

NOVA GAS LTD

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Ian Dempster
Gas Industry Company
PO Box 10 646
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Dear Ian,

Nova Gas Ltd submission regarding Application of Gas Governance Arrangements to Private Networks consultation paper prepared by Simon Terry Associates

Nova Gas has reviewed the consultation document prepared by Geoff Bertram of Simon Terry Associates (STA).

Review of the STA paper by LECG

Given the nature of the consultation document, its conclusions and the potential effects on our business we asked Kieran Murray of LECG to review the consultation paper and the economic theory that underpins its findings.

LECG's findings are that:

- the Nova Gas 'bypass' pipelines face 'workable competition' as determined by New Zealand's expert competition body, the Commerce Commission;
- application of regulation to Nova's bypass pipelines cannot be shown to address any real or significant problem; and
- the GIC has not shown that the benefits of regulation would exceed the costs when measured against the purposes of the Gas Act 1992.

A copy of LECG's review is attached.

Private Bypass pipelines and the Gas Act 1992

Nova's analysis of the provisions of the Gas Act 1992 (referred to in LECG's review) suggests that STA:

- wrongly concluded that the legislative framework treats open access and private networks as the same thing;
- wrongly concluded that customer owned pipelines fall outside the ambit of the Gas Act; and

- wrongly concluded that Nova provides distribution services as defined under the Gas Act, as Nova does not provide that service to *other parties* and only transmits its own gas on its pipelines.

Nova Gas comments on the STA paper

Nova Gas is concerned that the STA paper:

- proposes that the Commerce Commission, New Zealand's competition expert, was wrong in its assessment that Nova Gas faces workable competition in the bypass network areas;
- attempts to apply the essential services doctrine improperly;
- places the onus on Nova Gas to prove that the costs of regulation outweigh the benefits when the accepted regulatory principle is that it is the regulator which must show that the benefits exceed costs;
- raises issues and concerns about how a bypass network operator could engage in "strategic behaviour" or "gaming" that, in fact, cannot arise due to the actual industry switching and reconciliation processes (it was confirmed by STA during a recent workshop that there was no consultation with informed parties about the proposed "gaming" opportunities and that the opportunities were identified by making incorrect assumptions about the design of reconciliation and switching processes used);
- regards some potential developments such as interconnection as undesirable due to negative impacts on competing distributors, even though benefits are likely to arise for consumers; and
- has the potential outcome of protecting gas distributors from competition.

Finally, we agree with and support LECG's concluding comment that:

"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."

Yours sincerely



Charles Teichert