



**Submission to the Gas Industry Company
on its Transmission Balancing Second
Options Paper, July 2009**

From

Contact Energy Limited

17 August 2009

Introduction

Contact Energy Limited (“Contact”) welcomes the opportunity to provide feedback to the Gas Industry Company (“GIC”) on its Transmission Balancing Second Options Paper, dated July 2009 (“Second Options Paper”).

Contact agrees that action, identified in the Second Options Paper, is necessary to address the following balancing issues:

- specification of circumstances in which pipeline operators are permitted to undertake a balancing transaction;
- establishment of clear responsibility for managing residual balancing;
- establishment of a mechanism that requires pipeline operators to procure balancing gas on competitive market terms;
- establishment of a mechanism that allocates the consequences of balancing transactions to the party responsible for causing imbalance; and
- publication of full information on balancing transactions and the reasons for each transaction.

These issues should be addressed in a way that builds on experience, existing contractual arrangements and existing infrastructure such as OATIS.

In addition, Contact also believes the following balancing issues, which have previously been identified as high priority issues, should also be addressed:

- allocation of all gas deliveries at the start of the day following the day of delivery;
- establishment of a single balancing regime, including the allocation of balancing charges; and
- availability of balancing tools such as the opportunity to renominate.

It is important to the industry that these issues are not left behind. The GIC’s work programme should include activity and timelines that are designed to address all those issues.

Contact believes that the issues can be best addressed through changes to the MPOC and consequential changes to the VTC. However, the industry requires help to make these changes. It is unrealistic to assume that a single industry participant will be willing to provide the resources necessary to lead and fund the change process.

A change process is required that identifies:

- responsibility for leading the change process;
- how the industry will negotiate the changes required;
- responsibility for preparing the change requests; and
- responsibility for funding the change process.

Contact does not, at this stage, support expenditure on any of the regulatory processes, proposed by the GIC in its Second Options Paper, because that will divert resources from preparation of changes to contractual arrangements that will be necessary whatever process is followed. Contact, in general, does not support regulatory options, unless there is compelling evidence of market failure and other methods of tackling that failure are likely to be unsuccessful. Industry-led, negotiated approaches are likely to yield outcomes that are more innovative, less expensive and more flexible than regulated solutions. In particular Contact does not support the participative regulation option because the TSOs are given the responsibility of developing the detail of the balancing arrangements. That creates a high risk that the needs of users will be sidelined and forgotten.

Contact believes the industry is largely in agreement on the balancing issues that must be addressed. A process is now required to capture that support for change.

The GIC could play a significant role in establishing an effective change process. It would be more constructive for the GIC to focus on establishing and supporting that process rather than diverting significant resources to drafting and seeking submissions on regulations. Contact believes such an approach is consistent with the co-regulatory model on which the GIC is based and consistent with the Gas Act.

Contact's responses to the questions listed in the Second Options Paper are attached.

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Discussion Paper Questions

Question	Comment
<p><i>Q1: Do you consider that the objective identified in section 2 is appropriate? If not, what other objective(s) would you propose?</i></p>	<p>Contact assumes from section 2.1 of the Second Options Paper that the GIC is seeking to develop an objective in section 2 to express the <i>“most helpful regulatory objective for the current work”</i>. That means the objective should reflect the objectives of regulations as set out in the Gas Act and the GPS, and should also reflect the purpose of the work.</p> <p>In section 1.4 of the Second Options Paper the GIC states that resolution of the following matters is required:</p> <ul style="list-style-type: none"> – allocation of costs to causers and transparency of balancing transactions; – publication of linepack accounting to improve the visibility of balancing gas transactions; – the setting of tolerances so that users are able to take advantage of the inherent flexibility of pipelines; – to establish a policy to address UFG. <p>In section 1.5 of the Second Options Paper the GIC states that the purpose of the Second Options Paper is to present practical options for resolving high-priority issues relating to pipeline balancing. The GIC says its responsibility is to be confident that balancing is efficient and includes governance arrangements that ensure stable pipeline balancing in the long-term. Contact is not sure that is a requirement of the Gas Act or the GPS so is not sure why the GIC thinks it has that particular responsibility.</p> <p>In section 2.2 the GIC says <i>“the current focus is on the management of pipeline imbalance (the imbalance that remains when all individual user imbalances are added together) between linepack limits through the buying and selling of balancing gas”</i>.</p> <p>In section 2.2 the GIC identifies matters inside and outside the scope of proposed regulatory options. The only justification provided in the Second Options Paper for setting the bounds of the scope of the proposed regulatory options is the statement <i>“...we [the GIC] have taken account of the widespread view expressed in submissions on previous papers that a wholesale redesign of balancing arrangements is not warranted and targeted intervention is the best approach”</i>. Contact agrees that wholesale redesign is not required. Improvement of the current arrangements is required.</p> <p>Despite early statements in the Second Options Paper that the objective is to address high-priority balancing issues definition of the objective evolves into management of residual imbalance between linepack limits.</p> <p>The change in objective is discussed in section 4. Section 4 lists changes that have occurred since the Transmission Balancing Options Paper was published in December 2008 but there is little justification in that section of why the GIC needs to refocus its effort. The high-priority areas remain high-priority and the GIC should not lose sight of the need to address those issues. The GIC seems to recognise that in section 2.2 of the Second Options Paper but gives no indication of how it intends to progress those other matters.</p> <p>–</p>

Question	Comment
Q1: continued	<p>Nevertheless, despite the lack of justification in the Second Options Paper for the refocusing of the GIC's efforts to address balancing issues, the industry has become increasingly concerned about the issues set out in Table 9 of section 4.5 of the Second Options Paper and Contact agrees that those issues should be addressed. That should not, however, be at the expense of other previously identified high priority issues such as:</p> <ul style="list-style-type: none"> – allocation of all gas deliveries at the start of the day following the day of delivery (D + 1); – establishment of a single balancing regime, including the allocation of balancing charges; and – availability of balancing tools such as the opportunity to renominate. <p>That GIC's work programme should be reflected in the headline objective stated by the GIC. Contact considers the following headline objective would better reflect the work programme proposed by the GIC and the objectives set out in the Gas Act and GPS:</p> <p><i>"To provide a residual balancing service for all transmission system pipelines that is efficient and helps ensure reliable delivery of gas to transmission system customers."</i></p> <p>Contact believes this better describes the GIC's intentions, better encompasses the objectives of the GIC set out in the Gas Act and GPS, and avoids the phrase <i>"single balancing arrangement"</i> which prejudices certain outcomes. It is observed that the GIC seems to contemplate the different allocation mechanisms of the MPOC and VTC will continue. That means that there will not be a single balancing regime.</p> <p>None of the above is intended to imply that Contact thinks a headline statement of the objective is necessary or useful. The statement is too high level and too general to significantly contribute to the development of balancing processes or outcomes.</p> <p>Contact also notes that the outlines of regulations set out in the Appendices of the Second Options Paper adopt a new statement of purpose <i>"to define a single arrangement for managing pipeline imbalance"</i>. Contact questions why the efficiency objective has been discarded and why, despite the objective, the draft regulations seem to contemplate separate MPOC and VTC allocation mechanisms.</p> <p>Despite the GIC's efforts to develop a headline objective it does not seem to use that objective.</p>

Question	Comment
<p><i>Q2: Do you agree that the scope of the proposed regulatory options for this paper identified in section 2.2 is reasonable? Are there any items that should be considered in the scope that Gas Industry Co has not identified? Alternatively, are there any items in the scope that Gas Industry Co has included that should not be included?</i></p>	<p>The scope of the proposed regulatory options is not reasonable.</p> <p>It's not reasonable to expect a user to maintain a balanced position if there is a high probability that the user may not know its imbalance and the user does not have access to tools that allows it to manage imbalance. Moreover the scope does not indicate when the user must maintain a balanced position. For example is the obligation continuous in time or does it crystallise at hourly intervals, at daily intervals or at monthly intervals?</p> <p>Determination of gas injections and withdrawals for each day immediately following the end of each day is fundamental to determination of daily imbalance.</p> <p>Reasonable opportunity to renominate is one of the lowest cost methods of managing imbalance. MDL has indicated that it is able to provide more intraday nomination opportunities albeit at some cost. That requires further investigation.</p> <p>Tolerance provides a means of making pipeline flexibility available to pipeline users and may help to avoid unnecessary balancing transactions.</p> <p>The ERGEG states in "ERGEG Guidelines of Good Practice for Gas Balancing", dated 6 December 2006:</p> <p><i>"It is important that network users are not exposed to undue risks that they cannot manage effectively and/or without incurring inefficient costs that could create barriers to entry to the market. Therefore market participants should have access to appropriate information, adequate re-nomination procedures and flexibility tools/services so that they can manage their imbalance positions (and therefore risk) efficiently, taking into account the relevant characteristics of the balancing system, in particular the balancing period and/or the width of the tolerance margins."</i></p> <p>This principle is echoed in Appendix D of the Second Options Paper that sets out the GIC's desired features of a balancing regime:</p> <p><i>"Users should be able to manage risks associated with balancing charges, including having good knowledge of their balance positions and having an ability to hedge price risk."</i></p> <p>Allocation processes under the Gas (Downstream Reconciliations) Rules 2008 are a significant source of imbalance uncertainty. These Rules mean users are allocated imbalances caused by other users. This erodes the benefit of an individual user's investment in efforts to manage imbalance. Contact notes that the GPS indicates <i>"accurate, efficient and timely arrangements for the allocation and reconciliation of upstream gas quantities"</i> is an outcome that the Minister of Energy wishes the GIC to pursue.</p> <p>Contact believes all of the above matters are fundamental to balance management and should be addressed in the GIC's balancing work programme. Users have consistently raised these as issues that require the GIC's attention.</p> <p>It is inappropriate to develop regulations that require individual users to maintain a balanced position when practically because of poor information, lack of access to balancing tools and poor reconciliation processes users are not able to maintain a balanced position.</p> <p>The proposed regulations should comprehensively address balancing or if that is not possible at this time the scope of the proposed regulations should be clearly limited to addressing residual balancing. For example, addressing residual balancing would not address users' obligation to balance.</p>

Question	Comment
Q2: continued	<p>The GIC should further consider whether inclusion of an obligation that users should make reasonable endeavours to balance would influence users' behaviour. The courts have consistently determined that a reasonable endeavours obligation does not require the party with the obligation to incur cost to fulfil the obligation. A more effective and efficient approach is to set out the consequences faced by a user in failing to balance.</p> <p>In proposing a balancing agent that may not also be the system operator the GIC must carefully define the role of the balancing agent and the system operator. The scope of the proposed regulations should include the requirement:</p> <p><i>"describing the role and responsibilities of the System Operator"</i></p> <p>For reasons of efficiency Contact prefers that the system operator performs the role of balancing agent. This avoids the potential additional cost, duplication of effort and conflict arising from the creation of separate system operator and balancing agent roles.</p> <p>The proposed scope set out in Table 2 of section 2.2 does not make the GIC's intentions clear as to what will be within the limited scope that the GIC has decided it should address.</p> <p>The key issues related to provision of a residual balancing service are:</p> <ul style="list-style-type: none"> – the requirement for simplicity and transparency; – specification of the circumstances in which the balancing agent will undertake a balancing transaction; – the procedures for procurement and sale of balancing gas; – the mechanism of allocating balancing costs or revenue to the causers of imbalance; – the mechanism for resolving disputes; – establishment of the credit worthiness and credit risk of users of balancing services; and – funding arrangements. <p>Table 9 of section 4.5 of second Balancing Options Paper provides a much better description of the proposed scope of the regulatory options.</p>

Question	Comment
<p><i>Q3: Do you consider that the evaluation criteria set out in section 3 are appropriate for evaluating options for pipeline balancing arrangements? If not, why?</i></p>	<p>The Government Policy Statement on Gas Governance and Gas Act set out the objectives that Government requires the GIC to apply to all GIC recommendations for rules, regulations or non-regulatory arrangements for all parts of the gas industry. In addition, the Gas Act requires the GIC to identify all reasonably practicable options for achieving the objective of the regulation and requires the GIC to assess:</p> <ul style="list-style-type: none"> – the cost and benefits of each option; – the extent to which the objective would be promoted or achieved by each option; and – any other matters that the GIC considers relevant. <p>The GIC is also required to determine that the objective of regulations or rules it recommends is unlikely to be satisfactorily achieved by any reasonably practicable means other than the making of the regulation.</p> <p>These criteria are comprehensive and in any event are the criteria which, under legislation, the GIC must use to assess its proposals.</p> <p>Given the comprehensive nature of these criteria it's difficult to understand why the GIC feels that it is necessary to assess its proposals against another set of criteria even if the two sets of criteria share common features. That indirect assessment against Gas Act and GPS criteria results in loss of the detail of the GPS and Gas Act criteria and seems inappropriate.</p> <p>For example under the GIC's scheme:</p> <ul style="list-style-type: none"> – safe delivery of gas becomes security which is assessed as how thresholds are set for balancing actions; – delivered gas costs subject to downward pressure becomes an assessment of the costs of developing, implementing and operating the arrangements; – promotion of GPS objectives seems to be a catch-all category but is limited in the assessment to assessment of efficiency; and – providing a gas service that reflects customers' preferences becomes an assessment of the openness of the arrangements, the degree to which costs are socialised and an assessment of users' ability to hedge prices. <p>There is wide acceptance that the ERGEG balancing principles provide a useful framework against which the GIC could assess its balancing proposals. But again it's difficult to understand why the GIC wishes to make that assessment indirectly by showing the ERGEG balancing principles have features in common with the assessment criteria chosen by the GIC.</p> <p>The Gas Act does not prevent the GIC from assessing its proposals against criteria that are not part of the GPS and Gas Act criteria if the GIC wishes to do that but the primary assessment of all GIC recommendations must be against GPS and Gas Act objectives. That is a statutory requirement.</p>

Question	Comment
<p><i>Q4: Do you consider that Gas Industry Co has correctly identified the need to consider the alternative options based on our conclusions from the consultation process outlined in section 4?</i></p>	<p>Contact agrees that additional deficiencies in balancing arrangements have emerged since the GIC published its Transmission Balancing Options Paper in December 2008. In particular the termination of the legacy provisions of the MPOC in December 2008 and the resulting exposure of users to regular balancing transactions has exposed deficiencies in the MPOC and VTC mechanisms for allocation of balancing costs and has shown that the MPOC does not adequately specify circumstances in which the balancing agent may undertake a balancing transaction.</p> <p>Identification of those deficiencies has not, however, diminished concerns with balancing issues previously identified such as the need for balancing information, the need for users to know their imbalances on the day following each delivery day, the need to provide access to balancing tools and the complexity and potential conflict created by two balancing regimes.</p> <p>Because of the complexity of the MPOC and VTC most users continue to believe there will be an ongoing need to amend and adjust those arrangements as experience of the use of those arrangements grows.</p> <p>Because of that we are surprised that the GIC contemplates that the industry should have one last chance to fix the arrangements before it regulates. There is likely to be an on-going need to allow the MPOC, the VTC and balancing arrangements to change and evolve. It is unlikely that regulations could comprehensively resolve all balancing issues. Given the inflexibility of regulations, proceeding on the basis that regulations could comprehensively resolve balancing issues could prove a grave and costly mistake.</p> <p>Contact considers that the GIC has correctly identified the need to address additional balancing issues that have arisen since December 2008 when the GIC published its first Transmission Balancing Options Paper. However, there is still a need to address the issues identified in that earlier paper.</p>

Question	Comment
<p><i>Q5: Do you agree that the contracts based option identified in section 5 is reasonably practicable? If not, why?</i></p>	<p>The industry should be allowed to address balancing issues before the GIC contemplates regulations and forces a solution on the industry. The industry should have the best understanding of the issues and the constraints that the industry faces. The industry is likely to produce less costly, more flexible and more innovative solutions.</p> <p>Among industry participants there is a common understanding of the issues that must be addressed.</p> <p>Nevertheless, it is not easy for the industry to develop and agree a process to improve balancing arrangements through changes to contractual arrangements. Such a process requires funding and effective leadership. The GIC could assist the industry in those areas rather than spending significant industry resource on regulatory intervention.</p> <p>It takes significant resources to develop and pursue change requests. Not surprisingly TSOs and individual users are very reluctant to develop change requests if the cost of that work is not shared and there is significant risk those initiatives will be rejected. Contact has had experience of that. That means an industry supported process and industry funding is required to develop the required changes. On that basis a contracts based option is practicable. The industry is already developing a number of initiatives in this area based on MPOC change requests.</p> <p>The industry believes that most of the issues that the GIC proposes to address could be covered by changes to the MPOC and consequential changes to the VTC. If the GIC proceeds down one of the regulatory pathways those changes will still be required. The GIC could play a significant role in supporting and leading that process. That would avoid diverting resources to the development of regulations which seems unnecessary at this stage.</p>
<p><i>Q6: Do you agree that the prescriptive regulation option A identified in section 6 is reasonably practicable? If not, why?</i></p>	<p>The GIC clearly is able to recommend regulations to address balancing issues. Subject to appropriate consultation and assessment of those recommendations against the criteria set out in the Gas Act and the GPS Minister of Energy may accept the GIC's recommendations.</p> <p>Given the complexity of the regulations that would be required, the inflexibility of regulations and the high cost of developing and operating regulations Contact does not believe this would be a good outcome and should be unnecessary.</p> <p>Contact believes the issues identified can be addressed more simply, more effectively and at lower cost through MPOC and VTC changes.</p>

Question	Comment
<p><i>Q7: Do consider that the outline of the prescriptive regulations in Appendix B is appropriate? If not, why?</i></p>	<p>Contact does not consider the outline of prescriptive regulation in Appendix B is appropriate.</p> <p>The proposed regulation does not address matters such as:</p> <ul style="list-style-type: none"> – users' access to information necessary to determine and manage imbalance on a daily basis; and – user's access to balancing tools. <p>The role of the systems operator and the balancing agent is not clear. To avoid duplication of effort and conflict the balancing agent and the system operator should be the same entity.</p> <p>The proposed regulations appear to contemplate that the different balancing regimes of the MPOC and VTC, at least to the extent of allocation of balancing costs, would continue rather than unifying these into a single balancing regime.</p> <p>The proposed regulations appear to contemplate establishment of separate balancing zones. That seems an unnecessary restriction and limits users' flexibility to manage imbalance.</p> <p>The management of linepack between thresholds should make the requirement for tolerances unnecessary.</p> <p>It's unclear how TSOs could offer transmission services for balancing gas that are not subject to pipeline capacity limits.</p> <p>The inclusion of maximum and minimum balancing gas prices is contrary to sourcing gas at prices that reflect market values.</p> <p>Contact has not reviewed the outline of the proposed regulations in detail. If the detail of the regulations was developed many additional issues would be identified that are not addressed in the outline.</p>
<p><i>Q8: Do you agree that the prescriptive regulation option B identified in section 7 is reasonably practicable? If not, why?</i></p>	<p>Similarly to the response to question 6 the GIC is able to recommend regulations but Contact does not think this would be a good outcome. Option B is a slightly better outcome than option A as it avoids potential duplication of effort and conflict that may arise from having a balancing agent that is not the system operator.</p>

Question	Comment
<p><i>Q9: Do you agree that the participative regulation option identified in section 8 is reasonably practicable? If not, why?</i></p>	<p>Contact agrees that the participative regulatory option is reasonably practical.</p> <p>However, in reality it is little different from the contracts option as both involve industry agreement followed by regulation if the industry cannot progress appropriate arrangements.</p> <p>Both the contracts option and participative regulation will require similar GIC input and resources.</p> <p>Contact considers it would be more productive and efficient to assist the industry to address balancing issues through the contracts option rather than diverting its and the industry's resources to drafting regulations at the expense of developing the contractual arrangements.</p> <p>The timetable for participative regulation does not show the time required to develop the detail of the arrangements. If that was included the completion date of those arrangements is unlikely to be any earlier than the completion date of the contracts option.</p> <p>The participative regulation option is heavily reliant on TSOs developing the detail of the arrangement. That creates a high risk that users' needs will be sidelined and forgotten. For this reason Contact does not favour this approach because of this risk.</p>
<p><i>Q10: Do you consider that the outline of the participative regulations in Appendix C are appropriate? If not, why?</i></p>	<p>For the reasons set out in the response to question 6, Contact does not consider the outline of the participative regulations in appendix C is appropriate.</p> <p>In addition, Contact doubts that it will be possible to obtain the level of agreement, required under participative regulation, between TSOs on matters such as:</p> <ul style="list-style-type: none"> – the appointment of the balancing agent; – the balancing policy; and – changes to balancing policy or the balancing agent.

Question	Comment																									
Q11: Do you agree with Gas Industry Co's approach to evaluating the options identified as reasonably practicable in section 9? If not, why?	<p>Contact does not agree with the GIC's approach to evaluating the options.</p> <p>The GIC's evaluation to a large extent depends on assumptions about how well the four approaches address balancing issues. Any of the approaches could succeed or fail to a lesser or greater extent to address the issues. This is particularly demonstrated by the GIC assessing the contracts option as unknown in respect of many of the criteria yet the GIC is still able to produce a quantified rating for that approach. To judge those outcomes before the outcomes are known is meaningless. The detailed comparison attempted by the GIC requires foresight of outcomes that cannot be determined at this stage.</p> <p>It's only appropriate to use a detailed analytical framework to assess current arrangements and regulated arrangements when the full details of those arrangements are known.</p> <p>The different approaches do offer different outcomes in respect of:</p> <ul style="list-style-type: none">– cost;– timeliness of outcome;– flexibility; and– innovation. <p>The following table provides a simple comparison of the options in respect of those factors.</p> <table><tr><th></th><th>Contracts Option</th><th>Prescriptive Option A</th><th>Prescriptive Option B</th><th>Participative Option</th></tr><tr><td>Cost</td><td>low</td><td>high</td><td>high</td><td>medium</td></tr><tr><td>Timeliness of Outcome</td><td>later</td><td>earlier</td><td>earlier</td><td>later</td></tr><tr><td>Flexibility</td><td>higher</td><td>lower</td><td>lower</td><td>medium</td></tr><tr><td>Innovation</td><td>higher</td><td>lower</td><td>lower</td><td>medium</td></tr></table> <p>The table suggests arrangements subject to greater industry input are likely to be more flexible, more innovative and incur lower cost but may take longer to achieve. It should not be overlooked that the options leading to regulation will all require the changes to contracts required under the contracts option.</p> <p>Contact believes the assessment above is sufficient for the GIC to determine how it should proceed and that analysis in greater detail requires judgement of outcomes that cannot be made objectively at this stage.</p>		Contracts Option	Prescriptive Option A	Prescriptive Option B	Participative Option	Cost	low	high	high	medium	Timeliness of Outcome	later	earlier	earlier	later	Flexibility	higher	lower	lower	medium	Innovation	higher	lower	lower	medium
	Contracts Option	Prescriptive Option A	Prescriptive Option B	Participative Option																						
Cost	low	high	high	medium																						
Timeliness of Outcome	later	earlier	earlier	later																						
Flexibility	higher	lower	lower	medium																						
Innovation	higher	lower	lower	medium																						
Q12: Do you consider Gas Industry Co's assessment of the options presented is fair and reasonable? If not, why?	<p>For the reasons indicated in the response to question 11 Contact does not consider the GIC's assessment of the options is fair and reasonable. The GIC's assessment is based on an assessment of unknown outcomes.</p>																									

Question	Comment
<p><i>Q13: Do you agree that Gas Industry Co has, through the evaluation of options, correctly identified the participative regulation option as its preferred option? If not, why?</i></p>	<p>Contact does not believe the participative option is the best approach. Instead of spreading the industry's and the GIC's resources across development of regulations and detailed industry arrangements, it would be better to concentrate those resources on changing the MPOC and the VTC in areas where those arrangements are not working satisfactorily.</p> <p>Ultimately if that fails then the GIC should consider regulations. If it is necessary to regulate the work on the MPOC and VTC changes will still be required and the GIC will have a much better understanding of the necessary scope of regulations.</p>
<p><i>Q14: Do you agree with the next steps identified in section 11? If not, why?</i></p>	<p>It's not clear to Contact why the GIC contemplates making a recommendation to the Minister on 21 December 2009.</p> <p>That only seems necessary if the GIC intends to recommend balancing regulations, the full detail of the recommended regulations has been developed and the GIC has assessed the recommended regulations as required under the Gas Act and the GPS. The GIC will not be in a position to do that.</p> <p>Instead the GIC could write to the Minister indicating the process it intends to follow to address balancing but that information should have no more status than information to advise the Minister on progress the GIC has made.</p> <p>The proposed timetable ends at 21 December 2009. The GIC's work programme to address balancing issues will almost certainly continue beyond that date. The on-going deadlines should also be advised including the deadlines of the GIC's work programme to address other high priority balancing issues.</p>

Optional Questions

<p>Appendix B: Outline of prescriptive regulations</p> <p><i>OQ1: Gas Industry Co is still considering whether the scope of the regulations for prescriptive regulation options A and B should include provisions for curtailment and damages. They are currently drafted in the outline for prescriptive regulation option A. However, Gas Industry Co seeks submitters' views on whether provisions for curtailment and a damages regime should be included in the regulations or left to industry agreement and codes.</i></p>	<p>Curtailment and obligations to pay damages belong to the arsenal of tools available to manage balancing and failure to balance. Those mechanisms can be regarded as mechanisms designed to address extreme balancing situations.</p> <p>If those matters are to be addressed in the proposed regulations, then to achieve equivalent outcomes from the regulatory options, curtailment and damages should be addressed in all the regulatory options and not just regulation options A and B.</p> <p>However, it's understood that the focus of the Second Options Paper is provision of a residual balancing service. Excluding curtailment and damages from regulations covering residual balancing does not seem to significantly compromising regulations designed to address residual balancing regulations. However, failure to address those issues would clearly mean the regulations in would not address the full scope of balancing issues.</p> <p>Both the MPOC and VTC include curtailment provisions and provide for the payment of liquidated damages to a user who is unable to withdraw its gas entitlement from a pipeline on a day. The Critical Contingency Regulations also provide for curtailment and the payment of liquidated damages. It is not clear that there is a need for a further set of curtailment and damages provisions. Any new arrangements would have to be consistent with those other arrangements.</p>
<p><i>OQ2: If the scope of the regulations includes damage claims, the quantum of these can be determined through the dispute resolution process (by the Rulings Panel) or predetermined as 'liquidated damages'. Do you consider that the quantum of damages should be liquidated or are better determined by the Rulings Panel at the time of the claim?</i></p>	<p>Contact strongly prefers a predetermined liquidated damages regime. Predetermined liquidated damages create certain outcomes. Expensive time consuming dispute resolution processes that yield uncertain outcomes should be avoided.</p>
<p><i>OQ3: In schedule 2, Base Linepack and Thresholds, Gas Industry Co has not yet determined a process for setting and revising this table. Do you have a view as to how this might be best achieved under the regulations?</i></p>	<p>The thresholds should be determined from proposals made by transmission system operators and users' submissions on those proposals. The GIC could assist that process by setting out appropriate objectives and matters that TSOs are able to consider in making their proposals. For example, maximising users' access to line pack flexibility but without creating significant risk of inability to deliver gas to users' entitlements would be an important factor. A quantified approach could be taken such as setting the threshold so sufficient gas remained in linepack to supply expected gas requirements for a certain number of hours.</p>

<p>Appendix C: Outline of participative regulations</p> <p><i>OQ4: A design issue is how to define flexible linepack available to the Balancing Agent and ensure that this is a fair share of the flexibility available. In proposed regulation 5.f. Gas Industry Co has drafted it to be set as 'wide as practical' with any dispute to go to the dispute resolution process. An alternative would be to establish a special purpose process for establishing the flexible linepack. Do you agree with the current drafting, or would the alternative to create a special purpose process be more appropriate?</i></p>	<p>This is essentially the same question as question OQ3. The same approach is appropriate.</p>
<p><i>OQ5: The outline of regulations has been drafted to include tolerances. Do you consider tolerances should be included?</i></p>	<p>Tolerances determine how the costs or revenue of a balancing transaction are allocated. Contact believes all parties that contributed to an imbalance that caused balancing action should contribute to the cost of the transaction. It is incorrect to determine that users within a tolerance at a receipt point or delivery point did not contribute to the need for balancing action. Contact therefore believes there should be no provision for tolerances.</p> <p>Tolerances are inefficient in that they apply at receipt points and delivery points. This division of line pack flexibility requires assumptions about the concomitant imbalance at receipt and delivery points that mean the full quantum of linepack flexibility is unlikely to be available.</p> <p>Limiting balancing transactions to situations when linepack moves outside thresholds is an appropriate method of allowing users to benefit from linepack flexibility. Once linepack moves outside a threshold then all users who caused that should cover the imbalance consequences in proportion to their contribution to the imbalance.</p> <p>Contribution to imbalance is best determined from running imbalance at the end of the day on which the balancing action occurred.</p>