

# **MEMORANDUM OF UNDERSTANDING**

## **Between Gas Industry Company Limited and the Commerce Commission**

5 August 2011

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# MEMORANDUM OF UNDERSTANDING

This **Memorandum of Understanding** (memorandum) is made on the 5th day of August 2011.

**Between Gas Industry Company Limited** (Gas Industry Co)

**And The Commerce Commission** (the Commission)

## Background

- 1** Gas Industry Co is an industry-owned entity incorporated under the Companies Act 1993 and approved pursuant to section 43ZL of the Gas Act 1992 (the Gas Act) to fulfil the role of the industry body under the Gas Act. It is the co-regulator of the gas industry working with both the Government and industry to develop outcomes that meet the Government's policy objectives stated in the Government's April 2008 Policy Statement on Gas Governance. As the co-regulatory body of the gas industry it is able to make recommendations to the Minister of Energy on rules and regulations in relation to wholesaling, processing and transmission, distribution and retailing of gas.
- 2** The Commission is an independent Crown entity established under section 8 of the Commerce Act 1986 (the Commerce Act). The Commission has certain functions, powers and duties in relation to the gas industry, particularly, but not exclusively, under Part 4 of the Commerce Act. The Commission's jurisdiction under Part 4 includes setting regulation of the price and quality, and information disclosure requirements, for goods and services regulated under the Commerce Act, including gas pipeline services.
- 3** In addition the Commission has an interest in promoting outcomes that are consistent with outcomes in competitive markets. Gas Industry Co also has an interest in promoting competition and ensuring gas costs and prices are subject to sustained downward pressure.

## Purpose

- 4** Gas Industry Co and the Commission recognise that they share certain common interests in relation to their respective statutory functions in the gas industry. This memorandum explains how Gas Industry Co and the Commission intend to coordinate their respective roles under the Gas Act and the Commerce Act.
- 5** Nothing in this memorandum is intended to limit or affect the independence of each party or the requirement that each party act to fulfil its legal functions and obligations.

## **How we will work together**

- 6** Gas Industry Co and the Commission will work closely together in the spirit of this memorandum to ensure that their respective roles are well coordinated. The parties will share knowledge where appropriate to assist each to fulfil their respective roles.
- 7** The parties have established, and agree to continue, a schedule of regular meetings between senior staff to discuss each party's current and proposed work programme.
- 8** Gas Industry Co and the Commission agree that there are a number of principles that will govern the relationship under this memorandum. Specifically, but without limitation, the parties agree to:
  - a. work together to coordinate activities to avoid potential duplication of effort between the parties, and to maximise efficiency and effectiveness;
  - b. keep each other informed in a timely manner on any matter that may affect the other party's roles, responsibilities, powers, or functions;
  - c. work together to clearly communicate our respective roles and responsibilities to stakeholders and minimise the potential for confusion in that regard;
  - d. share information, knowledge, and skills to increase the overall capability of both parties;
  - e. adopt a 'no surprises' approach by advising each other as soon as practicable of any identified issues that might affect the other party; and
  - f. seek to minimise any scope for uncertainties regarding jurisdictional issues.

## **Roles and responsibilities in areas of common interest**

### **Regulation of gas pipeline businesses**

- 9** Gas Industry Co and the Commission acknowledge that there are areas of common interest in gas pipeline businesses and opportunities to coordinate their respective responsibilities and interests.
- 10** The Commission engages with gas industry participants that are subject to Part 4 regulation under the Commerce Act. Two key areas of work for the Commission in relation to gas pipeline services are setting price-quality paths for gas pipeline services and information disclosure requirements.
- 11** Gas Industry Co is interested in the ongoing operation of open access pipelines and, under the Gas Act, may recommend to the Minister of Energy that rules or regulations be made:
  - a. prescribing reasonable terms and conditions for access to transmission or distribution pipelines; and

- b. requiring expansions, upgrades, or service quality improvements to gas transmission pipelines and specifying how these are to be funded.

### **Mutual Obligations**

- 12** Gas Industry Co and the Commission have respective legislative obligations under the Commerce Act. Section 55I of the Commerce Act sets out how the Commerce Act interfaces with the Gas Act.
- 13** Section 55I requires:
  - a) Gas Industry Co to advise the Commission as soon as practicable after:
    - (i) making any recommendation for a gas governance regulation or rule under Part 4A of the Gas Act; or
    - (ii) making any decision under gas governance regulations or rules; or
    - (iii) issuing any guidelines;that is or are likely to be relevant to the Commission's Part 4 powers.
  - b) The Commission, before exercising any of its powers under Part 4 of the Commerce Act, must take into account:
    - (i) any gas governance regulation or rule under Part 4A of the Gas Act, or decisions made under those regulations and rules, that relates to or affects the quality standards or pricing methodologies applicable to a pipeline owner;
    - (ii) any guidelines issued by Gas Industry Co that it has been advised by Gas Industry Co are likely to be relevant to the powers of the Commission under Part 4 of the Commerce Act;
    - (iii) the levy payable by any pipeline owner under the Gas Act.
  - c) The Commission must, if asked by Gas Industry Co, reconsider any section 52P determination it has made and if it considers it necessary or desirable to do so, amend the determination to take account of any matter in clause 13(b) above.
- 14** The parties acknowledge these respective obligations and will use best endeavours to provide each other, as soon as practicable, updates of issues or work-streams that may trigger these obligations.

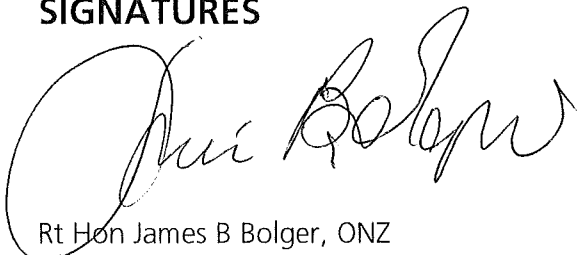
### **Terms of Memorandum**

- 15** This memorandum becomes effective when signed by Gas Industry Co and the Commission, and remains effective unless terminated by either party.
- 16** This memorandum may be amended at any time during its term by written agreement between the parties.

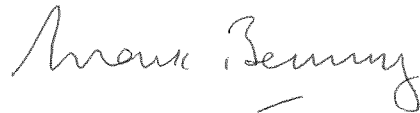
## Issue Resolution

- 17** The parties will use their best endeavours to resolve any issue in a timely manner and in the way that best supports the delivery of the Government's strategy and policy in respect of the gas industry.
- 18** Any issues arising between the parties will be resolved, or if necessary escalated for resolution, in accordance with the following order and timeframes:
- a. Gas Industry Co and Commission personnel to discuss and, if unresolved within two weeks, then escalated as provided in (b) below;
  - b. the responsible managers and, if not resolved within two weeks, then escalated as provided in (c) below;
  - c. the Chief Executive of Gas Industry Co and Chief Executive of the Commission, who will agree on what further action is required.
- 19** Solutions to issues must be consistent with the roles and mandates of each party.

## SIGNATURES



Rt Hon James B Bolger, ONZ  
Chair  
Gas Industry Company Limited



Dr Mark Berry  
Chair  
Commerce Commission