

Comment on Draft Governance (Balancing) Rules (Updated at 15 December 2009)

Introduction

1. The following is comment on the GIC's Draft Governance (Balancing) Rules (updated at 15 December 2009) ("Rules").

General Comments

2. The main concerns with the Rules are:
 - the GIC has not demonstrated that the Rules are necessary and has not identified the issue it is seeking to address through imposing the Rules;
 - the imposition of the will inevitably increase gas industry costs but the offsetting benefits have not been identified;
 - the Rules will create confusion about responsibility for delivering gas and are likely to weaken ability to claim for delivery failure;
 - the obligations under the Rules of transmission pipeline owners and the balancing agent are weak;
 - the liability of transmission pipelines owners and the balancing agent is not addressed in the Rules but will presumably have to be determined by the Rulings Panel;
 - the Rules lack clarity and are difficult to follow, particularly rules 34 to 38 and rules 48 to 51;
 - the Rules fail to address many of the issues, such as facilitation of self balancing, that industry participants identified in the ICD process as important aspects of balancing;
 - the Rules leave the balancing plan to specifically address the issues that have led to balancing disputes such as access to information, specification of circumstances in which balancing action will occur and the allocation of balancing costs to users;
 - unless the content of the Balancing Plan is better defined the Rules will be too uncertain and/or high level to be effective;
 - the operational aspects of the Rules should be reviewed to ensure the safe and efficient operation of the transmission system is not compromised by the operational aspects of the Rules;
 - the Rules are likely to reduce the availability of balancing gas as the Rules impose the risk of non payment for balancing gas on the providers of balancing gas;
 - imposition of the Rules and balancing plans is likely to require extensive changes to both the MPOC and the VTC with the changes ranging from complete removal of balancing provisions from the MPOC and VTC to retention of balancing provisions within the MPOC and VTC to ensure, for example, the safe operation of the transmission system owners' pipelines;

- the ultimate effect and impact of the Rules will remain unclear until the balancing plan and the terms and conditions of employment of the balancing agent are finalised;
- it is regrettable that the GIC is proposing not to recognise or to depart from the sound and well considered principles set out in the “*ERGEG Guidelines of Good Practice for Gas Balancing (GGPGB)*”. Specific examples are the recommendation in the Rules that:
 - the transmission system owner should be responsible for residual balancing;
 - market participants should have access to balancing tools; and
 - the link between availability of information and risk should be recognised with identification of ways of managing that risk.

General Comments Related to Drafting

3. The Rules should more consistently pick up concepts and terminology already used in the current transmission system codes.
4. A number of the rules allow a substantial amount of discretion or reserve optionality. For example, “*opinion*” is referred to in rules 15, 17, 26, 34, 38, 39, 42, 48 and 49. Rules should contain only limited and defined flexibility to maintain certainty and to prevent inconsistent application. If it is necessary to reserve discretion then it would be preferable to have more relevant criteria described in relation to which that discretion or power is exercised.
5. Contact struggles with the complexity of the Rules. The Rules could be simplified by limiting the Rules to a description of the core processes to be undertaken and followed. However, against this there is a lack of detail in some areas so that the scope and expected outcome of the Rules is unclear. An example is description of the requirements of balancing plans set out in the Schedule.

Rule 2, Commencement

6. The timing of the implementation of the Rules would make more sense if the order of rule 2.1 and rule 2.2 were reversed. Rule 2.2 establishes the “*commencement date*” and rule 2.1 establishes the “*go-live date*”.

Rule 2.1.1

7. Rules 6 to 11 and Part 2 (operational rules) could become effective before the balancing plan is published under rule 33.2.
8. The notice period before the Rules come into force is potentially only 5 to 6 days. That is inadequate. Rules 37.3, 47.1.3 and 50.4 raise similar concerns.
9. Users should have a reasonable time to digest the balancing plan and to amend their IT systems so that those systems are consistent with the Rules before the Rules become operational. Advice should be sought from Users on the time necessary to amend IT systems.

Rule 3, Purpose

10. The purpose is too high level and open to interpretation to be of any use. The purpose should better establish the end goal for balancing.

11. Because rule 30.1.2 requires a balancing plan, or an amendment to a balancing plan, to be consistent with the purpose of the Rules it is necessary that the purpose of the Rules is clearly and explicitly stated.
12. In reading the Rules it is difficult to discern what “*unified*” means in relation to the Rules.

Rule 4, Outline

13. Again, the meaning of “*unified*” is unclear. The requirement of “*unified balancing arrangements*” allows opportunity for different balancing regimes on the Maui and Vector pipelines providing those regimes work together. That would seem to allow the current balancing arrangements of Vector and MDL to continue. However, these arrangements lack clarity and disadvantage users of Vector’s pipelines compared to users of the Maui pipeline. Contact believes the objectives of the Gas Act, particularly minimisation of barriers to competition, can only be addressed if there is a single balancing regime extending across the whole transmission system.
14. The responsibility for managing linepack is also contentious and unclear. Either the balancing agent should have full responsibility both for managing linepack and for providing the transmission service or those responsibilities should remain with the transmission system owner. This is because provision of a transmission service and delivery of gas are inseparably intertwined with the management of linepack.
15. Division of responsibility for the operation of pipelines between the balancing agent and the transmission system owners is likely to compromise the reliable, safe, secure, economic and efficient operation of the transmission system.
16. To clearly separate the balancing agent’s role from provision of transmission services the balancing agent’s role could be limited to buying and selling balancing gas and allocating those costs to causers. This approach which removes balancing agent discretion may, however, result in a less efficient outcome and trivialises the role of the balancing agent.

Rule 5, Interpretation

Rule 5.1

“balancing action”

17. This definition is confusing as it suggests transactions to buy and sell gas could be committed at the same time to form a balancing action. The definition should be rewritten as “*balancing action means, either one or more transactions to sell balancing gas committed at the same time for the purposes of managing linepack under rule 15.1, or one or more transactions to purchase balancing gas committed at the same time for the purposes of managing linepack under rule 15.2*”.

“balancing agent”

18. The use of the term balancing agent implies the balancing agent acts for a principal. If the balancing agent acts for a principal then the principal should be allocated the responsibility under the Rules. Rule 15.4 states the balancing agent acts as agent for users in buying and selling balancing gas but a number of other rules, such as rule 29 *"terms of appointment of balancing agent"* suggests the balancing agent acts as agent for the transmission system owners. These different agency roles of the balancing agent create potential for conflict of interest.

"balancing zone"

19. The concept of balancing zones seems unnecessary. If balancing zones are considered necessary then some criteria should be provided to define what can be a balancing zone. Multiple balancing zones inevitably reduce flexibility and add complexity because accounting for flows of gas between balancing zones is required. The Rules should seek to eliminate unnecessary balancing zones.

"business day"

20. The definition seems unnecessarily complex. The standard definition used in the VTC and MPOC is better and more consistent with accepted industry definitions.

"clearing price"

21. Setting the clearing price of balancing gas purchased as the marginal cost and the clearing price of balancing gas sold as the marginal price increases the cost of balancing activity and is inconsistent with the objective of the Gas Act that the delivered price of gas should be subject to downward pressure. In addition, setting prices at these levels allows users to fully hedge imbalance destroying the reason for notifications. These prices also create a barrier to competition for those users who do not have either flexible gas supply or flexible gas demand.
22. A justification cited for use of marginal pricing is that prices would reflect the marginal cost of providing balancing. That might be correct if there was effective competition to provide balancing services but is unlikely to be correct in a thin market with little competition to provide balancing services. If competition is not effective then providers of balancing services would be free to price balancing services at levels in excess of the marginal cost of providing the balancing service.
23. After considerable debate the industry agreed the preferred approach was to use the average price.

"information exchange"

24. To avoid proliferation of platforms used to exchange information concerning the operation of the gas transmission system OATIS should be used as the information exchange with an alternative only used if OATIS is not available.

"Interconnected agreement"

25. Each transmission system owner should be under an obligation to ensure that there is an interconnection agreement in the form set out in the MPOC or the VTC, as relevant for every point on the transmission system where there is a connection between the transmission system and facilities that are not part of the transmission system.

26. Under Vector's current arrangements an interconnection agreement does not allow the receipt of gas into or the delivery of gas out of the transmission system and these agreements do not form part of the VTC.
27. We note that the definition excludes interconnection agreements at points of interconnection between balancing zones or at points where parts of the transmission system owned by different transmission system owners interconnect.
28. How does the definition relate to a transmission system owner who is also an interconnected party on that transmission system? Is such a person required to have an agreement with itself?

"linepack"

29. "The meaning of *"part of the transmission system"* is unclear. Subject to resolution of whether the concept of *"balancing zone"* is necessary *"part of the transmission system"* should be replaced by *"balancing zone"*.

"publish"

30. As indicated under the *"information exchange"* definition all information related to balancing should be published on OATIS.

"reference location"

31. The meaning of *"reference location"* in relation to providing balancing services is unclear. For example, for linepack that is free to move within a section of pipeline injecting gas at any delivery point for that section of pipeline or taking gas at any receipt point for that section of pipeline would have the same impact on linepack. This should mean delivering balancing gas at Oaonui is equivalent to delivering balancing gas at Rotowaro. The meaning of *"reference location"* requires clarification.

"shipper"

32. A person without *"an agreement with a transmission system owner to have gas transmitted through all or part of the transmission system"* but able to inject gas into or take gas out of the transmission system would not be covered by the definition.
33. It would be better to define a *"shipper"* as a person able to inject gas into a pipeline or able to take gas out of a pipeline.
34. How does the definition relate to a transmission system owner who is also a shipper? Is such a person required to have an agreement with itself?
35. Each transmission system owner should be under an obligation to ensure that there is an agreement in the form set out in the MPOC or the VTC, as relevant, for every gas delivery and every gas receipt from the transmission system.

"trader"

36. Is a person that trades gas at a transmission system receipt point or a transmission delivery point a trader?

"transmit"

37. What happens if the receipt quantity does not balance with the delivery quantity? Which quantity is used for the purposes of rule 57.4?

38. Confusingly the definition of *“transmit”* says it *“includes to receive a quantity of gas at one point on the transmission system and deliver an equivalent quantity of gas to another point on the transmission system”*. This wording raises the question as to what other actions are covered by *“transmit”*.

“transmission system code”

39. The MPOC and the VTC are not multilateral agreements. The agreements made under those codes are bilateral agreements.
40. Note that Vector interconnection agreements and Vector non-code transmission services agreements do not form part of the VTC.
41. Vector’s non-code transmission services agreements include balancing provisions so that these agreements will probably also need to be covered in rules such as rules 9, 30 and 69.

“transmission system”

42. The factor that determines whether or not the Rules apply to a transmission system or part of a transmission system is whether or not *“open access”* is available on the gas transmission pipelines that constitute that transmission system or part of a gas transmission system. The meaning of *“open access”* is therefore significant in relation to the Rules and may require clarification.

“user”

43. It is difficult to understand why it is necessary to state that a transmission system owner is not a user to the extent its imbalance has been corrected. Surely the same applies to other users?
44. A simpler approach would be to state that a transmission system owner is a user to the extent of its activities as a shipper, trader or interconnected party and a user to the extent of any difference in linepack from target linepack not accounted for by shipper, trader or interconnected party imbalances.
45. We assume that in respect of the Maui pipeline the balancing agent could only be a shipper and therefore could not be a user in relation to its balancing activities on the Maui transmission system. However, in respect of the current Vector transmission system arrangements the balancing agent’s activities could create imbalances. Under the Rules these imbalances would be allocated to the transmission system owner. Whether or not that is reasonable depends on how the transmission owner recovers any resulting costs.
46. (a)(iv)(b) of the *“user”* definition seems to conflict with (b)(ii) of the *“user”* definition.

Rule 5.2

“balance”

47. The definitions of *“balance”* lack clarity.

48. The balancing period is not specified in the definition. The definition of balance should fix the balancing period to the balancing period of the MPOC or VTC as relevant. There is nothing in the Rules as to how the balancing period is fixed. It is generally agreed that this should be a day but maybe some general principles for setting the balancing period should be set in the Rules. An example of these is set out in “*ERGEG Guidelines of Good Practice for Gas Balancing (GGPGB)*” dated 6 December 2006. Contact notes that setting a daily balancing period may create a significant barrier to entry for a retailer that wishes to supply the mass market for as long as mass market deliveries are determined at month end.
49. Provision should be made for correction of imbalance in the definition of balance. For example correction of imbalance is likely to mean that a user would create offsetting imbalance within an imbalance period.
50. It would also be useful to clarify that the approved receipt of gas or the approved delivery of gas to linepack falls within the definition of balance.
51. Shipper deliveries to mass market delivery points under current arrangements are not allocated until month end. The definition suggests, that in respect of shippers, mass market deliveries only have to be balanced retrospectively on a monthly basis. To avoid this it would be better to define balance, in respect of shippers, as matching the quantity of gas injected at a receipt point and the quantity of gas taken at a delivery point within the balancing period.
52. Since shippers, in most circumstances can only schedule gas flows rather than physically control gas flows, another and better approach would be to define shipper balance as scheduling injections at a receipt point equal to scheduled take at a delivery points. This would be consistent with the definition of interconnected party balance and consistent with the MPOC. The approach proposed in the Rules is consistent with the requirement in the MPOC but the current lack of requirements for nominations under the VTC means the VTC inadequately addresses the obligation to balance.
53. Consistent with the proposed redefinition of “*balance*” the obligation of the transmission system owner to balance could be simplified as a requirement “*to ensure the linepack at the end of each day within a balancing zone owned by that owner matches the target linepack of the balancing zone at the end of that same day after allowance for shipper, trader and interconnected party imbalances within that balancing zone*”.

“*balance*” and “*imbalance*”

54. Formatting of these sections differ.

“*balancing market*”

55. *This definition implies there is one balancing market but this is less clear in rules 16, 17 and 18.*

Rule 6, Users’ obligation in relation to balancing

Rule 6.1

56. Advice Contact has been able to obtain on the meaning of a “*reasonable endeavours*” obligation is that the party with the obligation is required to carry out the obligation but is not required to incur additional costs to perform the obligation. A “*reasonable endeavours*” obligation would therefore seem ineffective when balancing involves incurring costs for the purchase of gas to balance or the sale of gas at a loss to balance. For example, if on a day a user had a requirement for gas but was unable to source sufficient gas at a reasonable price would the user be excused from the obligation to balance on that day.
57. Self balancing should be more efficient than the balancing agent purchasing or selling gas to balance a user. The Rules should therefore facilitate self balancing. Instead of requiring transmission system owners to provide the information and tools that allow users to self balance, rule 8.1 unhelpfully requires transmission owners “*to use reasonable endeavours to ensure that its operating procedures and contractual arrangements are consistent with and do not unreasonably prevent users complying with the obligations in rule 6.1*” [the reasonable endeavours obligation to balance].
58. Under rule 6.1.2 users are also required to use reasonable endeavours to reduce imbalance to zero. Such action has the potential to conflict with the balancing agent’s balancing activity. The industry has proposed that in order to avoid this conflict users should make balancing nominations.

Rule 6.2

59. Rule 6.2.2 should recognise that there will be appropriate transfer of title for the gas purchase or sold through the cash-out.

Rule 6.3 and rule 6.4

60. It seems unnecessary to restate the joint obligation of transmission system owners if they jointly own the parts of a transmission system within a balancing zone. All that seems necessary is to amend the definition of user so that for the purposes of this definition transmission system owner includes two or more transmission system owners that own parts of the transmission system within a single balancing zone.
61. The term “*joint*” can have a number of meanings, including some specific legal meanings. It is unlikely that Vector will be willing to take responsibility for MDL’s failure to do something, or vice versa. Similar comments apply in relation to rule 28.
62. The MPOC provides that shippers and interconnected parties should balance. MPOC shippers balance by submitting balanced notifications. MPOC interconnected parties balance by injecting or taking gas to notifications. Under the VTC interconnected parties have no obligation to balance. Rule 6 is therefore confusing in relation to the VTC. To address this confusion a nomination regime should extend to the Vector transmission system and VTC interconnected parties and shippers should have a requirement to balance as under the MPOC.

Rule 6.5

63. Critical contingencies are declared and terminate at particular points in time but the allocation arrangements under the critical contingency arrangements apply to full days. Because of this the interrelationship between critical contingency arrangements and the Rules requires clarification.
64. Vector has included extensive provisions in its Critical Contingency Management Plan to address the similar issue in respect of its business as usual arrangements.

Rule 6.6

65. The purpose of rule 6.6 is unclear and seems inconsistent with the obligation of welded parties under the MPOC to balance metered gas flows with nominations and with the definition of “balance” under rule 5.2(c).
66. In principle all metered gas flows should be nominated.

Rule 7, Users’ obligation to provide information

Rule 7.1

67. The information required by the balancing agent should be specified.
68. Access to information under the VTC has been contentious.

Rule 8, Transmission system owners’ obligation to facilitate balancing

69. Rule 8 generally seems to create scope for exceptions and qualifications that will ultimately defeat the purpose of the Rules.

Rule 8.1

70. Rule 8.1 should not be expressed as a “reasonable endeavours” obligation. The transmission system owner’s procedures and arrangements must be consistent with and not unreasonably prevent users complying with rule 6.1. If the proposed wording was used the transmission system owners could set procedures or contracts that mean a user could not comply with the primary balancing obligation.
71. Rule 8.1 would seem to require interconnected parties to have a scheduled quantity in order to allow them to balance. Contact supports that requirement.
72. The Rules should set out the transmission system owner’s obligation to provide balancing tools such as the obligation to allow users to nominate, the right of users to amend nominations, the right of users to trade imbalances, the right of users to offer balancing services etc.

Rule 8.2

73. The need for and purpose of rule 8.2 is unclear.
74. Arguably the obligation under rule 10 that transmission system owners must provide the balancing agent with priority access to uncommitted pipeline capacity seems to conflict with rule 8.2. In addition, the obligation under rule 10 that transmission services available to the balancing agent must be priced on a fully variable basis seems in conflict with the capacity regime currently offered by Vector under the VTC and therefore also in conflict with rule 8.2.

75. Rule 8.2 significantly contributes to the confusion created by the Rules as to whether the transmission system owner has the obligation to deliver gas and the obligation of the balancing agent to deliver gas. This division of the responsibility to deliver gas requires clarification.

Rule 9, Transmission system owners to provide transmission system information

Rule 9.1

76. It is difficult to specify the information required by the balancing agent until the detail of the balancing plans and the detail of the transmission system codes is known. Is rule 9.1 sufficiently comprehensive?
77. A definitive list of information is required.

Rule 9.1.1

78. Are the threshold(s) specified in transmission system owners' critical contingency plans related to the target linepack of a balancing zone?
79. The critical contingency threshold limits are variable depending on the flows of gas at the time the critical contingency is initiated. Will those critical contingency thresholds provide a satisfactory basis to determine target linepack?
80. Shouldn't transmission system owners be required to specify target linepacks.

Rule 9.1.8

81. Does rule 9.1.8 require transmission system owners to impose a nominations regime across the whole transmission system or is the application of rule 9.1.8 limited to interconnection points between balancing zones? We note that the definition of interconnection agreement seems to exclude interconnection points between balancing zones.

Rule 9.2

82. This rule requires transmission system owners to provide real time metering information to the balancing agent. Potentially this could allow the balancing agent to implement an hourly balancing regime or a regime for even shorter periods. This would create significant additional balancing costs. At this stage daily balancing appears the optimum solution. The need for intraday balancing and limits on peaking are unresolved.

Rule 10, Transmission system owners to provide transmission services for balancing gas

Rule 10.1.1

83. What does "fully variable pricing" mean? Does this for example mean \$/GJ prices or \$/GJ/km prices. Why shouldn't a portion of the fees paid by the balancing agent be a fixed fee for access to information?

Rule 10.1.2

84. Would the balancing agent's priority access to capacity override a shipper's priority access to Vector transmission system reserved capacity under the VTC? To avoid this conflict VTC shippers should be required to nominate intention to use Vector transmission system pipeline capacity.

- 85. How does the balancing agent's priority relate to nominations made under Vector's interruptible agreements?
- 86. Does the balancing agent have any priority in the event of curtailment?
- 87. Does providing the balancing agent with priority access to transmission services offend the transmission system owners' undertakings that they will contract with all users on an arm's length basis?

Rule 11, Other obligations of transmission system owners in relation to balancing

Rule 11.1.1

- 88. Rule 11.1.1 creates confusion about the role of the transmission system owner and the balancing agent. The roles and accountability of each should be clearly established. In addition, safety and maintenance concerns should always override balancing. Is this rule consistent with rule 65?
- 89. The word "*facilitate*" in the first line of rule 11.1.1 is inappropriate. That could lead to the transmission system owner having to incur costs. The use of the word "*cooperate*" alone is sufficient

Rule 11.1.4

- 90. What liability does the publication of the compressor operation policy create? For example, could a user make a claim against a transmission system owner for failure to adhere to a compressor operation policy? Would publication of a compressor operation policy provide benefits or would it unnecessarily constrain transmission system owners and reduce flexibility?
- 91. It is unclear how availability of compression relates to balancing and to provision of delivery capacity. Potentially rule 11.1.4 could constrain delivery capacity provided by the transmission system owners.

Rule 11.2

- 92. Is it acceptable for transmission system owners to remove themselves from the obligation to deliver gas by transferring operation of the transmission system they own to the balancing agent? That seems unacceptable to users as it would leave them unable to make a successful claim for delivery failure.

Rule 12, Publication of transmission system

Rule 12.1

- 93. The future of the Gas (Information Disclosure) Regulations is in doubt because of the Commerce Commission's proposal to implement a new information disclosure regime.
- 94. The GIC should specify the information to be shown on these maps. Is the information shown on the maps provided for the purposes of the Gas (Information Disclosure) Regulations adequate? What is the purpose of this information disclosure?
- 95. The GIC should consider whether production of a map that shows the real time hourly flow at all significant metering points is justified.
- 96. Reference should be to the "*transmission system*" rather than to "*New Zealand's system of interconnected high pressure open access gas transmission pipelines*".

Rule 13, Functions of the balancing agent

97. The role of the balancing agent is unclear.
98. Is the balancing agent's role limited to:
- buying and selling gas when the predetermined linepack thresholds determined by the transmission system owner are exceeded and allocating the costs of imbalance to causers; or
 - does the role extend to physically managing linepack and exercising discretion on how to act?
99. The former limited role would allow separation of the transmission service provided by the transmission system owners from the balancing agent's role. The latter role creates confusing transmission system owner and balancing agent accountabilities but may offer more flexibility.
100. Is the balancing agent required to adjust linepack for UFG?
101. How will the linepack of each balancing zone be determined?

Rule 14, Functions to be carried out independently

Rule 14.2

102. It is understood that a transmission system owner could be the balancing agent under the Rules. In those circumstances the restriction on use of information under rule 14.2 would require ring fencing of the balancing agent's role. That eliminates the potential efficiency gains of a transmission system owner providing both transmission and balancing services. Ring fencing of the balancing agent's role is not addressed in the Rules.
103. What mechanisms are provided in the Rules to ensure that use of information provided to the balancing agent for the purposes is not used for purposes other than balancing and to ensure any inappropriate use is disclosed?

Rule 15, Management of linepack

Rule 15.1 and 15.2

104. The requirement that the balancing agent should *"use reasonable endeavours"* to purchase or sell sufficient balancing gas *"that in the balancing agent's opinion is necessary to return the linepack to, or close to, the threshold, or prevent the linepack falling below the threshold"* leaves the balancing agent free to exercise discretion on action it should take. That creates risk for users. If the balancing agent is able to exercise discretion then it should be exposed to the financial risk of inappropriate or unreasonable exercise of that discretion.
105. As indicated above a *"reasonable endeavours"* obligation does not require the party exercising that discretion to incur costs in respect of that obligation. The *"reasonable endeavours"* obligation of the balancing agent to buy or sell balancing gas seems meaningless.
106. Instead the balancing agent should have an absolute obligation to buy and sell balancing gas with defined and limited exceptions when that is not required.

107. The use of the “*if necessary*” and “*or close to*” wording in rules 15.1.1, 15.1.2, 15.2.1, 15.2.2 and 15.3 is also inappropriate. This language does not provide the certainty about when a balancing transaction will be undertaken that users are seeking.

108. **Rule 15.3**

109. Would the critical contingency arrangements become effective or could the transmission system owner curtail gas injections or takes if the availability of balancing gas was insufficient to return linepack to the relevant threshold? There should be clearer integration of transmission system operating codes, the critical contingency regulations and the Rules.

110. Wouldn't the Rules be more effective if users were notified that insufficient balancing arrangements were available?

Rule 15.4

111. Has the GIC obtained legal advice on the implications that the balancing agent acts as the agent of users. It seems an odd arrangement that an agent could be appointed on terms forced on the principal.

112. The “*agency*” arrangement potentially creates a risk for buyers and sellers of gas to the balancing agent. If the balancing agent failed to pay for, or deliver, such gas, against who would the counterparty be able to seek recovery of debt or an order to deliver the gas?

113. Rule 15.4 should state that title to gas passes consistent with the cash-out.

Rule 16, Rules for transactions relating to balancing gas market

Rule 16.2

114. Currently the BGX is not open to Vector transmission shippers and interconnected parties because lack of scheduling information makes it impossible to determine if the balancing service has been provided. Making the balancing market available to all users seems to require an extended nominations regime. Rule 16.2.2 would seem to continue to prevent users of Vector's transmission system from offering balancing services.

Rule 16.3

115. How will the balancing agent meet the prudential requirements of the balancing market if it is acting as the agent of users? That seems to require all users to meet the prudential requirements of the balancing market.

116. Should prudential issues be dealt with under the Rules, Codes or balancing market rules? The transmission system owners may argue that more risk is being placed on them under the Rules, for example, under rule 10 and rules 52 to 57. Even though it seems that transmission system owners may pass on these costs to users it is the transmission system owners that must first pay the costs. The comments in paragraphs 137, 138, 141, 142 and 143 below, related to rules 21.1 and 22.2, are relevant.

Rule 16.4

117. It is unclear whether clearing prices are set in relation to an intraday cycle, a transmission day or some other time period. Use of intraday cycle time bounds would considerably complicate balancing arrangements and would require hourly metering.

Rule 16.6

118. No mechanisms are provided to determine, how the maximum price of balancing gas that the balancing agent can purchase, and how the minimum price of balancing gas that the balancing agent can sell, are set in the balancing plan. It is proposed in the schedule that these could be set as a pre-estimate of critical contingency prices but that seems unworkable.

Rule 17, Rules for transactions outside balancing gas market

Rules 17.1 and 17.2

119. The notice and reasons provided by the GIC to the balancing agent under rule 17.1, that the balancing market is not working, and the results of the consultation under rule 17.2, determining how in such circumstances the balancing agent will buy and sell balancing gas, should be published.
120. Similarly, any notice given by the GIC under rule 17.2, that the balancing market meets the requirements of the Rules and the reasons for that, should be published.

Rule 18, Terms of balancing gas transactions

Rule 18.1.2

121. What does “*reasonable commercial practice*” mean? For example, does it mean that the balancing agent should only purchase balancing gas at prices close to the price of gas under prevailing gas supply contracts? Is “*reasonable commercial practice*” limited to the practices of the New Zealand gas market or are the practices of other markets relevant?
122. Deletion of rule 18.1.2 would not seem to impact on the Rules.

Rule 18.1.3

123. Rule 18.1.3 is an option. It seems pointless to include non-mandatory conditions in the Rules.
124. It seems unlikely there will be many offers of balancing services if buyers and sellers of balancing gas face significant risk of non-payment for the services they have provided. Rule 18.1.3 seems inconsistent with rule 18.1.2. Why isn't an allocation method similar to that set out rule 22.2 included to specify how under payment for balancing gas is allocated sellers of balancing gas?
125. This approach unsatisfactorily resolves the concern raised by Vector.
126. The issue is further discussed below in relation to rule 22.2.

Rule 19, Rules for allocation of balancing gas

Rule 19.1.2

127. The balancing agent should by 10am on the day, following any balancing action, publish on OATIS the details of that balancing action. The information published for each balancing action should include the following:

- the date and time of the balancing action;
- the balancing zone impacted by the balancing action;
- the quantity of gas bought or sold;
- the divergence of linepack within the balancing zone from the target linepack; and
- the clearing price of the quantity of balancing gas purchased or sold.

128. The method of allocating balancing gas and, in particular, to ensure that the allocation is made to the causer has been one of the more contentious aspects of the balancing arrangements of the MPOC and VTC. The Rules provide no principles or detail on how that allocation should be made. For example, an allocation via a general pipeline tariff would seem acceptable under the Rules.

129. The Rules should state the principle that balancing gas must be allocated to users so that the user responsible for change in linepack from the target linepack is allocated a quantity of balancing gas equal to the change in linepack that it caused. If the sale or purchase of balancing gas is less than users' contribution to the movement in linepack from target linepack then the quantity of balancing gas purchased or sold should be allocated in proportion to each user's responsibility for the movement in linepack from target linepack.

Rule 19.3

130. It is unclear how this provision works when the balancing agent has sold gas to balance. The balancing agent would require title to gas that it could sell in such circumstances.

Rule 19.4

131. Does transfer of title depend on payment?

Rule 20, Notification of adjustments to allocations and cash-out price of balancing gas

Rule 20.1.1

132. Why is an adjustment to users' allocations necessary under rule 20.1.1? The allocation to transmission system owners should be determined when the original allocations are made under rule 19.

Rule 20.1.2

133. The mechanism for the allocation of the balancing agent's overhead and profit is unspecified. It is unclear whether these are covered by subpart 3 of the Rules.

Rule 20.1.3

134. Given the importance of this information the method of notification should be specified rather than leaving it for the balancing agent to decide which of the methods listed in rule 65 will be used. OATIS should be used as the method of notification.

Rule 21, Payment for balancing gas purchased

Rule 21.1

135. The balancing agent should be required to issue invoices by a fixed date such as the 10th day of the month following the balancing action.

Rule 21.1.2

136. The information to be included in the balancing agent's invoice should be itemised and should include the following:
- the date and time of the balancing action;
 - the balancing zone impacted by the balancing action;
 - the quantity of gas purchased by the balancing agent;
 - the departure of linepack within the balancing zone from the target linepack at the time of the balancing action;
 - the clearing price of the quantity of balancing gas purchased; and
 - the quantity of balancing gas allocated to the user invoiced.

Rule 21.2

137. What happens in the event that a user does not pay the amount invoiced so that the total amount collected from users by the balancing agent is less than the amount the balancing agent is required to pay the sellers of balancing gas? Does rule 18.1.3 mean that the sellers of balancing gas bear that risk? How is the amount received allocated to the sellers of balancing gas? Why isn't a formula, as set out in rule 22.2, provided in the Rules to address the allocation?
138. This approach does little to address the concerns raised by Vector and will discourage offers of balancing gas. An alternative approach is to require the relevant transmission system owner to take the risk of non-payment and to ensure that the transmission services agreements include prudential provisions that allow the transmission owner to collect unpaid amounts through those prudential provisions backed-up by risk of forfeiture of rights to open access transmission services for non-payment. This, however, is the current approach which transmission system owners have found objectionable. Transferring the credit risk to the provider of the balancing gas exacerbates the risk to a position where the provider of the gas has no contractual relationship with the purchaser of the gas.

Rule 22, Payment of proceeds of sale of balancing gas

Rule 22.1

139. The balancing agent should be required to issue credit notes by a fixed date such as the 10th day of the month following the balancing action.

Rule 22.1.2

140. The information to be included in the balancing agent's credit note should be itemised and should include the following:
- the date and time of the balancing action;
 - the balancing zone impacted by the balancing action;
 - the quantity of gas sold by the balancing agent;

- the divergence of linepack within the balancing zone from the target linepack at the time of the balancing action;
- the clearing price of the quantity of balancing gas sold; and
- the quantity of balancing gas allocated to the user receiving the credit note.

Rule 22.2

141. It is unsatisfactory that payment to a user for balancing gas purchased by the balancing agent is dependent on the balancing agent receiving payment from the party that purchased that gas and the balancing agent's actions to recover that payment. There is nothing in the Rules that enables the provider of the balancing gas to obtain payment for the gas provided.
142. An alternative approach is to require the relevant transmission system owner to take the risk of non-payment and to ensure that the balancing agent includes prudential provisions in the balancing market rules that allow the transmission owner to collect unpaid amounts through those prudential provisions backed-up by risk of forfeiture of rights to participate in the balancing market or to access open access for non-payment. The transmission system owner is likely to have a contractual relationship with the purchasers of the balancing gas that provides a method of enforcing payment. Transferring the credit risk to the seller of the balancing gas transfers the credit risk to a person who has no contractual relationship with the purchaser of the gas.
143. It is unclear why the Rules provide an allocation method for allocating under payment to users who have been allocated balancing gas that has been sold by the balancing agent but there is no equivalent mechanism to allocate under payment for gas for the balancing agent's purchases of balancing gas from the balancing market although such a mechanism is suggested by rule 18.1.3.
144. The record keeping required by the balancing agent to meet the requirements of rule 22.2 could prove complex and cumbersome.

Rule 22.4.2

145. The "*reasonable endeavours*" obligation for the balancing agent to pursue purchasers for payment is valueless. The Rules should specify the action the balancing agent will take and should also set out interest the balancing agent is entitled to obtain in circumstances of late payment. The interest should be paid to the provider of the balancing gas.

Rule 23, Balancing agent must regularly settle any balancing gas allocated to the balancing agent

Rule 23.1.2

146. It is unclear how the balancing agent could trade gas it sold under rule 19.3 on the NZ Gas Exchange. What is the expected implementation date for the NZ Gas Exchange? Sale via the NZ Gas Exchange would require the balancing agent to have a transmission services agreement under the MPOC and VTC. Would the balancing agent be able to meet the prudential requirements of the MPOC, the VTC and the NZ Gas Exchange? Who would fund the balancing agent's purchases of capacity on the Vector transmission system?

Rule 24, Records of transactions

Rule 24.1.2

147. The balancing agent will need to maintain a record of the payments received from each user related to a purchase of balancing gas in respect of each balancing transaction.

Rule 24.2 and 24.3

148. The balancing agent must also publish the date and time of each balancing transaction.

User Rule 25, Errors in allocation

149. The Rules should address the impact of error corrections on the determination of imbalances that occur after the date of the error. There are conflicting views as to whether subsequent imbalances and payments should be corrected or whether these should not change with the effect of the balance correction rolled into future imbalances.

Rule 25.2.3

150. A correcting invoice or credit note should be issued by the balancing agent so that correcting payments are made in the month following the month in which the error was identified. Waiting until the next invoice or credit note is sent to the user potentially means the correcting payments could be delayed indefinitely.

Rule 25.4.2

151. The 6 monthly limit on error corrections is inconsistent with the ability to adjust allocations made under the downstream reconciliation arrangements for a period up to one year after the first allocation.

Rule 26, Monthly reports

152. The GIC should publish the balancing agent's full monthly report.

Rule 28, Joint obligations of transmission system owners in relation to appointment of balancing agent and preparation of balancing plan**Rule 28.1**

153. What happens if the open access transmission system is extended and that extension is owned by a new transmission system owner?

Rule 28.1.4

154. The transmission system owners have 60 business days (3 months), from the date the regulations become effective, to agree the balancing agent and the balancing plan. The time allowed is too short given the complexity of the arrangements and the need to integrate the arrangements with the MPOC, the VTC, the critical contingency arrangements and the downstream gas reconciliation arrangements.

Rule 28.2

155. Shouldn't a transmission owner be free to withdraw from involvement in a joint balancing plan rather than having a "*best endeavours*" obligation to try to make a failing joint balancing plan work? There must be a law of diminishing returns such that at some point the transmission system owners should be entitled to say they cannot reach agreement and should be entitled to ask the GIC to implement subpart 2.

Rule 29, Terms of appointment of balancing agent

156. The Rules should specify that the balancing agent will be appointed through a competitive process.
157. The Rules should also specify that the terms and conditions of the appointment of the balancing agent may not be inconsistent with the obligations of the balancing agent under the Rules.

Rule 29.1

158. Rule 29.1 is an option. It is pointless to include non-mandatory conditions in the Rules.

Rule 29.1.2

159. It seems unlikely that transmission system owners would want to indemnify the balancing agent for costs the balancing agent is unable to recover from users, particularly if the balancing agent is able to exercise discretion.
160. The balancing agent should bear appropriate risk if it is able to exercise discretion and should be liable for the consequences of its wilful default.
161. Will users be able to challenge the actions of the balancing agent?

Rule 29.1.3

162. The terms and conditions of the balancing agent should specify that the records kept by the balancing agent under the Rules are the property of the GIC and must be handed to or made available to the GIC upon notice of that requirement. This is necessary to maintain balancing continuity in the event of termination of the period of office of a balancing agent.

Rule 29.2

163. Rule 29.2 should state when the transmission system owner should publish the terms and conditions of the appointment of the balancing agent.

Rule 29.3

164. This rule is ambiguous because it could allow appointment of more than one balancing agent for different parts of the transmission system and seems to require that the balancing agent could not change over time.

Rule 30, Contents of draft balancing plan

Rule 30.1

165. The balancing plan must also be consistent with the requirements of the downstream reconciliation arrangements.

Rule 30.1.2

166. Because rule 30.1.2 requires a balancing plan or an amendment to a balancing plan to be consistent with the purpose of the Rules it is necessary that the purpose of the Rules is clearly and explicitly stated.

Rule 30.1.3

167. The meaning of “*unified regime*” is unclear. The extent of unification and whether unification of all aspects of the regimes is required could be contentious. The concept of a “*single regime*” is clearer.

Rule 30.1.4

168. Rule 30.1.4 allows the Rules to take priority over the MPOC, VTC or any other transmission system code. That potentially conflicts with rule 8.2.

Rules 31, rule 32 and rule 33

169. These rules are very convoluted and require redrafting.

Rule 31, Procedure for the approval of a balancing plan

Rule 31.1.2

170. It is possible to argue that no-one is affected by a “*draft balancing plan*”. The words “*if the draft balancing plan was approved and implemented*” should be added after “*affected by the draft balancing plan*”.

171. In addition the words “*substantially affected*” are ambiguous. For example it could be argued that gas market participants such as Contact or Genesis, would not be “*substantially affected*” by a balancing plan because gas transmission is only a small cost to such gas market participants relative to their overall costs whereas a balancing plan could have a very large impact on a small trader only supplying a few mass market consumers. We think any person should have the right to consult on a draft balancing plan.

Rule 31.1.2

172. In order to ensure appropriate consultation the GIC should manage the consultation rather than the transmission system owners.

Rule 31.1.3

173. Allowing only 20 business days to make submissions on a draft balancing plan is inadequate. A minimum of 40 business days should be allowed.

Rule 31.2

174. The GIC should be required to publish the draft balancing plan on the next business day following the day the GIC receives a draft balancing plan.

Rule 31.3.2

175. Allowing only 10 business days to make submissions on an amended draft balancing plan is inadequate. A minimum of 20 business days should be allowed.

Rule 31.4

176. The difference between a “*new draft balancing plan*” and an “*amended draft balancing plan*” is unclear. That creates ambiguity as to whether a draft balancing plan is subject to the full consultation process of rule 31 or only the consultation process set out in rule 31.3.

Rule 32, Approval of balancing plan

Rule 32.1

177. The start date of the 20 working days period for the GIC to approve the proposed balancing plan is not specified. That period should start on the next business day following the close-off date for submissions.
178. There doesn't seem to be a process for approval if the transmission system owner determines no amendment under rule 31.3 is required so that the proposed balancing plan is not submitted under rule 31.3.1.
179. There also doesn't seem to be a process for approval if the transmission system owner determines no amendment is required under rule 32.2.3.

Rule 32.1 and rule 32.2

180. Rule 32.1 and rule 32.2 refer to a “*proposed balancing plan*” whereas the rules 31 and 32.3 refer to a “*draft balancing plan*”. It is unclear whether or not a “*proposed balancing plan*” is a “*draft balancing plan*”.

Rule 32.2.3

181. It is unclear whether the amendment referred to in rule 32.2 is the amendment made by the GIC under rule 32.2 or the amendment proposed by the transmission system owner under rule 32.2.3 or both sets of amendments. This requires clarification.

Rule 32.3

182. The reference to rule 31.3 in rule 32.3 appears incorrect. The process would make more sense if the reference to rule 31.3 was replaced by a reference to rule 32.2 although that would require the reference to rule 31.3.1 to be replaced by a reference to rule 32.2.3.

Rule 33, Publication of initial balancing plan

Rule 33.1.3

183. It is unnecessary to restate the requirements of the go-live date.

Rule 33.2

184. The reference to rule 33.1 should be a reference to rule 33.1.3.

Rules 34 to rule 38

185. Rules 34 to rule 38 inclusive are very convoluted and difficult to follow. These rules should be reviewed and simplified.
186. A logical flow would be to require all proposed amendments to be submitted to the GIC. That of course is unnecessary if the amendment is proposed by the GIC.
187. The GIC should assess each proposed amendment to determine whether or not the proposed amendment is minor and technical.

- 188. If the proposed amendment is minor and technical and meets the requirement of rule 30 then the GIC should approve the amendment.
- 189. If the proposed amendment does not meet the requirement of rule 30 then the GIC must not approve the amendment.
- 190. If the amendment is not minor and technical but meets the requirement of rule 30 then the GIC must consult on the rule change, consider the submissions and determine whether or not to approve the proposed amendment.
- 191. All proposed amendments, consultation and GIC determinations should be published. Publication of proposed amendments and GIC determinations should include publication of full reasons.

Rule 34, Process for amendment to approved balancing plan

Rule 34.2

- 192. Users should also have the right to propose an amendment to the balancing plan. An amendment proposed by a user should be treated similarly to an amendment proposed by a transmission system owner.

Rule 34.2.1

- 193. Each individual transmission owner should have the right to propose amendment to a balancing plan.

Rule 34.3

- 194. Rule 34.3 seems to conflict with rule 35.1.3.

Rule 34.5

- 195. Rule 34.5 conflicts with rule 36.1. Rule 34.5 requires the GIC to approve an amendment if the amendment *"fits within the scope of rule 34.3 and complies with rule 30"* whereas rule 36 requires the GIC to approve an amendment *"if the industry body [the GIC] receives a proposed amendment under rule 34.3 ... if it is satisfied that it meets the requirement of rule 30"*. Rule 34.5 should be correctly incorporated in rule 36.1 and deleted.

Rule 34.7

- 196. Rule 34.7.1 allowing the GIC to approve amendments it proposes and that need to be made urgently conflicts with the requirement under rule 34.7.2 that amendments that the GIC proposes that are urgent but not minor and technical must be submitted to transmission system owners and become subject to rule 35.1. Under rule 35.2.2 an approved urgent amendment is subject to consultation. That seems pointless as the GIC will have already approved the urgent amendment. Under the Rules there is no provision for consideration of the consultation as no further rules seem to apply.

Rule 34.7.1

- 197. It seems pointless for the GIC to propose minor and technical or urgent amendments then to have discretion whether or not to approve those proposed amendments under rule 34.7.1. Rule 34.7.1 should instead state *"will approve the amendment unless the proposed amendment does not comply with rule 30 in which case the industry body shall not approve the proposed amendment"*.

Rule 34.8

198. Rule 34.8 allows the GIC discretion as to whether or not it pursues amendments requested by a single transmission owner or one or more users. The GIC's discretion to pursue the amendments significantly reduces the value of rule 34.8.
199. To address this concern all the words after industry body in the third line could be deleted and replaced with *"who must propose amendment of the balancing plan under rule 34.2 in accordance with the request if the proposed amendment complies with rule 30. If the proposed amendment does not comply with rule 30 the industry body must reject the request."*
200. Rule 34.8 would be clearer if it became rule 34.2.3.

Rule 35, Consultation on proposed amendment to balancing plan

Rule 35.2

201. To ensure consultation is consistent it would seem appropriate that the GIC is responsible for undertaking the consultation rather than the transmission system owners.

Rule 35.2.2

202. Any interested person should be able to participate in the consultation rather than *"persons that the transmission system owners consider are representative of the interests of persons likely to be substantially affected by the proposed amendment"*. Rule 35.2.2 raises the same concerns as indicated under paragraph 171 above.

Rule 36, Approval of amendment to balancing plan

Rule 36.1

203. It is the balancing plan after amendment that should meet the requirements of rule 30 and not the amendment. Hence the second *"it"* in the 3rd line of rule 36.1 should be replaced with *"the balancing plan after amendment"*.
204. The reference to rule 35.2.4(a) appears incorrect and should be to rule 35.2.5(a).
205. The following sentence should be added to rule 36.1 *"The industry body will not approve the amendment if the balancing plan after amendment would not meet the requirements of rule 30."*
206. It seems possible that an amended balancing plan could meet the requirements of rule 30 but less effectively than the original balancing plan. Hence *"better"* should be inserted before *"meets"* in the 3rd line of rule 36.1 and before *"meet"* in the amendment proposed to rule 36.1 in paragraph 204 above.
207. It's unclear what confirmation of a rule under rule 36.1 means.

Rule 36.2.3(a)

208. The word *"amended"* should be added before *"balancing plan amendment"* in rule 36.2.3(a).
209. The process to be followed on resubmission of the amended balancing plan amendment under rule 36.2.3(a) is unclear. For example, is it resubmitted under rule 34.2 and subject to the full approval process?

Rule 36.2.4

210. Rule 35.3 should apply to any new balancing plan amendment referred to in both rule 36.2.3(a) and rule 36.2.3(b).

Rule 37, Publication of amended balancing plan**Rule 37.1.2**

211. The GIC should also publish the notification that the amended balancing plan has been approved.

Rule 37.4

212. Rule 37.4 means an amended balancing plan could come into force before users were advised that the amended balancing plan was in effect. Rule 37.1.1 should be amended by adding “and users” after “transmission system owners”. Rule 37.1.2 should be amended by adding “at the same time” before “publish”.

Rule 38, Expiry of urgent amendments**Rule 38.1**

213. The reference to rule 34.6.2 in rule 38.1 is incorrect and should be a reference to rule 34.7.

Rule 38.1.2

214. It's unclear what confirmation of a rule under rule 36.1 means.

Rule 38.2.1

215. Users should also be notified that the urgent amendment has expired.

Rule 38.2.2

216. The words “at the same time” should be added before “publish” in rule 38.2.2.

Subpart 2, Appointment of balancing agent by industry body

217. In essence much of subpart 2 repeats subpart 1 but with the GIC appointing the balancing agent and setting the balancing plan. It would be more consistent and efficient for the Rules to contain generic processes for the appointment of the balancing agent, approval of the balancing plan and approval of balancing plan amendments.

218. A number of comments in respect of rules 39 to 64 are similar to comments made on rules 27 to 38.

219. The GIC should confirm that appointment of a balancing agent and approval of a balancing plan does not exceed the powers the GIC holds under the Gas Act relating to recommendation of gas governance arrangements.

Rule 40, Industry body's duties if subpart applies**Rule 40.1.1**

220. The notice given to transmission system owners under rule 40.1.1 should also be given to users.

Rule 41, Consequences of appointment of balancing agent and setting of balancing plan by industry body

Rule 41.1.3

221. Rule 41.1.3 means transmission owners have a one-off opportunity to appoint the balancing agent. Is that helpful to the industry?

Rule 42, Appointment of balancing agent by industry body

222. The Rules should specify that the industry body must appoint the balancing agent through a competitive process.
223. What is the GIC's obligation to ensure that there remains at all times a balancing agent appointed by the GIC? The requirement should be similar to the obligation imposed on transmission system owners under rule 28.2.

Rule 43, Terms of appointment of balancing agent by industry body**Rule 43.2.2 (b)**

224. Does the requirement for the GIC to indemnify the balancing agent in accordance with rule 43.2.2(b) mean that the balancing agent would be acting as the agent of the GIC? Does the GIC have the ability to commit the shareholders of the GIC in this way?
225. This provision involves the GIC directly in the operational risk of balancing. This potentially could create conflicts of interest for the GIC and could compromise its independence in matters such as considering amendments to the balancing plan. The requirement for the GIC to indemnify the balancing agent requires further consideration.

Rule 43.2.2.(c)

226. The terms and conditions of the balancing agent should specify that the records kept by the balancing agent under the Rules are the property of the GIC and must be handed or made available to the GIC upon notice of that requirement. This is necessary to maintain balancing continuity in the event of termination of the period of office of a balancing agent.

Rule 44, Publication of balancing agent service provider agreement

227. Rule 29.3 requires that there must be only a single balancing agent if the transmission system owners appoint the balancing agent. Why isn't there a similar requirement if the GIC appoints the balancing agent?

Rule 45, Balancing plan**Rule 45.1.1**

228. Rule 41.1.3(a) deletes rule 30 if the industry body appoints the balancing agent and sets the balancing plan. That means that the requirement in rule 45.1.1 that the balancing plan must comply with rule 30 does not make sense. The options are to restate rule 30 in subpart 2 and to refer to that rule or to combine subpart 1 and subpart 2 as proposed in paragraph 217 above.

Rule 45.1.2

229. It is possible to argue that no-one is affected by a "draft balancing plan". The words "if the draft balancing plan was approved and implemented" should be added after "affected by the draft balancing plan".

230. In addition the words “*substantially affected*” are ambiguous. For example, it could be argued that a gas market participant such as Contact or Genesis, would not be “*substantially affected*” by a balancing plan because gas transmission is only a small cost to such a gas market participant relative to their total costs whereas a balancing plan could have a very large impact on a small trader only supplying a few mass market consumers. Any person should have the right to consult on a draft balancing plan.

231. Rule 45.1.2 uses “*draft balancing plan*” and “*proposed balancing plan*”. To avoid confusion “*proposed balancing plan*” should be replaced with “*draft balancing plan*”.

Rule 45.1.3

232. Allowing only 20 business days to make submissions on a draft balancing plan is inadequate. A minimum of 40 business days should be allowed.

Rule 45.3

233. The procedure set out in rules 45.1.2 to 45.1.4 should only be waived if the draft balancing plan consulted upon by the transmission system owners under rule 31 remains substantially the same. The following words should be added after “*under rule 31*” in the second line of rule 45.3 “*and the draft balancing remains unchanged from the draft consulted on by transmission owners under rule 31*”.

234. An alternative approach would be to delete rule 45.3 as it would be inappropriate for the GIC to approve a balancing plan that did not have the agreement of transmission system owners or for the GIC to approve a balancing plan without consultation.

Rule 46, Publication of initial balancing plan

Rule 46.2.1

235. It is unnecessary to restate parts of the definition of the go-live date.

Rule 46 and 47

236. These rules could be consolidated. The distinction seems unnecessary.

Rule 48 to rule 51, Amendment to balancing plan

237. Rules 48 to 51 largely follow the scheme set out in rules 34 to 38. Rather than repeating those rules it would be improve consistency and efficiency if generic rules were drafted for the amendment process so that the same amendment rules could be used if the transmission owners or the industry body developed the balancing plan. It is noted that in both circumstances the GIC approves the balancing plan so that there should not be any reason why the processes should differ.

Rule 48, Process for amendment to approved balancing plan

Rule 48.2

238. Users should also have the right to propose an amendment to the balancing plan. An amendment proposed by a user should be treated similarly to an amendment proposed by a transmission system owner.

Rule 48.2.1

239. Each individual transmission owner should have the right to propose amendment to a balancing plan.

Rule 48.3

240. Rule 48.3 seems to conflict with rule 49.1.3

Rule 48.5

241. The reference to rule 30 in rule 48.5 does not work for the reasons set out in paragraph 228.

Rule 48.6

242. Rule 48.6 allows the GIC discretion as to whether or not it pursues amendments requested by a single transmission owner or one or more users. This is inappropriate and rule 48.6 should be amended. All the words after industry body in the third line should be deleted and replaced with *“who must propose amendment of the balancing plan under rule 48.2 in accordance with the request if the proposed amendment complies with rule [? insert reference to rule that is relevant when rule 30 is revoked]. If the proposed amendment does not comply with rule [? insert reference to rule that is relevant when rule 30 is revoked] the industry body must reject the request.”*

Rule 49, Consultation on proposed amendment to balancing plan

Rule 49.2.2

243. Any interested person should be able to participate in the consultation rather than *“persons that the transmission system owners consider are representative of the interests of persons likely to be substantially affected by the proposed amendment”*. Rule 35.2.2 raises the same concerns as indicated under paragraphs 171.

Rule 50, Approval of amendment to balancing plan

244. There should be a rule that establishes a process similar to that set out in rule 36.2 under which the GIC must give reasons why it has declined approval of a proposed amendment and under which it may propose amendments to the proposed amendments. Following that the amended proposed amendment could be resubmitted under rule 48.

Rule 50.1.2

245. The reference to rule 30 requires correction for the reasons set out above.

Rule 50.2.1

246. The GIC should also publish the notification that the amended balancing plan has been approved.

Rule 50.5

247. Rule 50.5 means an amended balancing plan could come into force before users were advised that the amended balancing plan was in effect. Rule 50.2.1 should be amended by adding *“and users”* after *“transmission system owners”*. Rule 50.2.2 should be amended by adding *“at the same time”* before *“publish”*.

Rule 51, Expiry of urgent amendments

Rule 51.1.2

248. It's unclear what confirmation of a rule under rule 50.1 means.

Rule 51.2.1

249. Users should also be notified that the urgent amendment has expired.

Rule 51.2.2

250. The words "*at the same time*" should be added before "*publish*" in rule 51.2.2.

Rule 52, Development fee

Rule 52.1

251. Is the GIC able to estimate the development fee?

Rule 52.2

252. Subpart 1 and subpart 2 of the Rules include the processes under which the GIC approves amendment of the balancing plans. It should be made clearer that "*reviewing and approving a balancing plan*" under rule 52.2.1(a), "*development and establishment of the balancing arrangements*" under 52.2.1(b) and "*development and consultation on the balancing plan*" under 52.2.2(c) exclude the GIC's costs related to approval of amendment of the balancing plan.

253. This could be easily achieved by stating that development costs are all the costs incurred by the GIC in relation to the Rules from the commencement date to the go-live date. This would make the division of costs between rule 52.2.1 and rule 52.2.2 unnecessary.

Rule 52.2.2(d)

254. The costs payable by the industry body under rule 41.3 should be included in ongoing fees rather than development costs as those costs would be incurred after the go-live date and are not development costs.

Rule 52.4.2

255. This rule doesn't make sense as there is only a single development fee. Rule 52.4.2 should be restated as "*the same costs are not costs under both rule 52.2.1 and rule 52.2.*". Alternatively, the proposal under paragraph 253 above would make rule 52.4.2 unnecessary.

Rule 52.4.3

256. Rule 52.4.3 seems incorrect because under rule 41.1.3 subpart 1 is revoked if subpart 2 applies.

Rule 53, How and when development fee must be paid

Rule 53.5

257. Rule 53.5 entitles the GIC to invoice transmission system owners for all its estimated development costs at a date that is likely to fall shortly after the commencement date. At that date the GIC is unlikely to have incurred any development costs and significant time may elapse before the GIC incurs actual development costs. Depending on the reliability of the GIC's estimates of the development costs the GIC could be in substantial credit or debit. This mechanism is inappropriate. Instead the GIC should invoice its actual development costs on a monthly basis from the commencement date to the go-live date. If the GIC insists on employing the proposed process for recovery of its development costs then it should be liable to pay interest on its over recovery compared to actual development costs.
258. It is also unreasonable that the GIC should allocate its development costs to transmission system owners on the basis of gas injected or received into the transmission system during the 12 months prior to the month in which the deadline for supplying returns occurred. Transmission system owners are likely to be recover those costs from users on the same basis. That will mean the development costs will not be recovered from the beneficiaries of the Rules. The GIC should capitalise the development costs and then recover those costs over say the 5 years from the go-live date on the basis of gas injected or received into the transmission system over that period. That would better allocate the development costs to the beneficiaries of the Rules.

Rule 53.8

259. This rule seems ineffective because rule 41.1.3 revokes subpart 1 if subpart 2 applies. That means that under rule 52.2 that there are no costs under subpart 1 if there are costs under subpart 2.

Rule 54, Ongoing fees

Rule 54.1

260. Is the GIC able to estimate the ongoing balancing agent costs?

Rule 54.2

261. It would be simpler if ongoing fees were defined as costs incurred by the industry body in relation to the Rules after the go-live date.

Rule 55, How and when estimated ongoing fees payable

Rule 55.3

262. Will the information that must be supplied in returns be available by the 10th day of each month?

Rule 55.6

263. It is unreasonable that the GIC should require transmission system owners to pay ongoing fees for a year on the basis of estimates of the ongoing costs for a year and estimates of gas injections and gas offtakes from the transmission system made at the start of the year. This creates risk that the GIC will be in substantial credit or debit compared to its actual costs. Instead, the transmission system owners should be invoiced for the actual costs incurred by the GIC in the preceding month allocated in accordance with actual transmission system gas injections and gas offtakes for that month.

Rule 56, How and when actual ongoing fees payable

Rule 56.4

264. This rule seems ineffective because rule 41.1.3 revokes subpart 1 if subpart 2 applies. That means that under rule 54.2.1 that there are no costs under subpart 1 if there are costs under subpart 2.

Rule 57, General provisions regarding fees

Rule 57.4

265. Under the Rules users are shippers, traders, interconnected parties and transmission system owners. Because of the definition of shipper under the Rules all users that transmit gas through the transmission system should be shippers. Hence to avoid confusion "user" in the third line of rule 57.4 should be replaced with "shipper".
266. Under the Rules there is a definition of "transmit" but no definition of "transmitted". It is assumed that "transmitted" means a quantity of gas received at one point on the transmission system and the same quantity delivered at another point on a transmission system. This raises the questions as to what quantity is used in respect of rule 57.4 when the quantity is received is not in balance with the quantity delivered.
267. The concluding phrase of rule 57.4 "or on such other basis as may be agreed by the industry body" creates uncertainty about the method of allocation and unnecessary risk for users. These words should be deleted.

Rule 58, Industry body to commission performance audits

268. On appointment of an auditor the industry body should be required to publish:
- the identity of the auditor;
 - the terms of reference for the audit; and
 - full details of any direct or indirect relationship between the auditor, a transmission system owner, the GIC, the balancing agent and any user.

Rule 58.1

269. Users should be able to request an audit of the balancing agent's activities. If the reasons for that request are reasonable the GIC should be required to arrange that audit.

Rule 58.2.1

270. The performance of the balancing agent under the terms of appointment of the balancing agent and under the balancing plan should fall within the scope of an audit.
271. Should the scope of audits also include the performance of transmission owners under their balancing plans?

Rule 59, Provision of information to auditor

Rule 59.1.1

272. The auditor should be able to request information from any user.

Rule 59.4

273. The Rules should specify information that is not confidential.

274. Given that much of the information held by the balancing agent will be user information users should also have a right to specify information that belongs to them and is confidential.

Rule 60, Preparation and publication of audit reports

Rule 60.3

275. Users should also have the opportunity to comment on the auditor's reports before those reports are finalised and published.

Rule 61, Auditor to prepare final audit report

Rule 61.3

276. The auditor should also be required to give a copy of the final audit report to users.

Rule 64, Use of final audit reports

Rule 64.1

277. It is unclear whether this provision is intended to restrict usage of audit reports. It does not appear to do that and therefore the provision is meaningless.

Rule 65, Giving of ordinary notices

Rule 65.2

278. Given the importance of these notices the Rules should clearly specify how users are notified of the balancing agent's allocations of balancing gas.

279. It would be useful for an appendix of the Rules to contain a list of information to be exchanged under the Rules, where that information will be notified and the deadline for notification of that information.

Rule 67, Urgent notices

280. It is difficult to imagine circumstances in which notices could not be given in writing, particularly as email notices are permitted. Removing the distinction between ordinary and urgent notices would simplify part of the Rules.

Rule 68, Safety override

Rule 68.1

281. A provision should also be included in the Rules exempting compliance from the Rules in circumstances when compliance would damage any user's facilities.

Rule 69, Relationship with transmission system codes

Rule 69.2

282. The priority given to the Rules requires careful consideration, particularly in relation to how the provision could impact on a user's rights to claim compensation for a failure to deliver gas.

283. Rule 69.2 appears to conflict with rule 8.2. Rule 8.2 suggests a transmission system code may prevail over the Rules whereas rule 69.2 states the Rules prevail over transmission system codes.

Rule 70, Relationship with Gas Governance (Critical Contingency Management) Regulations 2008

284. How will the balancing agent know about the critical contingency? Presumably there is no express provision in the Critical Contingency Regulations that requires the critical contingency operator to notify a critical contingency to the balancing agent. Accordingly the Critical Contingency Regulations may need to be amended to include this requirement.
285. Rule 70 is unclear in circumstances when the balancing agent has made a balancing transaction in a day and a critical contingency event has occurred during part of the same day. Clearly the balancing agent should act to correct imbalance that occurs during the part of the day before or after the critical contingency event but that balancing action will become part of critical contingency imbalance.

Schedule, Requirements for balancing plan

286. The numbering of the paragraphs of the Schedule requires correction.
287. The Schedule does not sufficiently cover the scope and detail of the content of the balancing plan.

Section A, Balancing agent

288. Why is it necessary for the balancing plan to contain “*details about*” the person appointed as the balancing agent? It would be better if the name and contact details of the balancing agent appointed was notified by the transmission system owners or the GIC. Isn’t this requirement covered by rule 29 and rule 44?
289. What would “*details about*” include? The schedule should detail the information that must be published.

Section B, Management of linepack

Section B b (i)

290. How would the balancing agent’s management of linepack interfere with the transmission of gas? The objective of the balancing agent’s management of linepack should be to ensure the delivery of gas that each user is entitled to receive under the relevant agreements with the transmission system owner.
291. Why isn’t there a requirement to set the upper and lower thresholds so that the cost of balancing is minimised?

Section B d

292. The words “*held by the balancing agent*” should be added after “*compressor operation*” in the 4th line of section B d.

Section B e

293. Why does the balancing agent require access to pressure information? Under the Rules (rule 13) the balancing agent is required to correct linepack to target linepack. There is no mention of management of pressure under the Rules. The balancing plan should set out the method of determining the linepack of each balancing zone.

Section B c

294. Force majeure events as well as maintenance should be recognised.
295. The words *"by the transmission system owners to the balancing agent"* should be added after *"notification"*.
296. Section B d
297. The words *"by the transmission system owners and the balancing agent"* should be added after *"coordination"*.

Section D, Balancing gas

Section D,c (i)

298. It difficult to imagine how transmission system owners or the GIC would determine the price cap for purchases of balancing gas under the proposed procedure. Critical contingency prices are calculated after the event and are supposed to reflect the highest value use during the critical contingency. That is likely to reflect the net back from electricity generation during the critical contingency period. Loss of thermal capacity can have a huge effect on the value of gas for electricity generation and depends on matters such as the magnitude of curtailment and generators' response to the contingency. Those matters are impossible to foresee.

Section D,c (ii)

299. Estimating the marginal cost of non production would also be very difficult. This is likely to substantially vary across gas fields depending on the matters such as the ability to restore production after a period of curtailment and the value of associated liquids lost during the period of curtailment.

Section E (a) (i)

300. Allocating balancing gas to users who have imbalance at the time the balancing agent commits to a balancing transaction seems to require hourly or possibly more frequent determination of users' imbalance. This would be impracticable and uneconomic. Allocations should be based on imbalances determined at the end of a day in which the balancing transaction occurred. It is necessary to determine whether peaking is a material issue.
301. Only users that contributed to the imbalance that required the balancing agent's corrective action should contribute.
302. Further consideration is required as to whether any user with an imbalance at the time of the balancing action would contribute or whether there is physical separation between balancing zones so that only users within a balancing zone where the balancing action is taken should contribute.

Section E (b)

303. The division of the transmission system into balancing zones seems unnecessary unless transmission system owners continue to own the linepack contained in their pipelines. The arrangements could be substantially simplified if the balancing agent had access to all linepack and did not have to account for flows of linepack between transmission system owners.
304. Refer also to the comment under paragraph 302 above.

Other comments relate to the Schedule

- 305. The balancing plan should also contain the provisions that allow users to self balance.
- 306. The schedule seems to assume that a transmission system owner will have a code or contractual arrangements that will cover matters such as how gas injections and gas offtakes of users are determined. That may not be the case and therefore those arrangements may need to be addressed in the balancing plan.
- 307. The Rules should be reviewed to identify all the matters that will need to be addressed in the balancing plan with the assumption that there may be nothing about balancing or how imbalance will be determined in a transmission system owner's code or contractual arrangements.