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Application of Gas Governance Arrangements to Private Networks: Comments on STA report

Prepared for Nova Gas Limited

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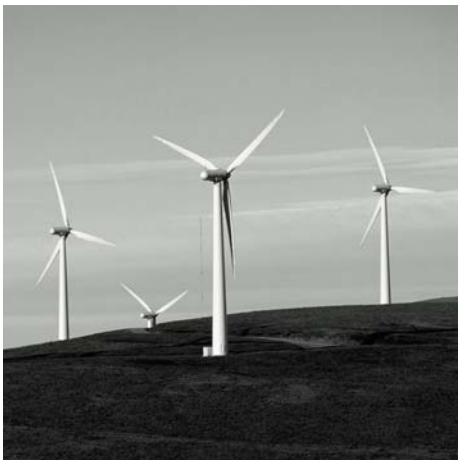

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1 Introduction

This report comments on the review by Simon Terry Associates Ltd (STA) of the extent to which gas market governance arrangements ought to apply to 'private gas distribution networks'. The STA paper, 'Application of Gas Governance Arrangements to Private Networks', was prepared for the New Zealand gas industry regulator, the Gas Industry Company (GIC).

My report focuses primarily on the implications of the STA paper for the regulation of Nova Gas Limited.

2 Summary of Simon Terry Associates paper

The main conclusions by STA are summarised in the introduction to its report (pages 1 to 3) and in its final section 'Summary of Main Points of Principle' (pages 50 to 53). These findings include the following views:

- There is no distinction between "private networks" and other networks in the Gas Act.
- Exemptions of certain private networks from information disclosure in 1997 and from price control in 2004 do not provide helpful precedents.
- Competitive pressure from bypass networks is a relevant consideration and might justify a time limited exemption, subject to revocation with due notice.
- The "essential facilities doctrine" needs rethinking in markets where a bypass network has entered; in the long run, the bypass network and the previous incumbent ought to be treated jointly as an essential facility for regulatory purposes.
- There are potential opportunities to game at the boundary between networks which are subject to regulation and those which are not.
- A private network would need to show clear evidence of a significant compliance burden, together with no detriments to effective functioning of the gas market as a whole, to justify an exemption from regulations such as information disclosure, registry participation, and inclusion in industry reconciliation and allocation procedures.

On the basis of these arguments, STA conclude that:

- Merchant pipelines can be provisionally exempted from access and dispute resolutions regulations involving third-parties, but other aspects of reconciliation rules are best applied industry-wide.
- Private merchant distributors should not be exempt from regulations specifying standard terms and conditions.

- Bypass operators need not be subject to price cap regulation, but the control regime needs to address spillovers from bypass markets to the wider population of gas customers.
- All industry participants should have to provide information to the central registry to compile accurate industry-wide statistics.
- All suppliers with potential market power should be subject to a mandatory disclosure regime with respect to standard terms and model contracts and detailed customer meter records.
- Merchant pipelines should not generally be exempt from unaccounted for gas reporting, notwithstanding the absence of multiple system users.

In the comments that follow, I address each of these main points of principle advocated by STA and show that the conclusions reached by STA do not provide a sound basis for the GIC to consider whether to remove the exemption from access regulation of Nova Gas.

3 Nova Gas is exempt under the Act

In the introduction to their report, STA say that there is "no distinction between 'private networks' and others appears in the Gas Act…". Further, at page 50, STA say:

> *Customer-owned private systems will appropriately be exempted from a wide range of regulatory requirements on the basis that no exploitation of market power at the expense of acquirers is in prospect, and no issues of competitive neutrality are at stake. In the Gas Act 1992, these systems are not defined as "industry participants" and hence lie outside the governance arrangements set up under the Act.*

By those statements, STA appears to say:

- The Gas Act does not distinguish between open-access and "private" (or bypass) networks.
- "Customer-owned private systems" (that is, private networks that are owned by customers) are not captured by the Gas Act at all.

I am advised by legal counsel for Nova Gas, that STA has misdirected itself as to the correct legal position under the Gas Act. In this section, I summarise my understanding of the legal position.

The relevant definitions in the Gas Act 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 odorisation 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*

industry participant *means—*

(a) a gas retailer:

(b) a gas distributor:

(c) a gas producer:

(d) a pipeline owner:

(e) a gas wholesaler:

(f) a person who purchases gas directly from a gas producer or gas wholesaler or on any wholesale gas market:

(g) a service provider appointed under any gas governance regulations:

(h) a gas metering equipment owner:

(i) a data administrator that provides data administration services to the gas industry,—

but does not include the industry body or the Commission (even to the extent that the industry body or the Commission may be acting as a service provider after an appointment under gas governance regulations)

line function services *means—*

(a) The provision and maintenance of pipelines for the conveyance of gas:

(b) The operation of such pipelines, including the assumption of responsibility for losses of gas

pipeline owner *means a person that owns pipelines for the conveyance of gas*

The definition of "pipeline owner" captures any person "that owns pipelines for the conveyance of gas". On that basis, anyone who owns a gas pipeline (including the "customer-owned private systems" referred to by STA) is an *industry participant.*

The term "pipeline owner" is meant to be a generic term, capturing all gas pipelines, for use in circumstances where the Gas Act is intended to apply across the board (see for example part 5, section 55 of the Act).

Where the Gas Act is only intended to apply to open-access networks, the term "gas distributor" is used instead of "pipeline owner". A "gas distributor" is someone who supplies "line function services *to any other person or persons*". Two good examples of where this distinction is material are the reconciliation and switching rules. Those rules

govern activity on distribution systems, which by virtue of the Gas Act, are gas pipelines "under the control of a gas distributor".

In its capacity as a bypass network operator, Nova Gas is not a "gas distributor". Nova Gas provides line function services to itself, not to other people. The only gas that passes through Nova Gas' private networks is owned by Nova Gas. That interpretation is consistent with the general scheme and purpose of the relevant parts of the Gas Act and the reconciliation and switching rules, which are designed to deal with issues arising on open access/multi-retailer networks.

It follows that:

- STA wrongly conclude that the existing legislative framework treats open-access and private networks as the same thing.
- STA wrongly conclude that "customer-owned private systems" fall outside the ambit of the Gas Act.
- In its capacity as a bypass network operator, Nova Gas is not captured by the reconciliation and switching regulations, to the extent that those regulations affect "gas distributors".

4 Regulation of workably competitive markets

4.1 STA concludes that open access type regulation should not apply in competitive market

At table 1 and table 3 in their report, STA explain that there would be a clear basis for exempting private networks subject to workable competition from most aspects of access regulation. The STA report uses the terms "full competition" and "workable competition". During the GIC workshop held on 31 March 2009, Dr Bertram confirmed that the appropriate test was 'workable competition', which is the standard applied by the New Zealand Commerce Commission (and similar agencies in other jurisdictions).[1]

[1] The concept of workable competition was first enunciated by economist J.M. Clark in 1940. He argued that the goal of policy should be to make competition "workable," not necessarily perfect as perfect competition does not exist in any market. All bodies which administer competition policy in effect employ some version of the concept. Glossary of Industrial Organisation Economics and Competition Law, compiled by R. S. Khemani and D. M. Shapiro, commissioned by the Directorate for Financial, Fiscal and Enterprise Affairs, OECD, 1993.

This conclusion, that gas networks subject to workable competition should generally be exempt from access regulations, is uncontroversial.

The exceptions listed by STA, to the conclusion that pipelines in workably competitive markets should not be subject to access regulation, were regulation required for gas safety purposes and any information disclosure regulation required for the purposes of monitoring market performance. The observation that all gas networks should be subject to safety regulations is not disputed. I comment on information disclosure further below.

4.2 By-pass markets are workably competitive

As acknowledged by STA, the Commerce Commission found in its 2004 Gas Control Inquiry that: [2]

> *The immediate areas where a bypass operator is competing with the incumbent have been placed in a discrete market. In these markets the Commission considers that there is strong evidence of vigorous competition for industrial and commercial customers.* (paragraph 13.11)

And

> *The Commerce Commission considers that Nova Gas faces workable or effective competition in the market where it provides gas services. That is, competition is not limited in this market.* (paragraph 18.23)

STA appear to invite the GIC to set aside the conclusions of the Commerce Commission Inquiry and to adopt a view that competition is limited in bypass network markets. STA conclude that an in-principle exemption from broad areas of regulation is not appropriate "except in the unlikely case of full competition…" (page 30) and "sweeping exemptions ought not to be available to 'industry participants' so long as the gas distribution sector remains an arena of limited competition" (page 46).

STA do not provide empirical evidence or analysis to support its view that, contrary to the Commerce Commission's findings, competition is limited in the bypass markets which Nova Gas operates. Rather, STA classify Nova Gas as operating in a duopoly market (a market with two suppliers, in this case, gas distribution networks) and seem to infer that because the market contains just two suppliers competition is limited. That is, STA appear to view competition between gas networks within a structure-conduct-performance paradigm. The structure-conduct-performance paradigm asserts a

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[2] Gas Control Inquiry – Final Report, November 2004 http://www.comco.govt.nz/RegulatoryControl/GasPipelines/ContentFiles/Documents/Public%20Version%20Final%20Report%2029%November%202004.pdf, paragraph 13.11.

relationship between market structure (as indicated by the number of existing suppliers in the market) and supplier conduct (e.g, price), which in turn determines market performance (consumer welfare).

However, the structure-conduct-performance paradigm is deficient; it is based on an incorrect understanding of the concept of competition. Competition is a dynamic process of entrepreneurship, not a static state of equilibrium. The number of suppliers (even if the number is one) in the market says little about the underlying competitive force at work in that market. There is no theory in modern economics that allows us to deduce from the observable market structure data conclusions about the degree of competition in a particular market.

The New Zealand Commerce Commission is not alone in rejecting the structure-conduct-performance paradigm for assessing market power in gas networks. The Australian Productivity Commission, in its *Review of the Gas Access Regime*, for example found that:[3]

> *The existence of gas pipelines that exhibit natural monopoly characteristics is insufficient to conclude that these pipelines have enduring market power which can be misused. Consideration needs to be given to the nature of the demand characteristics for the services of pipelines of a number of competitive forces and factors can impact on demand and constrain market power.*

And

> *Distribution networks have natural monopoly characteristics. The scope for distribution network owners to exercise market power arising from such characteristics can be constrained by a number of factors, including the availability of other fuel and energy substitutes. The extent to which market power is constrained differs across networks. A network owner servicing a new market (or one in which use is low) generally has little market power.*

The GIC is not an expert competition body and should be very cautious before adopting the approach recommended by STA, which rests on an assertion that the Commerce Commission erred in its Gas Inquiry findings. As the GIC has not undertaken any analysis of competition in the bypass markets it has no basis for setting aside the Commerce Commission findings. The presumption for the GIC should be that there is workable competition in the gas bypass markets and therefore that Nova Gas should be exempt from open access type regulation.

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[3] The Australian Productivity Commission, *Review of the Gas Access Regime*, Inquiry Report No 31, 11 June 2004.

5 Application of essential service doctrine

In contemplating bypass markets, STA claim that the "essential facilities doctrine" "losses its clarity" (page 18). STA concludes that the "doctrine arguably implies a joint regulatory obligation on both network owners" (page 20). STA reach this view by misinterpreting the doctrine and its implications.

The essential facilities doctrine holds that where a firm controls an essential facility or an essential input product, it may in certain circumstances be required to supply that product, or access to that facility, at a 'competitive price'. The essential facility doctrine is more common in overseas jurisdictions than in New Zealand and it is not clear that the New Zealand courts have, as yet, adopted the doctrine.[4]

The New Zealand High Court has however reviewed the factors that would need to be present before the doctrine would apply.[5] The first of these factors is that "in order for a facility or input product to be considered 'essential' it must not be practically duplicable, there must be no close substitutes for the facility or input, and it must be a necessary facility or input for competition in the pleaded market". The second condition is that the defendant firm must control the facility or input.

The first condition is clearly not met in bypass markets; a close substitute exists (the other pipeline) and the pipeline is evidently duplicable. The Nova Gas network in bypass markets therefore is not an essential facility in terms of the "essential facilities doctrine". The circumstances that might justify extending access regulation do not exist and a prima facie case exists for removing regulation from the currently regulated network.[6]

There are precedents in New Zealand and Australia for removing regulation where competition or other market changes mean that an owner of a facility no longer has substantial market power. For example, the Australian gas code stipulates that a pipeline cannot be subject to access regulation (to any extent) unless *all* of the following factors apply:

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[4] Justice Clifford J, *Commerce Commission v Bay of Plenty Electricity Limited*, High Court of New Zealand, CIV-2001-485-917, paragraph 395.

[5] Justice Clifford J, ibid, paragraph 388.

[6] Section 43ZN specifies that among the "other" objectives for the GIC in recommending regulation is to facilitate "access to essential infrastructure" (section 43ZN(b)(i). As the Nova Gas networks are not essential infrastructure, its not at all clear what objective the GIC would be pursuing were it to follow the approach recommended by STA.

(a) *that access (or increased access) to Services provided by means of the Pipeline would promote competition in at least one market (whether or not in Australia), other than the market for the Services provided by means of the Pipeline;*

(b) *that it would be uneconomic for anyone to develop another Pipeline to provide the Services provided by means of the Pipeline;*

(c) *that access (or increased access) to the Services provided by means of the Pipeline can be provided without undue risk to human health or safety; and*

(d) *that access (or increased access) to the Services provided by means of the Pipeline would not be contrary to the public interest.*

These provisions create an obligation on the Minister to be satisfied, on a case-by-case basis, that the benefits of retaining any aspect of regulated access would outweigh the costs, otherwise the regulation is removed. The Australian decisions show examples where, even in circumstances where it is not economic to replicate a gas pipeline, the access regime fails to meet all of the above conditions and the access regime is revoked.[7] We are not aware of any example where access regulation has been expanded to cover new entrant pipelines in bypass markets, as proposed by STA.

Similar regimes apply to telecommunication access in New Zealand and Australia; if elements of the network are subject to workable competition, access regulation is removed.

STA would have the GIC adopt the opposite approach to the now well established regulatory practice in Australia and New Zealand of removing access regulation where market power has diminished. There is no precedent in either New Zealand or Australia for the STA approach and the GIC should be loath to expand regulation in such an unexpected and unprecedented manner.

6 GIC should not protect competitors

STA is concerned that private networks might not face some costs (regulatory or otherwise) which are incurred by an open access network. STA suggest that this (presumed) cost difference allows "the bypass entrant to enjoy a perpetual right to free-ride" (page 20) and that this implies a "regulatory requirement for the merchant network

[7] See examples at http://www.ncc.gov.au/publication.asp?publicationID=204&sectorID=6

to subject its customers to a levy matching that applying on open-access network" (page 24).

STA appear to reach this conclusion through two lines of argument. The first seems to be a belief by STA that bypass is inefficient: "In an ideal world, fully-informed access price regulation would hold the price of network services down to the threshold level at which bypass entry is unprofitable…" (page 21).[8] The GIC should reject this line of logic. The GIC should not place itself in the position of judging the business model implemented by Nova Gas. It would be wholly inappropriate for a regulatory body partly comprised of industry participants to attempt to regulate to exclude commercial opportunities advanced by competitors. Any regulator must also have serious doubts about its ability to 'second guess' market developments – economic history, and New Zealand history in particular, is littered with examples of supposed natural monopolies which retained market power after technological, demand or other changes only because of regulated barriers to entry.

The second line of logic seems to be that Nova Gas gains some form of unfair advantage from not being regulated. STA argue that the "costs of securing competitively neutral access to customers for competing gas retailers" (page 24) should be shared across all customers, even those who are served by private networks. Such a requirement would be fundamentally at odds with competition policy in New Zealand (and elsewhere). The purpose of competition policy is to protect competition; regulation should not be used to assist firms (such as incumbent networks) exposed to competition. Nova Gas has no duty to aid competitors by providing them with a helping hand.[9]

If existing regulation imposes unnecessary costs on open access networks, then the GIC should work to reduce those costs, not try to offset those regulatory errors by imposing higher costs on entities not currently regulated.

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[8] STA does recognise that in the real world, bypass entry can result in positive gains, but these potential gains arise, according to STA, because of information asymmetries and an aversion to regulatory control.

[9] The case most often cited is the United States *Olympia Equipment Co v Western Union Telegraph Co* 797 F 2d 370 (1986); this case was been cited in *Telecom v Clear Communications,* for example, where the Court said that a firm does not have to "hold an umbrella over inefficient competitors" (at paragraph 402).

7 STA suggest that the GIC reverse long standing regulatory principles

In the introduction to their report, STA state that:

> *To justify an exemption there would have to be clear evidence of a significant compliance burden, together with no detriments to the effective functioning of the gas market as a whole from giving private networks privileged status with respect to matters such as (e.g.) information disclosure, registry participation, and inclusion in the industry reconciliation and allocation procedures.* (page 2)

The basis for this statement is unclear. Were STA correct in terms of the key principles discussed above – that is, if we were to accept that bypass markets were not workably competitive, that the essential services doctrine requires competing networks to be regulated, and that regulators should protect competitors rather than competition – this combination of ideas would still not provide a foundation for the quote above. STA are inviting the GIC to reverse long standing regulatory principles.

Regulations developed by the GIC cut across the general principle that private ownership (in this case of pipeline assets) entitles firms to transact, or to decline to transact, on whatever terms and conditions they see fit. In economics and in law considerable weight is attached to protecting property rights. Constitutional protection against the taking of property dates back at least as far as the Magna Carta in 1297. Section 29 of the Magna Carta held that:

> *"No freeman shall be disseised [i.e., deprived] of his freehold … but by lawful judgment of his peers or by the law of the land …"*

As evident from this quote, property rights are not absolute, a point which is discussed below. However, the general principle that ownership entitles firms to transact on mutually acceptable terms is embedded deeply in the institutions of a modern economy because it is the engine for economic growth and enhanced economic well-being. Voluntary exchange with secure property rights ensures that decision rights over resources tend to be acquired by those who value them, and individuals who value then most will be those who have specific knowledge and abilities relevant to the exercise of the right. Decision-makers benefit from increases in value or bear the consequences of reductions in value resulting from their actions, creating incentives that motivate efficient use of resources.

The general principle in favour of secure property rights is of course subject to important exceptions in both economics and law. For example, the law restricts property rights from being exercised in a manner that impinges on another person's property or the environment more generally. Parliament may also restrict the rights of private owners for public good purposes. Economics recognises that such actions may be welfare enhancing in certain circumstances. The presumption, however, is that private ownership entitles firms to transact, or to decline to transact, on whatever terms

and conditions they see fit unless there is a compelling public interest for the state to interfere with these arrangements.

STA invites the GIC to reverse this long standing presumption that a regulatory intervention to maintain or expand the scope of regulation should be justified on the basis that the benefits exceed the costs.[10] STA would shift the onus. Under the STA approach, industry participants would be presumed to be subject to regulation unless an entity could show "clear evidence of a significant compliance burden, together with no detriments to the effective functioning of the gas market as a whole".

The GIC should reject this approach. It should design process and criteria so that regulatory intervention occurs, or is maintained, only in those circumstances in which it is likely that the benefits of regulation outweigh its costs. Not granting an exemption is a decision to extend or maintain a regulatory intervention and hence an exemption should only be declined where there is a clear expectation that the benefits of regulation would exceed the cost.

To establish that the benefits of regulation would exceed the cost (and hence decline an exemption) the GIC should:[11]

- State clearly the nature and magnitude of the problem that requires a regulatory intervention.
- Show how the regulatory intervention would better achieve the principle objective relative to other options, including the option of doing nothing.
- Establish that the expected benefits exceed the total cost of regulation (including administrative, compliance, and economic costs), including nonquantifiable costs and benefits.

Measured against these basis tests, the criteria proposed by STA are manifestly inadequate.

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[10] The Government is currently strengthening the requirements on Ministers and departments to prepare Regulatory Impact Statements showing that the benefits of any proposed regulation exceed the costs.

[11] For a more developed list of criteria for establishing that the benefits of regulation exceed the costs, see http://www.treasury.govt.nz/publications/guidance/regulatory/impactanalysis/guid-ria-reqmts-nov08.pdf

8 Applying the standard regulatory principles

8.1 STA do not establish that there is a problem

In section 8 of their report, STA "work through some possible problems". The "problems" were identified by STA taking a 'blue skies' approach; that is an intellectual exercise of speculating as to what problems might emerge under the existing regulatory structure. Such an exercise might serve a useful purpose for the GIC in terms of identifying possible issues to think about and investigate. It does not provide a basis for extending regulation to Nova Gas.

To date, neither STA nor the GIC have established whether any of the problems identified by STA exist in practice. Nor has STA or the GIC established that if any of the problems do exist, they are of sufficient consequence to warrant regulation. A minimum condition of extending any regulation to Nova Gas, or any other industry participant, is that the regulation would address a clearly identified problem of some consequence.

STA in their consideration of "possible problems" identify four potential "spillover" effects in relation to reconciliation:

1) Direct interconnection:

I understand that currently there is no interconnection between the Nova Gas pipelines and the open access distribution networks that those pipelines compete with. Hence, the first possible problem identified by STA does not exist.

Interconnection of pipeline systems could be a beneficial development from a consumer perspective especially in relation to improvements in security of supply. Commercial interconnection arrangements would be needed to manage metering and allocation issues and would form a part of commercial negotiations of the interconnecting parties and would be subject to the Commerce Act. STA provide no basis for the GIC to intervene in any such negotiations.

2) Switching:

I understand that the assumptions used by STA in relation to the workings of the reconciliation process are incorrect and "gaming" of the process through use of deemed profiles is not feasible under the current regulated reconciliation processes. The standard profile for non TOU consumers is a dynamic residual profile that automatically adjusts for the affects of consumer loads that enter and exit the open access system. Indeed this is required to manage new gas consumers and those that discontinue consumption of gas permanently.

3) Notional gates and UFG:

I understand that currently there is no supply to consumers through multiple open access delivery points currently. Hence, the problem supposed by STA does not exist.

4) Strategic behaviour by retailers:

What STA label as strategic behaviour of a bypass operator or "gaming behaviour" is not inefficient or disadvantageous to consumers and represents innovation and competition by networks. This is an example of STA proposals protecting competitors rather than competition.

Generally consumers have exclusive supply contracts with retailers. It is possible that future competition may involve multiple retailers supplying the same customer, potentially through connections to multiple networks. From a consumer perspective, such activity would improve security of supply and enhance competition between pipeline owners/retailers. While there may not the commercial arrangements or incentives in place to facilitate this level of competition currently it would not be appropriate for the GIC to raise barriers to such developments given the potential benefits to consumers.

In Section 8.2, STA also raise issues related to contractual barriers to switching away from private bypass network. These are the same contractual terms which the Commerce Commission found had been agreed under "vigorous competition" and are subject to the Commerce Act and the Fair Trading Act. Nova Gas has no ability to prevent or frustrate a customer switching, other than enforcing agreed commercial terms. It was the competition and efficiency issues associated with customer switching issues on the ***open access network*** that led to the decision to regulate the switching process and not anything related to the existence of bypass networks.

8.2 STA do not establish that regulation is best solution to problem

It would seem that few if any of the problems identified by STA exist in practice and are of real consequence. If any problems subsequently emerge, the next step by the GIC should be to investigate whether the proposed solution is the best means of resolving that problem. STA do not show that regulating Nova Gas is the best way of resolving the problems it identifies. No other options are investigated; other options include revising or removing aspects of the regulation affecting other pipelines.

8.3 Benefits of regulation should exceed the costs

Before the GIC proposes to maintain or extend regulation, it should show that the benefits can be expected to exceed the costs. STA do not attempt to quantify any benefits from extending regulation as it proposes. Nor do STA consider the potential costs of regulation: information gathering and dissemination are costly; and the forced

release of information that would otherwise be kept confidential can damage incentives to invest and innovate.

8.4 Information disclosure

STA refer to the Government Policy Statement of April 2008, which includes the Government's policy objective that:

> *Good information is publically available on the performance and present state of the gas sector.*

The GIC must have regard to the GPS; that is, the statement is not a directive to the GIC but the GIC cannot ignore the policy statement and must give it due regard.

STA says that the policy statement "leaves no wriggle-room for exemption of private distribution networks from mandatory information disclosure" (page 45). In fact, the policy requirement is on the GIC to make good information publically available on the performance and present state of the gas sector. To establish a case for requiring Nova Gas (or any other entity to release information) by reference to this policy objective, the GIC would need to:

- Develop performance measures for the gas sector.
- Establish that these performance measures cannot be calculated using publically available information.
- Establish that the chosen performance measures better meet the principle objective than measures that could be calculated using publically available information.
- Show that the benefits of requiring information to be released by private entities to enable the GIC to publish its chosen performance measures exceed the total costs of the regulatory intervention.

STA do not show that the information it believes should be released is needed to develop performance measures of the gas sector, let alone that the release of this information would create a net benefit.

9 Conclusion

The STA report does not establish a sound basis for considering the application of the Gas Governance Arrangements to Private Networks. I understand that Nova Gas is exempt under the Act.

Even if it were not exempt, the regulations should not apply because:

- Nova Gas operates in workably competitive markets.
- The GIC has not established that:

- The regulation would address real and significant problems; and
- The benefits of the regulation would exceed the costs, when measured against the purpose of the Act.

The challenge for the GIC is to design a regulatory process that encourages and strengthens competition and innovation and imposes forms of regulatory intervention only where that intervention is likely to generate net economic benefits. The approach recommended by the STA falls well short of meeting this challenge.