



**Submission on Proposed Determinations and
Notifications under Gas (Downstream
Reconciliation) Rules 2008 and other
implementation Matters**

Response to GIC Consultation Paper

***by
Powerco Limited***

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Question 26 – Do submitters have any comments on the definition of “gas measurement system” in the context of the definition of “gas gate”?

Introduction

1. Powerco has considered this question in some detail. In the Consultation Paper (page 28), the GIC notes that it did not intend the connection between a distribution system (owned by one person) and a gas measurement system (owned by another person) to be considered as a gas gate. Powerco believes that there is a risk that such a connection could be considered to be a gas gate. If that connection is considered to be a gas gate, the notice (and other) obligations around gas gates will apply to that connection.
2. The Gas Act definition of “distribution system” is central to determining whether a gas measurement system is a distribution system in its own right, such that the point of connection between a distribution system (owned by one person) and a gas measurement system (owned by another person) amounts to a gas gate.
3. The GIC has sought information from submitters about their consideration of the issue of gas measurement system or meter ownership in the context of the Gas Act definition of “distribution system”.
4. It appears that the GIC’s intention in defining “gas gate” is to distinguish between lengths of interconnected gas pipe that are owned by separate parties. However, as discussed in this submission, the way that “gas gate” is defined may have the unintended consequence of including the connection between a distribution system and a gas measurement system.

Distribution System definition under the Gas Act 1992

5. The Gas Act currently provides that a *distribution system* (emphasis added) means:

*all fittings, whether above or below ground, under the **control of a gas distributor** and **used to distribute gas** from ... the boundary of the gasworks or gate station outlet flange supplying gas for distribution...to the outlet of the gas measurement system of the place at which the gas is supplied to a consumer or gas refueller....*

6. This definition is to be substituted for the following (emphasis added):

*all fittings, whether above or below ground, under the **control of a gas distributor** and **used to distribute gas** from... the boundary of the gas works or gate station outlet flange supplying gas for distribution to the point of supply of the place at which the gas is supplied to a consumer or gas refueller...*

Gas Industry Company definition of Gas Gate

7. The Gas (Downstream Reconciliation) Rules 2008, and other rules and proposed regulations that the Gas Industry Company has assisted with drafting, define Gas Gate to include (amongst other things) *the point of connection between **two gas distribution systems***.

Distribution system

8. It could be argued that all fittings under the control of a single gas distributor are one distribution system, and where any fittings are no longer under the control of that gas distributor and are instead under the control of another gas distributor, there are effectively two gas distribution systems (and therefore a gas gate). This is because of the use of the phrase “under the control of a gas distributor” which implies that once control changes to another gas distributor the distribution system ends and a different one begins.
9. However, this interpretation does not fit easily with references in the Gas Regulations 1993 (and proposed Gas Safety Regulations) to owners and operators of “a distribution system *or part of a distribution system*”. If, under our interpretation of “distribution system”, a change of control means that distribution system ends and a second distribution system begins, then it would not be possible for a distributor to own or operate *part* of a distribution system (as this would be considered a separate distribution system).
10. Under the Interpretation Act 1999, section 33 provides that *words in the singular include the plural and words in the plural include the singular*. It may be that “under the control of a gas distributor” includes the plural of more than one distributor and it does not matter whether control of a distribution system changes, so long as it is connected and is under the control of any one or more gas distributor, it is all one distribution system. This view is consistent with the references in the Gas Regulations to owners or operators of *part* of a distribution system and is also consistent with the view the Commerce Commission appears to take in its dealings with the gas industry.
11. If we take the view under the Gas Act and Gas Regulations that different distributors can own parts of a connected network such that there is only ever one distribution system, how can the Downstream Reconciliation Rules definition of a gas gate as including the point of connection between two distribution systems ever exist? If two distribution systems are connected, they are just two parts of one distribution system.
12. The interpretation of *control* will also be relevant. It is not clear from the Gas Act what may amount to control – i.e., to what degree must the gas distributor have control – does it have to be exclusive control, or only partial control? Control is not necessarily the same as ownership or operation and it is also feasible that more than one person could assert control over a distribution system through different means.

Gas measurement system as a distribution system

13. As discussed above, the GIC states (in the Consultation paper) that it did not intend a connection between a gas distribution system (owned by one person) and a gas measurement system (owned by another person) to be considered as a gas gate. The Consultation Paper does not go on to explain further as to why – for example, because the gas measurement system is not a distribution system in its own right or because, even if it is owned by another person, it is still part of *one* distribution system. The Consultation Paper asks for information about numbers of gas measurement system connections and meters owned by third parties, which suggests they believe the change of ownership/control may be significant.
14. If the change of control is significant and does create a separate distribution system, for the connection at a gas measurement system to be considered as a gas gate, the gas measurement system would have to be considered to be a separate distribution system,

in its own right. To be a separate distribution system, the gas measurement system must have the following characteristics:

- a) be a fitting - gas measurement systems appear to come under the definition of *fitting* in the Gas Act;
 - b) be under the control of a gas distributor (a gas distributor is someone who provides and maintains pipes lines for the conveyance of gas to other persons or who operates such pipe lines, including the assumption of responsibility for losses of gas) – this may vary depending on the facts and on how the relevant definitions are applied (as discussed below);
 - c) be used to distribute gas – arguably yes, although it is a measurement tool, the Gas Act contemplates that a gas measurement system can be part of a distribution system or gas installation and therefore, arguably, *distributes* gas; and
 - d) be between the boundary of the gasworks or gate station outlet flange supplying gas for distribution and the outlet of the gas measurement system or the point of supply – gas measurements systems are just on the distributor side of the point of supply to a consumer so are included.
15. A gas measurement system appears to meet criteria (a), (d) above and possibly also meets criteria (c).
16. Whether a gas measurement system meets criteria (b) above will depend on whether the person who is control of the gas measurement system provides and maintains or operates pipe lines. Pipe is defined in the Gas Act to include tubes, hoses and associated fittings. It is arguable that a gas measurement system is an associated fitting and therefore the owner/operator of a gas measurement system is consequently a gas distributor.
17. If it is the change of control that creates a separate distribution system, a gas gate will only be deemed to exist where a third party who is also a gas distributor controls the gas measurement system. If Powerco has control over the gas measurement system there is no change of control and therefore no second distribution network and no gas gate is deemed to exist. Similarly, if the third party is not deemed to be a gas distributor, there is no second distribution system and no gas gate is deemed to exist.

Analysis of this approach

18. If we take the view that a change of control creates a separate distribution system, then we are left with the odd situation where the existence of a distribution system (and therefore a gas gate) is dependent on whether another party controls the gas measurement system and whether that other party is deemed to be a gas distributor.
19. There seems to be an inherent conflict between the use of the term distribution system in the Reconciliation Rules and the definition and use of that term in the Gas Act and Gas Regulations. The Reconciliation Rules contemplate that two separate distribution systems can be connected, but the Gas Act and Gas Regulations view two connected distribution systems as two *parts* of *one* distribution system. As the Reconciliation Rules are made pursuant to the Gas Act, the Rules must be consistent with the Act.

20. If the GIC did not intend connections to gas measurement systems to be included as gas gates, this should be made clear in the Reconciliation Rules and in other rules and regulations that the Gas Industry Company assists with drafting as Powerco believes that there is an argument that they may otherwise be included.
21. It would be helpful for the Gas Industry Company to provide more information about what it had intended to be included by its definition of “gas gate” – particularly, “the point of connection between two gas distribution systems” and more information about why the GIC did not intend a connection between a gas distribution system (owned by one person) and a gas measurement system (owned by another person) to be considered as a gas gate, but did intend a connection between two distribution systems to be a gas gate.

Should you have any questions in relation to this submission, please contact Karen Frew on 06 759 6562.