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e-gas



Suppliers of natural gas
100% Kiwi owned and operated

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To Ian Dempster
Senior Advisor
Gas Industry Company
Todd Building
WELLINGTON

Re – Application DR09-12-u from Nova regarding its bypass networks.

Consultation on Exemption Application under the Gas (Downstream Reconciliation) Rules 2008.

Dear Ian,

Thank you for the opportunity to provide this submission following, pertaining to the above exemption application by Nova Gas .

For any enquiries, please feel free to contact me on (04) 499 4964 or email:sydhunt@e-gas.co.nz.

Regards

Syd Hunt
E-Gas Group of Companies

Q1: Do you consider that the exemption sought for Nova's bypass networks should be granted? Please give your reasons.

We believe that Nova networks should not be exempted from the rules of the Downstream Reconciliation for the following reasons;

- 1. Nova claim their pipeline is not a gas distributor as defined in the Gas Act - we will argue that this is incorrect.*
- 2. Nova argue that they are the only users of their network - we will show this is not correct.*
- 3. Nova argue that they will incur increased costs if it's subject to these rules - we will show this is also incorrect.*

We believe by not giving an exemption;

- 4. Better and open competition will exist and consumers will benefit.*
- 5. We will argue that the Nova pipeline must not be exempted due to the impact it has on UFG.*
- 6. We will argue that it is in the best interest of consumers on the Nova network that no exemption is granted.*

1.

Nova claims that an exemption should be granted with respect to the applicability of the Gas (Downstream Reconciliation) Rules (the Rules) to Nova Private (non-open access) pipeline, as is not a “gas distributor” as defined by the Gas Act 1992. They are as follows:

- ***Distribution system*** means all fittings, whether above or below ground, under the control of a gas distributor and used to distribute gas from—
 - (a) The boundary of the gasworks or gate station outlet flange supplying gas for distribution; or
 - (b) The outlet of the container in which gas for distribution is stored—
to the outlet of the gas measurement system of the place at which the gas is supplied to a consumer or gas refueller (or, where no such gas measurement system is provided, to the custody transfer point of the place at which the gas is supplied to a consumer or gas refueller); and, for the purposes of any regulations made under section 54 of this Act relating to odourisation or the measurement of calorific value, includes a gas transmission system
- ***Gas distributor*** means any person who supplies line function services to any other person or persons -
 - We disagree with Nova’s claim here as in most of its supply agreements that it has with customers on its network, they have in fact two contracts (i) Gas Supply Agreement and (b) Network Services Agreement.
 - By the fact that in their own gas supply agreement with its customers, Nova behave, and contract as a gas distributor. Furthermore, in many cases it writes Network contracts for different terms to their gas supply agreement so that they can achieve a rate of return on their investment of constructing the network to the consumer’s site. This is no different to the public network owners where new infrastructure is built and associated costs outlay are factored or written into the terms of the supply agreements with the retailer under an NSA (Network services agreement) or directly with consumers under a LSA (Line services agreement).
 - In its application, Nova claim, ‘..... the GIC has ignored the issue of other embedded networks (e.g. in commercial premises or apartment’s buildings) be captured by the Rules...’ . This is a ridiculous statement given that Nova networks by nature and design are for wider external connectivity and distribution other than within a confined physical area. If there is any logic in Nova’s claim - then it stops at the front door of these embedded

networks where the main meter acts as a gas gate meter. It is an impossible argument to validate given that the difference between this embedded network and Nova's bypass network is that Nova's gas gate meter is connected to the Vector Transmission, which is not the case for buildings and commercial premises.

- Nova's network falls under the definition a gas distribution under the Act by its characteristics that the gas it distributes can be traced directly back to a gas processing plant. Any gas shortfall and mis matches are traded and managed in such a way that only a gas network can distribute replacement gas (albeit by its user - a Gas Retailer) which an embedded network can't achieve without having interconnection agreements with Retailers and Wholesalers.

2.

Nova argue that they are the only users of their network - we will show this is not correct.

- *In its application Nova claim -*
- *'...As there are no other retailers able to distribute gas on Nova's pipeline then no customer on the Nova pipeline can switch to another retailer - instead they must disconnect (and they do from time to time) from the Nova pipeline and reconnect to the open access networks...'*
- *'Following on from this, then all gas that flows from the transmission system into Nova's pipelines can only be allocated to Nova and this is consistent with what has occurred historically'*

However, the GIC in its evaluation has made the following statement subsequent to this -

'.....Initial allocation for July 2009 Gas Gate Distribution on AUFG Factor MUFG Factor UFG Retailer Allocation'

FLB15601 NOVA 43836.8 1.0289 -0.0289 0 0 GNVG 43836.8

FLB15601 NOVA 43836.8 1.0289 -0.0289 0 0 AGCL 0

HST05203 NOVA 16593.67 1.0289 -0.0289 0 0 AGCL 0

HST05203 NOVA 16593.67 1.0289 -0.0289 0 0 GNVG 16593.67

HUN15302 NOVA 8728.214 1.0289 -0.0289 0 0 GNVG 8728.214

HWA20802 NOVA 9140.914 1.0289 -0.0289 0 0 GNVG 9140.914

TWB24810 NOVA 54319.61 1.0289 -0.0289 0 0 AGCL 0

TWB24810 NOVA 54319.61 1.0289 -0.0289 0 0 GNVG 54319.61

Page 4 GIC Consultation on Exemption Application under the Gas (Downstream Reconciliation) Rules 2008 - *" Nova's application indicates that its pipelines are for use by **Nova only** and that there is no requirement for an allocation of gas between retailers. However, gas gate trading notifications status and allocation data submitted for the **June and July consumption periods appear to contradict this statement** for three of the five bypass gas gates. At the Hastings HST05203, Flatbush FLB15601 and Tawa B TWB24810 gas gates, consumption data have been submitted for both Nova and The Auckland Gas Company Limited (Auckland Gas), albeit for the July consumption period, zero consumption data was submitted by Auckland Gas. While these companies are both Todd Energy subsidiaries, they are separate legal entities and therefore receive separate allocated quantities and UFG amounts."*

- Nova do not mention in their application any subsidiary or any other entity to use or allocate gas on its network other than Nova Gas. The GIC has discovered that in fact this is not true at all. In fact, the GIC claim that The Auckland Gas Company has allocated the gas at more than one of the Nova's private networks.
- The Gas registry and the Gas reconciliation clearly nominate The Auckland Gas Company is a stand-alone legal entity and supplier in its own right. There is no mention by Nova Gas in its application to allow The Auckland Gas access to this network, distribute gas on its network, conduct switching activities on its network and disconnect customers on its network.
- We assume that this is an error and hope that it is the case. However, if the GIC's determination is correct and to date they have been consistent in these matters, then the impact on UFG (as outlined later herein by the GIC - See 5) will have a significant impact on all shippers actively operating on these public gas gates.
- The fact is that Nova's claim to be the only retailer to allocate gas on its private network is factually incorrect and any statements made by Nova regarding retailer activities on its network needs to viewed with caution. This clearly confirms why Nova's private network should not be exempted from the Rules.

3.

Nova argue that they will incur increased costs if it's subject to these rules - we will show this is also incorrect.

Nova's argument of increased costs is unsubstantiated because of the following;

- All extensions for new construction is factored into their network agreements with consumers. This is stated in numerous correspondence where they claim to consumers that disconnection away from their network is not possible until the expiry of their network agreement. The reason given is that it is part of their original investment to connect them to the network.
- This tends to suggest then that for Nova to extend their network they have valued the capital outlay required and have forecasted for other potential new connections that could be tagged onto that construction route.
- The costs provided by Nova appear to be artificial as they should fall into normal operational costs associated in running any business. This becomes a particularly important consideration when its costs are reduced due to its ability to obtain retail revenue from Nova Gas and as it now appears to also be from The Auckland Gas Company.
- The scale value of gas and network revenue associated with the length of pipeline for Nova by comparison to Powerco (who has no retail advantage) we estimate places Nova considerably ahead by km ratio to revenue over Powerco. This determination is by estimates and based on data we have retrieved over the last 6 years.
- Any costs associated with Allocation and Management to comply with the rules as we have seen already by Nova in its treatment of the GIC levies has been passed through to its customers. Therefore we see Nova treating this no differently. In fact what Nova are seeking in this exemption appears to be additional profit taking, at the same time gouging new business from the public operator knowing that it has a profit margin safe haven free from compliance costs and information declaration.

Q2: Do you consider granting an exemption is desirable to better achieve the objectives set out in section 43ZN of the Act and the purpose of the Rules?

We strongly disagree.

Section 43 ZN

The intent of this section clearly points to safe delivery, cost effective supply and barriers to competition minimised.

Safe Delivery of Gas

Section 46 Gas Act 1992 - Safety requirements for distribution systems, etc

- *(1) All distribution systems, gas installations, fittings, and gas appliances shall be of such quality and standard, and shall be constructed, maintained, and operated in accordance with such safety requirements, as are prescribed by regulations made under section 54 of this Act.*

(2) Nothing in subsection (1) of this section applies to any distribution system, gas installation, fittings, or gas appliance exempted from the provisions of this section by regulations made under section 54 of this Act.

Compare: 1982 No 27 s 61

- Nova's primary argument for an exemption seems to focus on load accountability (5), access (2), increased costs (3) and competition which we intend to address later in our submission. However more critical to these issues in our opinion is the Safe Delivery of the Gas (as outlined in 43ZN (a) of the Gas Act) into and through its networks.
- One needs to bear in mind that originally the Nova bypass network only injected Landfill gas to its customer. But progressively we (gas industry) have been lead to believe by Nova that there have a been a gas mixture of landfill and s5442 gas in the past and now as we understand it Nova claim all the gas being injected into their network is of s5442 standard gas. We would request that the GIC investigate and confirm categorically that consumers switching onto the Nova network receive s5442 gas otherwise consumers could face conversion problems ie. faults to appliances and equipment when they switch back to the Public system, which is compliant to the s5442.
- As the Nova bypass network was originally injecting Landfill gas into its system to supply directly to its customers, we would urge the GIC to investigate whether gas being injected into the Nova bypass network actually complies with s5442 gas: 1999 Gas Specification of the Gas Regulations. Because the Nova bypass network supplies consumers coming off the public system whose

gas is compliant with this regulation we would strongly urge the GIC under s43ZN (a) to seek an independent audit of Nova's bypass network to ensure that its gas quality meets this requirement so that consumers who switch back to the public system have a safety assurance of compliance issued by Nova and that if consumers have any problems Nova can't mitigate damages just by completing a switch file.

s43ZN Objectives of industry body in recommending regulations for wholesale market, processing facilities, transmission, and distribution of gas

- *The objectives of the industry body, in recommending gas governance regulations under section 43F, are as follows:*
 - (a) *the principal objective is to ensure that gas is delivered to existing and new customers in a safe, efficient, and reliable manner; and*
 - (b) *the other objectives are—*
 - (i) *the facilitation and promotion of the ongoing supply of gas to meet New Zealand's energy needs, by providing access to essential infrastructure and competitive market arrangements:*
 - (ii) *barriers to competition in the gas industry are minimised:*
 - (iii) *incentives for investment in gas processing facilities, transmission, and distribution are maintained or enhanced:*
 - (iv) *delivered gas costs and prices are subject to sustained downward pressure:*
 - (v) *risks relating to security of supply, including transport arrangements, are properly and efficiently managed by all parties:*
 - (vi) *consistency with the Government's gas safety regime is maintained.*

Subparts 1, 2, and 4 of Part 4A (comprising sections 43A to 43ZZF, and section 43ZZR) were inserted, as from 18 October 2004, by section 5 Gas Amendment Act 2004 (2004 No 83).

4.

Better and open competition will exist and consumers will benefit.

- The Nova network whilst it has the right to restrict access to it by other retailers operates like a distribution network as and when it suits as a revenue threat on Nova Energy.
- Nova writes contracts that are network agreements with consumers. In the case of the public network operators when consumers contract for network services come up for renewal they are able to go to the market for competitive gas prices. In Nova's case they preclude this from occurring as they also have a separate Gas retail agreement with the customer which has its termination date at variance to the Network termination date. This precludes the customer from exercising their right to get competitor prices at the time as no other Retailer can operate on the Nova Network. This blatantly contradicts the customers right to competition for Gas supply - they have no option other than to remain with Nova.
- A more competitive model is for Nova's private network to be contestable and if Nova networks cannot beat the public operator then there is no logical reason why the customer should not be allowed to switch to the public network and Nova to retain the Retailer supply agreement but gas flows on the public system.
- The above would work very easily as Nova also have network agreements with the public operators.
- We urge that if competition is to fulfil s43ZN, not only should Nova pipeline not be exempted but the GIC investigate the transference of consumers back to the public system at the expiry of their network agreements with Nova and force Nova to transfer this gas load back over to the public operator - at the moment this is a major barrier to competition

Q3: Do submitters have any other comments on the application from Nova seeking exemption from the allocation of gas for its bypass networks?

5.

We will argue that the Nova pipeline must not be exempted due to the impact it has on UFG.

*As mentioned earlier in - Page 4 GIC Consultation on Exemption Application under the Gas (Downstream Reconciliation) Rules 2008 - “Nova’s application indicates that its pipelines are for use by **Nova only** and that there is no requirement for an allocation of gas between retailers. However, gas gate trading notifications status and allocation data submitted for the **June and July consumption periods appear to contradict this statement** for three of the five bypass gas gates. At the Hastings HST05203, Flatbush FLB15601 and Tawa B TWB24810 gas gates, consumption data have been submitted for both Nova and The Auckland Gas Company Limited (Auckland Gas), albeit for the July consumption period, zero consumption data was submitted by Auckland Gas. While these companies are both Todd Energy subsidiaries, they are separate legal entities and therefore receive separate allocated quantities and UFG amounts.” The question also needs to be asked why Auckland Gas Company appears in one month but not the next. Is there some laundering going on?*

Gas quantities at the Tawa B (TWB24810) bypass gas gate have an impact on the Tawa A TWA35610 gas gate. This is because the injection quantities at Tawa A (TWA35610) are calculated by difference, using the quantities measured at the Waitangirua (WTG06910) and Tawa B (TWB24810) gas gates, which connects to the Nova bypass network. While there is apparently a meter at the Tawa A (TWA35610) gas gate (owned by Powerco), it has never been calibrated and certified as a revenue meter but has always functioned as a check meter.

Vector as the transmission system owner for the Tawa A (TWA35610) gas gate does not consider the meter there is positioned to correctly measure the quantity of gas supplied into Powerco’s distribution network (and accordingly considers gas is actually delivered into Powerco’s network at the end of Vector’s pipeline).

GIC - “...As noted above, the gas gate trading notifications status and allocation data submitted for the June and July consumption periods indicate that both Nova and Auckland Gas are supplying gas from the Hastings HST05203, Flatbush FLB15601 and Tawa B TWB24810 bypass gas gates. As a result, the Rules allocate consumption quantities and UFG between these two retailers and their different customer allocation groups at these bypass gates”.

As mentioned in (2) Nova have claimed that they are the only retailer to allocate gas on its network. It is clear that Nova have not only contradicted itself but also potentially been the causer of some significant UFG. - GIC
“...3 for example, there is the potential for ICPs to be allocated to the incorrect network/gas gate (as some open access and non-open access networks are installed parallel in the same streets). Such an incorrect allocation could be identified through low or negative UFG on one network/gas gate versus high UFG on the other network/gas gate. Also a further factor in this regard is that the calculation of allocated quantities and UFG at the Tawa A shared gas gate can be directly affected and distorted by the level of UFG at Nova’s Tawa B gas gate. Continuing to apply the Rules at Tawa B will ensure transparency of UFG for both gas gates and will help identify any potential metering issues”

- The above GIC 3 qualification is extremely concerning. In particular Tawa A where shippers on the open access networks are currently facing a GIC audit due to the alarmingly high UFG.
- Ironically it was Nova Gas themselves who pushed for these gas gate audits and perhaps what the GIC has now unravelled and exposed (given that according to Nova, it is the only retailer allowed to allocate gas on its private network), appears to have been a clever attempt by Nova Gas to possibly out wit the GIC by shipping Auckland Gas ‘non-authorized gas load’ through its private network.
- This would make sense given the large-scale acquisition campaign Nova and the Auckland gas company has conducted recently in the residential sector. We have suspected that the cause of the UFG has been the residential heating load spike which occurred in an unseasonably cold May 09. The impact on Nova if it had insufficient capacity would have resulted in a major overrun if perhaps it had not taken the action that it did by shipping Auckland gas load through its private network.
- According to gas industry records, both The Auckland Gas and Nova Gas remain separate legal gas suppliers in their own right. As it stands The Auckland Gas Company has no right to allocate gas through the Nova private network.
- The costs of these UFG penalties on E-Gas and possibly other non-aligned Todd Energy entities has been significant. E-Gas intends to write separately to the GIC to seek an immediate inclusion of the Nova Pipelines and gas gates where they’re located in relation to the gas gates currently being audited by the GIC.

6.

We will argue that it is in the best interest of consumers on the Nova network that no exemption is granted and in order for s43ZN to be promoted and implemented by the GIC under 43F of the Gas Act.

- All consumer gas connections need to be registered.
- All consumer gas allocation needs to be recorded.
- Consumer access to free and open competition.
- Transparency of switching information needs to exist for every gas connection.
- Safety - As mentioned earlier the issue around consumer safety is of paramount importance in the delivery of gas to consumers. The registration ICP number is the identification of all consumers on the public and private networks. In the case of emergencies and for safety reasons all ICP's need to be accounted for on the one central registry. Associated to this are events of civil emergency, natural hazards where networks are damaged or fail and load shedding requirements become important in the management of gas distribution.

Nova are seeking to get an exemption from these fundamental and vital supply information and obligations because it because they own a private network.

Owning your own private network does not and should never exempt you from your legal obligations as a distributor, retailer and any other category of gas supplier if you are responsible for **the supply and management of gas for any member of the public.**

If anything, the Private network should be more closely scrutinised and auditable, as the GIC has now discovered.