

The average degree of alignment of the gas supply arrangements with the benchmarks is as follows:

Extent of compliance	Number of arrangements in 2011	Number of arrangements in 2010
Full	0	0
Substantial	3	2
Moderate	4	6
Low	3	4

5.5 Compliance by benchmark topic

The average degree of alignment per benchmark topic is set out in the table below. The table records the compliance from best compliance overall (i.e. "substantial" compliance for the benchmark when averaged across all relevant arrangements) through to worst (i.e. "low" compliance for the benchmark when averaged across all relevant arrangements).

Benchmark	2011 Compliance	2010 Compliance
6. Clear supply obligations	Substantial	Substantial
11. Clear consumer site responsibilities	Substantial	Substantial
1. Clear supply commencement	Moderate	Moderate
3. Clear consumer exit rights (open term)	Moderate	Moderate
4. Clear consumer exit rights (fixed term)	Moderate	Moderate
5. Clear contract variation procedures (non-price)	Moderate	Moderate
7. Clear supply restoration procedures	Moderate	Moderate
8. Clear price increases	Moderate	Moderate
9. Clear pricing information	Moderate	Moderate
10. Clear bond obligations	Moderate	Low
12. Clear metering obligations	Moderate	Moderate
14. Clear supply interruption procedures	Moderate	Moderate
15. Clear privacy obligations	Moderate	Moderate
17. Clear dispute resolution	Moderate	Moderate
18. Clear communication	Moderate	Moderate
2. Clear safety information	Low	Low
13. Clear disconnection process	Low	Low
16. Reasonable retailer liability limitations	Low	Low
Average	Moderate	Moderate

6 Issues

6.1 Issues of particular concern

The Recommendation envisaged (on Page 40) that this assessment would:

“Point out issues of particular concern, explain why they are of concern and identify the extent to which they are widespread (or apply only to a small number of retailers).”

Issues that Elwood Law considers would be of particular concern are those where the information provided to consumers is substantially different to that envisaged by the benchmarks or where the potential impact on consumers is significant.

A summary of such issues (including an explanation of the concern and the extent of the issue) is provided in the table below. This summary is Elwood Law’s view and may not reflect Gas Industry Co’s opinion of what it considers are issues of concern. The issues of particular concern are listed in the order

of the benchmarks, rather than in order of the level of concern.

Issue of particular concern Description of why it is of particular concern	Number of arrangements
<p>Issue 4.1. Clear consumer exit rights – no exit if alternative supplier offer is matched and fixed renewal period</p> <p>One retailer includes provisions which make it difficult for a consumer to exit their fixed term arrangements. The provisions restrict the consumer’s ability to switch to an alternative retailer at the end of the fixed term unless the current retailer is unwilling to match the alternative retailer’s offer. If the offer is matched, or if the consumer does not provide sufficient notice that it intends to switch retailers, the term automatically rolls over for another period of the same fixed term. If at the end of the initial fixed term a consumer switches in breach of this provision it appears that a substantial termination charge could be incurred.</p> <p>Although this issue is only present in one gas supply arrangement, it is viewed as of particular concern given the impact on each consumer who is affected. Elwood Law considers the provision unreasonably restricts consumer choice and does not appear necessary to protect the legitimate interests of the supplier. The provision also appears inconsistent with the intent of the Gas (Switching Arrangements) Rules 2008.</p> <p>Some jurisdictions (including the UK and Australia) provide that unfair terms in consumer contracts are void. In these jurisdictions terms such as those in question would probably be void. It is noted New Zealand legislation does not currently prohibit unfair terms in consumer contracts.</p>	<p>1 (out of 3)</p>
<p>Issue 5.3. Clear contract variation – notice of material changes</p> <p>An issue in seven of the gas supply arrangements was that the arrangements were not sufficiently clear that material changes to the terms of the arrangement must be directly communicated to the consumer. For example, many arrangements allowed such changes to be communicated either by notice to the customer <i>or</i> by public notices.</p> <p>The consumer impact will depend on how regularly non-price terms are materially changed and whether in practice retailers give notice by means of individual notices to customers in addition to any public notices.</p>	<p>7 (out of 10)</p>
<p>Issue 6.4. Clear supply obligations – point of supply</p> <p>Two arrangements did not include a clear description of the point to which gas will be supplied.</p> <p>One arrangement did not describe the point at all. The other arrangement described the point, circularly, as “the point at which the gas flows from the network into the</p>	<p>2 (out of 10)</p>

<p>Issue of particular concern Description of why it is of particular concern</p>	<p>Number of arrangements</p>
<p>customer’s gas installation or such other point as the parties may agree.” The point of supply is usually important in determining when risk passes to the consumer and in delineating who has responsibility for maintaining what equipment (eg the consumer generally is responsible for maintaining equipment on their side of the point of supply).</p> <p>Given the need to protect network integrity, the ambiguity in the definition of the point of supply is considered of particular concern.</p>	
<p>Benchmark 8. Clear price increases – Issue 8.4 reasons for increase and Issue 8.3 individual notices</p> <p>Issue 8.4: Seven of the gas supply arrangements did not require the retailer to state the reasons for a price increase when providing notice of that increase.</p> <p>Issue 8.3: Five of the gas supply arrangements do not require the retailer to send a separate notice of a price increase of more than 5%. These arrangements would permit the retailer using a public notice (e.g. in a newspaper) to communicate the price increase.</p> <p>These issues have both been viewed as of particular concern since in both cases the information that the retailer may provide differs from the information the benchmarks envisage must be provided.</p> <p>Elwood Law is not aware whether the relevant retailers opt, in practice, to provide reasons for price increases or to notify price changes to each consumer, despite not making a contractual commitment to do so. The consumer impact of these issues would be reduced to the extent any such practices occur.</p>	<p>7 (out of 10)</p> <p>5 (out of 10)</p>
<p>Issue 12.4. Clear metering obligations – frequency of meter reading</p> <p>Half of the gas supply arrangements are not sufficiently consistent with the relevant retailer’s legal obligations in relation to meter reading frequency. For example:</p> <ul style="list-style-type: none"> o One arrangement only included obligations for electricity meters, and not for gas meters. o Other arrangements note the retailer’s ‘plan’ or ‘usual practice’ in relation to meter reading, but do not commit to sufficient minimum reads. o Some business arrangements do not set out the required monthly meter reading obligations for those consumers on the standard terms and conditions who are expected to have a consumption greater than 250 GJ per annum (e.g. the arrangements only detail the obligations that apply for consumers with lower expected consumption). 	<p>5 (out of 10)</p>

Issue of particular concern	Number of arrangements
Description of why it is of particular concern	
<ul style="list-style-type: none"> ○ A lack of any minimum meter reading commitment in rural areas is notable in some arrangements. <p>Again, the lack of minimum meter reading commitments is of particular concern as it differs from the information the benchmarks expect will be provided.</p> <p>Despite the lack of contractual obligation, it is noted that the retailers are required to comply with certain minimum meter reading obligations. Gas Industry Co will likely be better able than Elwood Law to form a complete view on industry compliance in this area, as Gas Industry Co will have some visibility of each retailer’s compliance in relation to the frequency of meter reading through the administration of the Gas (Downstream Reconciliation) Rules.</p>	
<p>Benchmark 13. Clear disconnection process</p> <p>The lack of clarity regarding the processes that must be followed in relation to disconnections is of particular concern. For example:</p> <ul style="list-style-type: none"> ○ Issue 13.5: Nine of the gas supply arrangements do not include a clear obligation, except for emergency disconnections, to provide a final warning no less than 24 hours or more than 7 days before disconnection. ○ Issue 13.4: Seven of the gas supply arrangements do not, except for emergency disconnections, require the retailer to give 7 day’s warning of disconnection, and to allow a further 3 days for delivery of that notice. ○ Issue 13.2: Six of the gas supply arrangements do not require the retailer’s disconnection notices to state the actions consumers can take to avoid disconnection. ○ Issue 13.3: Ten of the gas supply arrangements do not limit disconnection for non-payment to non-payment of gas invoices. This differs from the expectation of the benchmark. However, many dual fuel energy suppliers issue a single invoice (which covers both fuels) and consider disconnection of both electricity and gas would appropriately protect their legitimate interests in the event an invoice remains unpaid and appropriate notices of disconnection are provided for both fuels. <p>The impact to consumers will vary depending on the retailer’s actual disconnection practices. However, given the low levels of compliance this is viewed as particular concern, especially given the benchmarks are broadly consistent with the EGCC’s Code of Practice which has been in place for many years.</p>	<p>All arrangements (to varying degrees)</p>
<p>Benchmark 14. Clear supply interruption procedures</p> <p>Eight gas supply arrangements do not provide clear</p>	<p>8 (out of 10)</p>

<p>Issue of particular concern</p> <p>Description of why it is of particular concern</p>	<p>Number of arrangements</p>
<p>information about where the consumer may access information about supply interruptions and don't require such information to be updated by the retailer as often as is practicable.</p> <p>Gas outages can cause significant disruption to consumers. Given such outages are beyond the consumer's control, it seems reasonable that consumers are able to access information regarding the supply interruption and that the information be regularly updated. It is acknowledged that the relevant distributor may be better placed to provide information on supply interruptions. If so, compliance with the benchmark may be as simple as the retailer committing in the gas supply arrangement for its website to direct consumers to the page on the relevant distributor's website where information on supply interruptions is regularly updated.</p>	
<p>Benchmark 16. Reasonable retailer liability limitations</p> <p>The liability benchmark requires "any exclusion of liability in the gas supply arrangements must be clearly specified and reasonable". To assess the reasonableness of the contractual provisions, Gas Industry Co's interpretation includes a "straw man" analysis of the extent to which particular exclusions and limitations of liability meet the benchmark (i.e. an analysis of provisions which constitute "full", "substantial", "moderate", "low" and "none" compliance).</p> <p>The provisions in industry arrangements fall far short of Gas Industry Co's interpretation of "full" compliance with this benchmark. All of the gas supply arrangements raised at least one compliance issue, with compliance levels of "low" or "none" applying to 9 of the 10 gas supply arrangements.</p> <p>Industry were provided with a copy of this straw man in July 2010, but are yet to take steps to align limitation of liability provisions with the straw man. The strong commercial benefits to retailers in limiting their liability may mean that progress towards alignment with this benchmark will be harder to achieve.</p>	<p>All arrangements (to varying degrees)</p>
<p>Issue 17.3. Clear dispute resolution - EGCC complaints scheme</p> <p>Four of the gas supply arrangements did not refer to the EGCC complaints scheme.</p> <p>The benchmark requires that the gas supply arrangements "advise Consumers that complaints not resolved to their satisfaction may be taken to the scheme approved under the Gas Act 1992". The EGCC complaints scheme took effect as the approved scheme under section 43E of the Gas Act from 1 April 2010.</p>	<p>4 (out of 10)</p>

Issue of particular concern	Number of arrangements
Description of why it is of particular concern	
In terms of the impact of this, it is understood that the scheme rules require retailers who invoice gas consumers to include on consumer invoices information about the existence and nature of, and the contact information for, the scheme.	

6.2 Wording contrary to the intent of the benchmarks

The Recommendation (page 41) also envisaged that Elwood Law would:

“Look at issues such as the use of wording that is technically aligned but contrary to the intentions of the benchmarks.”

It has been difficult to fully assess this. An example is useful to highlight this difficulty. One stated objective for the benchmarks is that the benchmarks “are sufficiently complete, accessible, and balanced to support the long term interests of gas consumers” (see page 1 of the Recommendation). Thus, considering whether a clause in a contract which technically aligns with a benchmark is consistent with the intentions of the benchmarks would involve considering (among other things) whether the clause is balanced and supports the long term interests of gas consumers. Such an assessment requires a policy review as well as a legal interpretation.

It has been noted that some of the benchmarks are “informational” (e.g. set out the conditions under which gas can be disconnected ...) rather than “prescriptive” (e.g. ...such conditions must be reasonable). The review has identified some wording which on the face of it appears unbalanced (e.g. “we reserve the right to discontinue the supply of energy” [i.e. on any grounds]) but will technically meet the informative benchmark standard. It is possible, but further analysis would be required, that such wording may not accord with the intentions of the benchmarks.

Where Elwood Law has identified provisions that we consider *may* be contrary to the intentions of the benchmarks, these have been noted to Gas Industry Co and the retailer concerned. Elwood Law believes that a consideration of whether or not contract wording is contrary to the intentions of the benchmarks requires further assessment, including of industry practice and the policy environment, which is beyond the scope of this “paper based” assessment.

7 Trends

Overall, we would describe the trend in compliance with the benchmarks as improving. One retailer has made significant steps towards alignment, and the other retailers have each expressed an intention to do so. In addition, the removal of E-Gas from the assessment process has changed the compliance landscape.

Apart from the one retailer that significantly amended its published gas supply arrangements, there have only been a handful of amendments to published gas supply arrangements since the 2010 assessment, none of which have significantly affected compliance with the benchmarks.

Of the 66 distinct compliance “issues”, 26 were widespread (found in more than 50% of the arrangements) in this assessment, compared with 29 widespread issues in the 2010 assessment. On average, in the 2011 assessment each gas supply arrangement included 25 compliance issues (compared with an average of 27 in the 2010 assessment).

This 2011 assessment identified one more arrangement with an overall average of “substantial” compliance across all benchmarks, and one fewer arrangement with overall “low” compliance. The average level of compliance with each benchmark was largely unchanged, although compliance with benchmark 10 (regarding bond obligations) increased to “moderate” in 2011, from “low” in 2010.

The improvement may be weaker than hoped. Some retailers stressed that completing their update to their gas supply arrangement by 1 July 2011 was problematic as the Electricity Authority only confirmed changes to its requirements in June 2011, and many of the supply arrangements cover both electricity and gas supply.

It is expected that the naming of retailers in future assessments is likely to act as a strong incentive for additional steps to be taken towards alignment prior to the next assessment date (which is yet to be confirmed). If each retailer achieves the update that they have indicated, it is likely that compliance in the next assessment will be significantly improved. For example, two retailers provided us with a current draft of their planned update, and both updates appear to address many of the compliance issues with their current gas supply arrangements that were identified in this assessment.

Elwood Law has provided a copy of all of the analysis that underlies the information summarised in this report to Gas Industry Co to assist with future assessments and identification of trends.

Attachment 1: Benchmarks and GIC Interpretation

1. Clear supply commencement

Benchmark	GIC Interpretation
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	<p>This benchmark concerns <i>supply commencement</i> not contract commencement. It must be <i>reasonably clear</i> when supply commences.</p> <p>The benchmark requires the commencement date to be either:</p> <ul style="list-style-type: none"> • an actual date or a method for determining a date (e.g. “the earliest possible date” or “the date you move in” or “the date you start taking supply from us”); or • as determined by the switching regulations or rules. <p>Benchmark is not met by a statement that supply commences when the Consumer starts taking supply.</p>
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.	<p>This benchmark concerns <i>contract commencement</i> not supply commencement. Benchmark requires it to be clear that arrangements can be back-dated to the date that supply commenced.</p> <p>Benchmark met by statement that Consumer becomes a customer by:</p> <ul style="list-style-type: none"> • continuing to receive and use gas at premises where a previous customer has left • arranging for Retailer to turn on gas supply that had been previously turned off. <p>Benchmark not met if back-dating of contract commencement date is not mentioned.</p>

2. Clear safety information

Benchmark	GIC Interpretation
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;	<p>Without comprehensive analysis and discussion with each Retailer, it will not be possible for the reviewers to assess whether the responsibilities have been accurately and comprehensively detailed.</p> <p>Specific responsibilities of the parties involved in the supply of gas are already assessed under the following benchmarks:</p> <ul style="list-style-type: none"> • Benchmark 6 – services provided by the Retailer • Benchmark 12 – requirements for metering • Benchmark 14 – faults and planned shutdowns • Benchmark 7 – Retailer’s response to supply disruption

Benchmark	GIC Interpretation
	<ul style="list-style-type: none"> Benchmark 11 – site responsibilities. <p>It is not considered that any additional responsibilities need be defined in an arrangement to meet the objectives of this assessment. Accordingly, it is not proposed to score this benchmark 2(a) separately. Gas Industry Co will consider moving this benchmark into the good practice guidelines.</p>
<p>(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</p>	<p>This benchmark requires the arrangement to provide “safety information” to Consumers. Safety issues are also addressed by other industry requirements and Gas Industry Co acknowledges that, in an emergency, safety information recorded in contractual arrangements is unlikely to be immediately at hand. However, contractual arrangements are a mechanism for raising safety awareness.</p> <p>Benchmark met if the specified safety information is contained in:</p> <ul style="list-style-type: none"> the contract a document referred to in the contract, even if the contract does not specify what information is contained in that other document. <p>For future reviews, Gas Industry Co will consider:</p> <ul style="list-style-type: none"> moving this benchmark 2(b) to the good practice guidelines, as other regulatory arrangements address safety and information recorded in an arrangement is unlikely to be immediately at hand in an emergency amending this benchmark 2(b) to require arrangements to include safety awareness provisions such as: <ul style="list-style-type: none"> when the Consumer must obtain compliance certificates what the Consumer should do to ensure gas safety at the Consumer’s premises, including how to turn off gas supply who the Consumer should call if there is an emergency involving gas at the Consumer’s premises.
<p>(c) where the Consumer may access information about supply interruptions, with this information to be updated by the Retailer as often as is practicable.</p>	<p>As this benchmark concerns supply interruptions, it is scored together with benchmark 14.</p>

3. Clear consumer exit rights (open term)

Benchmark	GIC Interpretation
3. Open term gas supply arrangements must provide the Consumer with the ability to cease gas supply from the existing Retailer:	If an arrangement has an initial fixed term followed by an open term, both benchmark 4 and 3 are relevant respectively. “Cease gas supply” includes provisions dealing with disconnection, discontinuing supply, terminating the agreement, exiting and ceasing being a customer.
(a) at any time without unnecessary delay;	Benchmark not met if: <ul style="list-style-type: none"> • there are restrictions on the circumstances in which the Consumer can terminate (the Consumer should be able to terminate at ANY time) • following termination, the charges only cease on a date agreed by the Retailer (as the Retailer could unreasonably withhold its agreement, except under the switching rules) • the Retailer can continue its daily fixed charge until gas is decommissioned (as this is outside the Consumer’s control). Benchmark may be met where: <ul style="list-style-type: none"> • termination is subject to the Consumer allowing the Retailer to perform a final meter reading • the length of notice that the Consumer must give is specified, but there is not a corresponding obligation on the Retailer to disconnect (one is implied). There is an <i>unnecessary delay</i> if more than one month’s notice of termination is needed.
(b) irrespective of any offer that the existing Retailer may make with respect to price or any other aspect of continued supply from that Retailer; and	Benchmark not met where the Consumer can’t switch to an alternative Retailer, unless the current Retailer is unwilling to match the alternative Retailer’s offer.
(c) without incurring any charges other than the direct costs related to termination, i.e. without penalty fees or exit fees.	

4. Clear consumer exit rights (fixed term)

Benchmark	GIC Interpretation
4. Fixed term gas supply arrangements must clearly state:	If application form or terms and conditions do not specify a fixed term, assume that the arrangement is for open term only and that the benchmark is not applicable.
(a) the expiry date;	Benchmark met if the expiry date can be calculated as provided in the contract. Benchmark not met if: <ul style="list-style-type: none"> • arrangement automatically rolls over for the same fixed term, unless prior notice is given. Gas

Benchmark	GIC Interpretation
	<p>Industry Co considers that roll-overs should be on an open term basis</p> <ul style="list-style-type: none"> the Consumer can't switch to an alternative Retailer at the end of the term, unless the current Retailer is unwilling to match the alternative Retailer's offer.
(b) whether or not there are provisions for early termination (i.e. prior to the expiry date); and	<p>Benchmark relates to the <i>Consumer's</i> right to terminate, not the Retailer's. Benchmark is:</p> <ul style="list-style-type: none"> not met by <i>general</i> right to terminate (eg for breach) or if contract is <i>silent</i> on right to convenience termination met by a statement that the Consumer has <i>no right</i> or has <i>limited rights</i> to convenience termination.
(c) the basis on which any early termination charges will be calculated, if early termination is allowed.	Benchmark met if no early termination charge is mentioned.

5. Clear contract variation procedures (non-price)

Benchmark	GIC Interpretation
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.	<p>Benchmark also applies to fixed term contracts. For those contracts, the benchmark is not met unless the Consumer may terminate the contract before the changes come into effect, and without any obligation to pay fees for the period past the date of termination.</p> <p>If arrangement has separate provisions for price terms, assume that general right to amend contract applies to non-price terms only.</p> <p>Benchmark met if:</p> <ul style="list-style-type: none"> the Retailer has no express right to amend the contract (assume that the Retailer won't change without each Consumer's agreement) one month's notice is given (February is less than 30 days). <p>Benchmark not met if less than 30 days' notice can be given.</p> <p>Benchmark not failed merely because the Retailer can change the arrangement on shorter notice, in the event of temporary supply emergencies.</p>
5.2. The gas supply arrangements must specifically provide for material changes in the terms of the gas supply arrangements or price to be directly communicated to Consumers and not through public notices.	This benchmark relates to non-price variations only. Price variations are addressed in benchmark 8. Benchmark met if all non-price variations must be directly communicated to the Consumer.

6. Clear supply obligations

Benchmark	GIC Interpretation
<p>6. The gas supply arrangements must describe the services to be provided to the Consumer.</p>	<p>Without comprehensive analysis and discussion with each Retailer, it will not be possible for the reviewers to assess whether the specific services of any Retailer have been accurately and comprehensively described in any arrangement.</p> <p>The following benchmarks already assess services that will be provided by the Retailer:</p> <ul style="list-style-type: none"> • Benchmark 7 – Retailer’s response to supply disruptions • Benchmark 11 – Retailer’s site obligations • Benchmark 12 – Retailer’s metering obligations • Benchmark 14 – Retailer’s obligations under special or emergency operating situations. <p>It is considered that the only service not sufficiently addressed in other benchmarks is the <i>supply of gas</i>. Each arrangement should reasonably include an obligation that the Retailer will supply gas of certain quality to a specified point.</p> <p>Benchmark may be met if:</p> <ul style="list-style-type: none"> • the Retailer’s obligation is to: <ul style="list-style-type: none"> ○ <i>endeavour</i> to supply gas (including “best” and “reasonable” endeavours and “aim to”) ○ <i>supply up to a maximum</i> quantity of gas ○ provide an “<i>energy service</i>” or “<i>energy supply</i>” rather than “supply gas” • the point of supply is: <ul style="list-style-type: none"> ○ <i>as defined by reference to gas regulations (see regulation 5 of the Gas (Safety and Measurement) Regulations 2010)</i> ○ <i>the point at which gas exits the meter</i> ○ <i>defined as “all energy past the meter is your responsibility”</i> • the Retailer cannot guarantee to provide a <i>continuous supply</i> of gas • the arrangement describes the point of supply, but there is <i>no express requirement</i> for the Retailer to supply to that point (the obligation is assumed) • supply is subject to the <i>safety</i> of the Consumer’s site when connected to the local distribution gas network • supply must be <i>exclusively</i> from the Retailer • in relation to the quality of supply: <ul style="list-style-type: none"> ○ <i>the Retailer agrees to comply with all relevant laws</i> ○ <i>quality may vary for reasons beyond the Retailer’s control</i> • obligations for transporting gas across a distribution network is excluded only where the network operator requires its own agreement with the Consumer <p>Benchmark not met if:</p>

Benchmark	GIC Interpretation
	<ul style="list-style-type: none"> the arrangement only describes the point of <i>electricity</i> supply the Retailer or network company can <i>determine</i> the point of supply (too general) the point of supply is described as “<i>the point</i> at which gas flows from a gas network into the Consumer’s installation, appliance or reticulation system” as that point itself is unclear.

7. Clear supply restoration procedures

Benchmark	GIC Interpretation
7. Where services are not provided as described, the gas supply arrangements must:	Benchmark relates to how the Retailer <i>responds</i> to interruptions to <i>gas supply</i> , not other service issues. The <i>circumstances</i> in which supply may be interrupted are addressed in benchmark 14.
(a) set out how the Retailer will respond to the Consumer where services are not supplied as described;	<p>Benchmark not met by a <i>standard complaints procedure</i>. Supply interruptions should be dealt with more promptly.</p> <p>Benchmark met by:</p> <ul style="list-style-type: none"> reasonable endeavours obligation (e.g. by the Retailer using reasonable endeavours to restore supply as soon as reasonably practicable) the Retailer ‘working with the relevant parties to try to minimise any inconvenience’.
(b) whether any payments will be made to the Consumer as a result of services not being supplied; and	<p>Benchmark met if:</p> <ul style="list-style-type: none"> arrangements provide there will be no payment “payment” includes any financial benefit to Consumer (eg discounts) <p>Benchmark not met if the contract is silent as to whether or not payments will be made.</p>
(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.	<p>The objective behind this benchmark is to clearly notify Consumers of their rights.</p> <p>Benchmark not met by:</p> <ul style="list-style-type: none"> <i>general</i> statement that the Retailer will comply with laws as this does not notify Consumers of this important statutory protection statement that the Consumer Guarantees Act is <i>excluded to the maximum extent permitted by law</i> as non-business Consumers may wrongly assume they have no Consumer Guarantees Act rights. <p>Benchmark met by:</p> <ul style="list-style-type: none"> reference to “Consumer protection legislation” instead of “Consumer Guarantees Act” statement that arrangement does not exclude or limit rights under the Consumer Guarantees Act exclusion of the Consumer Guarantees Act as permitted under that Act (i.e. for businesses) an exclusion of liability clause not excluding Consumer Guarantees Act liability eg “except to

Benchmark	GIC Interpretation
	the extent of any liability arising pursuant to the Consumer Guarantees Act".

8. Clear price increases

Benchmark	GIC Interpretation
8. In order to increase the price of gas supplied under the gas supply arrangements, the gas supply arrangements must state:	
(a) the length of notice that shall be given before the price increase takes effect, which shall be not less than 30 days from the giving of notice;	
(b) the method by which notice shall be given...	<p>Benchmark not met:</p> <ul style="list-style-type: none"> by provision that Consumers can request the cause of a price increase where the method of notice is unclear. <p>Benchmark met by public notice (eg on website or newspaper).</p> <p>Benchmark may be met by a general notice clause specifying how all notices from the Retailer will be given.</p>
...provided that, if the increase in price is more than 5%, a separate notice of the increase must be individually communicated to the Consumer in writing...	<p>Benchmark not met by:</p> <ul style="list-style-type: none"> public notice (eg on website or newspaper) automatic price review (eg annual) that is not notified in accordance with benchmark 6.1, despite it being "communicated" in the arrangement. <p>Benchmark met by:</p> <ul style="list-style-type: none"> emailed notice notice in next invoice.
...as soon as possible; and	This benchmark does not need to be scored, as benchmark 8(a) requires that not less than 30 days' notice be given.
(c) that the notice will include the reasons for the increase.	Benchmark met if contract only requires notice of the general reasons for the increase.

9. Clear pricing information

Benchmark	GIC Interpretation
9.1. The gas supply arrangements must:	
(a) refer to the relevant prices or pricing schedule (as may be produced by the Retailer from time to time) of products and services available to the Consumer;	<p>Without comprehensive analysis and discussion with each Retailer, it will not be possible for the reviewers to assess whether prices are accurately and comprehensively described in any arrangement.</p> <p>The benchmark requires the prices to be clear to the Consumer, whether in the arrangement itself (eg application form) or publically available (eg on the Retailer’s website or in another publically accessible location).</p> <p>Benchmark met if a price plan is referenced to in the arrangement but the arrangement does not describe where Consumers may find the price plan, provided the price plan is in fact available on the Retailer’s website.</p> <p>Benchmark not met:</p> <ul style="list-style-type: none"> • if arrangement does not specify <i>where</i> price information can be found • if the specified location of price information is not publically available.
(b) state that the Consumer is liable for the charges, but only for those charges, for all of the services provided under the gas supply arrangements;	<p>Benchmark met if contract <i>clearly specifies</i> the charges that the Consumer will be liable for.</p> <p>Benchmark not met if:</p> <ul style="list-style-type: none"> • Consumer liable for <i>unspecified charges</i> (eg “all other costs”) • the amount of any charges are open ended (does not apply where the Consumer will receive advance notice of change to these charges).
(c) state the time from which the Consumer will be liable for the charges;	<p>The intention behind this benchmark is adequately addressed in benchmark 1. No need to assess here.</p>
(d) in the case of bills based on estimates, include a simple explanation of how the estimate will be calculated...	<p>Benchmark met if the estimate must simply be “reasonable”.</p>
...and of the process that will be used for correcting any estimates;	<p>Benchmark met:</p> <ul style="list-style-type: none"> • if Retailer will invoice according to a meter reading performed by the Consumer • even where the Consumer’s right to request a correction is limited (eg because Consumer can only request a test annually).

Benchmark	GIC Interpretation
(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...	<p>Benchmark met if:</p> <ul style="list-style-type: none"> • over-charging will be <i>credited</i> against next invoice • an <i>appropriate adjustment</i> will be made. <p>However, benchmark not met if:</p> <ul style="list-style-type: none"> • the time frame is not mentioned (“next invoice” is acceptable) • the Consumer can only request metering tests each 12 months and adjustment only extends back to the date of testing (as refund may exclude many months of overcharging).
...and may invoice the Consumer for any underpayments subject to sub-clause (f); and	<p>Benchmark relates to under-charging by Retailer, not under payment by Consumer.</p> <p>Benchmark not met if arrangement does not provide that under charging may be invoiced.</p> <p>Benchmark met if:</p> <ul style="list-style-type: none"> • under-charging can be included in subsequent invoice • the under-charged amount is payable after the dispute resolved, even if the amount is not required to be invoiced.
(f) the gas supply arrangements will state the term limitations that will apply for the recovery of underpayments.	<p>Benchmark relates to under-charging by Retailer, not under payment by Consumer.</p> <p>Benchmark not met if arrangement does not provide any term limitations.</p> <p>However benchmark may be met if the Retailer can charge beyond a specified term limit if:</p> <ul style="list-style-type: none"> • it should not reasonably have been expected to have been aware of the error • the Consumer contributed to the error, or could have reasonably been expected to have known about the error.
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.	<p>Benchmark met if arrangement <i>does not provide</i> for payment options (assumed that Retailer does not offer any).</p>
<p>9.3. Metering:</p> <p>In relation to the metering of gas supply to the Consumer, the gas supply arrangements must clearly describe:</p> <p>(a) any additional costs associated with providing, correcting, changing, or removing metering equipment, which may be listed in a separate schedule;</p>	<p>Benchmark met if the arrangement:</p> <ul style="list-style-type: none"> • <i>does not mention</i> any additional costs (assume there are none) • says costs may be payable (eg inspection, repair and/or replacement costs) but <i>does not specify the amount</i> of those costs • provides that the Consumer will be informed prior to taking any action on a meter which may incur a charge.
(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...	

Benchmark	GIC Interpretation
...and the method for correcting previous billed consumption if found to be incorrect.	Benchmark not met by: <ul style="list-style-type: none"> dealing with the method of testing without describing the correction process providing that consumption will be “adjusted accordingly”.

10. Clear bond obligations

Benchmark	GIC Interpretation
10.1. Where the Retailer requires a bond from the Consumer, the gas supply arrangements must state:	Benchmark met in full if arrangement does not reference bonds (assume that bonds are not required). If arrangements provides that “other lending criteria apply” it is assumed that bonds may be required.
(a) the requirement for the Retailer to provide to the Consumer the reasons for requiring a bond;	Benchmark not met if arrangement says “if we have concerns about your ability to pay we may require a bond”. The arrangement must oblige the Retailer to give more detailed reasons in each case.
(b) the period of time within which the bond must be paid to the Retailer; and	This benchmark does not need to be scored. It is reasonable for bonds to be paid before supply commences. Any additional time for payment allowed by a Retailer will not prejudice the Consumer.
(c) how long the Retailer will keep the bond.	Benchmark met if arrangement: <ul style="list-style-type: none"> describes the <i>circumstances</i> in which the bond will be released, rather than a specific time period provides an indefinite period for retaining bonds, provided the bond will be returned on <i>termination and payment of outstanding charges</i>.
10.2. If the Retailer keeps the bond for longer than 12 months, it must provide:	Benchmark not met if arrangement includes no restriction on the time that a bond may be kept (assume it may be kept for longer than 12 months). Benchmark met if arrangement provides that the balance of any bond will be repaid after 12 months if you have paid all invoices on time (assume that reason for keeping it is non-payment of invoices on time).
(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	GIC Interpretation
11.1 The gas supply arrangements must:	
(a) describe the physical point at which the Consumer’s responsibility begins;	The requirement to define the point of supply is assessed in benchmark 6. No separate assessment required.
(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;	“On the Consumer’s premises” includes both sides of the point of supply. Benchmark not met if the Consumer is required to provide certification in relation to the Retailer’s equipment at the Consumer’s site.
(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	“On the Consumer’s premises” includes both sides of the point of supply.
(d) the consequences the Consumer may face for not granting access.	Benchmark not met by <i>general statement</i> that the Retailer may terminate or suspend the arrangement for breach.
11.2 Metering. In relation to the metering of gas supply to the Consumer, the gas supply arrangements must clearly describe the Consumer's responsibility for protecting, not tampering with, and providing access to meter(s) for maintenance and reading purposes.	

12. Clear metering obligations

Benchmark	GIC Interpretation
12. In relation to the metering of gas supply to the Consumer, the gas supply arrangements must clearly describe:	See also benchmarks 8 and 11.
(a) the requirements for metering relevant to the pricing options selected by the Consumer;	The arrangement must make it clear who has responsibility for: <ul style="list-style-type: none"> • providing the meter • maintaining the meter.
(b) the frequency of meter readings; and	The arrangement must: <ul style="list-style-type: none"> • clearly describe the frequency in which the Retailer will read meters • be consistent with the Retailer’s legal obligations for frequency of meter reading.

Benchmark	GIC Interpretation								
	<p>Gas Industry Co assumes all TOU (time of use) meters will comply with legal frequency obligations. In terms of Retailer’s legal obligations for frequency of non-TOU meters:</p> <ul style="list-style-type: none"> • the Gas (Downstream Reconciliation) Rules 2008 require (in general terms) that Retailers <i>must</i> read meters as follows: <ul style="list-style-type: none"> ○ for expected consumption between 250 GJ pa and 10 TJ pa, monthly ○ for all lower expected consumption: <ul style="list-style-type: none"> ▪ each individual meter at least once every 12 months, unless exceptional circumstances prevent; and ▪ at least 90% of the meters once every 4 months (Gas Industry Co notes that this aggregate obligation cannot be applied at the level of individual arrangements) • Under the EGCC’s Gas Code of Practice meter readings <i>should</i> take place a minimum of four times a year, unless the Consumer agrees individually otherwise or does not provide the Retailer with reasonable access to the meter. For the purpose of this benchmark, the code is not a legal obligation unless the Retailer agrees in the arrangement to comply with it. <p>Accordingly, arrangements must provide at least the following:</p> <table border="1" data-bbox="1093 740 2157 1150"> <thead> <tr> <th data-bbox="1093 740 1469 799">Frequency</th> <th data-bbox="1469 740 2157 799">Arrangement Type</th> </tr> </thead> <tbody> <tr> <td data-bbox="1093 799 1469 927">Monthly</td> <td data-bbox="1469 799 2157 927">“Business” or “Business/Residential” (where expected consumption could reasonably be between 250 GJ and 10 TJ pa)</td> </tr> <tr> <td data-bbox="1093 927 1469 1054">Four times a year (including “plans to” or “should” do so, but not “several times a year”)</td> <td data-bbox="1469 927 2157 1054">“Residential Only” where the Retailer <i>agrees</i> in the arrangement to comply with industry codes of practice (or relevant industry codes of practice)</td> </tr> <tr> <td data-bbox="1093 1054 1469 1150">Once every 12 months</td> <td data-bbox="1469 1054 2157 1150">“Residential Only” where Retailer <i>does not</i> agree in the arrangement to comply with industry codes of practice</td> </tr> </tbody> </table> <p>The “individual agreement” noted in the Code of Practice cannot be contained in the Retailer’s standard documentation but must be provided individually (for example a Consumer may agree that the Retailer may miss a meter read where the Consumer recently provided its own estimate). The benchmark is not met if the arrangement states that a longer time between readings is permitted for rural meters.</p>	Frequency	Arrangement Type	Monthly	“Business” or “Business/Residential” (where expected consumption could reasonably be between 250 GJ and 10 TJ pa)	Four times a year (including “plans to” or “should” do so, but not “several times a year”)	“Residential Only” where the Retailer <i>agrees</i> in the arrangement to comply with industry codes of practice (or relevant industry codes of practice)	Once every 12 months	“Residential Only” where Retailer <i>does not</i> agree in the arrangement to comply with industry codes of practice
Frequency	Arrangement Type								
Monthly	“Business” or “Business/Residential” (where expected consumption could reasonably be between 250 GJ and 10 TJ pa)								
Four times a year (including “plans to” or “should” do so, but not “several times a year”)	“Residential Only” where the Retailer <i>agrees</i> in the arrangement to comply with industry codes of practice (or relevant industry codes of practice)								
Once every 12 months	“Residential Only” where Retailer <i>does not</i> agree in the arrangement to comply with industry codes of practice								
(c) the obligation to ensure metering is conducted in accordance with	Relevant standards and codes of practice include:								

Benchmark	GIC Interpretation
relevant industry standards and codes of practice.	<ul style="list-style-type: none"> NZS5259, which has legal effect under the Gas Act on all meter owners EGCC’s Gas Code of Practice, which is not legally binding in itself. <p>Benchmark met if Retailer agrees to comply with:</p> <ul style="list-style-type: none"> “relevant” industry standards and codes of practice, rather than all of them “industry requirements”, rather than standards and codes of practice <p>Not met if Retailer merely agrees to comply with “laws” as the EGCC Code of Practice is not a law and NZS5259 is not directly binding on Retailers.</p>

13. Clear disconnection process

Benchmark	GIC Interpretation
13.1. The gas supply arrangements must:	Benchmark addresses <i>disconnection, termination or suspension</i> by the Retailer for the Consumer’s breach. These are distinct to “disconnections” dealt with in other benchmarks: <ul style="list-style-type: none"> Benchmark 3 (How to stop being a Consumer of your current Retailer) Benchmark 14 (Faults and Planned Shutdowns).
(a) set out the conditions under which Consumers can be disconnected other than in accordance with clause 13.2 below;	Benchmark met if: <ul style="list-style-type: none"> the Retailer can disconnect on any grounds there is no ability to disconnect other than under clause 14 below.
(b) provide that any notice of such disconnection will describe the actions that the Consumer can take to prevent disconnection.	Benchmark not met if the arrangement is silent on this, even if the actions the Consumer can take to prevent disconnection are notified <i>in practice</i> .
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.	Benchmark not met if the Retailer can discontinue gas supply for non-payment of an invoice for another form of energy (particularly applicable in dual energy arrangements).
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;	<p>Notice requirement not met if arrangement:</p> <ul style="list-style-type: none"> merely provides that the Retailer will give notice, without specifying the length of notice allows Retailer to attempt to give the required length of notice (although force majeure clause may apply). <p>“Emergency disconnections” relate to disconnections for the purpose of protecting health, safety or damage to property. Grounds for disconnection under regulatory arrangements are primarily focused on safety.</p> <p>Accordingly, the following wording does not meet the benchmark as the wording may extend beyond emergency or safety purposes:</p>

Benchmark	GIC Interpretation
	<ul style="list-style-type: none"> • instructions from a Lines Company or Network Operator to disconnect • breach of contract by the Consumer • mere suspicion that there has been tampering with a meter, equipment, pipes or fittings (it may not be the Consumer’s fault) • failing to advise the Retailer of any damage to metering or network equipment • tampering, hacking into, or interfering with any metering network equipment • deliberately taking advantage of the fact that the meter was inaccurate or not working properly.
(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.	Benchmark not met if arrangements merely provide that Retailer: <ul style="list-style-type: none"> • will give notice, without specifying the length of notice • will try/attempt to give the required length of notice (although force majeure clause may apply).
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.	Benchmark met if Retailer may still disconnect if dispute is not in good faith or is frivolous or vexatious.
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.	Benchmark not met: <ul style="list-style-type: none"> • by the arrangement merely providing that “charges will apply” • if prices are available online, but the online price plan is not referenced in the arrangement • if an online price plan is referenced in the arrangement, but the online price plan does not specify disconnection and connection charges. Benchmark met: <ul style="list-style-type: none"> • if prices are available online and the price plan is referenced (anywhere) in the arrangement.

14. Clear supply interruption procedures

Benchmark	GIC Interpretation
14.1. The gas supply arrangements must clearly: (a) describe the circumstances under which supply may be interrupted without prior warning;	Benchmark met with any description of circumstances (assume the description is comprehensive) including “for reasons beyond our control”.
(b) provide a minimum notice period before a planned shutdown, which	Benchmark not met if arrangement merely provides that the Retailer will:

Benchmark	GIC Interpretation
<p>should be no less than four business days unless agreed otherwise with the Consumer; and</p>	<ul style="list-style-type: none"> • “give notice” without specifying any time period • “give notice where practical” • “try to give notice” • “use best endeavours to give advance notice” without specifying any time period. <p>Benchmark met if Retailer:</p> <ul style="list-style-type: none"> • must give “as much notice as is reasonably practicable” as a typical force majeure clause would excuse delays beyond the Retailer’s control • notice period is subject to the network operator or meter owner (whichever is responsible for the shutdown) giving sufficient notice to do so. <p>The phrase “unless agreed otherwise with the Consumer” refers to a case specific agreement and thus reference to a shorter notice period in the arrangement itself is insufficient.</p>
<p>(c) describe the Retailer’s rights and obligations under special or emergency operating situations.</p>	<p>Specifically, this benchmark addresses “critical contingencies” under the Gas Governance (Critical Contingency Management) Regulations 2008. Under these regulations, Retailers must:</p> <ul style="list-style-type: none"> • notify each of their Consumers to apply to the Retailer if the Consumer wishes to be classified as an “essential service provider” or “minimal load Consumer” (regulations 44 and 45). In practice, this classification will not be relevant to the vast majority of Consumers on standard gas supply arrangements and the necessary notice may be covered in an application form, in the gas supply arrangement or elsewhere. Accordingly, compliance with this requirement not been assessed for the purpose of compliance with this benchmark • during a critical contingency, comply with directions from a transmission system owner given under the regulations (regulation 55(1)) • on receiving such a direction, urgently notify each of their Consumers affected by the critical contingency to curtail demand in accordance with the direction (regulation 56(1)). Directions for a Consumer to curtail its demand are only of practical relevance for Consumers with very large consumption or agreed “minimum load” requirements. For the purpose of this review, it is assumed that minimum load Consumers are on bespoke agreements. For the Consumers covered by this review it is understood their gas will either be supplied in a contingency or curtailed • if applicable, urgently notify each of their Consumers affected by the critical contingency that supply has resumed (regulation 56(1)). <p>Accordingly, all arrangements (business or residential) must:</p> <ul style="list-style-type: none"> • permit the Retailer to curtail supply in a critical contingency situation. The following phrases meet the benchmark: <ul style="list-style-type: none"> ○ the Retailer may curtail supply to the extent required by law

Benchmark	GIC Interpretation
	<ul style="list-style-type: none"> ○ the Retailer does not guarantee supply • require the Retailer to urgently notify the Consumer of supply resumption following a critical contingency situation. A simple statement that the Retailer will “comply with laws” is not sufficient as most Consumers would not be aware of this particular legal requirement.
<p>14.2. Provision of information to Consumers</p> <p>The gas supply arrangements must provide information to Consumers on where the Consumer may access information about supply interruptions, with this information to be updated by the Retailer as often as is practicable.</p>	<p>Benchmark not met unless the information is referred to in:</p> <ul style="list-style-type: none"> • the contract • a document referred to in the contract • the contract does not need to specify what particular information is contained in a referenced document.

15. Clear privacy obligations

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

Benchmark	GIC Interpretation
Consumer.	

16. Reasonable retailer liability limitations

Benchmark	GIC Interpretation						
16. Any exclusion of liability in the gas supply arrangements must be clearly specified and reasonable.	<p><i>Background</i></p> <p>Liability exclusions are used to allocate the financial risk of certain events between contracting parties. Gas Industry Co interprets “exclusions” in this sense as including “limitations of liability” and “indemnities” that benefit the Retailer. It does not consider this benchmark currently addresses exclusions to the benefit of Consumers.</p> <p>The benchmark requires that allocations of financial risk be “reasonable”. In this case, reasonableness depends on factors such as:</p> <ul style="list-style-type: none"> • what financial risks are involved (their impact and likelihood) • who is best placed to manage the financial risks (including by way of insurance) • what premium has been included in the charges to address the risk. <p>At this stage, Gas Industry Co has not performed a comprehensive analysis of these factors in the retail gas supply market. Instead it proposes the following approach as a “straw man”. This approach allows an initial comparison between Retailers that can be refined in subsequent reviews.</p> <p><i>Straw Man – Complete Exclusions</i></p> <p>Gas Industry Co considers that certain complete exclusions of liability are inherently unreasonable. Accordingly, the liability “exclusion” aspect of this benchmark will be scored as follows:</p> <table border="1"> <thead> <tr> <th>Benchmark Score</th> <th>Exclusion</th> </tr> </thead> <tbody> <tr> <td>Full</td> <td>No exclusions other than as permitted below.</td> </tr> <tr> <td>Substantial</td> <td>No liability for damage <i>to any other person</i>, as it is misleading for arrangements to purport to exclude liability in ways it is not possible to do. No liability for events that are <i>unforeseeable</i>, as they may still be within the Retailer’s control.</td> </tr> </tbody> </table>	Benchmark Score	Exclusion	Full	No exclusions other than as permitted below.	Substantial	No liability for damage <i>to any other person</i> , as it is misleading for arrangements to purport to exclude liability in ways it is not possible to do. No liability for events that are <i>unforeseeable</i> , as they may still be within the Retailer’s control.
Benchmark Score	Exclusion						
Full	No exclusions other than as permitted below.						
Substantial	No liability for damage <i>to any other person</i> , as it is misleading for arrangements to purport to exclude liability in ways it is not possible to do. No liability for events that are <i>unforeseeable</i> , as they may still be within the Retailer’s control.						

Benchmark	GIC Interpretation																
	Moderate	<p>No liability for damage <i>notified to the Retailer outside a specified time</i>, if that time limit is unreasonable.</p> <p>No liability for the <i>quality or character of gas supplied</i>, as Retailers have regulatory obligations to provide quality gas.</p>															
	Low	<p>No liability for anything <i>other than its negligence or deliberate act or omission</i>, as ordinary breach should be actionable.</p> <p>No liability for <i>all acts and omissions of subcontractors</i> (including network operators and meter readers), as Gas Industry Co considers that the Retailer should accept responsibility for subcontractors to the extent the Retailer would be liable had the Retailer committed the act / omission. The Consumer will not necessarily know what services are subcontracted.</p>															
	None	No liability for <i>any of its acts or omissions</i> .															
<p><i>Straw Man – Liability Caps</i></p> <p>Partial limitations of liability are harder to assess, particularly because of the many different approaches that Retailers can take. For example, a cap may apply to single events or to the contract in aggregate. Caps may apply to individual Consumers, or across multiple Consumers. The liability “cap” aspect of this benchmark will be scored as follows:</p>																	
<table border="1"> <thead> <tr> <th data-bbox="1086 951 1361 1254" rowspan="2">Benchmark Score</th> <th colspan="2" data-bbox="1361 951 1809 1126">Single Consumer</th> <th data-bbox="1809 951 2152 1254" rowspan="2">Multiple Consumers</th> </tr> <tr> <th data-bbox="1361 1126 1570 1254">Per event or series of related events</th> <th data-bbox="1570 1126 1809 1254">In aggregate (including in 12 months)</th> </tr> </thead> <tbody> <tr> <td data-bbox="1086 1254 1361 1310">Full</td> <td data-bbox="1361 1254 1570 1310">\$500k +</td> <td data-bbox="1570 1254 1809 1310">\$600k +</td> <td data-bbox="1809 1254 2152 1310">\$100m +</td> </tr> <tr> <td data-bbox="1086 1310 1361 1366">Substantial</td> <td data-bbox="1361 1310 1570 1366">\$100-499k</td> <td data-bbox="1570 1310 1809 1366">\$150-599k</td> <td data-bbox="1809 1310 2152 1366">\$10m-\$99m</td> </tr> </tbody> </table>				Benchmark Score	Single Consumer		Multiple Consumers	Per event or series of related events	In aggregate (including in 12 months)	Full	\$500k +	\$600k +	\$100m +	Substantial	\$100-499k	\$150-599k	\$10m-\$99m
Benchmark Score	Single Consumer		Multiple Consumers														
	Per event or series of related events	In aggregate (including in 12 months)															
Full	\$500k +	\$600k +	\$100m +														
Substantial	\$100-499k	\$150-599k	\$10m-\$99m														

Benchmark	GIC Interpretation			
	Moderate	\$50-99k	\$80-149k	\$2-9m
	Low	\$10-49k	\$15-79k	\$100k-\$1.9m
	None	\$0-9k	\$0-14k	0-99k
<p><i>Straw Man – Permitted Exclusions</i></p> <p>Benchmark not failed merely because:</p> <ul style="list-style-type: none"> • the Consumer Guarantees Act 1993 is excluded to the extent the Consumer is acquiring gas <i>for the purpose of a business</i> • liability is excluded for: <ul style="list-style-type: none"> ○ <i>economic loss</i> (including loss of profit) ○ <i>indirect loss</i> ○ <i>consequential loss</i> ○ <i>reasonable force majeure events</i> (including events indirectly beyond the Retailer’s control) except to the extent the force majeure purports to exclude events that may (in fact) be squarely within the Retailer’s control (such as malicious acts of its employees) ○ damage caused to <i>sensitive appliances</i> ○ damage caused by the Consumer failing to <i>switch off appliances prior to reconnection</i> ○ any interruption or reduction in the <i>supply of gas into the gas network</i> • <i>risk</i> in gas supplied passes to the Consumer at the point of supply • the Consumer indemnifies the Retailer against: <ul style="list-style-type: none"> ○ fines and other penalties due to any <i>failure of the Consumer’s meter</i> to comply with industry codes or standards ○ failing to obtain the landlord’s permission to install, modify, remove or replace any part of the network or metering equipment on your property, if the Consumer in fact agreed to this work • liability limitations also benefit lines companies, network operators, meter readers and meter owners • multiple Consumers under an arrangement are jointly and severally liable • the Retailer may choose to replace any damaged property or goods, up to the same maximum amount, instead of paying cash. 				

17. Clear dispute resolution

Benchmark	GIC Interpretation
17. The gas supply arrangements must:	
(a) advise Consumers, either directly or by reference to other accessible documents, of the process they should follow, including timelines, to bring a complaint to the Retailer, for resolution directly between the Retailer and the Consumer; and	Arrangement will be marked down if: <ul style="list-style-type: none"> • contract procedures inconsistent with internal code of practice • not clear where Consumers should address complaints to • individual Consumers must appoint person from within their “organisation”.
(b) advise Consumers that complaints not resolved to their satisfaction may be taken to the scheme approved under the Gas Act 1992.	Benchmark requires reference to: <ul style="list-style-type: none"> • “the Electricity and Gas Complaints Commission scheme” • “an independent dispute resolution scheme approved under the Gas Act”. Benchmark not met by: <ul style="list-style-type: none"> • reference to “any independent complaints resolution process” offered by the Retailer • a restriction of the time within which the Consumer may refer the matter to the EGCC for investigation.

18. Clear communication

Benchmark	GIC Interpretation
Consumers to Retailers 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.	Not met by contact information on a website, as the information must be contained in the arrangement.
Retailers to Consumers 18.2. The gas supply arrangements must specify how notices from the Retailer will be delivered to the Consumer...	This benchmark relates to general notices, not specifically addressed in other benchmarks.
...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.	Assess this benchmark together with benchmark 5 (Changes to gas supply arrangements).

Attachment 2: Documents for Review

The following table lists the documents reviewed in this assessment. The documents are listed in alphabetic order, by retailer name.

Retailer	Standard Contract	Application Form	Price Plan	Privacy Policy (excluding website)	Other
1. Bay of Plenty Energy http://www.bope.co.nz	Terms of Supply http://www.bope.co.nz/apply/standard_terms.php	PDF http://www.bope.co.nz/documents/apply_form.pdf Online http://www.bope.co.nz/apply/form.php	Not available on website	No separate privacy policy	Complaints Process http://www.bope.co.nz/complaints/index.php
2. Contact Energy https://www.contactenergy.co.nz	Residential Terms and Conditions effective 1 August 2008 http://www.contactenergy.co.nz/web/pdf/legal/residential_terms_and_conditions.pdf	Automated form https://www.contactenergy.co.nz/web/houseMovers?vert=fh	Residential automated price plans http://www.contactenergy.co.nz/web/supplyMap?display=pricing&vert=fh Service fees http://www.contactenergy.co.nz/web/findoutabout/servicefees?vert=fh	No separate privacy policy	SmoothPay Terms and Conditions http://www.contactenergy.co.nz/web/pdf/legal/smoothpay_terms_and_conditions.pdf Dual Energy Terms and Conditions http://www.contactenergy.co.nz/web/pdf/legal/terms-and-conditions-dualenergy-2011.pdf Residential Switching http://www.contactenergy.co.nz/web/pdf/legal/switching_terms_and_conditions.pdf Complaints Process http://www.contactenergy.co.nz/web/view?page=/contentiw/pages/shared/complaintsprocedure&vert=fh

Retailer	Standard Contract	Application Form	Price Plan	Privacy Policy (excluding website)	Other
					Rockgas Reticulated Residential Terms and Conditions / Application Form
	Standard Business Energy Supply Agreement http://www.contactenergy.co.nz/web/pdf/legal/CT_Standard_Business_Energy_Supply_Agreement_1207.pdf	SME automated form https://www.contactenergy.co.nz/web/joinContact?signUpType=bus&vert=sb	Businesses need to call Contact for their plan https://www.contactenergy.co.nz/web/business/pricing?vert=sb Service fees as above	No separate privacy policy	Dual Energy Terms and Conditions: as above SME Complaints Process http://www.contactenergy.co.nz/web/shared/complaintsprocedure?vert=sb Rockgas Reticulated Commercial Terms and Conditions / Application Form
3. Energy Direct http://www.energydirectnz.co.nz/	Residential Customer Supply Agreement http://www.energydirectnz.co.nz/PDF/customer-supply-form.pdf	Residential application form http://www.energydirectnz.co.nz/PDF/res-application.pdf	Residential pricing, by region http://www.energydirectnz.co.nz/home-service-fees.html Service fees http://www.energydirectnz.co.nz/PDF/OCT2010-prices/EDNZ_Combined_Service_Fee_Schedule_Oct_2010.pdf	No separate privacy policy	Making a Complaint http://www.energydirectnz.co.nz/making-a-complaint.html Handling Customer Complaints Code of Practice http://www.energydirectnz.co.nz/PDF/handling_customers.pdf Paying your Energy Account Code of Practice http://www.energydirectnz.co.nz/PDF/paying_your_bills.pdf
	Standard Business Customer Supply Agreement http://www.energydirectnz.co.nz/PDF/business-supply-form.pdf	Business application http://www.energydirectnz.co.nz/PDF/bus-application.pdf	Business pricing on request http://www.energydirectnz.co.nz/bus-service-fees.html Service fee: as above.	No separate privacy policy	

Retailer	Standard Contract	Application Form	Price Plan	Privacy Policy (excluding website)	Other
4. Energy Online http://www.energyonline.co.nz/	Standard Terms and Conditions of Supply of Electricity (also apply to gas and all customers) http://www.energyonline.co.nz/terms and conditions	Online application http://www.energyonline.co.nz/home/join_us/online_signup_form	Standard fees residential http://www.energyonline.co.nz/residential/schedule_of_fees Standard fees business http://www.energyonline.co.nz/business/schedule_of_fees Standard fees farming http://www.energyonline.co.nz/farming/schedule_of_fees Pricing Plans http://www.energyonline.co.nz/residential/pricing_plans	http://www.energyonline.co.nz/home/site_map/privacy_policy/art_id/28	Complaint information Residential http://www.energyonline.co.nz/residential/when things go wrong Business http://www.energyonline.co.nz/business/when things go wrong Farming http://www.energyonline.co.nz/farming/when things go wrong
5. Genesis Energy http://www.genesisenergy.co.nz	Genesis Energy Terms and Conditions from 1 May 2011 http://www.genesisenergy.co.nz/genesis/second-level-nav/terms-&-conditions/en/genesis-energy-terms-and-conditions.cfm	Online residential https://www.genesisenergy.co.nz//genesis/for-home/join-us/join-us_home.cfm?&CFID=3464161&CFTOKEN=74002898	Residential pricing plans by region http://www.genesisenergy.co.nz/genesis/for-home/pricing-plans/see-our-electricity-and-gas-pricing-plans\$.cfm	http://www.genesisenergy.co.nz/genesis/index.cfm?C2B40BF5-CB34-B897-04B6-A58D445ECE42	Complaint information http://www.genesisenergy.co.nz/genesis/index.cfm?2A713B60-C09F-4299-6D48-D9F00AB4986E
	As above	Online business https://www.genesisenergy.co.nz/genesis/for-business/join-us/join-us_home.cfm	Business pricing on request http://www.genesisenergy.co.nz/genesis/for-business/pricing-	As above	As above

Retailer	Standard Contract	Application Form	Price Plan	Privacy Policy (excluding website)	Other
			plans/pricing-plans_home.cfm		
6. Mercury Energy (Mighty River Power) http://www.mercury.co.nz	Standard Terms and Conditions http://www.mercury.co.nz/tsandcs/default.aspx	Online application https://www.mercury.co.nz/forms/services.aspx?action=join Residential Application Form http://www.mercury.co.nz/Downloads/ResidentialApplicationForm.pdf	Residential regional price plans http://www.mercury.co.nz/Residential/pricingplans_gas.aspx	No separate privacy policy	Dispute resolution help http://www.mercury.co.nz/help/dispute.aspx Dual Fuel http://www.mercury.co.nz/Residential/gas.aspx
7. Nova Energy http://www.novaenergy.co.nz	Standard Terms Residential Gas and Electricity Supply http://www.novaenergy.co.nz/?q=node/53	Online residential and commercial http://www.novaenergy.co.nz/join-nova-energy Residential Application Form http://www.novaenergy.co.nz/forms/nova_energy_apply_residential.pdf	Regional price plans http://www.novaenergy.co.nz/gas-electricity-prices	No separate privacy policy	Dual Fuel http://www.novaenergy.co.nz/dual-energy-advantage
	Standard Terms For Commercial Gas & Electricity Supply http://www.novaenergy.co.nz/node/52	Online residential and commercial http://www.novaenergy.co.nz/join-nova-energy Commercial Application Form http://www.novaenergy.co.nz/sites/default/files/uploads/images/commercial_gas_elec_a.pdf		No separate privacy policy	

Attachment 3: Benchmark Issues

This Attachment lists all of the different types of failures to meet the benchmarks (referred to as “issues”) and how many gas supply arrangements contain each issue. To ensure consistency with the 2010 assessment, this assessment uses the same issues as used in the 2010 assessment. As some benchmarks are relevant to only a proportion of the assessed gas supply arrangements, the percentage shows the proportion of relevant arrangements that include each issue.

Benchmark Issues	2011			2010		
	Number of failures	Number of relevant contracts	Proportion	Number of failures	Number of relevant contracts	Proportion
1. Clear supply commencement						
1.1. Not clear when gas supply will commence.	4	10	40%	6	12	50%
1.2. Not clear that, where the arrangement is completed after the retailer has begun supplying gas to the consumer, the arrangement commences from date that gas was first supplied by the retailer to the consumer.	2	10	20%	4	12	33%
2. Clear safety information						
2.1. No clear description of how consumers can turn off their gas supply in an emergency.	7	10	70%	10	12	83%
2.2. No clear information on any procedures for reconnection after the emergency will be provided.	7	10	70%	9	12	75%
3. Clear consumer exit rights (open term)						
3.1. There are restrictions on the circumstances in which the consumer can terminate an open term arrangement.	4	7	57%	3	7	43%
3.2. Following termination of an open term arrangement, the charges only cease on a date agreed by the retailer.	4	7	57%	4	7	57%
3.3. The consumer's ability to terminate an open term arrangement subject to an unnecessary delay.	0	7	0%	0	7	0%
3.4. The consumer can't switch to an alternative retailer, unless the current retailer is unwilling to match the alternative retailer's offer.	0	7	0%	0	7	0%

Benchmark Issues	2011			2010		
	Number of failures	Number of relevant contracts	Proportion	Number of failures	Number of relevant contracts	Proportion
3.5. The consumer is subject to penalty fees on termination of an open term arrangement.	0	7	0%	0	7	0%
4. Clear consumer exit rights (fixed term)						
4.1. Consumer can't switch to an alternative retailer at the end of the term, unless the current retailer is unwilling to match the alternative retailer's offer.	1	3	33%	2	5	40%
4.2. Contract automatically rolls over for same fixed term, unless prior notice is given.	1	3	33%	2	5	40%
4.3. Not clear whether or not the consumer can terminate before fixed expiry date.	0	3	0%	0	5	0%
4.4. No clear basis on which early termination charge will be calculated.	1	3	33%	1	5	20%
5. Clear contract variation procedures (non-price)						
5.1. Non-price terms of the arrangement can be changed on less than 30 days' notice.	0	10	0%	0	12	0%
5.2. Non-price terms of the arrangement can be changed without notice.	1	10	10%	1	12	8%
5.3. No clear requirement that material changes in terms of the arrangement will be directly communicated to the consumer, not through public notice.	7	10	70%	8	12	67%
6. Clear supply obligations						
6.1. No obligation on the retailer to supply gas.	0	10	0%	0	12	0%
6.2. Some ambiguity in the retailer's obligation to supply gas.	0	10	0%	0	12	0%
6.3. No clear requirement to meet regulatory quality standards.	2	10	20%	3	12	25%
6.4. No clear description of the point to which gas will be supplied.	2	10	20%	5	12	42%
7. Clear supply restoration procedures						
7.1. No clear description of how the retailer will respond to supply interruptions.	3	10	30%	5	12	42%

Benchmark Issues	2011			2010		
	Number of failures	Number of relevant contracts	Proportion	Number of failures	Number of relevant contracts	Proportion
7.2. No clear mention of payments (if any) to the consumer for service disruption.	10	10	100%	12	12	100%
7.3. No clear statement that the consumer's redress for service disruption are in addition to rights under Consumer Guarantees Act.	2	10	20%	4	12	33%
8. Clear price increases						
8.1. Length of notice of price increases less than 30 days.	3	10	30%	4	12	33%
8.2. No clear method of notifying price increases.	2	10	20%	3	12	25%
8.3. Where a price increase is more than 5%, no clear requirement to send separate notice of the increase to the consumer.	5	10	50%	6	12	50%
8.4. No clear requirement to state reasons for a price increase when providing notice of the increase.	7	10	70%	8	12	67%
9. Clear pricing information						
9.1. No clear reference to relevant prices or pricing schedule.	1	10	10%	2	12	17%
9.2. The extent of some charges are too open ended.	4	10	40%	6	12	50%
9.3. No clear explanation of how estimates will be calculated.	4	10	40%	3	12	25%
9.4. No clear explanation of the process that will be used for correcting estimates.	5	10	50%	7	12	58%
9.5. No clear provision that retailer will promptly refund or credit any over charge.	1	10	10%	1	12	8%
9.6. No clear provision that the retailer may invoice the consumer for previous under charging.	1	10	10%	1	12	8%
9.7. No clear statement of the term limits applying to the recovery of previous under charging.	7	10	70%	9	12	75%

Benchmark Issues	2011			2010		
	Number of failures	Number of relevant contracts	Proportion	Number of failures	Number of relevant contracts	Proportion
9.8. No clear explanation of how payment options operate.	1	10	10%	2	12	17%
9.9. No clear additional costs associated with associated with providing or changing metering equipment.	2	10	20%	3	12	25%
9.10. No clear process to follow if consumer suspects meter is reading incorrectly.	1	10	10%	2	12	17%
9.11. No clear method for correcting incorrect readings.	5	10	50%	5	12	42%
10. Clear bond obligations						
10.1. The retailer is not required, in each case, to give reasons for requiring bonds.	4	7	57%	5	8	63%
10.2. Not clear how long bonds may be kept for.	2	7	29%	2	8	25%
10.3. Bond may be kept for longer than 12 months, and reasons for doing so are not clear.	2	7	29%	2	8	25%
10.4. Not clear how bonds are refunded.	2	7	29%	3	8	38%
10.5. Not clear if interest is payable by the retailer on bonds.	3	7	43%	4	8	50%
11. Clear consumer site responsibilities						
11.1. Consumer's site responsibilities not clear.	0	10	0%	0	12	0%
11.2. Consumer is required to provide certification in relation to the RETAILER'S equipment at the consumer's site.	3	10	30%	3	12	25%
11.3. Rights of retailer to access consumer premises unclear.	0	10	0%	0	12	0%
11.4. No clear consequences stated for consumer for not granting access to their premises.	5	10	50%	6	12	50%
11.5. Consumer responsibility for protecting metering equipment is not described or is unclear.	0	10	0%	0	12	0%

Benchmark Issues	2011			2010		
	Number of failures	Number of relevant contracts	Proportion	Number of failures	Number of relevant contracts	Proportion
12. Clear metering obligations						
12.1. Not clear who has responsibility for providing the meter.	1	10	10%	1	12	8%
12.2. Not clear who has responsibility for maintaining the meter.	1	10	10%	1	12	8%
12.3. No clear description of the frequency in which the retailer will read meters.	0	10	0%	0	12	0%
12.4. Frequency of meter reading not consistent with the retailer's legal obligations.	5	10	50%	6	12	50%
12.5. Requirement to ensure metering is in accordance with relevant industry standards and codes of practice is not described or is unclear.	4	10	40%	6	12	50%
13. Clear disconnection process						
13.1. No clear grounds on which the retailer can disconnect.	0	10	0%	0	12	0%
13.2. No clear requirement for disconnection notices to state the actions consumers can take to avoid disconnection.	6	10	60%	9	12	75%
13.3. Retailer can disconnect a consumer's gas supply for non-payment of non-gas invoices.	10	10	100%	11	12	92%
13.4. No clear obligation, except for emergency disconnections, to give 7 days' warning of disconnection, allowing a further 3 days for delivery.	7	10	70%	10	12	83%
13.5. No clear obligation, except for emergency disconnections, to provide final warning no less than 24 hours or more than 7 days before disconnection.	9	10	90%	11	12	92%
13.6. No clear obligation to delay disconnection for dispute resolution relating to the disconnection.	6	10	60%	8	12	67%
13.7. No clear description of disconnection and reconnection charges.	3	10	30%	4	12	33%
14. Clear supply interruption procedures						

Benchmark Issues	2011			2010		
	Number of failures	Number of relevant contracts	Proportion	Number of failures	Number of relevant contracts	Proportion
14.1. No clear description of the circumstances in which supply may be interrupted.	0	10	0%	0	12	0%
14.2. No clear obligation to give a minimum of 4 days' notice of planned shutdowns.	4	10	40%	4	12	33%
14.3. No clear right for the retailer to curtail supply in a critical contingency situation.	0	10	0%	0	12	0%
14.4. No clear obligation for the retailer to urgently notify the consumer to curtail demand during a critical contingency situation, or of supply resumption afterwards.	10	10	100%	12	12	100%
14.5. No clear information about where the consumer may access information about supply interruptions and no obligation that this information will be updated by the retailer as often as is practicable.	8	10	80%	11	12	92%
15. Clear privacy obligations						
15.1. No clear express requirement that retailer will comply with the Privacy Act or relevant privacy laws.	6	10	60%	8	12	67%
15.2. The purposes for which the retailer may collect personal information are not set out.	6	10	60%	7	12	58%
15.3. The retailer may use personal information for ANY purpose.	0	10	0%	0	12	0%
15.4. No clear confirmation that individuals may access their personal information.	1	10	10%	3	12	25%
15.5. No clear confirmation that individuals are able to correct their personal information.	2	10	20%	4	12	33%
15.6. Not clear where the consumer can obtain information about how the Retailer collects, uses, discloses and stores his/her personal information.	6	10	60%	8	12	67%
16. Reasonable retailer liability limitations						
16.1. Retailer liability excluded (substantial compliance).	0	10	0%	1	12	8%
16.2. Retailer liability excluded (moderate compliance).	0	10	0%	0	12	0%

Benchmark Issues	2011			2010		
	Number of failures	Number of relevant contracts	Proportion	Number of failures	Number of relevant contracts	Proportion
16.3. Retailer liability excluded (low compliance).	8	10	80%	9	12	75%
16.4. Retailer liability excluded (no compliance).	1	10	10%	1	12	8%
16.5. Retailer liability capped (substantial compliance).	0	10	0%	0	12	0%
16.6. Retailer liability capped (moderate compliance).	0	10	0%	0	12	0%
16.7. Retailer liability capped (low compliance).	5	10	50%	7	12	58%
16.8. Retailer liability capped (no compliance).	3	10	30%	3	12	25%
17. Clear dispute resolution						
17.1. Some issues with internal complaints procedure.	1	10	10%	1	12	8%
17.2. No internal dispute resolution scheme.	0	10	0%	0	12	0%
17.3. No clear reference to EGCC complaints scheme.	4	10	40%	6	12	50%
17.4. The time within which the consumer may refer the matter to the EGCC complaints scheme is limited.	1	10	10%	1	12	8%
18. Clear communication						
18.1. No clear advice on how the consumer can communicate with the retailer.	0	10	0%	1	12	8%
18.2. No clear description of how the consumer will generally be notified by the retailer.	4	10	40%	5	12	42%

Attachment 4: Compliance Landscape

This Attachment shows the level of compliance on a scale of full (being the best), substantial, moderate, low and none (being the worst) for each gas supply arrangement against each benchmark topic. The arrangements have been numbered and listed in a random order, so they cannot be attributed to any particular retailer.

Benchmark Topic	Arrangements										Average
	Contract 1	Contract 2	Contract 3	Contract 4	Contract 5	Contract 6	Contract 7	Contract 8	Contract 9	Contract 10	
1. Clear supply commencement	Moderate	Full	Full	Low	Full	Full	None	Low	Low	Full	Moderate
2. Clear safety information	None	Full	None	Full	Low	None	Low	None	None	None	Low
3. Clear consumer exit rights (open term)	N/A	Low	Low	Substantial	Full	N/A	Low	Substantial	Low	N/A	Moderate
4. Clear consumer exit rights (fixed term)	Low	N/A	N/A	N/A	N/A	Substantial	N/A	N/A	N/A	Full	Moderate
5. Clear contract variation procedures (non-price)	None	Moderate	Moderate	Moderate	Moderate	Full	Moderate	Moderate	Full	Full	Moderate
6. Clear supply obligations	Moderate	Full	Full	Full	Full	Full	Full	Moderate	Low	Full	Substantial
7. Clear supply restoration procedures	Substantial	Substantial	Low	Moderate	Substantial	Substantial	Substantial	None	Low	Substantial	Moderate
8. Clear price increases	Low	Full	None	Full	Moderate	Low	Full	Low	None	Low	Moderate
9. Clear pricing information	Low	Substantial	Low	Moderate	Moderate	Full	Full	Low	Low	Moderate	Moderate
10. Clear bond obligations	N/A	Full	None	Full	Full	Moderate	N/A	Low	None	N/A	Moderate
11. Clear consumer site responsibilities	Substantial	Full	Substantial	Full	Full	Moderate	Full	Substantial	Substantial	Moderate	Substantial
12. Clear metering obligations	Low	Full	Moderate	Moderate	Full	Full	Full	Low	Low	Moderate	Moderate
13. Clear disconnection process	Low	Low	Low	Moderate	Low						
14. Clear supply interruption procedures	Moderate	Substantial	Low	Moderate	Moderate	Low	Substantial	Moderate	Low	Low	Moderate
15. Clear privacy obligations	None	Full	Low	Full	Full	Low	Full	Low	Low	Low	Moderate
16. Reasonable retailer liability limitations	None	Low	Moderate	Low	Low	Low	Low	Low	Moderate	None	Low
17. Clear dispute resolution	Low	Full	Low	Substantial	Full	Full	Full	Substantial	Low	Low	Moderate
18. Clear communication	Low	Full	Low	Full	Full	Low	Full	Full	Low	Full	Moderate
Average	Low	Substantial	Low	Substantial	Substantial	Moderate	Moderate	Moderate	Low	Moderate	Moderate