



27 September 2007

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Dear Mr Dempster,

Information disclosure by owners of gas processing facilities

Introduction

1. Mighty River Power welcomes the opportunity to comment on the Gas Industry Co's (GIC's) Statement of Proposal *"Information disclosure by owners of gas processing facilities"*, September 2007.
2. No part of our submission is confidential and we are happy for it to be made publicly available.

Q2: Do you agree that alternatives to the status quo that may meet the objectives are limited to low cost, light-handed measures?

3. Mighty River Power believes the focus of regulation should be on the natural monopoly/bottleneck facility components of the gas industry i.e., gas transmission and distribution. Where there is workable competition for the provision of a particular good or service regulation is unnecessary.
4. Gas processing facilities are not in the same category of gas transmission and distribution pipelines. Nothing in the GIC's consultation papers suggest otherwise. Gas processing facilities can nevertheless have bottleneck characteristics. The implication is that regulation (if any) that is warranted it should not be heavy-handed. Mighty River Power accordingly supports the introduction of gas information disclosure Rules for owners of gas processing facilities.

Q3: Given the finding on no substantial inefficiency in the gas processing market and given the need to maintain a watching brief for a later recommendation on access protocols, do you agree that the only reasonably practical options are information disclosure provided either by industry agreement or mandated by rules under the Act?

5. Yes.

Q4: Do you agree that the Gas Industry Co has provided industry participants with a reasonable opportunity to adopt information disclosure by way of industry arrangement?

6. The date on which the GIC provided industry participants with the agreement is unclear from the paper. However, given the simplicity of the agreement, six weeks should have been sufficient time to consider the agreement and complete sign-off procedures.

Q5: Do you agree, given at least one party has chosen to “hold out” from joining the industry arrangement, the only reasonable practicable option which remains for Gas Industry Co is to recommend rules for information disclosure? If not, please give your reasons.

7. Mighty River Power considers that the GIC did all it could reasonably be expected to do in attempting to reach agreement with gas processing facility owners for voluntary disclosure.
8. It is disappointing that a minority of gas processing facility owners choose either not to engage with the GIC on this matter, or outright refused to be a party to the proposed voluntary regime. The actions of this minority imply that they either do not care whether they are regulated or actually want to be regulated. If not that, then they do not understand the counterfactual; if voluntary agreement can not be reached regulation will likely be introduced. Mighty River Power agrees with the GIC that the “hold out” by one party made the introduction of Rules necessary.

Q6: Do you agree with the assessment of costs and benefits, in particular that the uncertainties associated with continuing to pursue the industry arrangement mean it is likely to be the more expensive option?

9. It does not make sense for the GIC to continue down a path that has previously been tried and failed unless new information comes to light that reasonably assures the previously failed path will succeed. There seems to be nothing to indicate that this is the case.

Q7: Do you have any comments on the draft information disclosure rules contained in Appendix B?

10. Mighty River Power has a number of comments on the proposed Gas (Processing Facilities Information Disclosure) Rules 2007.
11. There is nothing new in introducing information disclosure. The gas industry is already subject to the Gas (Information Disclosure) Regulations 1997. The electricity, telecommunications, airports industries are also, for example, subject to broadly similar types of information disclosure requirements.
12. Mighty River Power believes that the GIC should have regard to the content of these different disclosure requirements in developing disclosure requirements for gas processing facilities.
13. Section 4 of the Gas (Information Disclosure) Regulations 1997 defines gas processing facility as “a facility for treating gas so that the treated gas is suitable for consumption”. It is not clear why the GIC has not simply adopted this definition.
14. Section 10.2 of the proposed Gas (Processing Facilities Information Disclosure) Rules 2007 requires facility owners to disclose “Forecasts of spare gas processing capacity”. The proposed Rules are silent on how the capacity would be forecast. In contrast, Regulation 23 of the Gas (Information Disclosure) Regulations requires pipeline owners to not only disclose information on capacity, but also prescribes the methodology for calculating capacity. It is standard practice for information disclosure regimes to either prescribe methodologies that are required to be used, or disclose the methodology that is used. Mighty River Power believes the proposed Rules should require gas processing facilities to disclose the methodology they use to calculate forecasts of spare gas processing capacity.
15. Part 3 of the proposed Gas (Processing Facilities Information Disclosure) Rules 2007 on disclosure of approaches for access also deviates substantially from the other information

disclosure regimes cited above. The other information disclosure regimes require information to be publicly disclosed, including information on access arrangements e.g., access terms and conditions, price and pricing methodology. In contrast the proposed Part 3 only requires disclosure to the GIC, and the information required to be disclosed is strictly limited and high level.

16. This variation is made all the more curious by the proposed clause 16.2. Clause 16.2 states that "... facility owners will not be required to disclose any information that a reasonable person would consider was commercially sensitive at the time the disclosure was made." Apart from the subjectivity, and scope for varying interpretations, of what a reasonable person would consider commercially sensitive, this clause means that facility owners need not disclose commercially sensitive information. Given the GIC is proposing that facility owners not be required to disclose commercially sensitive information why would the GIC not require the disclosed information to be made publicly available?
17. Further, given the proposed clause 16.2., why is it necessary for the GIC to propose clause 19.1 which would mean that all information disclosed in accordance with Part 3 to be treated as confidential? Why treat information as confidential if facility owners do not have to disclose commercially sensitive information. Clauses 16.2 and 19 do not make sense to Mighty River Power.
18. The other observation we have about the proposed access disclosure requirements is that the requirements of proposed clauses 16.1.2 and 16.1.3 are vague. There would be a wide range of different interpretations and information content that is disclosed (even without the commercial sensitivity provision in clause 16.2).
19. Each field produces a different quality of fluid. Mighty River Power believes, for the information disclosure to be helpful in facilitating access, it would be useful for the information content include, amongst other things, the capacity used and the capacity available for such elements as carbon dioxide, sulphur, nitrous oxides/other gases, LPGs, condensate and crude. Water extraction and disposal is also worthy of recording as are any constraints under the RMA e.g., total emissions, water disposal and so forth.

Concluding remarks

20. Mighty River Power believes that, at most, a limited information disclosure regime is warranted for gas processing facilities. Gas processing can have some bottleneck characteristics, but not anything like that of gas transmission and distribution.
21. If an information disclosure regime is to be introduced it is important that it is designed in a manner that will result in the provision of consistent and useful information. Mighty River Power believes the lack of prescription in the proposed regime, and the proposed discretion to facility owners may undermine the usefulness of the regime. We propose it be tightened, drawing on the approach in the Gas (Information Disclosure) Regulations 1997, and other information disclosure regimes.
22. If you have any queries regarding this letter, please do not hesitate to contact me (on 09 308 8259 or robert.allen@mightyriver.co.nz) or Duncan Jared, Mighty River Power's Gas Portfolio Manager (on 09 308 8290 or duncan.jared@mightyriver.co.nz).

Yours sincerely,

Robert Allen

Regulatory Manager