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Sent: Thursday, 2 October 2008 2:15 p.m.

To: submissions

Subject: Submission on Compliance procedures - Contact Energy feedback

Importance: High

Contact welcomes the opportunity to provide feedback to Gas Industry Co on this subject. The following fairly represents the views of the key people within Contact who have an interest in GIC arrangements, but is provided informally given we understand no formal consultation is required for the compliance processes.

In general the processes seem to largely repeat the Compliance Regulations, though sometimes using different wording, so there is a risk that this could cause them to be slightly inconsistent. We recommend that the GIC carefully reviews the procedures to ensure there are no such inconsistencies. The GIC should also be mindful of where the processes could unreasonably restrict the flexibility that would otherwise be available to both the Investigator and the Rulings Panel (in particular, noting regulation 40 of the Compliance Regulations).

We realize this is something of work in progress for the GIC, but we note that many of the procedures and templates are incomplete and hope these will be developed further in the future. For example, Regulation 19(2) indicates that the Market Administrator may publish guidelines about the weighting and application of the factors to be taken into account when determining materiality, but the processes do not appear to provide this information. We are also of the view that the template settlement agreement does not add much in its present form. The template only reveals that a settlement agreement should describe who are the parties, the background and what is being agreed and be executed by them. However, it does not explain how to deal with the most important aspects of any settlement: e.g. whether it is full and final, if it is without prejudice to the parties' views on the relevant matter or whether liability is admitted or denied, whether it (or any part of it) is confidential, where costs should fall etc. It also does not include any applicable general boiler-plate, such as entire agreement and governing law clauses, which would usually be included in settlement agreements for completeness and certainty. The template also does not mention the Rules and Regulations in relation to which it would be used.

It is noted the GIC has made statements indicating that it intends the Rulings Panel will eventually become the final point for determining a much wider range of disputes such as MPOC and VTC disputes. Contact does not think it is appropriate to deprive parties to these arrangements of the protection afforded by the courts unless both parties agree to that. A one person Rulings Panel will not be subject to the checks and balances of court processes. There will be no oversight of Rulings Panel determinations and no rights of appeal. Appointing a single person to make determinations creates high risk of bias and inappropriate influence by vested interests.

Contact considers a one person Rulings Panel is only appropriate to resolve a limited range of disputes and that careful consideration is required even in those limited circumstances whether the parties should have rights to appeal Rulings Panel decisions. Contact does not consider a one person Rulings Panel as appropriate for resolving disputes outside the rules and regulations currently implemented as a result of GIC recommendations. However we don't *per se* object to a consistent compliance framework being appropriately applied across a range of similar performance-based rules.

We also have some concerns about the proposed the Market Administrator (MA) function:

MA not required to monitor breach trends - The MA is not tasked with keeping a record of breaches that would allow trend analysis on whether or not the cause of breaches is due to how the rules are written or interpreted. If a rule is repeatedly breached by a number of retailers, then the rule could be at issue rather than retailer behaviour.

MA to inform all participants of alleged breach before all facts have been collected - this is likely to lead to all participants joining these breaches so that they have access to any additional information provided after the initial breach notification, and as a consequence unnecessary overheads by the MA in informing all interested parties regarding immaterial breaches. We consider (as for electricity) other participants do not need to join a breach until the decision to refer the breach to an investigator has been made.

Regards

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