



Analysis of and Response to
Submissions on the Retail
Contracts Consultation
Paper issued on 5 October
2009

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About Gas Industry Co.

Gas Industry Co was formed to be the co-regulator under the Gas Act.

As such, its role is to:

- recommend arrangements, including rules and regulations where appropriate, which improve:
 - the operation of gas markets;
 - access to infrastructure; and
 - consumer outcomes;
- administer, oversee compliance with, and review such arrangements; and
- report regularly to the Minister of Energy and Resources on the performance and present state of the New Zealand gas industry, and the achievement of Government's policy objectives for the gas sector.

Authorship

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Executive summary

A consultation paper on options for the governance of retail contract terms was published in October 2009. The consultation paper set out the rationale for oversight of retail contracts, proposed benchmark terms, and canvassed options for the implementation of the benchmarks. This paper summarises the submissions received, including input from the 2009 Consumer Forum, and provides Gas Industry Co's response. Proposed next steps are also set out.

Eight submissions were received, all from industry participants. The summary of submissions is attached as Appendix A. Also, a workshop on retail contracts was held in conjunction with the 2009 Consumer Forum, and the outcomes are summarised in section 2.

Eleven general issues are identified that warrant a specific response. In brief, the issues and responses are:

- the design of the regulatory objective (some wording changes have been made);
- the rationale for the oversight of retail contracts (the rationale set out in the consultation paper is still considered to be valid);
- the form of the benchmarks (a firm consensus in favour of Gas Industry Co's preference for selective and outcome-based benchmarks);
- a focus on bundled services (contract to provide a full reference to the services provided but with scope for flexibility);
- restriction or extension of the proposed benchmarks (no change in the list of topics, but more explicit reference to safety and the deletion of excessive references to legislation and regulations);
- common benchmarks for gas and electricity (agreed to be a desirable objective, to the extent that it can be achieved under separate governance arrangements, and taking into account of inherent difference between fuels);
- threshold for inclusion of contracts in retail contract benchmarks (exclusion of negotiated contracts);
- preferred option between voluntary benchmarks and regulations (a voluntary approach preferred);

- monitoring and reporting under the voluntary option (open publication of individual retailer alignment after completion of transitional period); and
- implementation and transition (analysis of benefits and costs in conjunction with final design, and adoption of 18 month transitional period).

The range of topics for the benchmarks and the specifications of the detailed clauses are being revised based on comments from submitters and attendees at the Consumer Forum. As a result, it is likely that the existing 15 topics will be retained. Although it is proposed to make changes to some of the detailed clauses, the changes are generally expected to be minor and have the overall effect of making the benchmarks more general in their application and more efficient in their wording.

The submissions and comments received have provided a comprehensive and constructive basis for moving forward on governance arrangements for retail contracts. The preferred approach is voluntary alignment by retailers with selective and outcome-based benchmark terms, with an 18-month transitional period before the publication of an independent assessment of the extent of alignment for individual retailers. Revised specifications for the benchmarks and a detailed design for implementation are being developed based on this report. This material will be discussed at a workshop with the industry before making a recommendation to the Associate Minister (by June 2010).

Contents

1	Introduction	9
1.1	Background	9
1.2	Structure and content of report	9
<hr/>		
2	Consultation	11
2.1	Submitters	11
2.2	Industry workshop	11
2.3	Consumer Forum	12
<hr/>		
3	General issues raised and Gas Industry Co's response	14
	Issue 1: Design of the regulatory objective	14
	Issue 2: Rationale for oversight of retail contracts	15
	Issue 3: Form of benchmarks – selective and outcome-based, or prescriptive and comprehensive?	16
	Issue 4: Focus on bundled services	16
	Issue 5: Benchmarks to apply to associated documents as well as contracts	16
	Issue 6: Restriction or extension of the proposed benchmarks	17
	Issue 7: Common benchmarks for gas and electricity	18
	Issue 8: Threshold for inclusion of contracts in retail contract benchmarks	18
	Issue 9: Preferred option between voluntary benchmarks and regulation	19
	Issue 10: Monitoring and reporting under voluntary option	19
	Issue 11: Implementation and transition	20

4	Design of specific benchmark terms: submitter views and Gas Industry Co's response	21
	Topic 1: How to become a customer	21
	Topic 2: How to stop being a consumer of your current retailer.	22
	Topic 3: Changes to a contract	22
	Topic 4: Service standards	23
	Topic 5: Prices, bills, and payment	23
	Topic 6: Bonds	24
	Topic 7: Obligations of the parties in relation to supply to the site and access	24
	Topic 8: Metering	25
	Topic 9: Disconnection and reconnection	25
	Topic 10: Faults and planned shutdowns	26
	Topic 11: Privacy	27
	Topic 12: Liability of the retailer and the consumer	27
	Topic 13: Dispute resolution	28
	Topic 14: How consumers communicate with the retailer	28
	Topic 15: Notices from the retailer	28
<hr/>		
5	Next steps	30
6	Conclusions	32
Appendix A	Summary of submissions	33
Appendix B	Retail contract benchmark terms as proposed in the consultation paper	59

1

Introduction

1.1 Background

The Government Policy Statement on Gas Governance April 2008 (GPS) requires Gas Industry Co to undertake work, as appropriate, to ensure that contractual arrangements between gas consumers and retailers adequately protect the long-term interests of small consumers¹. Through the work programme agreed with the Associate Minister, Gas Industry Co is committed to providing advice to the Associate Minister on this subject by 30 June 2010.

As a major step towards this milestone, a consultation paper on options for the governance of retail contract terms was published on 5 October 2009. The closing date set for submissions was 3 November 2009. The consultation paper set out:

- the rationale for oversight of retail contracts;
- proposed benchmark terms that were selective and outcome focused, and a comparison of the benchmarks against current industry practice; and
- options for implementation of the benchmarks, either voluntary or regulated.

This paper summarises the submissions received, along with comments from the 2009 Consumer Forum, and provides a Gas Industry Co response. It also sets out the proposed next steps.

1.2 Structure and content of report

The structure of the report and a brief description of the coverage under each heading are set out in the table below.

Section	Brief description
1. Introduction	Background to the work on retail contracts and the structure of the present paper.

¹ 'Small consumer' is defined by the Gas Act 1992 as a person who uses less than 10 terajoules (TJ) of gas per annum.

Section	Brief description
2. Source of submissions and other inputs	List of submitters on consultation paper and results of workshop held at 2009 Consumer Forum. A full analysis of submissions is set out in Appendix A.
3. General issues raised and Gas Industry Co response	Sets out the issue, submitters' views, and the Gas Industry Co response, for general issues relating to the design and implementation of oversight arrangements.
4. Design of specific benchmark terms: submitter views and Gas Industry Co's response	Analyses submitter views on the proposed benchmarks, topic by topic, with amendments proposed as considered appropriate. The benchmarks from the consultation paper are set out in Appendix B.
5. Next steps	Next stages and schedule for development of the retail contracts project.
6. Conclusions	See Section 6.

2 Consultation

2.1 Submitters

Submissions were received from:

- Contact Energy Limited (Contact)
- Energy Direct NZ Limited (Energy Direct)
- Genesis Energy Limited (Genesis)
- Greymouth Gas New Zealand Limited (Greymouth Gas)
- Mighty River Power (MRP)
- Nova Energy Limited (Nova)
- Powerco Limited (Powerco)
- Vector Limited (Vector)

Several submissions were received after the formal closing date but were accepted so as to obtain the best possible coverage in responses from industry participants. The submissions are summarised in Appendix A.

2.2 Industry workshop

In October 2009, a workshop was held for industry participants to provide information that would assist in the preparation of submissions, but some valuable insights also came from the discussions at the workshop.

2.3 Consumer Forum

The 2009 Consumer Forum was held on 16 October 2009 and included a short workshop on the 'Options for the Governance of Retail Contract Terms – Consultation Paper' (the Consultation Paper). The workshop was based on a pre-set list of four questions, and participants were invited to provide individual responses as well as contribute to discussions in groups. Only one participant supplied an individual response.

The participants were provided with the 15 topic headings under which the benchmark terms have been categorised. These are:

Topic heading
1. How to become a consumer
2. How to stop being a consumer
3. Changes to a contract
4. Service standards
5. Prices, bills, and payment
6. Bonds
7. Obligations of parties in relation to supply to the site and access
8. Metering
9. Disconnection and reconnection
10. Faults and planned shutdowns
11. Privacy
12. Limitation of liability
13. Dispute resolution
14. How the consumer communicates with the retailer
15. Notices from the retailer

Responses against the four questions are summarised in the table below.

Consumer Forum Question (CFQ)	Summary of response
CFQ 1: The proposed approach is for retail contracts to be consistent with a set of agreed 'benchmark' terms. Do you agree with this approach? If you think there might be better approaches, say what they are and explain why you think they might be better.	There was general agreement with outcome-based benchmarks rather than a full contract or a very prescriptive approach. There was also general agreement with taking a voluntary approach and only considering regulations if some companies do not respond to the benchmarks. Regulations might be more targeted than the benchmarks; that is to say, aimed specifically at particularly important or troublesome benchmarks.

Consumer Forum Question (CFQ)	Summary of response
<p>CFQ 2: Benchmark terms have been organised under 15 topic headings. Is this list complete or do you think there are other subjects that should be included? State what they are.</p>	<p>The list of topics was considered to be appropriate and there were no suggestions for additions or deletions.</p> <p>Key topics were suggested to be:</p> <ul style="list-style-type: none"> 4. Service standards. 5. Prices, bills, and payment. 9. Disconnection and reconnection. 13. Dispute resolution.
<p>CFQ 3: The benchmarks generally focus on what should be included in contracts rather than what should be excluded. There may be some very unfair clauses in current use that should be specifically excluded. Do you know of any examples of such clauses? If so, then explain what they are and why they are unfair.</p>	<p>Points of particular concern were as follows:</p> <ul style="list-style-type: none"> • There should be no matching terms clauses (where the retailer seeks to prevent a switch by matching the rival retailer's offer). • Consumers do not like situations where line and energy services are split and offered on differing time frames.
<p>CFQ 4: The tables (in the questionnaire) set out the benchmark terms proposed in the consultation paper. Look at these terms and, if you can, give a view on whether you think the proposals are fair and reasonable for both consumers and retailers; whether there are any proposed benchmarks that are unsuitable and should be deleted; and whether there are any new benchmarks that should be added.</p>	<p>There was either general agreement with, or no comment on, the following (in the latter case mainly because of lack of time during the discussion): 1, 2, 3, 4, 6, and 9.</p> <p>Topic 5: Need to simplify. Should add that any revised pricing schedules to be communicated to the consumer.</p> <p>Topic 7: Add clause that states notice to be given and how delivered.</p> <p>Topic 8: Add clause that must describe any fees relevant to (e).</p> <p>Topic 10: Generally agreed but suggested that there should be a sticker or picture on the meter box showing emergency numbers etc.</p> <p>Topic 11: Information to be collected only for the purposes of gas supply, eg not for advertising.</p> <p>Topic 12: Add reference to Fair Trading Act.</p> <p>Topic 13: Generally agreed but should all be in simpler language.</p> <p>Topic 14: Generally agreed. Information provided should be 0800 number, email/website, and postal address.</p> <p>Topic 15: Public notices in newspaper not acceptable means for notifying contract changes – use mail or email, for this and pricing changes.</p>

3

General issues raised and Gas Industry Co's response

Key issues from submissions and other comments are outlined below. Comments on the design of the specific benchmarks are addressed in the following section. The key issues are more limited in number than the questions posed in the consultation paper because they relate to the policy approach and the design of the arrangements, rather than just the provision of information.

The tables under each issue set out a summary of the feedback from submitters and Gas Industry Co's response. The result of considering some issues raised in submissions may be revision of the wording of certain benchmark terms. For reference, the proposed terms in the consultation paper are set out in Appendix B. Gas Industry Co will publish a revised set of benchmark terms early in 2010.

Issue 1: Design of the regulatory objective

Summary of Submitter and other inputs	Gas Industry Co response
<ul style="list-style-type: none">• Five submitters generally supported the proposed regulatory objective.• Two disagreed entirely.• One with no comment.• Three submitters suggested additional or alternative wording.• There were two submitters who disagreed with the basic concept of oversight of retail contracts by Gas Industry Co.	<p>The general thrust of the regulatory objective is still considered to be appropriate, but the suggested changes are generally useful and can be accommodated.</p> <p>Reference to market structures and supplier obligations has been retained to reflect the relevant GPS outcomes.</p> <p>The wording has also been condensed by using the more general phrasing suggested by a submitter.</p>

The revised formulation suggested is:

Determine the most appropriate gas governance arrangement for the oversight of retail contract terms in the gas industry so as to ensure that consumer contracts for gas supply:

- are sufficiently complete, accessible, and balanced to support the long term interests of gas consumers;

- clearly set out the respective obligations of the retailer and consumer, including any obligations the consumer has to meter or network owners;
- reflect as far as possible market structures; and
- support the achievement of an effective complaints resolution scheme for consumers.

Issue 2: Rationale for oversight of retail contracts

Summary of Submitter and other inputs	Gas Industry Co response
<ul style="list-style-type: none"> • Of the eight submitters, three agree that some level of oversight is warranted. • Two provide comments that are supportive of guidelines but not necessarily of oversight per se. • Two submitters disagree that the need for oversight has been demonstrated. • Two submitters suggest that oversight through the Electricity and Gas Complaints Commissioner Scheme (EGCC) code of practice should be sufficient, now that the EGCC has been approved. • One submitter believes that outstanding issues have been largely resolved by the Gas (Switching Arrangements) Rules 2008 (the Switching Rules). 	<p>It is clear that industry views on the rationale for action by Gas Industry Co are still mixed, with only three participants providing strong support.</p> <p>Gas Industry Co considers that the rationale provided in the consultation paper continues to be valid.</p> <p>See detailed comments below.</p>

Gas Industry Co detailed response:

The reasons against oversight are debatable. The contention that the EGCC will provide oversight misses the point that the approval of the EGCC as a complaints scheme will not (and cannot by law) include a code of practice that purports to set minimum terms for retail contracts. Both the content of the code, and compliance with it, will remain entirely voluntary. Moreover, the existing code is only invoked when it is relevant to a complaint. The converse argument is more compelling: that the benchmark terms proposed by Gas Industry Co are essential to giving the EGCC a set of independently developed benchmarks for reference.

The argument that the Switching Rules will eliminate all problems in regard to commencing and terminating contracts conflicts with experience to date. Work by the Investigator under the Gas Governance (Compliance) Regulations 2008 (Compliance Regulations) has found that fixed term contracts, in particular, are being used as an impediment to switching. For example, some consumers attempting to switch have found themselves threatened with law suits by both the outgoing retailer and the incoming retailer.

Gas Industry Co considers that the rationale provided in the consultation paper continues to be valid. However, it does agree that the extent of the problems falls short of justifying regulations at this stage. The implementation of voluntary benchmarks is a sensible, relatively low-cost first step, which could be effective in resolving most issues. If it is not, then regulations may have to be considered.

Issue 3: Form of benchmarks – selective and outcome-based, or prescriptive and comprehensive?

Summary of Submitter and other inputs	Gas Industry Co response
<ul style="list-style-type: none"> • Very strong consensus from submitters on this issue. • One submitter had no comment. • All other submitters support selective and outcome-based rather than comprehensive and prescriptive benchmarks (based on the adoption of a voluntary approach). • If regulations were adopted, particularly selectively to apply to areas of non-compliance, there is some feeling that more prescriptive terms might be appropriate. 	<p>This result confirms Gas Industry Co’s existing position, which is in favour of selective and outcome-based benchmarks. The issue of whether more prescription might be appropriate for selective regulations is not pertinent in the shorter term.</p>

Issue 4: Focus on bundled services

Summary of Submitter and other inputs	Gas Industry Co response
<ul style="list-style-type: none"> • Three submitters agree that there should be a focus on bundled services. • Three submitters effectively disagree. • Two submitters have no comment. 	<p>Submitters are evenly split on the issue of whether or not there should be a governance focus on bundled services.</p> <p>On balance, Gas Industry Co’s view is that there should be a focus on retail contracts providing a complete reference to all of the parties involved in service delivery, but within that there should be scope to allow innovative solutions that may involve unbundling.</p>

Issue 5: Benchmarks to apply to associated documents as well as contracts

Summary of Submitter and other inputs	Gas Industry Co response
<ul style="list-style-type: none"> • One submitter has made the point that many matters are better covered in associated documents, for example the application for gas supply, or the information pack provided to new customers, rather than in the contract itself. 	<p>The point is accepted although it is important that such documents are visible and accessible.</p> <p>It thus proposed that more broadly defined ‘supply arrangements’ should apply to the benchmarks.</p>

Suggested preamble:

Reference is made to ‘gas supply arrangements’, which includes the contract and may include other documents provided to the consumer, so long as those documents are identified in the contract and are accessible for monitoring purposes.

Issue 6: Restriction or extension of the proposed benchmarks

Summary of Submitter and other inputs	Gas Industry Co response
<p>In terms of coverage generally:</p> <ul style="list-style-type: none">• Two submitters have no comment.• One submitter disagrees with benchmarks altogether.• Two submitters think coverage is appropriate (although one of those thinks that some consolidation could occur).• Two submitters suggest aspects or specific clauses that should be removed (including redundant references to legislation or regulations).• Two submitters suggest some areas requiring additional cover (safety, LPG, and private networks). <p>The Consumer Forum considered that coverage was appropriate. Further submitter comment is noted below.</p>	<p>There is a general level of comfort with the topics covered and no changes at that level are proposed.</p> <p>Suggestions for consolidating or deleting specific clauses are considered in the next section of the paper.</p>

Summary of Submitter and other inputs:

Submitters were also asked to comment on the treatment of unfair terms. For those who responded specifically to the question, three submitters are in favour of using the benchmarks for this purpose and two are opposed. A majority of submitters (five) do not think all of the ‘unfair’ terms quoted in the consultation paper are necessarily unfair but rather a response to particular commercial circumstances and one submitter thinks they are unfair. Two submitters identify the area of terminations as being of significant concern.

Gas Industry Co detailed response:

On balance, it is considered that it would be appropriate to specifically link safety to the service standards for supply (clause 4.1), but this should be sufficient given that safety is extensively covered in regulations made under the Gas Act. Gas Industry Co’s view is that it would be premature to specifically include LPG, but it is recognised that this may be an issue for further consideration in the future.

There is some sense to the suggestion that the benchmarks should exclude requirements that are already set out in legislation, regulations, and rules. So far as retailer performance is concerned, that is legitimate. Retailers can be expected to be knowledgeable about the law and lawful in their behaviour. If they are not lawful in their behaviour, they are unlikely to comply with contract terms.

However, consumers cannot be expected to have the same degree of knowledge. There is strong merit in including references to legislation that specifically relate to consumer rights.

In terms of preventing unfair terms, it is agreed that the benchmarks should be designed with this in mind and that has been specifically done in response to the issues around changing retailers and termination of contracts. However, there is a reasonably strong consensus from retailers against reacting to some of the other ‘unfair’ terms quoted and Gas Industry Co agrees that there are arguments both for and against. On balance, it is considered that commitment to supply considerations are already implicitly covered by clause 4.1 of the benchmarks, but clause 5.2(b) under pricing could be strengthened to make it clear that consumers are only liable for charges related to their taking of supply.

Issue 7: Common benchmarks for gas and electricity

Summary of Submitter and other inputs	Gas Industry Co response
<ul style="list-style-type: none"> Four submitters have either directly or indirectly promoted the use of common benchmarks between electricity and gas. 	<p>While common benchmarks are an attractive proposal, this requires further consideration.</p> <p>There are differences between the fuels, and differences between the legislative obligations of the participants in each industry and the organisations with oversight of them.</p> <p>Gas Industry Co will, to the extent possible, liaise with the Electricity Commission on this matter, but cannot commit to full harmonisation of benchmarks.</p>

Gas Industry Co detailed response:

As indicated above, there are inherent differences between gas and electricity which make full harmonisation impracticable. At governance level, electricity and gas are subject to different legislation (the Electricity Act and the Gas Act 1992), and there are separate electricity and gas GPSs which are similar but not identical.

The markets are different. Electricity is an essential service with special requirements that reflect that status, whereas gas is a discretionary fuel subject to interfuel competition. There are also marked different technical attributes to take account of, which have wide ranging impacts on safety issues, the management of load and aspects such as metering.

Issue 8: Threshold for inclusion of contracts in retail contract benchmarks

Although not specifically asked for, three submitters have raised the issue of the appropriate threshold for inclusion of retail contracts in the benchmarks.

Summary of Submitter and other inputs	Gas Industry Co response
<ul style="list-style-type: none"> All three disagree with the use of the 10 TJ per annum threshold for small consumers (as set out in the Gas Act). One retailer preferred a reduction to 1 TJ per annum. The other two were seeking the exclusion of negotiated (business) contracts. 	<p>The preference is to adopt the approach whereby the benchmarks apply to contracts based on the standard published terms and conditions for each retailer.</p> <p>See detailed comment below.</p>

Gas Industry Co detailed response:

The issue of threshold size is linked to that of the option chosen. If a regulated approach were chosen, restricted to a small number of selected terms and conditions and with disclosure mandated, then a higher threshold that encompasses a greater range of contracts might be justified. However, the voluntary approach preferred in this response would be more practicable to implement if a more restricted threshold were adopted. The preference is to adopt the approach suggested by Contact: set the threshold to apply to contracts based on the standard published terms and conditions for each retailer. Monitoring on this basis would be reasonably straightforward and low cost. Monitoring negotiated contracts would be difficult and costly to implement, and would be vulnerable to inconsistent disclosure by retailers.

The downside of the suggested approach is that there might be a disincentive to publish standard terms and conditions. This is not an issue at present, any deterioration in current levels of transparency would be a ground to reconsider the case for regulatory intervention.

Issue 9: Preferred option between voluntary benchmarks and regulation

Summary of Submitter and other inputs	Gas Industry Co response
<ul style="list-style-type: none"> Six out of the eight submitters are quite clear in preferring a voluntary approach to regulation. One submitter prefers the status quo (no oversight at all). One submitter would prefer to see a more robust analysis of the options before a choice is made. Some support for selective regulation if the voluntary approach is not comprehensively adopted. The Consumer Forum showed a preference for a voluntary approach but support for selective regulation if the voluntary approach is not successful. 	<p>Gas Industry Co agrees with the majority view of preferring a voluntary approach. The suggestion of selective regulation if not all retailers align with the voluntary benchmarks has considerable merit and is an option that will be considered in the future, if necessary.</p>

Issue 10: Monitoring and reporting under voluntary option

Although the question was not asked directly, views have been expressed on the approach to monitoring if voluntary adoption of the benchmarks is the chosen option.

Summary of Submitter and other inputs	Gas Industry Co response
<ul style="list-style-type: none"> • Four submitters either directly supported the open publication of the degree of alignment (or compliance) of individual retailers, or strongly suggested that it be considered. • Support for this approach was also expressed at the industry workshop. 	<p>The preferred approach is to provide confidential feedback to individual retailers and only publish consolidated results for the transitional period, and then move to open publication of individual results.</p> <p>See detailed comment below.</p>

Gas Industry Co detailed response:

There has been a concern about open publication because it may hinder gaining maximum industry support for the oversight arrangements adopted. However, the level of support for open publication is sufficient to suggest that this approach could be adopted without disadvantage. The preferred approach is to provide confidential feedback to individual retailers and only publish consolidated results for the transitional period; and to move to open publication of individual results post-transition. This would recognise that existing contractual commitments may affect the speed of transition feasible for different retailers.

Issue 11: Implementation and transition

An issue in regard to 'next steps' is whether the current analysis is taken as sufficient to proceed with a voluntary arrangement, or whether further evaluation of benefits and costs should be done first.

Summary of Submitter and other inputs	Gas Industry Co response
<ul style="list-style-type: none"> • Three submitters favour a better cost/benefit analysis. • One wishes to have further consultation. • Four have no comment. • An important design issue concerns the length of transition before full alignment with the benchmarks is sought. • Three submitters favour a transitional period of 18 months. • One submitter favours at least 1 year. • One submitter states that transition is not appropriate for a voluntary approach. • The other three submitters have no view. 	<p>The 18-month transitional period already proposed is generally agreed and will be adopted. A transitional period is relevant to a voluntary approach because it marks the change from assisting with alignment to monitoring and reporting on non-alignment.</p> <p>It is considered that a full cost/benefit analysis would be most unlikely to change the preference for a voluntary approach, but the Company will review the need for further analysis when finalising the design of the approach adopted.</p>

4

Design of specific benchmark terms: submitter views and Gas Industry Co's response

This section sets out comments from submitters and others on the specific benchmark terms proposed in the consultation paper, and the Gas Industry Co response to them. For ease of reference, the benchmark terms proposed in the consultation paper are set out in Appendix B. Where Gas Industry Co has agreed that the wording of a benchmark should be revised, those amendments will be made in January 2010 and the full set of terms discussed with industry participants.

The discussion below is by topic, rather than by clause.

The terms 'retailer' and 'consumer' have been used to describe the parties to the contract. Some submitters have suggested using other terms such as 'supplier' and 'customer'. The preference is to be consistent throughout and to use the former terms.

Topic 1: How to become a customer

Summary of Submitter and other inputs

- Three submitters have no comment.
- The other five submitters raise various points including:
 - the need to recover any costs incurred after supply has started.
 - a preference to agree contracts before supply starts.
 - the difficulty of determining when supply can start because of the impact of the Switching Rules (except for consumers taking supply for the first time).
 - problems in defining a 'reasonable opportunity' for the consumer to refuse the contract under clause 1.2.
- There was general agreement on the proposed term at the Consumer Forum.

Gas Industry Co response:

The submissions made broadly similar comments that are best accommodated by making the benchmarks more general in their wording. The intent is thus preserved, but there is more discretion

for the retailer to reflect the actual circumstances of supply. However, it is considered appropriate to retain the 'reasonable opportunity' wording in clause 2.1.

Topic 2: How to stop being a consumer of your current retailer.

Summary of Submitter and other inputs

- Two submitters have no comment.
- Two submitters essentially agree with the proposed benchmarks.
- Three submitters see no reason for referring to the Switching Rules.
- Two submitters are concerned that costs incurred should be recoverable.
- One submitter suggests a simplified format that distinguishes between fixed- and open-term contracts.
- There was general agreement with the benchmarks from the Consumer Forum and a firm rejection of clauses that allow the existing retailer to match the terms offered by a new retailer (and thereby prevent a switch).
- Three submitters have no comment.

Gas Industry Co response:

It is agreed that direct reference to the Switching Rules is unnecessary and should be removed. The alternative wording suggestions from Genesis are partially accepted, although some of the wording is inappropriate because it is about behaviour rather than contract terms. The revised wording will reflect these points.

Topic 3: Changes to a contract

Summary of Submitter and other inputs

- One submitter has no comment.
- One submitter thinks that the benchmarks should be restricted to contracts covering less than 1 TJ pa.
- One submitter agrees with the benchmarks.
- Four submitters raise questions about clause 3.2, especially the phrase 'materially less' and whether the clause is even needed given that consumers can switch if they so choose.
- One of the submitters also states that clause 3.1 should not apply to fixed-term contracts.
- The Consumer Forum agreed with the benchmarks.

Gas Industry Co response:

On balance it is agreed that clause 3.2 is probably unnecessary provided that there is a strong benchmark (see Topic 2, above) covering the ability to switch retailers. However, it also makes sense to limit changes to fixed-term contracts within the term of the contract, unless the consumer agrees. The revised benchmarks will reflect these views.

Topic 4: Service standards

Summary of Submitter and other inputs

- Two submitters have no comment.
- Three submitters broadly agree with some minor wording changes.
- The other three submitters have more substantial disagreement, which includes deleting 4.2 for being redundant and subjective, deleting the reference to compensation in 4.3, and deleting 4.1 for being redundant and cosmetic.
- There was no substantive comment from the Consumer Forum.

Gas Industry Co response:

Some minor editing is proposed to clause 4.1, but the clause is considered important because the services provided are fundamental to the contract. On balance, it is not considered that specific reference should be made to safety, because this is already extensively covered in regulations. It is agreed that clause 4.2 is redundant and should be deleted. Clause 4.3 is also considered to be important to retain, but concerns over the reference to compensation are noted. A different form of words is thus proposed. If retailers choose to use different words again in their contracts, that should be acceptable as long as the intent is the same.

Topic 5: Prices, bills, and payment

Summary of Submitter and other inputs

- Two submitters have no comment.
- Three submitters agree with the proposals.
- The remaining three submitters have a range of comments that respectively relate to 5.2(e) (no time limitation), 5.1(c) (explain price increases), and in one case comprehensive disagreement with most of the clauses as redundant.
- The view from the Consumer Forum was that the provisions should be simplified and should require any revised pricing schedules to be communicated to the consumer.

Gas Industry Co response:

Pricing is a crucial part of the contract and it is considered that it should be covered by the benchmarks in reasonable detail. The provisions are also very similar to those that have already been agreed to by EGCC members in their code of practice. The contention that retailers will be driven to do most of the things referred to anyway is no reason for excluding them (consumers should be aware of what to expect), the time limitation in 5.2(e) is a sensible discipline on retailers to act promptly, and it is appropriate under 5.1(c) to explain the reasons for price increases as they will usually be cost driven. The Consumer Forum concern is covered by the existing wording.

It is thus proposed to make minimal changes to the current proposals. The only change proposed is to strengthen clause 5.2(b) to make it clear that the consumer should not be held liable for charges unrelated to the services supplied.

Topic 6: Bonds

Summary of Submitter and other inputs

- Four submitters have no comment.
- Three submitters agree with the proposals.
- One submitter queries why a bond should be returned after 12 months unless reasons are given.

Gas Industry Co response:

There is implicit or explicit agreement with the proposals from almost all submitters. The inclusion of the 12-month limit on retaining a bond is a protection against the retailer retaining the bond when the reasons for having it have disappeared. No change is thus proposed to the current proposals.

Topic 7: Obligations of the parties in relation to supply to the site and access

Summary of Submitter and other inputs

- Two submitters have no comment.
- Three submitters agree with the benchmarks.
- One submitter does not see that the benchmarks are necessary.
- One submitter proposes removing clause 7.1(c).
- One submitter wishes to generalise the reference to regulations.
- The Consumer Forum suggested adding a clause that notice is to be given.

Gas Industry Co response:

Clause 7.1(c) reflects the relevant GPS outcome and benefits the consumer by providing clarity about relationships. Gas Industry Co's view is that it should remain. The reference to regulations is already considered to be general enough. While the desire of consumers to have notice is appreciated, it is not clear that this would be practicable in many circumstances.

On balance, it is proposed that no changes be made to the existing benchmarks.

Topic 8: Metering

Summary of Submitter and other inputs

- Two submitters have no comment.
- Three submitters agree with the benchmarks.
- Two submitters wish to change 8.1(a) (unclear at present, frequency of meter reading too onerous).
- One submitter wishes to remove 8.1(b).
- One submitter wishes to change the wording of 8.1(c).
- One submitter proposes requiring the consumer to notify hazards on site.
- One submitter proposes consolidating clause 8.1 with 7.1 and 5.1 to 5.3.
- A suggestion from the Consumer Forum was that a clause be added to describe any fees relevant to (e).

Gas Industry Co response:

The point about conflict with the Gas (Downstream Reconciliation) Rules 2008 in regard to frequency of meter reading is agreed and it is proposed to remove this reference, but otherwise it is considered that 8.1(a) is already sufficiently clear. It is considered that 8.1(b) should remain as these 'requirements' are voluntary if not otherwise mandated. The additional word in 8.1(c) is agreed. It should not be necessary to require the consumer to notify hazards as there is already scope for doing this under 7.1(b).

The suggestions for consolidation are noted, and although not actioned at this stage, may warrant further consideration at the detailed design stage. The point raised from the Consumer Forum is already effectively covered by (c), but an extra word can be added to make this clear.

Topic 9: Disconnection and reconnection

Summary of Submitter and other inputs

- Two submitters have no comment.
- Two submitters effectively support the proposed benchmarks.
- Four submitters have comments on individual clauses including:
 - 9.1 (modify one word);
 - 9.2 (consider dual fuel situations, is too limiting at present);
 - 9.3 (confirm final warning, deal with permanent cessation of supply);
 - 9.4 (harmonise with EGCC CA18.5, deal with non payment situation);
 - 9.5 (charges in separate schedule).
- One submitter suggests consolidating 9.1 and 9.2 with 7.1.

Gas Industry Co response:

The word change suggested for clause 9.1 is accepted (as it does not substantially change the meaning). No change is proposed to 9.2 as there are too many complications at present in covering dual fuel contracts, and there is benefit to the consumer in retaining the reference to ‘validly invoiced’ charges. Gas Industry Co does acknowledge that it would be appropriate for it to discuss its proposed benchmark terms with the Electricity Commission later in the process.

On balance, it is considered that the change proposed to 9.3 of qualifying the phrase ‘requesting termination’ is unnecessary in the context of this clause. Although not precisely suggested, there is considered to be merit in ensuring that there is a reasonable time gap between the delivery of the written (first) warning and the delivery of the final warning. It is agreed that clause 9.4 should be harmonised with EGCC Code CA18.5.

The point raised in regard to clause 9.5 about charges in a separate schedule is already covered by the general preamble to the benchmarks, so no change is required. The topic is of sufficient importance in itself that it should not have clauses combined with clause 7.1.

Topic 10: Faults and planned shutdowns

Summary of Submitter and other inputs

- Two submitters either agree or have no comment.
- One submitter thinks that 10.1(b) is redundant.
- Three submitters note that, regarding 10.1, supply interruptions may come from the distributor or meter owner.
- One submitter thinks that 10.1(d) is too broad and should be restricted to how to turn off the gas.
- One submitter wants an additional benchmark regarding continued access to their equipment for distributors/meter owners.
- The Consumer Forum generally agreed with the benchmarks but suggested that there should be a sticker or picture on the meter box showing emergency numbers and shut-off procedures.

Gas Industry Co response:

It is agreed that 10.1(a) could appropriately be worded more generally but 10.1(b) should remain. The point about access should be able to be adequately covered by other existing provisions such as 10.1(c). It is considered that 10.1(d) should remain in full but the wording could usefully be tidied up.

The suggestion from the Consumer Forum is very sensible, but it is too detailed for general benchmarks.

Topic 11: Privacy

Summary of Submitter and other inputs

- Three submitters have no comment.
- One submitter agrees with the proposed terms.
- Three submitters disagree on the grounds that the requirement is already in law and is redundant in contracts.
- The Consumer Forum explicitly supported the inclusion of these terms and wished to extend them to stipulate that information should be collected only for the purposes of gas supply, e.g. not for advertising.
- The comparison with current industry practice in the consultation paper indicates that the majority of retailers already include Privacy Act obligations.

Gas Industry Co response:

While it may duplicate statutory provisions, it is important to set out privacy obligations in the benchmarks so that consumers are aware of their rights. However, it seems unnecessary to go as far as specific exclusions such as 'any purpose other than gas supply'.

It is proposed that the existing wording should be retained.

Topic 12: Liability of the retailer and the consumer

Summary of Submitter and other inputs

- Two submitters have no comment.
- Four submitters agree with the benchmarks.
- Two submitters effectively disagree that compliance with specific legislation should be included in the contract.
- The Consumer Forum suggested also including the Fair Trading Act.

Gas Industry Co response:

As indicated in the previous section, it is considered that references to legislation should remain where they relate to consumer rights, and no change to the existing wording is proposed.

Conversely, it is considered that the Fair Trading Act is not sufficiently relevant to the circumstances of gas supply to small consumers to warrant inclusion.

Topic 13: Dispute resolution

Summary of Submitter and other inputs

- Four submitters generally support the proposed terms or the approval of the EGCC.
- Two submitters have no comment.
- Two submitters suggest that some clauses (variously 13.2 and 13.3) are redundant or are unnecessary (especially with the expected approval of the EGCC as a complaints scheme under the Gas Act).
- The Consumer Forum felt that the clauses could be simplified.

Gas Industry Co response:

Some simplification is appropriate now that the EGCC has been approved as the consumer complaints scheme.

Topic 14: How consumers communicate with the retailer

Summary of Submitter and other inputs

- Three submitters have no comment.
- Three submitters agree with the proposals.
- One submitter is not aware that there is any consumer concern over this topic.
- The Consumer Forum generally agreed with the proposals and suggested that information provided should be the retailers' 0800 number, email/website, and postal address.

Gas Industry Co response:

It is considered that the current form of words should be largely retained but generalised to encompass multiple forms of communication as suggested by the Consumer Forum.

Topic 15: Notices from the retailer

Summary of Submitter and other inputs

- Three submitters have no comment.
- Three submitters agree with the benchmark.
- One submitter agrees but thinks that the benchmark should be restricted to material changes.
- One submitter doubts this topic is of concern to consumers.
- One retailer suggests consolidating 15.1 with 14.1.
- The Consumer Forum was of the view that public notices in newspaper were not an acceptable means for notifying contract term and pricing changes – mail or email were preferred.

Gas Industry Co response:

There is no disagreement with the benchmark, but there are various views on whether it should be strengthened; for example, to prevent the use of public notices for contract terms or price changes; or reduced in scope (not to apply to trivial matters). Both points have some merit and are accommodated in the modified wording below.

There is implicit discretion for retailers to decide on 'materiality'. Although 14.1 and 15.1 could be consolidated, the subject matter is sufficiently different to warrant separate topic headings.

5

Next steps

If the regulation of benchmark terms were the preferred option, the next step would be the development of a Statement of Proposal (SOP), which would set out a full assessment and cost benefit analysis as required by the Gas Act. Stakeholders would have an opportunity to make submissions on the SOP and this would lead to a Recommendation to the Associate Minister.

However, the clear preference of stakeholders, and of Gas Industry Co, is for a voluntary approach. A formal SOP is thus not required and it would be possible to simply finalise the design of the voluntary approach and seek the endorsement of the Associate Minister for its implementation.

The preference is to provide for a further round of interaction with industry participants based on a full proposed design for the monitoring of retail contract benchmarks. The reasons for providing for further interaction are as follows:

- This response sets out reasons for making some changes to the wording of most of the benchmark terms, but does not provide the revised wording. It would be appropriate to provide the proposed wording to industry participants and then hold roundtable discussions to confirm that the proposals are the 'best practicable solution' at this stage.
- The consultation paper contained only preliminary ideas on implementation. A fully specified approach to implementation needs to be determined which takes account of submissions on the consultation paper as set out in this response and is again subject to a final confirmation check with industry participants.

It is accordingly proposed to publish a full design for the scheme by early February 2010 and to use that document as the basis for an industry workshop scheduled for the afternoon of Tuesday 16 February. A workshop is felt to be a better means for confirming final details than a formal consultation process. Gas Industry Co may also provide an opportunity for consumer representatives to further comment on the proposed design.

In conjunction with the development of the full design, consideration will also be given to whether there is a need to evaluate further the benefits and costs of pursuing the voluntary approach

compared to other options. If it is decided to undertake further cost benefit analysis, this will be included in the final recommendation to the Associate Minister.

After taking account of the result of the industry workshop and any discussions with consumer representatives, the final proposed approach, including the specifics of the retail contract benchmarks, will go to the Gas Industry Co Board for approval. It is not expected that there will be a further round of consultation after Gas Industry Co Board approval. Instead, the approved approach will be recommended to the Associate Minister no later than June 2010.

6

Conclusions

- Submissions have provided a constructive and comprehensive basis for selecting a preferred option for the gas governance of retail contract terms and for confirming specifications for the detailed benchmarks.
- The preferred approach is that of voluntary alignment with published benchmark terms, an 18-month transitional period during which only information on overall industry progress will be published, and then the regular review and publication of the degree of alignment for individual retailers.
- If the voluntary approach is not successful, the adoption of a regulatory approach will be considered, with the current preference being the regulation of only a small number of selected benchmarks.
- The preferred approach to the specification of the benchmarks is to be selective and outcome-based.
- It is proposed that Gas Industry Co now develop a detailed design for the voluntary approach to be discussed at an industry workshop prior to recommending endorsement of this approach by the Associate Minister (no later than June 2010).

Appendix A Summary of submissions

Submissions have been received from the following stakeholders:

- Vector Limited
- Contact Energy Limited (Contact)
- Energy Direct
- Genesis Energy (Genesis)
- Greymouth Gas
- Mighty River Power (MRP)
- Powerco
- Nova Gas (Nova)

The submissions are summarised below against each of the questions posed in the consultation paper. Comments on other issues are also summarised.

Question	Comment
<p>Q1: Do you agree with the proposed regulatory objective? If you disagree explain why, and give an alternative formulation.</p>	<p>Vector: Generally agree but strongly recommend benchmarks should only apply to consumers with less than 1TJ pa supply.</p> <p>Contact: Agree, but suggest adding words ‘to consider the regulations currently imposed on retailers in relation to energy supply and consider what level of alignment is appropriate’.</p> <p>Energy Direct: Agree that is reasonable.</p> <p>Genesis: No. May be other means for improving consumer outcomes without implementing governance arrangements for overseeing contracts. Not clear that contracts need to reflect market structures. No need to refer to consumer complaints. Suggest an alternative formulation. – ‘To ensure that consumer contracts for gas supply are sufficiently complete, accessible and balanced to support the long term interests of gas consumers’.</p> <p>Greymouth: No comment.</p>

Question	Comment
	<p>MRP: No direct comment, but comfortable with development of benchmark terms that Gas Industry Co could use to assist in monitoring and public reporting on different retailers' terms and conditions.</p> <p>Powerco: Suggest that specifically include GPS clause that '...contractual arrangements adequately protect the long term interests of small consumers'.</p> <p>Nova: Objective does not recognise tension between use of lay language and legal wording for contract. Also no need to provide support for complaints scheme as effective resolution already available through the NZ judicial system, especially small claims tribunal.</p> <p>Summary: Of the eight submitters, one has no comment and two disagree outright. There are five submitters who generally support the objective but several of these have suggestions for amending or adding to the wording.</p>
<p>Q2: Do you agree that the evidence available supports some degree of structured oversight of the quality of retail contract terms? If you disagree explain why.</p>	<p>Vector: Agree that there are shortcomings that warrant action. Support 'light handed' approach with some monitoring by Gas Industry Co on extent of retailer alignment with benchmarks.</p> <p>Contact: Disagree that two retailers with unfair terms supplying 15% of the market justifies oversight of retail terms. Having a single dual fuel complaints scheme with a single set of benchmark terms should be the objective.</p> <p>Energy Direct: Agree that if benchmarks set are mandatory some degree of oversight necessary to ensure compliance. If benchmarks voluntary then no oversight necessary – consumers can address concerns through the complaints resolution scheme.</p> <p>Genesis: Yes.</p> <p>Greymouth: Governance of retail contracts should be primarily through guidelines, not regulation.</p> <p>MRP: Gas Industry Co has not demonstrated that a minority of retailers have residential terms and conditions that fall below acceptable practice, but pleased at favourable results of evaluation of MRP terms and conditions</p> <p>Powerco: Agree, noting that previous comments by Commerce Commission now backed up by Gas Industry Co analysis. Have particularly come across consumers locked into contract rollover and would like this to be addressed.</p> <p>Nova: Disagree. Evidence cited was prior to start of gas registry, which has resolved many change of retailer problems. Competitive markets and ability of consumer to switch unhindered is the best way of achieving acceptable retail contracts. Also risk of minimum benchmarks hindering innovation and can be made meaningless by new</p>

Question	Comment
	<p>means of differentiation.</p> <p>Summary: Of the eight submitters, three agree that some level of oversight is warranted, two provide comments that are supportive of guidelines but not necessarily of oversight per se, and two submitters disagree that the need for oversight has been demonstrated.</p>
<p>Q3: Do you agree the 'benchmark' terms for retail contracts should be selective and outcome based rather than comprehensive and prescriptive? If you disagree explain why, and describe your preferred approach.</p>	<p>Vector: Strongly support selective and outcome based approach.</p> <p>Contact: Prefer selective and outcome based. Retailers should have the ability to differentiate themselves in the market.</p> <p>Energy Direct: Agree with selective and outcome based approach. If exhaustive, almost like model contract with no scope for retailers to differentiate.</p> <p>Genesis: Yes. Fully support merits of selective and outcome based approach</p> <p>Greymouth: No comment.</p> <p>MRP: Move to selective and outcome approach from previous model contracts approach is a positive change.</p> <p>Powerco: Agree as is likely to have the strongest cost-benefit justification.</p> <p>Nova: Not necessary at all, but if must have them then better to be outcome based rather than prescriptive, and limited in scope.</p> <p>Summary: Very strong result. One submitter has no comment but all other seven submitters support selective and outcome based rather than comprehensive and prescriptive.</p>
<p>Q4: Do you agree the focus of governance on retail contracts should be the bundled service (gas, metering, transport) received by consumers?</p>	<p>Vector: Should not focus on whether the contracts are for bundled services or not. Consumers should be free to choose services that best suit their needs.</p> <p>Contact: Agree.</p> <p>Energy Direct: Agree. There are terms and conditions within our contracts with gas distributors and meter operators that we are required to pass on to our consumers.</p>

Question	Comment
	<p>Genesis: Any intervention should be flexible enough to accommodate any business model.</p> <p>Greymouth: No comment.</p> <p>MRP: No direct comment.</p> <p>Powerco: Agree. The norm on open access network is to provide a bundled service; however, a focus on this would exclude direct contracts between distributors/meter owners and consumers.</p> <p>Nova: No. There are examples in the electricity industry where innovations are taking place where there is bundling and unbundling of retail services, and this could occur also in the gas industry.</p> <p>Summary: Three submitters agree that there should be a focus on bundled services, three submitters effectively disagree, and two submitters have no comment.</p>
<p>Q5: Are you aware of any instances in the gas industry of consumers having direct contracts with meter owners or distributors? If so, how should these contracts be governed?</p>	<p>Vector: Yes – but confined to large use consumers of more than 10 TJ per annum.</p> <p>Contact: Not aware of any such contracts on open access networks. However, expect that the benchmarks will apply equally to private networks, e.g. Nova bypass network.</p> <p>Energy Direct: Have had two customers who had line charge agreements directly with the network operator. Not aware of any direct contract for metering. Noted that metering and distribution fundamentally different from retailing, and require different terms and conditions.</p> <p>Genesis: Yes, customers on Nova’s networks contract directly with a vertically integrated distributor, meter owner and retailer.</p> <p>Greymouth: No comment.</p> <p>MRP: No comment.</p> <p>Powerco: Some cases on public networks of direct contracts but mainly with big consumers. But relatively common for private networks to intertwine retail and distribution contract terms. Important to cover private as well as public networks.</p> <p>Nova: Yes, although not for consumers less than 10TJ at this time. There are a number of consumers that have a</p>

Question	Comment
	<p>direct relationship with Vector for distribution services. To avoid confusion, Nova does not have separate network and energy contracts with consumers on its private network.</p> <p>Summary: Two submitters have no comment, two submitters point out that on private networks there is a single contract with an integrated retailer/meter owner/distributor, two submitter's notes that there are examples of such separate contracts only above 2 TJ per annum and one submitter notes two examples of separate distribution contracts without specifying gas quantity.</p>
<p>Q6: Do you agree with the analysis of the need for and scope of benchmark terms relative to consumer expectations? If not explain why.</p>	<p>Vector: Agree with Gas Industry Co analysis and pleased to see recognition that some expectations best met by competition rather than benchmarks. Regarding item six on 'supply of gas' should caveat as subject to 'best endeavours: not a strict obligation.</p> <p>Contact: Should not take account only of consumer expectations – retailers (as the counter party) also have some expectations.</p> <p>Energy Direct: Generally agree that benchmarks align with expectations (Detailed comments provided under seven headings).</p> <p>Genesis: A number of comments offered regarding Expectation 2 (regulate analysis of retail contracts could assist), Expectation 3 (is relevant but covered by the second benchmark), Expectation 4 (not true that retailer has full control as also influenced by distributor and consumer), Expectations 5 and 6 (again retailers do not have full control).</p> <p>Greymouth: No comment.</p> <p>MRP: No direct comment.</p> <p>Powerco: While safety is mentioned in Expectation 6 it is not carried through adequately into the benchmarks.</p> <p>Nova: No. The benchmarks do not and cannot contemplate all possible variations of customer service proposition. Also commented that the 10 TJ per annum threshold is too high. In general the benchmarks cover many areas of service delivery that do not have a history of complaints from consumers.</p> <p>Summary: Two submitters have no comment and one submitter disagrees with any benchmarks for any reason. One submitter makes point that retailer expectations are important as well. Three submitters broadly agree with relationship between the expectations and the benchmarks but comment on various aspects (safety not adequately</p>

Question	Comment
	expressed, need to recognise circumstances where retailers do not have full control).
<p>Q7: Are the benchmark terms proposed for 'how to become a customer' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</p>	<p>Vector: No comment.</p> <p>Contact: Proposed benchmark assumes retailer and consumer have an open line of communication which is not always the case. In absence of any specific agreement, the contract start date is when the customer begins taking supply. Disagree that customer can terminate contract without charge where customer has taken supply.</p> <p>Energy Direct: Benchmarks should be updated to reflect the Switching Rules eg for a normal switch the commencement date for a normal switch is not normally chosen by the retailer or the consumer. Opportunity for the consumer to agree to terms and conditions should be before the contract starts rather than providing opportunity to terminate after supply has commenced.</p> <p>Genesis: Suppliers should be able to recover charges for any gas consumed and for any services that the customer has used.</p> <p>Greymouth: No comment.</p> <p>MRP: Reasonable for the customer to be able to switch retailers without charge but supplier will need to recover costs incurred in terminating supply entirely (or socialise the cost through higher tariffs).</p> <p>Powerco: No comment.</p> <p>Nova: Proposed 1.1 does not take account of fact that supply commencement date is uncertain when customer signs up as this is determined through the switching process. Normally get around this by structuring base agreement as an application form. Proposed 1.2 has problems in defining 'reasonable opportunity' and also in practice smaller consumers offered a standard package that is not subject to negotiation because of issues of scale.</p> <p>Summary: Three submitters have no comment. The other five submitters raise various points the including need to recover costs incurred after supply started, preference to agree contract before supply starts, the difficulty of determining when supply can start because of impact of Switching Rules, and problems in defining 'reasonable opportunity' for consumer to refuse contract.</p>
<p>Q8: Are the benchmark terms proposed for 'how to stop being a customer of your</p>	<p>Vector: Only appropriate to consumers who use less than 1 TJ per year. Above that are able to negotiate commercial contracts with matching terms.</p>

Question	Comment
<p>current retailer' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</p>	<p>Contact: Unnecessary to require compliance with legislation in contracts. Benchmark should refer only to 'industry switching rules'.</p> <p>Energy Direct: Agree that customers should be able to provide notice and terminate their gas supply once the initial term has expired, and that termination should be in accordance with the Switching Rules.</p> <p>Genesis: Could be useful to provide separate benchmarks for fixed term v open-ended contracts. Simplified wording for each option is suggested. Not necessary to refer to the switching rules.</p> <p>Greymouth: No comment.</p> <p>MRP: Reasonable for the consumer to be able to switch without charge but there will be costs incurred (charges) if supply is terminated permanently.</p> <p>Powerco: No comment.</p> <p>Nova: Clause 2.2(a) redundant as supplier have to comply with the switching rules. Clause 2.2(b) is not logical because the consumer takes gas directly from the distribution pipelines and that is always directly under their control. Disconnection to prevent daily fixed charges is a distribution company requirement.</p> <p>Summary: Two submitters have no comment and two submitters essentially agree with the proposed benchmarks. However, there are a mix of views from other submitters. Three submitters see no reason for referring to the Switching Rules. Two submitters are concerned that costs incurred should be recoverable. One submitter suggests a simplified format that distinguishes between fixed and open term contracts.</p>
<p>Q9: Are the benchmark terms proposed for 'changes to a contract' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</p>	<p>Vector: Only appropriate to consumers who use less than 1 TJ per year. Above that are able to negotiate commercial contracts with matching terms.</p> <p>Contact: Term 'materially less favourable' is uncertain and unworkable. Clause 3.2 superfluous as the consumer always has the right to terminate a contract.</p> <p>Energy Direct: Tying one months' notice to 'materially different' changes is too subjective – if implemented will have to give guidance on what this means.</p> <p>Genesis: Yes.</p>

Question	Comment
	<p>Greymouth: No comment.</p> <p>MRP: Regarding clause 3.2, retailers should not be able to change terms during term of fixed term contract – phrase ‘materially less’ is also problematic.</p> <p>Powerco: Consumers should also be told which clauses are being changed, added or removed.</p> <p>Nova: Clause 3.2 redundant as customers can always switch if terms changed without their agreement. Deciding what is ‘materially less favourable’ is too subjective.</p> <p>Summary: One submitter has no comment, one submitter thinks that should be restricted to contracts covering less than 1 TJ per annum and one submitter agrees with the benchmark. Four submitters raised questions about clause 3.2, especially the phrase ‘materially less’ and whether the clause is even needed.</p>
<p>Q10: Are the benchmark terms proposed for ‘service standards’ appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</p>	<p>Vector: Support these terms.</p> <p>Contact: Support with some minor wording changes. In 4.3 insert ‘including if appropriate’ and replace ‘compensation’ with ‘service level payment’.</p> <p>Energy Direct: Accepted service levels vary by network or over time. Better to cover service levels and fees separately to contract but provide notice of changes in same way as for price.</p> <p>Genesis: Some minor wording changes proposed to 4.1, proposed that reference to compensation in 4.3 should be deleted, and proposed that 4.2 is deleted as redundant and not meaningful.</p> <p>Greymouth: No comment</p> <p>MRP: Questions raised over 4.2 - very dependent on service offered by network operators, and how should ‘good practice’ be interpreted?</p> <p>Powerco: No comment.</p> <p>Nova: Clause 4.1 is redundant and cosmetic only, 4.2 is redundant and subjective (‘good practice’). No comment on 4.3</p> <p>Summary: Two submitters have no comment and three submitters broadly agree with some minor wording changes.</p>

Question	Comment
	<p>The other three submitters have more substantial disagreement which includes particularly deleting or questioning 4.2 because it is redundant and subjective, deleting the reference to compensation in 4.3 and deleting 4.1 because it is redundant and cosmetic.</p>
<p>Q11: Are the benchmark terms proposed for 'prices, bills and payment' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</p>	<p>Vector: Support these terms.</p> <p>Contact: In 5.2(e) there should be no time limitation for over or under payments, and should especially not apply if error due to illegal activity.</p> <p>Energy Direct: Agree with these proposals.</p> <p>Genesis: Yes, except for 5.1 (c). No clear rationale for requiring retailers to try to explain price increase – pricing is not 'cost plus'.</p> <p>Greymouth: No comment.</p> <p>MRP: No comment.</p> <p>Powerco: Support the disclosure of key components of a gas bill - customer feedback indicates that customers are confused as to what price increases relate. Better information needed.</p> <p>Nova: Clauses 5.1(c), 5.2, and 5.3 are superfluous as it is in the retailer interests to do these things anyway. Clause 5.1(a) imposes arbitrary limit without any real benefits to consumers. Clause 5.1(b) - not clear why separate notification if increase greater than 5%?</p> <p>Summary: 2 submitters have no comment, 3 submitters agree with the proposals and the remaining 3 submitters have a range of comments that respectively relate to 5.2(e) (no time limitation), 5.1(c) (why explain price increases?), and comprehensive disagreement with most of the clauses as redundant.</p>
<p>Q12: Are the benchmark terms proposed for 'bonds' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please</p>	<p>Vector: No comment.</p> <p>Contact: Terms are appropriate.</p> <p>Energy Direct: Agree that complete and reasonable.</p>

Question	Comment
provide details.	<p>Genesis: Agree.</p> <p>Greymouth: No comment.</p> <p>MRP: No comment.</p> <p>Powerco: No comment.</p> <p>Nova: Requirement to return a bond after 12 months unless explanation given seems irrational. Why should it be returned?</p> <p>Summary: Four submitters have no comment, three submitters agree with the proposals, and one submitter queries why a bond should be returned after 12 months unless explanation given?</p>
<p>Q13: Are the benchmark terms proposed for 'obligations of the parties in relation to supply to the site and access' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</p>	<p>Vector: Support these terms.</p> <p>Contact: Terms are appropriate.</p> <p>Energy Direct: Agree that terms are reasonable and compatible with own network and metering arrangements.</p> <p>Genesis: Query whether benchmark 7.1 (c) is necessary Why use contracts to educate consumers?</p> <p>Greymouth: No comment.</p> <p>MRP: No comment.</p> <p>Powerco: Remove specific reference to Gas Act regulations as other regulations might apply in the future – just say 'relevant legislation'</p> <p>Nova: Not aware of any issues for consumers in this area and rights well understood by suppliers because of distributor requirements.</p> <p>Summary: Two submitters have no comment, three submitters agree with the benchmarks, and one submitter does not see that the benchmarks are necessary. One submitter proposes removing clause 7.1 (c) and one submitter wishes to generalise the reference to regulations.</p>

Question	Comment
<p>Q14: Clause 7.1(c) reflects the outcomes in the GPS which relate to efficient market structures and good understanding of roles, in relation to gas metering, pipeline and energy services. Accepting the limitations in what can be covered in a retail contract; does this clause go as far as possible in reflecting these outcomes? Provide alternative wording if you think that amended or extended wording would improve the clause.</p>	<p>Vector: Support this clause but emphasise that its coverage should not be extended further.</p> <p>Contact: Terms are appropriate.</p> <p>Energy Direct: Appropriate to explain responsibilities of retailer, meter owner, and distributor, but at a high level only.</p> <p>Genesis: Disagree that 7.1(c) is necessary to give effect to GPS objective on role clarity. A good response to GPS objective would be to examine whether current environment has gaps that lead to role ambiguity and whether regulatory actions are required to resolve this. Such analysis unlikely to lead to conclusion that contracts should describe respective roles of retailer, meter owner and distributor.</p> <p>Greymouth: No comment.</p> <p>MRP: No comment.</p> <p>Powerco: No comment.</p> <p>Nova: Answer similar to Q13.</p> <p>Summary: Answer to question already effectively covered by Q 13 which is why four submitters have no comment. three submitters agree with the benchmark and 1 submitter disagrees.</p>
<p>Q15: Are the benchmark terms proposed for 'metering' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</p>	<p>Vector: Customers should be required to notify retailers and other relevant providers of hazards on site. Amend clause 8.1 (c) to read 'either providing, changing or removing metering equipment.'</p> <p>Contact: Terms are complete and appropriate.</p> <p>Energy Direct: Agree that terms are complete and appropriate.</p> <p>Genesis: Proposed benchmark 8.1(a) is unclear and proposed benchmark 8.1(b) is unnecessary. Other benchmarks are suitable.</p> <p>Greymouth: No comment</p>

Question	Comment
	<p>MRP: No comment.</p> <p>Powerco: Agree with benchmarks.</p> <p>Nova: Why minimum of four times a year in 8.1 (a). This is more onerous than reconciliation requirements and may not be feasible in some cases.</p> <p>Summary: Two submitters have no comment and three submitters agree with the benchmarks. Two submitters wish to change 8.1(a) (unclear at present, frequency of meter reading too onerous), one submitter wishes to remove 8.1(b) and one submitter wishes to change the wording of 8.1(c). One submitter proposes requiring the consumer to notify hazards on site.</p>
<p>Q16: Are the benchmark terms proposed for 'disconnection and reconnection' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</p>	<p>Vector: Support these terms.</p> <p>Contact: 9.3 does not adequately cover some circumstances. Suggest insert following words 'where the consumer advises that it no longer requires a gas supply for the foreseeable future, or where the consumer is vacating the premises' be inserted after 'requests disconnection'.</p> <p>Energy Direct: Agree overall but some points need clarifying. CI 9.2: difficult to determine whether outstanding balances are gas or electricity, usually disconnect gas first. CI 9.3(b): whether final warning should be confirmed if delivered more than 24 hours before hand. CI 9.5: include charges in separate schedule as may change frequently.</p> <p>Genesis: In 9.1 (b) replace 'avoid' with 'prevent'. 'Validly invoiced' in 9.2 seems redundant. Modify 9.4 to be consistent with EGCC CA18.5 to avoid abuse of the disputes system</p> <p>Greymouth: No comment.</p> <p>MRP: No comment.</p> <p>Powerco: Agree that issues of connection and disconnection between retailers and distributors should not be covered.</p> <p>Nova: Clause 9.2 limits the ability of retailers and consumers to make price/quality/service tradeoffs. Clause 9.4 provides a potential opportunity for consumers to unnecessarily defer disconnection for non-payment.</p> <p>Summary: Two submitters have no comment and two submitters effectively support the proposed benchmarks. Four</p>

Question	Comment
	<p>submitters have comments on individual clauses including 9.1(modify one word), 9.2 (consider dual fuel situations, is too limiting at present), 9.3 (confirm final warning, deal with permanent cessation of supply), 9.4 (harmonise with EGCC CA18.5, deal with non-payment situation), and 9.5 (charges in separate schedule).</p>
<p>Q17: Are the benchmark terms proposed for 'faults and planned shutdowns' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</p>	<p>Vector: Need to recognise that supply interruption may be from a distributor or meter owner, not the retailer directly.</p> <p>Contact: 10.1(d) is too broad and should cover only a requirement to include information on how to turn off gas supply in an emergency. Cannot include specifics of restoring supply in contracts. A requirement that retailers include a fault phone number on every bill, and include in their contracts that consumers should use phone number in event of an unplanned outage, is more appropriate than proposed words in 10.2.</p> <p>Energy Direct: Generally reasonable but note that network or meter operators usually initiate shutdowns regarding CI 10.1 B.</p> <p>Genesis: Yes.</p> <p>Greymouth: No comment</p> <p>MRP: With respect to 10.1(b), extent to which retailer can give notice of a planned shutdown is dependent on the amount of notice the network operator gives the retailer.</p> <p>Powerco: Current wording consistent with Commerce Commission ruling. Support inclusion of 'unless agreed with the consumer' on 9.1(b). Include benchmark that distributor/meter owners retain access to their equipment for emergencies, safety, repairs.</p> <p>Nova: Benchmark redundant as contract requires agreement of consumer anyway.</p> <p>Summary: Two submitters either agree or have no comment, and one submitter think the benchmark is redundant. Three submitters note that, supply interruptions may or usually come from distributor or meter owner. One submitter thinks that 10.1(d) is too broad and should be restricted to how to turn off the gas. One submitter wants additional benchmarks regarding continued access to their equipment for distributors/meter owners.</p>
<p>Q18: Are the benchmark terms proposed for 'privacy' appropriate? If not please</p>	<p>Vector: No comment.</p>

Question	Comment
<p>explain why. If an alternative form of words or an additional clause is suggested, please provide details.</p>	<p>Contact: Unnecessary to explain what the Privacy Act 1993 already does.</p> <p>Energy Direct: Agree.</p> <p>Genesis: Not clear that clause is necessary as is statutory obligation for retailers.</p> <p>Greymouth: No comment.</p> <p>MRP: Not required - should be taken as a given.</p> <p>Powerco: No comment.</p> <p>Nova: Redundant as is already a statutory obligation.</p> <p>Summary: Three submitters have no comment, one submitter agrees with the proposed terms and the other three submitters disagree on the grounds that the requirement is already in law and is redundant in contracts.</p>
<p>Q19: Are the benchmark terms proposed for 'liability of the retailer and the consumer' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</p>	<p>Vector: Support these terms, especially clause 12.2.</p> <p>Contact: Agree that appropriate</p> <p>Energy Direct: Agree that terms are reasonable.</p> <p>Genesis: Yes.</p> <p>Greymouth: No comment.</p> <p>MRP: Question whether residential terms and conditions need to state that supplier will comply with the law.</p> <p>Powerco: No comment.</p> <p>Nova: No. Clause 12.1 is redundant with respect to domestic consumers. With respect to small business consumers do not believe that the benchmarks should expand on the obligations of suppliers under the Consumer Guarantees Act which effectively excludes commercial consumers.</p> <p>Summary: Two submitters have no comment and four submitters agree with the benchmarks. Two submitters</p>

Question	Comment
	effectively disagree that compliance with a legislation should be included in the contract.
<p>Q20: Are the benchmark terms proposed for 'dispute resolution' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</p>	<p>Vector: Support approval of the EGCC.</p> <p>Contact: Agree that appropriate.</p> <p>Energy Direct: Terms reasonable but acceptable for contract to cover complaint procedures at a high level and refer to separate document with detailed procedures.</p> <p>Genesis: Agree with clause 13.1 but believe that 13.2 can refer directly to the EGCC and 13.3 can be deleted now that the EGCC scheme has been amended to allow for approval.</p> <p>Greymouth: No comment.</p> <p>MRP: No specific comment.</p> <p>Powerco: Support inclusion of EGCC in terms.</p> <p>Nova: Clauses 13.2 and 13.2 are redundant as all consumers already have access to complaints resolution through the judicial system, especially small claims tribunal.</p> <p>Summary: Four submitters generally support the proposed terms, two submitters have no comment, and two submitters suggest that some clauses (variously 13.2 and 13.3) are redundant with the approval of the EGCC or are unnecessary.</p>
<p>Q21: Are the benchmark terms proposed for 'how consumers communicate with the retailer' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</p>	<p>Vector: Agree.</p> <p>Contact: Agree that terms are appropriate.</p> <p>Energy Direct: Agree that terms are reasonable.</p> <p>Genesis: Yes.</p> <p>Greymouth: No comment.</p>

Question	Comment
	<p>MRP: No comment.</p> <p>Powerco: No comment.</p> <p>Nova: Not aware that this topic is an area of concern for small consumers.</p> <p>Summary: Three submitters have no comment, three submitters agree with the proposals, and one submitter is not aware that there is any consumer concern over this topic.</p>
<p>Q22: Are the benchmark terms proposed for 'notices from the retailer' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.</p>	<p>Vector: Yes, but only for material changes – trivial changes can be covered in a public notice.</p> <p>Contact: Agree that are appropriate.</p> <p>Energy Direct Agree that are reasonable.</p> <p>Genesis: Yes.</p> <p>Greymouth: No comment.</p> <p>MRP: No comment.</p> <p>Powerco: No comment.</p> <p>Nova: Not aware that this topic is of concern to consumers.</p> <p>Summary: Three submitters have no comment, three submitters agree with the benchmarks, one submitter agrees but thinks should be restricted to material changes, and one submitter doubts this topic is of concern to consumers.</p>
<p>Q23: Viewing the proposed benchmarks as a whole, are there topics which should have been included and have not, or are there terms which have been included but might be removed to make the</p>	<p>Vector: Support topics included and there should be no expansion until after 18 month transitional period.</p> <p>Contact: Should not duplicate what is already required of retailers under the law.</p> <p>Energy Direct: Benchmarks complete and comprehensive. Ideally should focus on terms important to consumers including terms to be lawful, fair, and reasonable; connection, disconnection, and termination; pricing, billing, and payment, responsibilities for safety, supply, and access; dispute resolution; and privacy.</p>

Question	Comment
<p>benchmarks more compact? Give reasons for any views expressed, and examples where appropriate.</p>	<p>Some consolidations possible: for example combine 14.1 and 15.1, include 9.1 and 9.2 with 7.1, and consolidate 8.1 with 7.1 and 5.1 to 5.3.</p> <p>Genesis: The benchmarks are silent on private networks and LPG – any reasons for discrimination in this way. Should remove benchmarks 4.2, 5.1 (c), 7.1(c), 8.1 (a) and (b), and 13.3.</p> <p>Greymouth: No comment.</p> <p>MRP: No comment.</p> <p>Powerco: Issue of safety not carried through strongly enough into benchmarks</p> <p>Nova: Regulatory intervention in freedom of suppliers and consumers to enter into contracts is inefficient. Gas Industry Co would be better to allocate resources to areas where there is little or no competition, eg monopoly network providers.</p> <p>Summary: Two submitters have no comment, one submitter disagrees with benchmarks altogether, two submitters think coverage is appropriate (although one of those thinks that some consolidation could occur), two submitters suggest aspects or specific clauses which should be removed, and two submitters suggest some areas requiring additional cover (safety, LPG, private networks.)</p>
<p>Q24: Should the benchmarks be extended or amended to prevent the use of such unfair conditions, or would another approach be more appropriate?</p>	<p>Vector: Should not be extended further.</p> <p>Contact: Benchmarks should be extended to prevent clearly unfair terms, in particular locking consumers into contract rollover. Regarding some of the other examples, there is a balance to be found between interests of consumers and ensuring that consumers carry out their obligations under retail contracts. Retailers generally only use clauses of the type shown under extreme circumstances.</p> <p>Energy Direct: Best way to deal withy unfair terms is through benchmarks. Some terms that appear unfair have been developed to deal with unusual circumstances. Three examples given that relate to refusing to supply if another person owes money, no obligation to continue supply, and continuation of daily fixed charge after supply ceased.</p> <p>Genesis: Do not agree with examples as are valid responses to the commercial pressures faced by retailers and distributors.</p>

Question	Comment
	<p>Greymouth: No comment.</p> <p>MRP: No direct comment.</p> <p>Powerco: Yes, benchmarks should be extended to cover such unfair conditions, and would support targeted mandatory approach if voluntary approach unsuccessful</p> <p>Nova: Examples quoted reflect right of supplier to refuse to transact and lack of control over distribution and transmission. There are also good general protections available to the consumer.</p> <p>Summary: Some of the submissions do not directly address the question posed. Two submitters have no comment, one submitter is against extending the benchmarks for unfair terms, and three submitters agree with extending the benchmarks to cover unfair terms but do not agree that all of the examples quoted fall into this category. Two submitters disagree that the examples quoted are unfair but are rather a commercial response to particular circumstances.</p>
<p>Q25: Are there other examples of unfair terms in use that should be excluded from acceptable terms? If the answer is yes please give examples.</p>	<p>Vector: No comment.</p> <p>Contact: Not aware of any other unfair contract terms.</p> <p>Energy Direct: Customers have a responsibility to read and understand contracts before they enter into them and retailers need to ensure they understand – thus an informed decision can be made. Customers often do not understand termination clauses – can cause unnecessary difficulties when they try to switch.</p> <p>Genesis: Not aware of any other specific examples.</p> <p>Greymouth: No comment.</p> <p>MRP: No direct comment.</p> <p>Powerco: Clauses that have been brought to Powerco's attention mainly concern terminations – 5 topics within this area of concern given.</p> <p>Nova: No.</p> <p>Summary: Six submitters either have no comment or no examples to offer. Two submitters consider that a</p>

Question	Comment
	troublesome area is that of terminations, although some of the difficulties arise because consumers do not read and understand their contracts.
<p>Q26: To what extent do you think the published standard retail terms reflect the current practice between retailers and consumers (persons consuming less than 10 terajoules per annum)?</p>	<p>Vector: Published standard terms are a good reflection of mass market contracts, but significantly less alignment for larger consumers. Supports amending threshold from 10 to 1 TJ pa.</p> <p>Contact: Current published standard terms fairly reflect current practice between Contact and its customers except where special pricing on contract terms negotiated. Note that 10 TJ pa threshold may be OK for downstream reconciliation TOU and levy thresholds, but not necessarily best for the benchmark terms. More practical threshold is to exclude consumers on individually negotiated contracts.</p> <p>Energy Direct: Our actions usually more favourable to customers than what is covered with our terms and conditions. For example usually write to customers about price increases even if less than 5%.</p> <p>Genesis: Should not necessarily limit scope of analysis to the contents of contracts, may need to consider contract formation processes and context.</p> <p>Greymouth: No comment.</p> <p>MRP: No specific comment.</p> <p>Powerco: Understand that some retailers individual contracts differ from their standard terms – need to consider how many small consumers are on individual unpublished terms to ensure they are protected.</p> <p>Nova: Believe that the analysis carried out by the independent consultant was potentially flawed because of lack of knowledge and lack of access to all relevant information. Several mistakes made regarding interpretation of contracts. Also believe that some of the benchmarks are cosmetic and superficial for example 14 and 15.</p> <p>Summary: Two submitters have no comment, one submitter makes comments that are unrelated to the question, three submitters note the good correlation of mass market contracts with standard terms but not for larger customers with individual contracts, one submitter notes that need to consider associated documents as well as the contract, and one submitter notes that its actions are usually more favourable to its consumers than the contract provisions.</p>
<p>Q27: Do you agree that a common set of benchmarks or</p>	<p>Vector: Agree to use of common set of benchmarks and strongly support voluntary approach.</p>

Question	Comment
<p>minimum terms should be used, irrespective of whether implementation is voluntary or mandatory (regulated)? If you disagree, explain why.</p>	<p>Contact: If minimum terms regulated, there should be fewer items and more precise language to avoid over-regulation. However, the benchmark terms should not include restrictions or requirements that could not be imposed by regulation.</p> <p>Energy Direct: Not worth setting benchmarks unless mandatory or all retailers are willing to comply. Need to also see outcome of work stream on consumer complaints and if this requires compliance with terms and conditions</p> <p>Genesis: Yes.</p> <p>Greymouth: No comment.</p> <p>MRP: Should use same terms whether implementation voluntary or mandatory.</p> <p>Powerco: Support common set of benchmarks whether implementation voluntary or mandatory.</p> <p>Nova: Disagree with benchmarks under any conditions. There is no plausible justification for regulation.</p> <p>Summary: One submitter disagrees with benchmarks under any conditions, two submitters effectively have no relevant comment, four submitters agree that benchmarks should be common across implementation options, and one submitter states that if regulated there should be fewer terms and more precise language.</p>
<p>Q28: Do you agree that these are the most appropriate options for analysis, and that they have been appropriately specified? If you think that other options should have been selected or the specifications should be changed, set out your proposals and explain why.</p>	<p>Vector: Voluntary and regulated options analysed were appropriate. Selection of non-regulatory option by Gas Industry Co appropriate as no clear cost-benefit from regulatory approach.</p> <p>Contact: Most effective means to achieve alignment is publication of recommended benchmarks with monitoring of uptake on basis of voluntary disclosure.</p> <p>Energy Direct: Do not believe voluntary option is worth while unless all retailers are willing to comply. With regulatory option need mandatory assessment and ability to allege breaches.</p> <p>Genesis: Not clear why Option 1 requires a transitional period. Other options for Gas Industry Co to consider are disseminating information publicly on alignment with benchmarks based on voluntary or compulsory disclosure; and selectively applying mandatory compliance only to benchmarks with strong evidence of persistent non-compliance and consumer harm.</p> <p>Greymouth: Governance of retail contracts should be primarily through guidelines, and negotiated commercial</p>

Question	Comment
	<p>contracts should not be included.</p> <p>MRP: Not directly addressed.</p> <p>Powerco: Yes, agree with options.</p> <p>Nova: The option of continuing with the status quo, i.e. no benchmarks, has not been considered. There is no compelling case for change.</p> <p>Summary: One submitter has no direct comment, two submitters effectively agree with the options selected, two submitters support voluntary guidelines without saying anything about regulation, and one submitter only supports a voluntary approach if all retailers are willing to comply. One submitter thinks the status quo should be included as an option. One submitter favours inclusion of option of applying mandatory compliance only to benchmarks with evidence of persistent non-compliance.</p>
<p>Q29: Do you agree that all of the relevant benefits, costs, risks and uncertainties of the option had been identified and appropriately characterised. If you disagree please provide alternative or additional material and explain your reasoning.</p>	<p>Vector: Quantitative analysis to complement the qualitative analysis would have been desirable. Current indeterminate result indicates Gas Industry Co should be cautious about being too prescriptive.</p> <p>Contact: No comment.</p> <p>Energy Direct: Agree that costs and benefits difficult to quantify at this stage. There will be significant costs to retailers to physically change any of their terms and conditions. As well as initial costs, costs will be incurred if benchmarks change over time.</p> <p>Genesis: More thorough analysis of costs and benefits required. Analysis does not include the risk of regulatory error, that is, setting benchmarks that are detrimental to consumers.</p> <p>Greymouth: No comment.</p> <p>MRP: Not directly addressed.</p> <p>Powerco: No comment.</p> <p>Nova: Should have included as costs the loss of dynamic efficiency (reduced innovation) and restriction on flexibility to develop contract terms, both resulting from regulation.</p>

Question	Comment
	<p>Summary: 3 submitters specifically want a better cost benefit analysis to be carried out. Three submitters have specific suggestions for additional costs to be considered including cost to change terms and conditions, risk of regulatory error, loss of dynamic efficiency, and restrictions on flexibility to innovate.</p>
<p>Q30: What degree of commitment do you think is required from retailers, in relation to the voluntary alignment of their contracts with the proposed benchmarks, to shift the cost/benefit analysis away from regulated benchmarks terms?</p>	<p>Vector: Retailers should conform to benchmarks by 18th month of transition period and only then should Gas Industry Co investigate any non-compliance and whether regulations thus justified.</p> <p>Contact: Commitment to align within 18 months of finalising the benchmarks.</p> <p>Energy Direct: Little incentive for retailer to comply as changes generally to consumer’s rather than retailer’s benefit. Gas Industry Co should publish information on retailers who do not comply with the minimum terms, to both warn consumers and encourage voluntary compliance. Unless all retailer comply, voluntary regime will not be effective.</p> <p>Genesis: Depends on the assessment of the harm caused by ‘non-compliance’ compared to the costs of regulation. Also other options might be fit for purpose than either of the options identified by Gas Industry Co.</p> <p>Greymouth: No comment.</p> <p>MRP: No direct comment.</p> <p>Powerco: Support idea of self regulation. If retailers do not comply then publish non-compliant parties on Gas Industry Co website. If non-compliance with some terms after the 18 month period, then regulate those specific terms for all customers.</p> <p>Nova: No comment.</p> <p>Summary: Three submitters have no direct comment. Three submitters think that retailers should have 18 months to align and then consider regulations (preferable specific terms) is significant non-alignment. One submitter thinks that under a voluntary regime there will be little incentive for retailers to comply. 1 submitter observes that the answer depends on the degree of harm, caused by ‘non-alignment’.</p>
<p>Q31: Based on the analysis above or any additional analysis that you include in your submission, what do you think</p>	<p>Vector: Strongly support voluntary approach.</p> <p>Contact: Preferred option to achieve alignment with the benchmarks is to make them voluntary with the threat of regulation if substantive alignment not achieved within 18 months. Publishing an alignment report on the Gas Industry Co website exposing outlier retailers should incentivise those retailers to align without regulation. Results of</p>

Question	Comment
<p>the preferred option for inclusion in the statement of proposal should be? Explain why.</p>	<p>'threat of regulation' in electricity mixed.</p> <p>Energy Direct: Prefer voluntary regime but will only achieve desired outcome if all retailers agree to comply. Otherwise will be necessary to have legislated minimum terms, with focus on the most critical terms only.</p> <p>Genesis: A more robust analysis of the options available and their relative costs and benefits is required to support a decision on which option should be preferred.</p> <p>Greymouth: Governance of retail contracts should be primarily via guidelines – regulations are an unnecessary burden on the retailer. Should exclude non-residential customer contracts.</p> <p>MRP: Believe that regulated minimum terms would have higher costs and lower benefits than voluntary benchmarks.</p> <p>Powerco: Support voluntary approach with a transitional period of 18 months.</p> <p>Nova: Should abandon this work stream unless a clear case can be made that current contractual terms and conditions require changing. Proposed benchmarks will require changes by all retailers that will have absolutely no impact on the way in which customers are supplied.</p> <p>Summary: One submitter takes the view that the status quo should remain and another that more robust analysis is required before an option is chosen. All 6 of the other submitters support a voluntary approach with some support for selective regulation if the voluntary approach fails.</p>
<p>32: Other issues: Thresholds for inclusion</p>	<p>Vector: Benchmarks should only apply to consumers with less than 1 TJ pa to provide consistency with overseas jurisdictions, flexibility for larger consumers, and a more targeted approach. Alternatively only some benchmarks might apply over 1 TJ per year.</p> <p>Contact: 10 TJ threshold may be convenient as is used in other places, but not necessarily the best for the benchmark terms. More practical threshold is standard residential and business terms applicable to most customers not on special price/negotiated contracts.</p> <p>Energy Direct: No comment.</p> <p>Genesis: No comment.</p> <p>Greymouth: Inappropriate to include any non-residential customer contracts, as business contracts are negotiated</p>

Question	Comment
	<p>with customers to take into account business requirements.</p> <p>MRP: No comment.</p> <p>Powerco: No comment.</p> <p>Nova: No comment.</p> <p>Summary: No comment from five submitters. Of the other submitters one favours reducing inclusion to 1 TJ pa and two favour the exclusion of negotiated (business) contracts.</p>
<p>33. Other issues: miscellaneous – next steps, implementation, commonality with EC.</p>	<p>Vector: Transitional period of 18 months reasonable. Would appreciate further consultation prior to implementation. Should minimise overlaps with work to implement EGCC.</p> <p>Contact: Transitional period of 18 months.</p> <p>Energy Direct: Dual fuel customers will usually have their electricity and gas supplies covered by one set of terms and conditions and this should be considered.</p> <p>Genesis: No need for transitional period with voluntary approach. Should be consistency across fuels and networks, and welcome EC and Gas Industry Co working together on consumer contracting. Needs to be more robust analysis of the options to support a decision on which option is preferred.</p> <p>Greymouth: No comment.</p> <p>MRP: Transitional period of 1 year minimum. Would like to see Gas Industry Co and the EC adopt the same benchmarks so the same changes can be made across the two energy forms.</p> <p>Powerco: Support proposed transitional period of 18 months.</p> <p>Nova: Need a cost benefit analysis to demonstrate that the net benefit of either a voluntary or mandatory scheme is better than status quo.</p> <p>Summary: Three submitters favour a transitional period of 18 months, one favours a minimum of a year and the remainder have no comment. Three submitters favour further consultation or a better cost benefit analysis before a decision is confirmed and the remainder have no comment. Four submitters favour common terms for gas and</p>

Question	Comment
	electricity and/or the EC/GIC working together to that end and the remainder have no comment.

Appendix B Retail contract benchmark terms as proposed in the consultation paper

1. How to become a customer

- 1.1 The contract must state when the contract is to commence and supply is to be taken, and this must be agreed between the retailer and the customer. If either date is retrospective the contract must make this clear to the consumer.
- 1.2 The contract must provide a reasonable opportunity for the consumer to agree to the terms and conditions offered or terminate the contract and supply without charge.

2. How to stop being a customer

- 2.1 The contract must provide that, subject only to any initial term that may be agreed in the contract, the consumer shall have the right to terminate the contract with, and cease gas supply and charges, the existing retailer, for any reason including to obtain supply from a new retailer and irrespective of any offer that the existing retailer makes in respect of price or any other aspect of continued supply; on no more than one months notice and any shorter period allowed by the retailer.
- 2.2 The contract must provide that;
 - (a) if the consumer is switching retailers, termination will be effected in accordance with the Rules governing switching;
 - (b) if the customer is ceasing gas supply altogether, termination will be effected as soon as reasonably practicable following the consumer's notice of termination.

3. Changes to a contract

- 3.1 The contract may permit the retailer to change the non-price terms and conditions of the contract upon giving the consumer no less than 30 days notice of the changes.
- 3.2 The contract must provide that if the changes so notified by the retailer or subsequently negotiated are, together, materially less favourable to the consumer than under the existing contract, then the consumer may, regardless of whether the contract has a fixed term, terminate the contract on no more than one month's notice, or any shorter period allowed by the retailer, given before the date on which the charges were to become effective.

4. Service standards

- 4.1 The contract must describe the services and quality of service standards provided to the consumer.
- 4.2 The contract must provide that the services and quality of service standards will at all times be:
- (a) consistent with all legal obligations relating to the supply of gas;
 - (b) no less than good industry practice then prevailing in New Zealand.
- 4.3 The contract must be set out how the retailer will respond to the consumer where quality of service standards are not met, including any compensation that would be paid to the consumer if the retailer does not meet its obligations.

5. Price, bills and payment

- 5.1 In order to increase the price of gas supplied under the contract, the contract 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 in which notice will be given provided that that if the increase in price is more than 5%, then a separate notice of the increase must be individually communicated to the consumer in writing as soon as possible.; and
 - (c) that the notice will include an explanation of the reasons for the increase.
- 5.2 The contract must:
- (a) refer to the relevant prices or pricing schedule (as may be produced by the retailer from time to time) of products and services available to the consumer;
 - (b) state that the consumer is liable for the charges for all the services provided under the consumer contract;
 - (c) state the time from which the consumer will be liable for charges
 - (d) In the case of bills based on estimates, include a simple explanation of how the estimate will be calculated, and of the process that will be used for correcting any estimates
 - (e) Provide that if the retailer makes an error and charges an incorrect amount to the consumer, then upon becoming aware of the error the retailer:
 - will promptly refund or credit to the consumer any amount that has been overcharged;,,

- may invoice the consumer for any underpayments, but the contract will state the term limitations that will apply for the recovery of underpayments.

5.3 If the retailer offers alternative payment options to consumers, a simple explanation of how those options operate must be set out in the contract or in a separate publication identified in the contract.

6. Bonds

6.1 Where the retailer requires a bond from the consumer, the contract must state:

- (a) a requirement for the retailer to provide to the consumer the reasons for requiring a bond;
- (b) the period of time within which the bond must be paid to the retailer;
- (c) how long the retailer will keep the bond. If the retailer keeps the bond for longer than 12 months, it must provide its reasons for doing so to the consumer;
- (d) how the bond will be refunded; and
- (e) whether or not interest is payable on the bond.

7. Obligations of parties in relation to supply to the site and access.

7.1 The contract must :

- (a) describe the physical point at which the customer's responsibility begins;
- (b) explain the consumer's responsibilities pursuant to sub-clause 7.1(a) including in relation to gas lines, meters and other equipment on the consumer's premises and for compliance with all safety and technical requirements under regulations and codes of practice.
- (c) explain the responsibilities of the other parties to gas supply; comprising the retailer; and distributors and meter owners if those responsibilities are not included in the retailers responsibilities;
- (d) 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 the consequences the consumer may face for not granting access.

8. Metering

8.1 In relation to the metering of gas supply to the consumer, the contract must clearly describe:

- (a) the requirements for metering relevant to the pricing option selected by the consumer, including the frequency of meter readings, which shall not be less than four times per year;
- (b) the obligation to ensure metering is in accordance with relevant industry standards and codes of practice;
- (c) any additional costs associated with providing or changing metering equipment which may be listed in a separate pricing schedule;
- (d) the consumer's responsibility for protecting, not tampering with and providing access to meter(s) for maintenance and reading purposes; and
- (e) the process to be followed in the event that either the retailer or the consumer suspects that a meter is reading incorrectly and the method for correcting previous readings if found to be incorrect.

9. Disconnection and reconnection

9.1 The consumer contract must;

- (a) set out the conditions under which consumers can be disconnected other than in accordance with clause 10 below ;
- (b) provide that any notice of such disconnection will describe the actions that the consumer can take to avoid disconnection.

9.2 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.

9.3 Except for emergency disconnections or in the case of disconnections under the Gas Act or Gas Regulations for safety reasons, or where a consumer requests disconnection, the contract must provide:

- (a) for at least 7 days written notice of warning of disconnection and allow an additional 3 days for the delivery of the notice; and
- (b) for a final warning no less than 24 hours or more than 7 days before disconnection.

9.4 If a dispute resolution under the contract has been initiated by the consumer in regard to the cause of any proposed disconnection, then disconnection action must be delayed until after the conclusion of the dispute resolution process.

9.5 The contract must set out the charges that will apply to disconnection and/or reconnection, and the circumstances under which the charges will apply.

10. Faults and planned shutdowns

10.1 The contract must clearly:

- (a) describe the circumstances under which the retailer may interrupt supply without prior warning;
- (b) provide a minimum notice period before a planned shutdown, which should be no less than four days unless agreed otherwise with the consumer;
- (c) describe the retailers rights and obligations under special or emergency operating situations; and
- (d) describe where information of emergency procedures is located, including information on how the consumer can turn off their gas supply in an emergency; and how under emergency conditions information and procedures for reconnection will be achieved.

10.2 The contract will give details on where information of the time and duration of unplanned outages can be obtained.

11. Privacy

11.1 The contract must provide that the retailer will comply with the provisions of the Privacy Act 1993. and accordingly the contract must:

- (a) set out the purposes for which the retailer may collect personal information from the consumer; and
- (b) confirm that individuals will be able to access personal information held about them and have the opportunity to correct this information.

12. Limitation of liability

12.1 Except to the extent that the retailer is legally entitled to exclude the provisions of the Consumer Guarantees Act, the contract must provide that nothing in the contract will limit the consumer's rights under the Consumer Guarantees Act.

12.2 Any exclusion of liability in the contract must be clearly specified and reasonable.

13. Dispute resolution

13.1 The contract must advise consumers of the process that they should follow to bring a complaint to the retailer for resolution directly between the retailer and the consumer, including associated timelines and the resolution options available.

13.2 The contract must;

(a) nominate an independent dispute resolution scheme to which consumers may take a complaint if they are not satisfied by the result from the retailer's own dispute resolution process.

(b) describe how the consumer may access the scheme.

13.3 This independent dispute resolution scheme;

(a) must be a scheme approved under the Gas Act if such approval has been given;

(b) must otherwise provide for an independent determination of a complaint if other options for resolution, within the scheme, are not successful.

14. How the consumer communicates with the retailer

14.1 The contract must provide advice to the consumer on a practicable and effective means for the consumer to communicate with the retailer on any issues over which they have concerns or need information.

15. Notices from the retailer

15.1 The contract must specify how notices from the retailer will be delivered to the consumer.