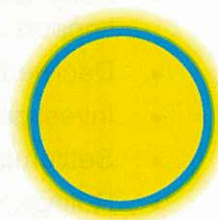


10 October 2008

Sarah Greathead  
Team Secretary  
Gas Industry Company  
P O Box 10-646  
**Wellington**

**POWERCO**



Dear Sarah,

Powerco is pleased to have this opportunity to comment on the Market Administrator, Investigator and Rulings Panel's summary of procedures, published for consultation on 19 September 2008.

The Gas Industry Company has outlined that the draft documents and consultation process aims to address three key essential elements of an efficient compliance framework: transparency (in relation to processes and outcomes), clarity of the rules and opportunities to learn. Powerco commends the Gas Industry Company on their work so far, and makes recommendations to support these aims.

Powerco notes that the Critical Contingency regulations are not mentioned in the Gas Governance (Compliance) Regulations 2008 or the summary of procedures as these regulations have not yet been finalised. Powerco would appreciate the Gas Industry Co confirming that there will be consultation on the compliance regime for these regulations once they are completed. Powerco makes the following comments on the three documents:

#### Market Administrator (MA)

Rule 12 states that if the Market Administrator (MA) receives an alleged breach notice the MA will acknowledge this within five business days. However, as noted in electricity procedures, the MA is likely to receive some breaches which do not have a prima facie case to answer. Powerco suggests that the MA filter out these cases and acknowledge to the notifying party that no prima facie case exists (and reflects this in the procedures flowchart accordingly).

Rule 14 states that the MA may request information about the circumstances of a breach from a number of sources, although the process of gathering information is omitted from the procedures flow chart. Powerco recommends this is added.

Procedure 19 (2) allows the MA to publish guidelines on the weight attributed to the list of factors that determine materiality. As discussed in the workshop, the Gas Industry Company has not attributed any weighting to the factors listed in 19(1) due to the low numbers of breaches received to date. It would be helpful if a matrix is developed, similar to the Electricity Commission's matrix, showing the impact of the breach (low, medium or high) and the potential breach areas.

In addition to providing consistency of application by the MA, the matrix will also help a company estimate the business impacts of its actions. This helps provide a focus of areas where a company should improve its internal controls.

It would be useful for the MA to categorise breaches and supply information on the outcome of various breaches over periods of time. This information may also be useful to an auditor investigating an issue under Part 4 of the Gas (Downstream Reconciliation) Rules 2008. Powerco suggests for ease of understanding that the five categories adopted by the Electricity Commission be adopted as they are familiar to most participants. The categories are:

- Early Closure (minor market impact, party acknowledges the breach and all supporting information provided with the breach notice)
- Declined to peruse (with or without a warning letter)
- Investigation
- Settlement
- Rulings Panel.

Powerco suggests that the summaries of the procedures for the MA (and the Investigator) should stipulate that where the material facts of a breach are identical with another breach already decided by either the Investigator or the Rulings Panel, that the MA must follow that decision. Similarly the Investigator procedures should also state that they will follow the decisions of the Ruling Panel.

Powerco recommends that both the MA and the Investigator summary of procedures should refer to bullets 4 and 5 of the Rulings Panel summary of procedures, in relation to conflicts between the Gas Act, rules and regulations and terms.

At the workshop it was noted that the MA will report rule breaches every month to the Gas Industry Co. If the MA discovers that a particular rule is being breached repeatedly, the MA will advise the Gas Industry Co, and it will decide whether a rule change is needed. Powerco recommends improving transparency of this process by allowing industry participants to examine the statistics on rule breaches, and by making a list of potential rule changes available on the Gas Industry Co website.

#### Investigator and Market Administrator

The procedures allow for the MA and the Investigator to change them from time to time, and on a case by case basis. Powerco recommends that any material departures from the published summary and procedure documents and accompanying flowchart are communicated to industry participants.

Rule 32 (2) affords the investigator the ability to use any process she deems suitable. In Powerco's experience with electricity procedures, for material alleged breaches Powerco has found conferences with breach participants extremely useful for debating and agreeing the facts. This option should be offered as part of the negotiated settlement process.

#### Rulings Panel

For complex and serious cases it might be useful if the Rulings Panel could give a draft decision on the matter at hand or seek comments. This would be particularly useful if the decision affects financial reporting of contingent liabilities or making accounting provisions.

The Gas Industry Co may wish to consider editing paragraph 7, which states that 'the participants and the investigator shall have the right to cross examine any witness called by the panel'. In the Gas Governance (Compliance) Regulations 2008 the term 'participant' includes a large number of people (eg any registry participant). The Gas Industry Co may wish to change this to 'any participant listed under regulation 39(2).

## General Comment

At the workshop the Gas Industry Co outlined that the intention of the compliance regime was use the Rulings Panel where possible to avoid re-creating the "Somes Island" effect that currently exists in electricity procedures. From an improvement to knowledge and decision making aspect, Powerco supports this aim. Powerco however, has some reservations around the timeframes in the procedures, and will be watching with interest as to whether the appropriate balance of cases are being referred to the Rulings Panel for a decision.

Finally Powerco notes that rule 51 and 52 do not have a statutory cap to the amount of fines that can be levied on an industry participant in any one year. This is different to the electricity equivalent and may be an area where a rule change should be recommended.

Should you have any comments in relation to our letter please do not hesitate to contact me.

Yours faithfully,



**Paul Goodeve**  
Regulatory and Business Manager

