



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Energy and Resources
Title of Cabinet paper	Gas (Levy of Industry Participants) Regulations 2021	Date to be published	6 July 2021

List of documents that have been proactively released

Date	Title	Author
May 2021	Cabinet paper: Gas (Levy of Industry Participants) Regulations 2021	Office of the Minister of Energy and Resources
20 May 2021	Cabinet minute: LEG-21-MIN-0070	Cabinet Office

Information redacted

YES / NO [select one]

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In Confidence

Office of the Minister of Energy and Resources

Chair, Cabinet Legislation Committee

Gas (Levy of Industry Participants) Regulations 2021

Proposal

- 1 I propose that the Gas (Levy of Industry Participants) Regulations 2021 are approved for submission to the Executive Council to enable the Gas Industry Company (GIC), as co-regulator of the gas industry, to recover its costs for the 2021/22 financial year. A Cost Recovery Impact Statement (CRIS) is attached at Annex One.

Executive Summary

- 2 Under the Gas Act 1992 (the Act), the GIC is the approved industry owned co-regulator of the gas industry. Its principal objective is to ensure that gas is delivered to existing and new customers in a safe, efficient, and reliable manner.
- 3 The GIC recovers the majority of the costs of its work programme through a levy on gas consumers. The remainder of the costs are recovered from market fee¹ revenue and equity reserve², which are both insufficient to deliver its work programme.
- 4 The Act provides that each year the GIC may make a recommendation to me, as the Minister of Energy and Resources, for levy regulations to recover the majority of its costs for that financial year.
- 5 I have received the GIC's recommendation for the 2021/22 financial year that includes levy rates based on estimated costs to deliver a work programme that aligns with the Government's objectives and outcomes for the gas sector. For the 2021/22 financial year, the GIC has recommended levy regulations be made to recover \$3.47 million, about 73 per cent of its estimated total work programme costs for that year (total work programme costs are estimated to be \$4.77 million). These costs are to be recovered through an annual retail levy (on gas retailers) of \$5.28 per customer³, and a wholesale levy (on participants that purchase gas from producers) of 1.1445 cents per gigajoule (GJ) purchased.⁴

¹ Market fees are payable in accordance with certain gas governance rules and regulations to recover actual expenses directly required to administer service provider arrangements and any other expected direct costs related to the monitoring of those arrangements.

² Equity reserve is money set aside made up of industry advance reserves and retained earnings (i.e. shareholder fees).

³ As measured by the number of Installation Control Points (ICP, a consumer's physical point of connection). Note that a consumer may have more than one ICP.

⁴ Note that both the retail and wholesale levy rates are GST exclusive.

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- 6 I intend to accept the GIC's recommendation and I propose that the attached levy regulations are submitted to the Executive Council.
- 7 On 15 March I authorised the drafting of regulations to go directly to Cabinet Legislation Committee without reference to Cabinet Economic Development Committee (DEV) and Cabinet as the levy regulations are routine and do not require new policy decisions. This decision is in line with paragraph 7.91(d) of the Cabinet Manual.

Policy

Each financial year the GIC makes a recommendation on levy regulations to recover its costs

- 8 The GIC was established in 2004 as the approved industry body for the co-regulation of the gas industry, under the Gas Act 1992 (the Act). Its principal objective under the Act is to ensure that gas is delivered to existing and new customers in a safe, efficient, and reliable manner. The Act and the Government Policy Statement on Gas Governance 2008 (the GPS) further articulates the Government's objectives and outcomes for the GIC, including fairness and environmental sustainability.
- 9 The GIC uses regulatory and non-regulatory mechanisms to ensure effective oversight of wholesale and retail gas markets, processing facilities, and gas distribution for an estimated 300,000 customers, including major industrial users. The GIC has also played an active role as the Sector Coordinating Entity for the New Zealand gas industry, supporting the Government's COVID-19 response.
- 10 As an industry owned co-regulator, the GIC's role and structure differs from Crown Entity regulations and other levy-funded organisations. The GIC is governed by a seven-member Board with a requirement for four independent (i.e. non-industry) directors, including the chair, Rt Hon Jim Bolger, who served as the Prime Minister of New Zealand from 1990 to 1997.
- 11 The costs of delivering GIC's work programme are primarily recovered through a levy on gas industry participants. The rest is recovered through market fees and equity reserves. The Act provides for the GIC to make a recommendation to the Minister of Energy and Resources that regulations are made to set up the levy rates and require gas industry participants to pay the levy.
- 12 The levy regulations can only apply to the financial year in which they are made, therefore new levy regulations must be made every year in order for the GIC to fund its activities.⁵ Annual levy recommendations are consistent with those taken in previous years. The current levy regulations, the Gas (Levy of Industrial Participants) Regulations 2020, were approved on 12 May 2020 by the Cabinet Legislation Committee [LEG-20-MIN-0049].

⁵ Section 43ZZE(3) of the Act.

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The recommended 2021/22 levy regulations are routine and do not require new policy decisions

- 13 Upon receiving the GIC’s recommendation for the 2021/22 levy regulations, I have assessed that these regulations are routine and do not require new policy decisions. In line with paragraph 7.91(d) of the Cabinet Manual, I authorised the drafting of the levy regulations to go directly to the Cabinet Legislation Committee without reference to Cabinet Economic Development Committee and Cabinet.

The recommended 2021/22 levy regulations provide for slightly higher rates than those provided for in the 2020/21 levy regulations

- 14 For the 2021/22 financial year, the GIC has recommended levy regulations to recover \$3.47 million of its total work programme costs (\$4.77 million) for 2021/22, slightly more than the \$3.45 million levy funding requirement for 2020/21 (by 0.64 per cent).
- 15 The costs are to be recovered through an annual retail levy (on gas retailers) of \$5.28 per customer/ICP⁶, and a wholesale levy (on participants that purchase gas from producers) of 1.1445 cents per gigajoule (GJ) purchased.
- 16 The current retail and wholesale levy rates have applied from 1 July 2020 and will expire on 30 June 2021. Table One provides a comparison of retail and wholesale levy rates between the 2020/21 and 2021/22 financial years. Both levy rates have increased slightly from last year. For 2021/22, the GIC estimates the number of ICPs to grow, but the amount of gas purchased to decline.
- 17 The GIC has a process for managing any over-collection of levies at the end of each financial year, with any overpayments usually being returned to gas industry participants as part of a ‘wash-up’ process.

Table One: Comparison of retail and wholesale levy rates 2020/21 and 2021/22. These figures exclude GST

Figures GST exclusive where applicable	2020/2021	2021/22 (Proposed)	% change
Retail Levy (per ICP)	\$5.16	\$5.28 per ICP	+2.33%
Wholesale Levy (cents per GJ)	1.1164c	1.1445c	+2.51%
Total levy funding requirement	\$3,450,182	\$3,472,367	+0.64%

⁶ Note that this levy is charged on a monthly basis of 44 cents.

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- 18 Further detail on the GIC's year-on-year total work programme costs are provided in the attached CRIS.

The recommended 2021/22 levy regulations enable the delivery of a work programme aligned with the Government's objectives and outcomes for the gas industry

- 19 GIC has an annual review process for its levy rates and work programme ahead of making a recommendation for levy rates for the next financial year.

- 20 The GIC's work programme for 2021/22 largely continues existing multi-year work streams, including activities to meet statutory requirements (such as the administration of existing gas governance regulations) and the delivery of key projects in alignment with government and industry priorities. Key examples include:

20.1 Considering the recommendations from the Electricity Price Review and how these will impact on governance and regulation of the gas industry. Undertaking consultation with stakeholders and then making recommendation to the Minister accordingly.

20.2 Provide support to the roll-out of advanced gas metering for residential gas consumers and engage with industry to ensure that industry standards and systems are suitable to support this.

20.3 Undertaking review of the proposed amendments to the Critical Contingency Management Regulations (CCM). It intends to make a recommendation to amend the CCM Regulations during FY 2022.

20.4 Continue working on its information disclosure work-stream to determine if current settings around information disclosure in the gas industry are adequate.

20.5 Investigate the current settings in the natural gas market and the role of gas in New Zealand to assess the market's ability to support New Zealand's transition to a renewable electricity and a net zero emissions economy in the long run.

- 21 The work programme is balanced between work-streams funded by the retail levy and wholesale levy.

- 22 Further details on how the GIC intends to allocate levies across its work-programme is provided in the draft CRIS attached at Annex One.

The recommended 2021/22 levy regulations meet the assessment criteria set out in the Act

- 23 Section 43ZZD(2) of the Act requires that I must accept the GIC's recommendation if:

23.1 the levy rate is reasonable, having regard to the GIC's draft Statement of Intent (SOI), Annual Report, and the objectives and outcomes in the GPS; and

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23.2 the GIC has consulted with industry participants on the levy rate or amount; and

23.3 the requirements of sections 43ZZB to 43ZZE of the Act (which prescribe the costs that may be funded from the levy and various legal aspects of making the regulations) are met.

24 An assessment against each requirement is set out below:

The levy rates are reasonable, having regard to the GIC's draft SOI, annual report, and the objectives and outcomes in the GPS

25 I am satisfied that the GIC's proposed levy rates are reasonable. The GIC has developed a work programme that aligns with the Government's objectives and outcomes for the gas sector, and this is evident in the GIC's draft SOI. The levy rates have been set based on the estimated costs of delivering that work programme.

26 The recommended levy rates for 2021/22 (assuming full cost pass through of both the retail and wholesale levy) are estimated to cost:⁷

26.1 residential consumers around \$5.57⁸ per year (0.60 per cent of an average residential gas bill)⁹, a 2.2 per cent increase from last year;

26.2 commercial customers around \$16.72 per year (0.10 per cent of an average commercial bill), a 0.47 per cent decrease from last year; and

26.3 industrial customers around \$577.53 per year (0.16 per cent of an average industrial gas bill) and a 1.6 per cent decrease from last year.

27 Further detail on the impact of the levy on consumers is provided in the draft CRIS attached as Annex One.

The GIC has consulted with industry participants on the recommended levy rates

28 The GIC has consulted with industry participants in late 2020 and early in 2021 through a forum and a consultation document: *Consultation on Gas Industry Co FY2022 Work programme and Levy*.¹⁰

⁷ There is no "typical" commercial or industrial customer and so these numbers are intended to be indicative only. To provide some indication of the impact on users, the paper assumes a typical annual gas usage of 25 GJ for residential consumers, 1,000 GJ for commercial consumers and 50,000 GJ for industrial consumers. It also assumes an average price of gas of \$37.25 per GJ for residential consumers, \$16.04 per GJ for commercial consumers and \$7.19 per GJ for industrial consumers.

⁸ Made up of 1) retail levy of \$5.28, and 2) \$0.29 of wholesale levy passed down to the residential consumer.

⁹ Note that the gas levy will have a greater impact on lower income households because, on average, fuel expenses take up a greater proportion of their household income.

¹⁰ <https://www.gasindustry.co.nz/work-programmes/levies/developing/levy-fy2022-1-july-2021-30-june-22/document/7152>

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- 29 There was broad support from the industry for the GIC's role, work programme, estimated costs, and associated levy rates. An analysis of submissions has been published on the GIC's website.¹¹
- 30 I am satisfied that the GIC has undertaken sufficient consultation on the levy proposal, and that industry is supportive of it.

The legal requirements of sections 43ZZB to 43ZZE of the Act are met

- 31 These sections of the Act prescribe the costs that may be met from the levy and various legal requirements that the levy regulations must meet. I am satisfied that the levy regulations the GIC has proposed meet the requirements of sections 43ZZB to 43ZZE of the Act. This is further outlined in the draft CRIS.

The GIC considers that any future COVID-19 outbreak is unlikely to have a material impact on levy revenue

- 32 If New Zealand goes to Alert level 2 or 3 the GIC expects that revenue will be largely unaffected. However, it may be affected if New Zealand moves to Alert Level 4 for an extended amount of time during FY2021/22. The magnitude of the impact is dependent on the specific circumstances of the lockdown (e.g. national vs regional, length etc.).

Financial Implications

- 33 There are no financial implications for government. The GIC's operations are fully funded through the levy on gas industry participants, shareholder and market fees, and equity reserves.

Timing and 28-day rule

- 34 The Gas (Levy of Industry Participants) Regulations 2021 are proposed to come into force on 1 July 2021. No waiver of the 28-day rule is sought.

Compliance

- 35 The draft regulations comply with:
- 36.1 principles of the Treaty of Waitangi;
 - 36.2 rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 36.3 the principles and guidelines set out in the Privacy Act 2020;
 - 36.4 relevant international standards and obligations; and
 - 36.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

¹¹ <https://www.gasindustry.co.nz/work-programmes/levies/developing/levy-fy2022-1-july-2021-30-june-22/document/7206>

- 36 I am satisfied that the statutory requirements in section 43ZZD(2) of the Gas Act 1992 have been met. See the policy section of this paper for more information.

Regulations Review Committee

- 37 There are no grounds for the Regulations Review Committee to draw the regulations to the attention of the House under Standing Order 327.

Certification by Parliamentary Counsel

- 38 Parliamentary Counsel Office has certified the regulations as being in order for submission to Cabinet.

Impact Analysis

- 39 A CRIS has been prepared and is attached to this paper as Annex One.
- 40 MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached CRIS prepared by MBIE. The panel considers that the information and analysis summarised in the statement meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

Climate Implications of Policy Assessment

- 41 The Climate Implications of Policy Assessment (CIPA) team at the Ministry for the Environment has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Publicity

- 42 The levy regulations will be notified in the New Zealand Gazette (the Gazette) no later than 2 June 2021, and published on the GIC's website. The CRIS will be published on MBIE's website.

Proactive Release

- 43 I intend to proactively release this paper within 30 business days from the date that Cabinet considers this paper, or when the Regulations are notified in the Gazette.

Consultation

- 44 As stated, I am satisfied that the GIC has undertaken sufficient consultation on the levy proposal, and that the gas industry is supportive of it.
- 45 The GIC and the Treasury have been consulted on this paper. The Department of Prime Minister and Cabinet have been informed.

Recommendations

I recommend that the Cabinet Legislation Committee

- 1 **Note** that the Gas Industry Company is the approved gas industry 'co-regulator' under the Gas Act 1992, and it is mostly funded by a levy on gas industry participants;
- 2 **Note** that the Gas Act 1992 provides for the Gas Industry Company to make a recommendation to the Minister of Energy and Resources regarding levy regulations, including on levy rates, and that they can only apply to the financial year they are made in;
- 3 **Note** that I consider this decision meets the requirements of paragraph 7.91(d) of the Cabinet Manual that the regulations are routine and can go directly to the Cabinet Legislation Committee (LEG);
- 4 **Note** that I have received the Gas Industry Company's recommendation for levy regulations for the 2021/22 financial year;
- 5 **Note** the Gas Industry Company's levy recommendation for the 2021/22 financial year will enable it to recover up to \$3.47 million for the financial year beginning 1 July 2021 through:
 - 5.1 an annual retail levy on gas retailers of \$5.28 (excluding GST) per customer/ICP; and
 - 5.2 a wholesale levy on participants that purchase gas from producers of 1.1445 cents (excluding GST) per gigajoule (GJ) purchased;
- 6 **Note** that section 43ZZD of the Gas Act 1992 requires the Minister of Energy and Resources to accept the Gas Industry Company's recommendation to make levy regulations if the Minister is satisfied that:
 - 6.1 the levy rate or amount is reasonable, having regard to the industry body statement of intent, the latest industry body annual report, and any Government Policy Statement objectives and outcomes;
 - 6.2 the industry body has consulted with industry participants on the levy rate or amount; and
 - 6.3 the requirements of sections 43ZZB to 43ZZE have been met;
- 7 **Note** that I intend to accept the Gas Industry Company's recommendation as I consider it satisfactorily meets these requirements;
- 8 **Note** that the Gas (Levy of Industry Participants) Regulations 2021 will give effect to recover up to \$3.47 million through a retail levy and a wholesale levy for the financial year from 1 July 2021;
- 9 **Note** these regulations will also revoke the Gas (Levy of Industry Participants) Regulations 2019 as they are now spent;

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- 10 **Authorise** the submission to the Executive Council of the Gas (Levy of Industry Participants) Regulations 2021;
- 11 **Note** that these regulations will be published in the Gazette no later than 2 June 2021 to comply with the 28-day rule; and
- 12 **Note** that the Gas (Levy of Industry Participants) Regulations 2021 will come into force on 1 July 2021.

Authorised for lodgement

Hon Dr Megan Woods

Minister of Energy and Resources