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Dear Pamela

Submission on the GIC's Draft Decision Paper - Framework for Gas Retailer Insolvency Arrangements

Introduction

1. Vector Limited ("Vector") welcomes the opportunity to make this submission on the Gas Industry Company's ("GIC") *Draft Decision Paper – Framework for gas retailer insolvency arrangements* ("Draft Decision Paper"), released for consultation on 15 October 2014.
2. We also appreciate the GIC's establishment of the Insolvent Retailers Working Group ("IRWG") and consideration of the IRWG's views in the development of its proposed arrangements to address future gas retailer insolvencies.
3. We broadly agree with the GIC's proposals in the Draft Decision Paper. To further improve the robustness of the proposed arrangements without compromising future flexibility, we suggest these additional measures:
 - extending the notification requirements of any potential retailer insolvency to gas transmission system owners/operators ("TSOs") and distributors;
 - allowing the GIC to obtain information from the Gas Registry on the insolvent retailer's customers should the insolvent retailer not be able to provide the information; and
 - the GIC conducting an annual exercise to test the capability of all gas retailers to provide the information required under the proposed arrangements should they become insolvent.
4. We discuss the above and other suggestions, and set out our responses to specific questions in the Draft Decision Paper below.

5. No part of this submission is confidential and we are happy for it to be made publicly available.
6. Vector's contact person for this submission is:

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Responses to specific questions

Q1: Do you have any comments on the high-level process described in this section?

7. We have no objections to the high-level process described in section 2.1.
8. We particularly support the GIC's statement that "it may require the insolvent retailer to supply information necessary for customer transition at the time an insolvency provider is appointed", and the proposed consequential changes to the Switching Rules (pages 8-9 of the Draft Decision Paper).
9. We further support the GIC's proposal to "amend...the Reconciliation Rules to clarify the ongoing obligations for providing allocation data and creating an offence provision that would apply to non-industry participants" (page 10).

Q2: Do you have any comment regarding the insolvency trigger?

Q3: Should the obligation to report a retailer insolvency be placed on retailers only, to report their own insolvencies, or should gas producers, gas wholesalers, and the allocation agent also have reporting responsibilities (as proposed above)?

Q4: Do you agree that these changes to the Switching Rules would be minor and would not adversely affect the interest of any person in a substantial way?

10. We generally agree with the insolvency triggers identified.
11. We support broadening the definition of the term "insolvent" beyond that of the appointment of a liquidator, to include:

...a retailer that is unable to pay its debts as they become due in the normal course of business; and the value of the gas retailer's assets is less than the value of its liabilities including contingent liabilities. [page 11]
12. We agree that this broader definition would allow for "a more timely response to an insolvency" (page 10).

13. The GIC proposes to require gas producers or wholesalers to notify the industry body "if a retailer is in default of its financial obligations under a contract as soon as practicable" (proposed section 99 of the Switching Rules). In addition, we **recommend** that TSOs and distributors be allowed to make such notification; for example, when a retailer is in serious breach of its financial obligations under its use-of-system agreement with its distributor.
14. Extending section 99 to TSOs and distributors would further ensure that potential insolvencies are detected in a timely manner 'across the board'. However, this notification should not be an absolute requirement on the above industry participants and should only cover "material" breaches.
15. We generally agree that the proposed changes to the Switching Rules in relation to the definition of an insolvent retailer, including the notification requirements, are minor in nature.

Q5: Do you agree that the Switching Rules be amended to include the ability for Gas Industry Co to require information from an insolvent retailer?

Q6: Do you agree with the proposed content of the report(s)? Are there items that should be added or deleted, and why?

Q7: Do you agree that these changes are minor and would not adversely affect the interest of any person in a substantial way?

16. Yes, we definitely agree that the GIC should be able to require information from an insolvent retailer. However, it is quite plausible that an insolvent retailer may not be able to supply the information, or that the information may not be available and/or reliable.
17. In such cases, we **recommend** an arrangement (a 'Plan B') where the GIC would be authorised to access the Gas Registry to obtain the required customer information that would enable or facilitate the efficient transfer of 'orphan customers'.
18. Further, to provide the GIC and stakeholders confidence on retailers' ability to provide the required information should they become insolvent, we **recommend** that the GIC conduct an annual exercise or 'stress test' that would assess retailers' ability to provide the required information. This would be similar to the annual exercise held by the Critical Contingency Operator but would not extend to verifying the information's accuracy or reliability (that would likely require an audit, which would be costly and onerous on retailers).
19. We **recommend** that proposed section 101.1 take effect 12 months from the date the file format is published, not when a notice is published in the New Zealand Gazette. Retailers' ability to comply with the new information requirements in a

timely manner is highly dependent on the file format being published, not on the date a notice is gazetted.

20. We further **recommend** the addition of timeframes to proposed sections 104.1 and 104.2 - for the transfer of stranded ICPs by the industry body to recipient retailers, i.e. ICPs on the Gas Registry with INACTIVE-TRANSITIONAL or INACTIVE-PERMANENT or ACTIVE-VACANT status that do not have a responsible retailer.

Q8: Further, it is likely that the cost of monitoring would be offset by the savings gained from finding any instances of gas consumption at the monitored ICPs, which can then be prevented through disconnection or used to identify potential new customers. In other words, without the proposed change, any UFG caused by vacant and inactive ICPs of the insolvent retailer will be allocated to remaining retailers at the affected gas gate in proportion to their customer load. With the proposed change, gas consumption at those ICPs will be identified and prevented, providing a benefit to all retailers at the gate at the expense of minor monitoring costs. Accordingly, Gas Industry Co concludes that this changes [sic] does not adversely affect retailers in a substantial way. Do you agree with the proposed amendments to the Switching Rules?

Q9: Do you agree that the proposed change is minor and does not adversely affect the interests of any person in a substantial way? If not, please describe the substantial adverse effect.

21. We agree with the proposed amendments to the Switching Rules that would enable the industry body to transfer indeterminate ICPs to solvent retailers.

Q10: Do you agree with the proposed trigger?

22. Yes, we agree that the trigger for the transfer of orphan consumers should be their existence, not "how they came to be that way", i.e. liquidator disclaiming their contracts (page 18).

Q11: Do you agree with the proposed approach of transferring orphan customers on an ICP-by-ICP basis? If not, what alternative would you suggest that takes into account the need to transfer customers quickly and the limited resources at Gas Industry Co's disposal?

23. Yes.

24. The GIC should clarify what the term "contract no longer being performed" means (page 19, paragraph 3). Does it imply that the insolvent party is still a "retailer"?

Q12: Should a de minimus threshold (of eg 5% or 10%) apply to recipient retailers? If yes, do you agree with the proposed separate approaches to allocation group 1-3 and allocation group 4-6 customers?

Q13: If not, do you prefer the option where all retailers are included, but those with less than 5% market share (by customers and volume) can opt out?

25. Yes, a *de minimus* threshold should apply to recipient retailers. We agree with the different approaches proposed for customers under allocation groups 1-3 and allocation groups 4-6.
26. We **recommend** that retailers who opt out from being recipient retailers should only be able to do so in the case of Active customers. Otherwise, they would have to provide compelling reasons for doing so, e.g. it would inflict excessive costs on their customers or the retailer does not have a use-of-system agreement in place with the relevant distributor. The GIC could develop some thresholds/guidance when opting out would be allowed.
27. We seek clarification from the GIC how direct connect customers would be treated should they become orphan customers as a result of their retailer becoming insolvent.

Q14: Do you have any views on the proposed ICP allocation methodology?

28. We have no objection with the proposed ICP allocation methodology.

Q15: Do you agree with this approach? Why or why not?

29. In this section, the GIC appears to assume that all retailers offer standard terms and conditions that can then be applied to the transferred customers, which is not the case. For example, Vector's gas retailer business (OnGas) supplies gas only to industrial and commercial customers, and does not have standard terms and conditions (including price) in the same way as mass market retailers.
30. Where there are no 'standard prices', we believe that setting prices at market rates would be a realistic and reasonable arrangement. We note that transferred customers would be free to switch to another retailer if the recipient retailer's terms are not to their satisfaction. We seek the GIC's view on such cases.

Q16: Do you agree that this is a reasonable approach to the transfer of large consumers? If not, what alternative would you suggest?

31. Yes.

Q17: Do you have any comments on clauses 8-11 of the proposed Drafting instructions?

32. No comment.

Q18: Do you have any comments on clause 12 in the proposed drafting instructions?

Q19: Do you agree with the proposal in clause 13 of the proposed drafting instructions?

33. We consider proposed section 13 of the Drafting Instructions to be unnecessary as these terms are covered in Transmission Service Agreements (which set prices) and the Vector Transmission Code. We **recommend** its removal.

34. Should the GIC retain section 13, we **recommend** that section 13(2) be amended to:

To the extent that Vector has capacity available at the requested Receipt-Delivery Point(s), it must offer that capacity to the recipient retailer.

35. No instructions regarding prices are necessary as the price takes care of itself. We assume that the current wording is based on the (incorrect) assumption that the posted prices apply as Capacity x Price irrespective of the starting point in the year. Capacity is in fact charged for each day as Capacity x Price / Days in the relevant Gas Year.

36. Further, we believe that section 7(4)(b) of the Drafting Instructions should be made clearer that cancelling the contract means stopping the consumption of gas. We **recommend** the following amendment:

...the date on which the transferred orphan consumer CEASES USING GAS and cancels the contract or switches to another retailer.

Q20: Do you agree with this proposal? Why or why not?

Q21: Do you agree that the change is minor and will not adversely affect the interest of any person in a substantial way?

37. We generally agree with the proposed amendments to the Reconciliation Rules.

38. The word "retailer" in proposed sections 53A and 53B should be in bold font.

Other comments

Risks associated with retailer insolvency

39. Table 1 on page 2 of the Draft Decision Paper states:

Since insolvent retailers have incentives to maximise the value of their business, and viable retailers have incentives to grow their business, it is likely that the customers of an insolvent retailer will be sold to another retailer. The outcome of **orphan consumers occurring would therefore be a low probability outcome...**

[emphasis added]

40. We disagree with this view; the existence of orphan customers was not fully prevented during the E-Gas insolvency despite the development of urgent regulations (though not used). That insolvency exposed other market participants to "residual risks", which triggered the development of arrangements to address future gas retailer insolvencies in the first place.
41. The levels of gas prices and their limited predictability also pose risks to market participants who may have to bear some of the upfront residual risks (e.g. depressed market confidence) of an insolvency that is not of their making.

Drafting Instructions

42. We **recommend** that all references to "Vector" in the Drafting Instructions be changed to "the TSO", to refer in a generic manner to whichever party runs the transmission pipeline.
43. We further **recommend** that section 3(2)(a) in the Drafting Instructions be amended to:

"the ICPs are not transferred to other retailers, OR THE LIQUIDATOR OF THE INSOLVENT RETAILER HAS DISCLAIMED THESE CONTRACTS, there is a real risk..."

Concluding comment

44. We are happy to discuss with the GIC any aspect of this submission.

Yours sincerely



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