



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Energy and Resources
Title of Cabinet paper	Gas (Levy of Industry Participants) Regulations 2023	Date to be published	26 June 2023

List of documents that have been proactively released

Date	Title	Author
May 2023	<i>Gas (Levy of Industry Participants) Regulations 2023</i>	Office of the Minister of Energy and Resources
18 May 2023	<i>LEG-23-MIN-0061 Minute</i>	Cabinet Office
12 April 2023	<i>Stage 2 Cost Recovery Impact Statement: Setting the Gas (Levy of Industry Participants) Regulations 2023</i>	MBIE

Information redacted

YES / NO

Any information redacted in this document is redacted in accordance with MBIE's and MFAT'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 2023

Proposal

- 1 I propose that the Gas (Levy of Industry Participants) Regulations 2023 are approved for submission to the Executive Council to enable the Gas Industry Company to recover the majority of its costs for the 2023/24 financial year.
- 2 A Cost Recovery Impact Statement is attached at Annex One.

Executive Summary

- 3 The Gas Industry Company (GIC) co-regulates the gas industry, with the primary objective to ensure that gas is delivered to existing and new customers in a safe, efficient, fair, reliable, and environmentally sustainable manner. Since 2007, a levy on gas industry participants has been in place to fund the majority of GIC's costs. As levy regulations may only apply in respect of the year in which they are made, new levy regulations are required every year.
- 4 On 27 March, I received a recommendation from GIC for levy regulations that would recover costs of \$4.46 million for the 2023/24 financial year (a 2.7 per cent decrease from the 2022/23 financial year), representing approximately 75 per cent of its estimated total work programme costs. These costs are intended to be covered through two levy rates:
 - 4.1 an annual retail levy (on gas retailers) of \$6.54 per customer, and
 - 4.2 a wholesale levy (on participants that purchase gas from producers) of 1.4326 cents per gigajoule purchased.
- 5 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.
- 6 The costs imposed on end users are relatively small, approximately 13 cents per week for a residential gas consumer, which represents approximately 0.75 per cent of their annual gas bill. Large industrial users, who consume the most gas, will pay the majority of the levy.
- 7 I consider that the criteria in the Gas Act 1992 (the Act) for accepting this levy recommendation from GIC are met and therefore I intend to accept the levy recommendation. I propose that the attached levy regulations are submitted to the Executive Council.

Explaining the policy

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

- 8 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.
- 9 As an industry owned co-regulator, GIC's role and structure differs from Crown Entity regulators and other levy-funded organisations. 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.
- 10 The costs of delivering its work programme are primarily recovered through a levy on gas industry participants. The remainder of costs are recovered from market fees¹ revenue and equity reserves².
- 11 GIC can make a recommendation to the Minister of Energy and Resources that regulations are made to require gas industry participants to pay a levy. These levy regulations can only apply to the financial year in which they are made, therefore new levy regulations must be made every year.³
- 12 The 2022/23 levy regulations were approved on 12 May 2022 by the Cabinet Legislation Committee [LEG-22-MIN-0059]. The current levy rates have applied from 1 July 2022 and will expire on 30 June 2023.

The recommended 2023/24 levy regulations are routine and do not require new policy decisions

- 13 I received GIC's recommendation for the 2023/24 levy regulations, and I have assessed that these regulations are routine and do not require new policy decisions.
- 14 On 5 April 2022, I authorised the drafting of regulations to go directly to Cabinet Legislation Committee without reference to Cabinet Economic Development Committee and Cabinet as the levy regulations are routine and do not require new policy decisions. This is in line with paragraph 7.95(d) of the Cabinet Manual.

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 Section 43ZZE(3) of the Act.

The recommended 2023/24 levy regulations provide for a lower levy funding requirement than the previous financial year.

- 15 GIC has recommended levy regulations to recover \$4.46 million of its total work programme costs for 2023/24, a 2.7 per cent decrease in levy funding requirements year on year, reflecting a small reduction in work programme costs funded by the levy.
- 16 These costs are to be recovered through an annual retail levy of \$6.54 per customer/Installation Control Points (ICP)⁴ (on gas retailers), and a wholesale levy (on participants that purchase gas from producers) of 1.4326 cents per gigajoule (GJ) purchased (note that these are GST exclusive).
- 17 Table One provides a comparison of retail and wholesale levy rates between the 2022/23 and 2023/24 financial years.

Table One: Comparison of retail and wholesale levy rates 2022/23 and 2023/24 (figures excluding GST)

	2023/24 (Proposed)	2022/2023	Percentage change
Retail Levy (per ICP)	\$6.54	\$6.63	-1.4%
Wholesale Levy (cents per GJ)	1.4326	1.3997	+2.4%
Total levy funding requirement	\$4,455,703	\$4,579,373	-2.7%

- 18 While there is a decrease in the levy funding requirement overall, there is an increase in the wholesale levy rate. This does not reflect an increase in levy funding costs; it reflects lower forecasted gas production in the coming year. This means that the costs are shared across lower volumes of gas, increasing the amount of levy per GJ of gas.
- 19 The impact of the levy is estimated at 13 cents per week for a residential gas consumer, which represents approximately 0.75 per cent of their annual gas bill. Large industrial users, who consume the most gas will pay the majority of the wholesale levy.
- 20 Should GIC’s forecasts that underpin the levy rates be underestimates, there is a potential for over-collection. A process is in place 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.

⁴ An ICP is a consumer’s physical point of connection). Note that a consumer may have more than one ICP. The retail levy rate equates to 55.25 cents per month for each ACTIVE-CONTRACTED ICP.

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The levy recommendation enables the delivery of a work programme aligned with the Government's objectives and outcomes for the gas industry

- 21 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. The work programme is distributed between workstreams funded by the retail levy and wholesale levy.
- 22 The proposed work programme for 2023/24 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:
 - 22.1 Gas Transition Plan: implementing recommendations from the Gas Transition Plan, which may include recommending new gas governance arrangements or amendments to existing arrangements
 - 22.2 Energy transition: dedicating significant resources to transition issues in anticipation of substantial changes to the role of gas as New Zealand transitions to a net zero emissions economy by 2050
 - 22.3 Advanced gas metering: determining the changes required to support the roll-out of advanced gas meters. This includes consulting on a Statement of Proposal for rule changes, making a recommendation to the Minister, beginning implementation of system changes, the go-live of new arrangements and monitoring of new processes
 - 22.4 Critical Contingency Management: amendments to existing regulations, supporting regulatory change process, and implementing proposed changes to the regulations (including consequential changes to existing industry processes), and
 - 22.5 Guidelines to enhance consumer outcomes: follow up on steps taken by dual fuel retailers to comply with new guidelines developed by GIC following the Electricity Price Review recommendations and commence work on any actions arising from the review of participants' processes.
- 23 Further details on how levies will be allocated across workstreams is provided in the Cost Recovery Impact Statement (CRIS) attached at Appendix One.

The recommended 2023/24 levy regulations meet the assessment criteria set out in the Act

- 24 Section 43ZZD(2) of the Act requires that I must accept GIC's recommendation if I am satisfied that:
 - 24.1 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

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- 24.2 GIC has consulted with industry participants on the levy rate or amount, and
- 24.3 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.

25 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

- 26 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.
- 27 The recommended levy rates for 2023/24 (assuming the full cost is passed on through both the retail and the wholesale levies) are estimated to cost:⁵
 - 27.1 Residential consumers around \$6.90 per year (0.75 per cent of an average residential gas bill)⁶, a 1.15 per cent decrease from last year
 - 27.2 Commercial customers around \$20.87 per year (0.09 per cent of an average commercial bill), a 1.16 per cent increase from last year, and
 - 27.3 Industrial customers around \$722.84 per year (0.12 per cent of an average industrial gas bill), a 2.32 per cent increase from last year.
- 28 While the wholesale levy has increased (due to lower forecast gas production), the retail levy has decreased (due to more consumers). The levies make up a very small proportion of overall gas costs for consumers.

GIC has consulted with industry participants on the recommended levy rates

- 29 GIC's consultation commenced with the annual co-regulatory forum in December 2022. The co-regulatory forum gives stakeholders, including major users and industry participants, an opportunity to provide GIC with feedback on the 2023/24 financial year work programme.
- 30 In December 2022, GIC released a consultation paper setting out GIC's strategic role, work programme and proposed levy rates. Consultation closed in February 2023.

⁵ There is no "typical" commercial or industrial customer. To provide some indication of the impact on users, a typical annual gas usage of 25 GJ for residential consumers, 1,000 GJ for commercial consumers and 50,000 GJ for industrial consumers has been assumed. Gas prices are also assumed from 2022 nominal average prices, of \$36.5 per GJ for residential consumers, \$23.59 per GJ for commercial consumers and \$11.57 per GJ for industrial consumers.

⁶ Note that the gas levies 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.

IN CONFIDENCE

- 31 Seven submissions were received. Submitters commended GIC for proposing a decreased levy funding requirement despite maintaining an ambitious work programme and were in favour of the proposed levy rates. Submissions supported the process for developing the FY2024 work programme and budget as being a well-established and fit-for-purpose process.
- 32 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

- 33 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.

Financial Implications

- 34 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

- 35 The Gas (Levy of Industry Participants) Regulations 2023 are proposed to come into force on 1 July 2023. No waiver of the 28-day rule is sought.

Compliance

- 36 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 (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 37 I am satisfied that the requirements in section 43ZZD(2) of the Act have been met. See the policy section of this paper for more information.

Regulations Review Committee

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

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Certification by Parliamentary Counsel

- 39 The Parliamentary Counsel Office (PCO) has certified the regulations as being in order for submission to Cabinet provided that they have been recommended by the Minister of Energy and Resources in accordance with section 43ZZD of the Act.

Impact Analysis

- 40 A CRIS has been prepared and is attached to this paper as Appendix One.
- 41 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

- 42 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

- 43 The levy regulations will be notified in the *New Zealand Gazette* (the *Gazette*) no later than 2 June 2023 and published on the PCO website. The CRIS will be published on MBIE's website.

Proactive Release

- 44 I intend to proactively release this paper within 30 business days from the date that Cabinet considers this paper.

Consultation

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

Recommendations

The Minister for Energy and Resources recommends that the Cabinet Legislation Committee:

- 1 **Note** that the Gas Industry Company (GIC), the co-regulator for the gas industry, is mostly funded by a levy on gas industry participants that have been in place since 2007

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- 2 **Note** that the Gas Act 1992 (the Act) provides for GIC 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 GIC's levy recommendation for the 2023/24 financial year, which would enable it to recover up to \$4.46 million through:
- 4.1 an annual retail levy on gas retailers of \$6.54 (excluding GST) per customer/Installation Control Points, and
- 4.2 a wholesale levy on participants that purchase gas from producers of 1.4326 cents (excluding GST) per gigajoule purchased
- 5 **Note** that section 43ZZD of the Act requires the Minister of Energy and Resources to accept the GIC's recommendation to make levy regulations if the Minister is satisfied that:
- 5.1 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, and
- 5.2 the industry body has consulted with industry participants on the levy rate or amount, and
- 5.3 the requirements of sections 43ZZB to 43ZZE have been met
- 6 **Note** that I have accepted the GIC's recommendation as I am satisfied that the requirements in section 43ZZD of the Act have been met.
- 7 **Note** that the Gas (Levy of Industry Participants) Regulations 2023 will give effect to a retail levy and a wholesale levy for the financial year from 1 July 2023, to recover up to \$4.46 million
- 8 **Note** these regulations will also revoke the Gas (Levy of Industry Participants) Regulations 2021 as they are now spent
- 9 **Authorise** the submission to the Executive Council of the Gas (Levy of Industry Participants) Regulations 2023
- 10 **Note** that the Gas (Levy of Industry Participants) Regulations 2023 will come into force on 1 July 2023.
- 11 **Note** that these regulations will be published in the *Gazette* no later than 1 June 2023 to comply with the 28-day rule.

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Authorised for lodgement

Hon Dr Megan Woods

Minister of Energy and Resources

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Appendix One: GIC Levy Regulations 2023 Stage 2 Cost Recovery Impact Statement