



## COVERSHEET

<b>Minister</b>	Hon Dr Megan Woods	<b>Portfolio</b>	Energy and Resources
<b>Title of Cabinet paper</b>	Gas (Levy of Industry Participants) Regulations 2019	<b>Date to be published</b>	9 July 2019

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
09/07/19	<i>Cabinet paper: Gas (Levy of Industry Participants) Regulations 2019</i>	Office of the Minister of Energy and Resources
09/07/19	<i>Cabinet minutes: DEV-19-MIN-0125</i>	Cabinet Economic Development Committee

### Information redacted

YES / **NO**

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The Chair

Cabinet Economic Development Committee

## **Gas (Levy of Industry Participants) Regulations 2019**

### **Proposal**

- 1 I propose that the annual levy regulations are approved for submission to Executive Council to enable the Gas Industry Company, as co-regulator of the gas industry, to recover its costs for the 2019/20 financial year.

### **Executive Summary**

- 2 The Gas Industry Company's (GIC) principal objective is to ensure that gas is delivered to existing and new customers in a safe, efficient, and reliable manner.
- 3 As an industry owned co-regulator, the GIC must make a recommendation to me each year on levy regulations to recover the majority of its costs. I have received the GIC's recommendation for the 2019/20 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.
- 4 The GIC has recommended levy regulations be made to recover \$3.77 million of its total work programme costs for 2019/20. This is proposed to be recovered through an annual retail levy (on gas retailers) of \$6.12 per customer<sup>1</sup>, and a wholesale levy (on participants that purchase gas from producers) of 1.1279 cents per gigajoule (GJ) purchased<sup>2</sup>.
- 5 The GIC's levy recommendation meets the legislative requirements, and I intend to accept it. I propose that the attached levy regulations are submitted to Executive Council.
- 6 This paper incorporates the requirements of a Cabinet Legislation Committee paper and is being submitted to the Economic Development Committee as part of a previously agreed, streamlined annual process.

### **Background**

- 7 The GIC is the approved gas industry 'co-regulator' under the *Gas Act 1992* (the Act) that was established in 2004 at the request of industry. Its objectives are set out in the Act, with its principal objective to ensure that gas is delivered to existing and new customers in a safe, efficient, and reliable manner. Other government outcomes and objectives for the GIC are set out in the Government Policy Statement on Gas Governance 2008 (the GPS).
- 8 The GIC co-regulates to deliver improved oversight of wholesale and retail gas markets, processing facilities, and gas distribution for more than 285,000 consumers, including major industrial users.

1 As measured by the number of Installation Control Points (a customer's physical point of connection).

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

- 9 The co-regulatory model means that the GIC's role and structure differs from Crown Entity regulators and other levy-funded organisations. The GIC is a company owned by the industry, and currently has 14 shareholders that each hold a \$1 share and pay shareholder fees of \$2,000 (excluding GST) per year. Any gas industry participant can become a shareholder by completing an application form and paying a \$1 application fee.
- 10 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. Currently, the three industry directors are the Chief Executives of Contact Energy and Powerco, and the Senior Vice President responsible for the Australasia organisation of OMV.
- 11 There have been improvements in the gas industry under the co-regulatory model, including the introduction of regulated and non-regulated mechanisms to address many of the objectives and outcomes set out in the GPS, while meeting the principal objective of the Act.
- 12 The GIC has now developed its objectives and work programme for 2019/20. The costs of delivering this work programme are primarily recovered through a levy on gas industry participants (approximately 72 per cent). The rest is recovered through market fees<sup>3</sup> and equity reserves.
- 13 The Act provides for the 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.
- 14 The levy regulations can only apply to the financial year in which they are made<sup>4</sup>, therefore new levy regulations must be made every year. For the 2019/20 financial year, the GIC has recommended the levy regulations recover \$3.77 million. This is a slight decrease (5.2 per cent) on 2018/19.

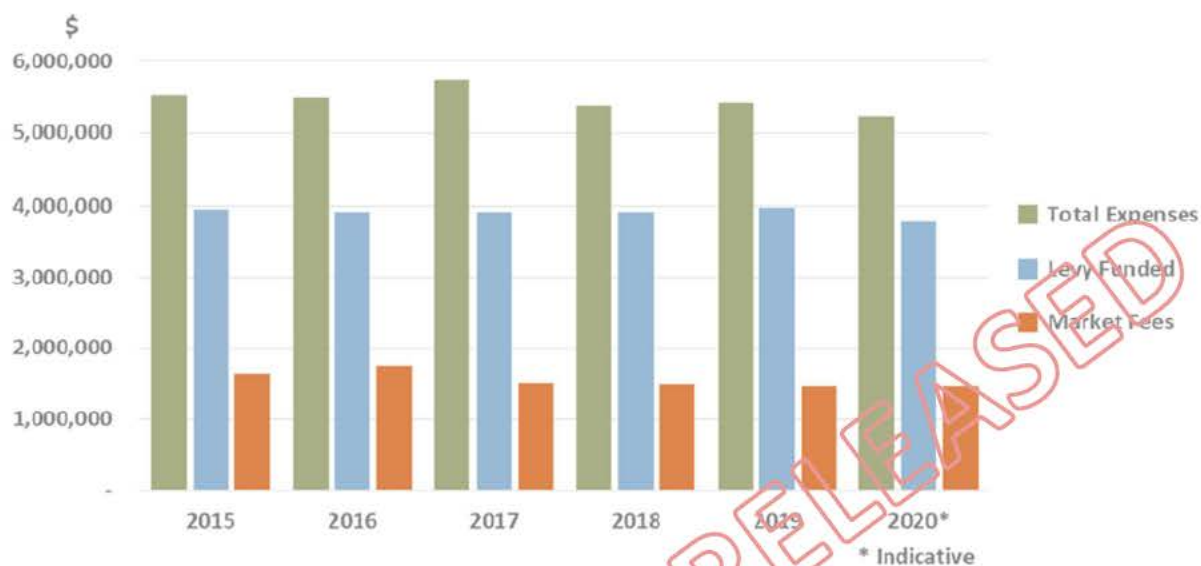
#### *The GIC's proposed levy and annual work programme*

- 15 The GIC has recommended levy regulations be made to recover \$3.774 million of its total work programme costs for 2019/20, slightly less than the figure for 2018/19 (\$3.983m). This is proposed to be recovered through an annual retail levy (on gas retailers) of \$6.12 per customer, and a wholesale levy (on participants that purchase gas from producers) of 1.1279 cents per gigajoule (GJ) purchased. Figure one shows the GIC's year-on-year total work programme costs.

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 Section 43ZZE(3) of the Act.

Figure One: GIC's total work programme costs and levy funded and market fees requirements, 2015-2020



- 16 The GIC's work streams continue to be balanced between those funded by the retail levy and wholesale levy. The work programme for 2019/20 largely continues existing multi-year work streams, including activities to meet statutory requirements and the delivery of key projects in alignment with government and industry priorities.
- 17 A key project funded by the wholesale levy is the implementation of the Gas Transmission Access Code (GTAC). This programme of work aims to ensure that transmission pipeline access arrangements transparently provide for the efficient utilisation of physical capacity and effectively signal any need for efficient investment in additional capacity.
- 18 The wholesale levy will also fund the GIC's work to develop options for addressing information disclosure issues in the gas market that were highlighted during the 2018 Pohokura production outages.
- 19 A number of other work streams, such as revision of the D+1 Pilot Scheme, amending the Downstream Reconciliation Rules and the review of Critical Contingency management arrangements are closely associated with the GTAC project.
- 20 The levy regulations can only apply to the financial year in which they are made. Without new levy regulations for 2019/20, the GIC would be required to fund its operations from reserves built up from shareholder fees and would be unable to deliver its proposed 2019/20 work programme.

*Table One: GIC objectives, work programme and proposed levy funding*

GIC Objectives	Supporting Work Programme	Total levy	Wholesale	• Retail
Promote efficient, competitive and confident gas markets	Retail Gas Contracts Oversight Scheme, Gas Distribution Contracts Oversight Scheme, retailer insolvency, gas quality, regulation and rule changes, gas measurement, supply/demand model, wholesale market, information disclosure.	• \$0.76 m	0%	• 100%
Facilitate efficient use of, and timely investment in, gas infrastructure	Gas transmission access, transmission pipeline balancing, hydrogen related issues, transmission code changes, transmission pipeline interconnection, gas transmission security and reliability.	\$1.22 m	100%	0%
Deliver effectively on its accountabilities as the gas industry body	Downstream reconciliation, switching and registry, critical contingency management, compliance and enforcement, statement of intent and annual report.	\$1.63 m	44%	56%
Develop and communicate the role of gas in meeting New Zealand's energy needs	New Zealand Gas Story, other reporting (e.g. industry performance measures, switching statistics, quarterly reports).	\$0.16 m	52%	48%
Levy Contribution 2018/19		\$3.983 m	57%	43%
<b>Levy Contribution 2019/20</b>		<b>\$3.77 m</b>	<b>46%</b>	<b>54%</b>

*Assessment of GIC's levy recommendation proposal*

- 21 The GIC has made the above levy recommendation following consultations on a work programme and budget late last year, and early in 2019.
- 22 Section 43ZZD(2) of the Act requires that I must accept the GIC's recommendation if:
- 22.1 the levy rate is reasonable, having regard to the GIC's Statement of Intent, Annual Report, and the objectives and outcomes in the GPS;
  - 22.2 the GIC has consulted with industry participants on the levy rate or amount; and
  - 22.3 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.

23 An assessment against each requirement is set out below.

*The levy rate is reasonable, having regard to the GIC's SOI, annual report, and the objectives and outcomes in the GPS*

24 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 SOI. The levy rates have been set based on the estimated costs of delivering that work programme.

25 The recommended levy rates for 2019/20 (assuming full cost pass through of both the retail and wholesale levy) are estimated to cost<sup>5</sup>:

25.1 residential consumers around \$6.40<sup>6</sup> per year (0.67 per cent of an average residential gas bill)<sup>7</sup>, a 1.4 per cent decrease from last year;

25.2 commercial customers around \$17.40 per year (0.11 per cent of an average commercial bill) and a 6.2 per cent decrease from last year; and

25.3 industrial customers around \$570.07 per year (0.19 per cent of an average industrial gas bill) and an 8.8 per cent decrease from last year.

26 Further detail on the impact of the levy on consumers is provided in the Regulatory Impact Statement attached to this paper.

27 The GIC has consulted with industry participants, through a forum and a consultation document: *Consultation on Gas Industry Co FY2020 Work programme and Levy*<sup>8</sup>.

28 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<sup>9</sup>.

29 I am satisfied that the GIC has undertaken sufficient consultation on the levy proposal, and that industry is supportive of it.

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

30 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 legal requirements of sections 43ZZB to 43ZZE of the Act.

5 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 \$38.46 per GJ for residential consumers, \$15.19 per GJ for commercial consumers and \$6.13 per GJ for industrial consumers.

6 Made up of 1) retail levy of \$6.12, and 2) \$0.28 of wholesale levy passed down to the residential consumer.

7 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.

8 <http://gasindustry.co.nz/work-programmes/levies/developing/>

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## **Consultation**

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

## **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.

## **Legislative Implications**

- 34 Regulations are required to give effect to the GIC's levy recommendations. These have been drafted and are attached. The draft regulations revoke the Gas (Levy of Industry Participants) Regulations 2017, as they are no longer necessary<sup>10</sup>.

## **Timing and the 28-day rule**

- 35 The Gas (Levy of Industry Participants) Regulations 2019 are proposed to come into force on 1 July 2019. 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 principles and guidelines set out in the *Privacy Act 1993*;
  - 36.4 relevant international standards and obligations; and
  - 36.5 the LAC Guidelines on the Process and Content of Legislation (2014 edition), which are maintained by the Legislation Design and Advisory Committee.
- 37 I am satisfied that the statutory requirements in section 43ZZD(2) of the *Gas Act 1992* have been met.

## **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 319.

## **Certification by Parliamentary Counsel**

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

## **Regulatory Impact Analysis**

- 40 A Regulatory Impact Statement (RIS) has been prepared and is attached to this paper as Annex 1.

<sup>10</sup> The 2018 levy regulations are still necessary as they contain a requirement to keep records until 30 June 2019.

- 41 The Regulatory Impact Analysis Review Panel has reviewed the attached Regulatory Impact Statement (RIS) prepared by the Ministry of Business, Innovation and Employment. It considers that the information and analysis summarised in the RIS meets the criteria necessary for Ministers to fairly compare the available policy options and take informed decisions on the proposals in the paper.

### **Consistency with Government Statement on Regulation**

- 42 I have considered the analysis and advice of my officials, as summarised in the attached RIS, and I am satisfied that the regulatory proposals recommended in the paper:

- 42.1 are required in the public interest;
- 42.2 will deliver the highest net benefits of the practical options available; and
- 42.3 are consistent with our commitments in the Government Statement on Regulation.

### **Publicity**

- 43 The levy regulations will be notified in the *Gazette* and published on the GIC's website. The RIS will be published on the Ministry of Business, Innovation and Employment's website.

### **Proactive Release**

- 44 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 New Zealand Gazette.

### **Recommendations**

I recommend that the Committee:

- 1 **Note** the Gas Industry Company is the approved gas industry 'co-regulator' under the Gas Act 1992, and its work programme is mostly funded by a levy on industry participants;
- 2 **Note** 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** I have received the Gas Industry Company's recommendation for levy regulations for the 2019/20 financial year;
- 4 **Note** 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:
  - 4.1 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;
  - 4.2 the industry body has consulted with industry participants on the levy rate or amount; and
  - 4.3 the requirements of sections 43ZZB to 43ZZE have been met;



- 5 **Note** I am satisfied that these requirements have been met and has have accepted the recommendation that levy regulations be made;
- 6 **Note** the Gas (Levy of Industry Participants) Regulations 2019 will enable the Gas Industry Company to recover up to \$3.77 million for the financial year beginning 1 July 2019 through a:
  - 6.1 retail levy of \$6.12 (excluding GST) on gas retailers for each installation control point for which they are responsible, to be paid in monthly instalments; and
  - 6.2 wholesale levy of 1.1279 cents (excluding GST) per gigajoule on gas industry participants that purchase gas from a gas producer, to be paid monthly based on gas purchases up to and including the last day of the previous month;
- 7 **Note** these regulations also revoke the Gas (Levy of Industry Participants) Regulations 2017 as they are now spent;
- 8 **Note** that the Gas (Levy of Industry Participants) Regulations 2019 come into force on 1 July 2019; and
- 9 **Authorise** submission to Executive Council of the Gas (Levy of Industry Participants) Regulations 2019.

Authorised for lodgement

Hon Dr Megan Woods

**Minister of Energy and Resources**