



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Energy and Resources
Title of Cabinet paper	Gas (Levy of Industry Participants) Regulations 2022	Date to be published	12 July 2022

List of documents that have been proactively released

Date	Title	Author
May 2022	<i>Gas (Levy of Industry Participants) Regulations 2022</i>	<i>Office of the Minister of Energy and Resources</i>
12 May 2022	<i>LEG-22-MIN-0059 Minute</i>	<i>Cabinet Office</i>
14 April 2022	<i>Stage 2 Cost Recovery Impact Statement: Setting the Gas (Levy of Industry Participants) Regulations 2022</i>	<i>MBIE</i>

Information redacted

NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

In Confidence

Office of the Minister of Energy and Resources
Chair, Cabinet Legislation Committee

Gas (Levy of Industry Participants) Regulations 2022

Proposal

- 1 I propose that the Gas (Levy of Industry Participants) Regulations 2022 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 2022/23 financial year. A Cost Recovery Impact Statement (CRIS) is attached at Annex One.

Executive Summary

- 2 GIC is the approved industry body under Part 4A of the Gas Act 1992 (the Act). It co-regulates the gas industry, with a primary objective *“to ensure that gas is delivered to existing and new customers in a safe, efficient, fair, reliable and environmentally sustainable manner.”*
- 3 Since 2007, a levy on gas industry participants has been in place to fund the majority of GIC’s costs. Gas industry participants include residential, industrial and commercial consumers and gas retailers. The levy is a very small proportion of gas consumers’ overall gas bill. The remainder of GIC’s costs are recovered from market fee revenue and equity reserves.
- 4 The Act sets out that levy regulations may only apply to the financial year in which they are made. This means that new regulations commence every year on 1 July (the start of the financial year).
- 5 I have received a recommendation from GIC for levy regulations that would recover costs of \$4.58 million for the 2022/23 financial year. This amount is aligned with the estimated costs to deliver a work programme that aligns with the Government’s objectives and outcomes for the gas sector. This levy funding would represent approximately 72 per cent of GIC’s estimated total work programme costs. Total costs are estimated to be \$6.34 million.
- 6 Consistent with previous years, the costs are intended to be covered through two levy rates:
 - 6.1 an annual retail levy (on gas retailers) of \$6.63 per customer¹; and
 - 6.2 a wholesale levy (on participants that purchase gas from producers) of 1.3997 cents per gigajoule (GJ) purchased.²

¹ 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.

² Note that both the retail and wholesale levy rates are GST exclusive.

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- 7 The costs imposed on end users are relatively small, approximately 13 cents per week for a residential gas consumer, which represents approximately 0.7 per cent of their annual gas bill. Large industrial users, who consume the most gas, will pay the majority of the levy.
- 8 The Act sets out several criteria, that if I consider are met, mean I must accept GIC's levy recommendation:
 - 8.1 The levy rate must be reasonable, having regard to GIC's Statement of Intent (SOI), annual report, and the objectives and outcomes in the Government Policy Statement on Gas Governance 2008 (GPS);
 - 8.2 GIC has consulted with industry participants on the levy rate or amount; and
 - 8.3 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 regulations) are met.
- 9 I intend to accept GIC's recommendation and I propose that the attached levy regulations are submitted to the Executive Council.
- 10 On 4 April 2022, I authorised the drafting of regulations to go directly to Cabinet Legislation Committee (LEG) without reference to Cabinet Economic Development Committee (DEV) and Cabinet as the levy regulations are routine and do not require new policy decisions. This is in line with paragraph 7.91(d) of the Cabinet Manual.

Policy

Each financial year the Gas Industry Company makes a recommendation on levy regulations to recover its costs

- 11 The Gas Industry Company (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 articulate the Government's objectives and outcomes for GIC, including fairness and environmental sustainability.
- 12 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. GIC has also played an active role as the sector coordinating entity for the gas industry, supporting the Government's COVID-19 response.
- 13 As an industry owned co-regulator, GIC's role and structure differs from Crown Entity regulators and other levy-funded organisations. 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.

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- 14 The costs of delivering GIC's work programme are primarily recovered through a levy on gas industry participants. The remainder of costs are recovered from market fee³ revenue and equity reserves⁴.
- 15 The Act provides for GIC to make a recommendation to the Minister of Energy and Resources that regulations are made to set the levy rates and require gas industry participants to pay the levy. 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 GIC to fund its activities.⁵ This year's levy recommendation is consistent with those adopted in previous years, with the only adjustment being to the specific levy rates.
- 16 The 2021/22 levy regulations, the Gas (Levy of Industry Participants) Regulations 2021, were approved on 20 May 2021 by the Cabinet Legislation Committee [LEG-21-MIN-0070].

The recommended 2022/23 levy regulations are routine and do not require new policy decisions

- 17 I received GIC's recommendation for the 2022/23 levy regulations, and 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 2022/23 levy regulations provide for higher rates than those provided for in the 2021/22 levy regulations

- 18 For the 2022/23 financial year, GIC has recommended levy regulations to recover \$4.58 million of its total work programme costs for 2022/23.
- 19 For 2021/22, levy funding requirements were estimated at \$3.47 million. This means that the proposed levy funding requirement has increased by 32 per cent. The primary driver for this is that GIC's levy revenue for the current financial year has been insufficient to meet GIC's work programme costs.
- 20 For 2021/22, total work programme costs were estimated at \$4.77 million. However, GIC's current forecast for 2021/22 has total work programme costs of \$6 million. To make up for this gap, GIC funded a substantial portion of the work programme itself, rather than from levy or market fees. As such, GIC expects the actual year-on-year increase in costs to deliver the work programme between 2021/22 (\$6 million) and 2022/23 (\$6.34 million) to be \$340,373 (a small increase of 5.7 per cent).

³ 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.

⁴ Equity reserve is money set aside made up of industry advance reserves and retained earnings (i.e. shareholder fees).

⁵ Section 43ZZE(3) of the Act.

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- 21 The increased funding requirement for the 2022/23 financial year also reflects the proposed work programme costs. The proposed work programme is ambitious and has been updated to respond to the transition of the gas industry to a lower carbon future. It reflects a substantial programme of work to explore the main themes uncovered in the investigation of gas market settings (a piece of work I requested GIC to undertake at the end of 2020).
- 22 The costs are to be recovered through an annual retail levy (on gas retailers) of \$6.63 per customer/Installation Control Points (ICP)⁶, and a wholesale levy (on participants that purchase gas from producers) of 1.3997 cents per gigajoule (GJ) purchased.
- 23 The current retail and wholesale levy rates have applied from 1 July 2021 and will expire on 30 June 2022. Table One provides a comparison of retail and wholesale levy rates between the 2021/22 and 2022/23 financial years.
- 24 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 2021/22 and 2022/23. These figures exclude GST

Figures GST exclusive where applicable	2021/2022	2022/23 (Proposed)	% change
Retail Levy (per ICP)	\$5.28	\$6.63	+25.57%
Wholesale Levy (cents per GJ)	1.1445	1.3997	+22.30%
Total levy funding requirement	\$3,472,367	\$4,579,373	+31.88%

- 25 While the increase from the previous year appears large, the levy actually represents a very small proportion of most consumers’ gas bill. It is estimated at 13 cents per week for a residential gas consumer, which represents approximately 0.70 per cent of their annual gas bill. Large industrial users, who consume the most gas will pay the majority of the levy.
- 26 Further detail on GIC’s year-on-year total work programme costs are provided in the attached CRIS.

The recommended 2022/23 levy regulations enable the delivery of a work programme aligned with the Government’s objectives and outcomes for the gas industry

- 27 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.

⁶ The retail levy rate equates to 55.25 cents per month for each ACTIVE-CONTRACTED ICP.

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- 28 The proposed work programme for 2022/23 consists of multi-year workstreams, which includes meeting statutory requirements, such as administration of existing gas governance regulations, and seeks to address Government and industry priorities through the completion of key project deliverables. Key work includes:
- 28.1 Gas market settings investigation workstreams: this supports work to ensure that current market, commercial and regulatory settings that provide for gas visibility and flexibility are fit for purpose in supporting the gas transition.
 - 28.2 Electricity Price Review (EPR): continue work on investigating the application of the 32 recommendations from the EPR to the natural gas and liquefied petroleum gas (LPG) markets.
 - 28.3 Information disclosure: continue work on implementing a regulatory solution for the disclosure of gas production and storage facility outage information.
 - 28.4 Sector coordinating entity role for COVID-19: involves collating information on any risks to the New Zealand gas industry arising from COVID-19 outbreak and to help with reporting.
 - 28.5 Advanced gas metering: work to determine what changes are required to support the roll-out of advanced gas meters.
 - 28.6 Critical Contingency Management: continue work on a recommendation to the Minister on changes to the Gas Governance (Critical Contingency Management) Regulations 2008.
- 29 The work programme is distributed between workstreams funded by the retail levy and wholesale levy.
- 30 Further details on how GIC intends to allocate levies across its work-programme is provided in the CRIS attached at Annex One.

The recommended 2022/23 levy regulations meet the assessment criteria set out in the Act

- 31 Section 43ZZD(2) of the Act requires that I must accept GIC's recommendation if:
- 31.1 the levy rate is reasonable, having regard to GIC's draft Statement of Intent (SOI), annual report, and the objectives and outcomes in the GPS;
 - 31.2 GIC has consulted with industry participants on the levy rate or amount; and
 - 31.3 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.

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32 An assessment against each requirement is set out below.

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

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

34 The recommended levy rates for 2022/23 (assuming the full cost is passed on through both the retail and the wholesale levies) are estimated to cost:⁷

34.1 Residential consumers around \$6.98 per year (0.70 per cent of an average residential gas bill)⁸, a 25.31 per cent increase from last year;

34.2 Commercial customers around \$20.63 per year (0.12 per cent of an average commercial gas bill), a 23.39 per cent increase from last year; and

34.3 Industrial customers around \$706.48 per year (0.16 per cent of an average industrial gas bill), a 22.33 per cent increase from last year.

35 While the levy rates have increased on the previous year, they still make up a very small proportion of overall gas costs for consumers. I consider that given the increased level of work programme activities, these increases are reasonable.

GIC has consulted with industry participants on the recommended levy rates

36 GIC's consultation commenced with the annual co-regulatory forum in December 2021. The co-regulatory forum gives stakeholders, including major users and industry participants, an opportunity to provide GIC with feedback on the 2022/23 financial year work programme.

37 In December 2021, GIC released a consultation paper setting out GIC's strategic role, work programme and proposed levy rates. Consultation closed in February 2022.

38 Eight submissions were received. Submitters acknowledged the ambitious work programme and were in favour of the proposed levy rates. Submissions are published on GIC's website.⁹

⁷ There is no "typical" commercial or industrial customer. To provide some indication of the impact on users, we have assumed 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, based on 2021 nominal average fuel prices, an average price of gas of \$40.02 per GJ for residential consumers, \$17.88 per GJ for commercial consumers and \$8.85 per GJ for industrial consumers.

⁸ 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. However, the overall impact on consumers is likely to be very small.

⁹ <https://www.gasindustry.co.nz/work-programmes/levies/consultation-6/>.

- 39 There was strong support for GIC initiating and progressing the workstreams identified in the Gas Market Settings Investigation final report (which makes up a substantial portion of the 2022/23 financial year work programme), with submitters noting it would potentially reduce uncertainty for gas industry participants. Submitters considered the proposed levy increase was justified based on the work programme presented.
- 40 I am satisfied that 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

- 41 These sections 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 GIC has proposed meet the requirements of sections 43ZZB to 43ZZE of the Act. This is further outlined in the CRIS.

GIC considers that COVID-19 will not have material impacts on the amount generated through the levy

- 42 GIC does not consider that COVID-19 will have material impacts on the ability of gas consumers to pay the levy. However, the current Omicron outbreak may impact GIC's wholesale levy revenue in 2022/23 should an outbreak among critical workers lead to a reduction in gas production. The magnitude of any impact will depend on the gas field(s) impacted, and the length of any disruption.

Financial Implications

- 43 There are no financial implications for government. 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

- 44 The Gas (Levy of Industry Participants) Regulations 2022 are proposed to come into force on 1 July 2022. No waiver of the 28-day rule is sought.

Compliance

- 45 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.

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

Regulations Review Committee

- 47 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

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

Impact Analysis

- 49 A CRIS has been prepared and is attached to this paper as Annex One.
- 50 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

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

Publicity

- 52 The levy regulations will be notified in the *New Zealand Gazette* (the *Gazette*) no later than 2 June 2022, and published on the Parliamentary Counsel Office website. The CRIS will be published on MBIE's website.

Proactive Release

- 53 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

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

Recommendations

I recommend that the Cabinet Legislation Committee

- 1 **Note** that the Gas Industry Company, the co-regulator for the gas industry, is mostly funded by a levy on gas industry participants that has been in place since 2007;
- 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;
- 4 **Note** that I have received the Gas Industry Company's recommendation for levy regulations for the 2022/23 financial year;
- 5 **Note** the Gas Industry Company's levy recommendation for the 2022/23 financial year will enable it to recover up to \$4.58 million for the financial year beginning 1 July 2022 through:
 - 5.1 an annual retail levy on gas retailers of \$6.63 (excluding GST) per customer/Installation Control Points; and
 - 5.2 a wholesale levy on participants that purchase gas from producers of 1.3997 cents (excluding GST) per gigajoule (GJ) purchased;
- 6 **Note** that the total levy funding requirement of \$4.58 million (up from \$3.47 million) is a large increase from the 2021/22 financial year. This is being driven by:
 - 6.1 The levy for the previous financial year being insufficient for meeting GIC's costs. When compared to the budgeted total work programme costs for 2021/22 of \$4.77 million, GIC's current forecast has total work programme costs of approximately \$6 million. To make up for this gap, GIC funded a substantial portion of the work programme itself, rather than from the levy or market fees. Based on this, the expected year-on-year increase in total costs to deliver the work programme between 2021/22 (\$6 million) and 2022/23 (\$6.34 million) is \$340,373 (a small 5.7 per cent increase); and
 - 6.2 GIC's ambitious work programme for the 2022/23 financial year, including more work around the transition of the gas industry to a lower carbon future;
- 7 **Note** that the levy represents only a very small proportion of most consumers' gas bill (estimated 0.70 per cent of a residential gas consumers' annual bill). Large industrial users, who consume the most gas will pay the majority of the levy;

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- 8 **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;
- 9 **Note** that I intend to accept the Gas Industry Company's recommendation as I consider it satisfactorily meets these requirements;
- 10 **Note** that the Gas (Levy of Industry Participants) Regulations 2022 will give effect a retail levy and a wholesale levy for the financial year from 1 July 2022, to recover up to \$4.58 million;
- 11 **Note** these regulations will also revoke the Gas (Levy of Industry Participants) Regulations 2021 as they are now spent;
- 12 **Authorise** the submission to the Executive Council of the Gas (Levy of Industry Participants) Regulations 2022;
- 13 **Note** that these regulations will be published in the *Gazette* no later than 2 June 2022 to comply with the 28-day rule; and
- 14 **Note** that the Gas (Levy of Industry Participants) Regulations 2022 will come into force on 1 July 2022.

Authorised for lodgement

Hon Dr Megan Woods

Minister of Energy and Resources

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