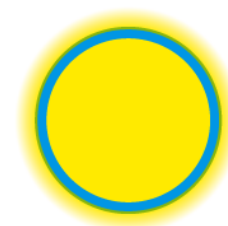


13 July 2012

Submissions
Gas Industry Company
PO Box 10 646
Wellington
New Zealand

[Submitted via Gas Industry Co website]

POWERCO



Dear Ian,

**Powerco Submission on amendments to the Gas Governance (Compliance)
Regulations 2008 statement of proposal**

Introduction

1. Powerco welcomes the opportunity to comment on the Gas Industry Company's (GIC) statement of proposal paper, *Amendments to the Gas Governance (Compliance) Regulations 2008* (SoP), published on 31 May 2012. We recognise the importance of the *Gas Governance (Compliance) Regulations 2008* (Regulations) in providing the appropriate framework for the monitoring and enforcement of gas governance arrangements for industry participants.
2. This letter summarises Powerco's thoughts in respect of the SoP, our responses to the consultation questions in the requested format can be found in Appendix A. None of the content of this letter or Appendix A are confidential.

Powerco supports the review of the Regulations

3. Powerco acknowledges the need to periodically review and ensure guiding industry regulations and rules are still fit for purpose and drafting errors are rectified. We agree that the proposed amendments in the SoP align with the statutory objectives of the Gas Act (Act) and Government Policy Statement on Gas Governance (GPS).
4. We support the GIC's use of the requirements of section 43N(1) of the Act to assess the proposed amendment to introduce a threshold regime, and the GIC interpretation that section 43N(3) applies to the remaining proposed minor drafting and clarification amendments.

General comments on the proposed minor amendments to the Regulations

5. In general, we support all 14 proposed minor amendments and consider that they are covered by section 43N(3) of the Act. We consider the amendments will improve the operation of the Regulations that support the gas governance regime and do not adversely affect any person in a substantial way.
6. Three of the minor proposed amendments (11,12 & 14) contained in the SoP propose to introduce new powers under the Regulations. To remain covered by section 43N(3) of the Act, the GIC must be confident that the drafting of any new powers is robust and not open to misunderstanding or misuse. If any doubt exists that this can be done we recommend that the GIC consult with industry participants as per 43N(1) of the Act.

Comments on the proposed introduction of a threshold regime

7. It is recognised that the Regulations have created an environment of high compliance with gas governance rules and regulations. The current no discretion approach of the Regulations to reporting and the subsequent process of investigating and ruling provide a strong incentive for participants to remain compliant and has contributed to the current compliance success. Any introduction of a threshold regime must not erode the current state of high compliance as this would negatively impact on the performance of the industry.
8. Powerco recognises that after three years of experience of the Regulations being in place, trends of minor breaches that are not considered material have been identified and are creating unnecessary costs. The cost benefit analysis supports the argument that processing minor breaches is not efficient and that ultimately it is consumers that are passed the costs. We therefore support the proposal for the introduction of a threshold regime within a stringent set of guidelines.
9. We acknowledge that the GIC recognise the potential challenges a threshold regime may face, including regular trends being developed towards de-facto rule change. We fully support the GIC's proposal to actively monitor breaches that fall below the proposed threshold and ensure no abuse occurs. We believe that the monitoring of statistics of all apparent breaches is an essential component to be included in the development of guidelines. Allowing participants, consumers and other persons to allege a breach at any time, regardless if the rule breached fell within the threshold regime, will be an essential concept in providing certainty that the threshold regime will not exclude a breach from being investigated.
10. Powerco believes that the GIC correctly took a cautious approach to the classification of the proposal under the Act and followed the process required in 43N(1). The information provided as per 43N(1) has been essential in understanding the issues around the proposed introduction of a threshold regime further, resulting in us agreeing with the GIC that the proposal falls under section 43N(3).

Conclusion

11. Powerco is pleased that the GIC is reviewing the Regulations with the aim of rectifying drafting errors and introducing efficiency around the breach reporting requirements. We support the proposed minor changes and proposed introduction of a threshold regime.

12. Thank you for the opportunity to make this submission. If the GIC wishes to discuss any aspects of this submission further, please do not hesitate in contacting me on 06 757 3397 or oliver.vincent@powerco.co.nz.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Oliver Vincent". The signature is stylized with a large initial 'O' and a horizontal line extending to the right.

Oliver Vincent
Regulatory Analyst
Powerco

Appendix A Template for Submissions

To assist Gas Industry Co in the orderly and efficient consideration of submitters' responses, a suggested format for submissions has been prepared an electronic copy of which is available on our website. This is drawn from the questions posed throughout this Consultation Document. Submitters are also invited to include any other comments in their responses to this Consultation Document.

Name of organisation: Powerco Limited

Contact person: Oliver Vincent

Email address: oliver.vincent@powerco.co.nz

Phone: 06 757 3397

Could you please provide comment as to whether you agree with the amendment proposals? If not, please indicate which specific proposal or proposals you disagree with and provide reasons why.

PROPOSAL	COMMENT
Q1: The proposal to amend regulation 10(2) to remove the words 'by other means'.	Agree
Q2: The proposal to amend regulation 11 so that the heading refers to 'certain service providers'.	Agree
Q3: The proposal to clarify that the notice requirements in regulation 12(1)(b) apply to the notice issued under regulation 13(1).	Agree
Q4: The proposal to amend regulations 13(2) and (3) so that a participant becomes a party to a breach and not a breach notice.	Agree
Q5: The proposal to include the industry body as a party from who information can be sought, and to who will be provided with all notices and documents that are circulated to industry participants, and parties joined.	Agree
Q6. The proposal to amend regulation 19(1)(k) to include reference to orders of the Rulings Panel.	Agree
Q7. The proposal to amend the mandatory requirement on the Allocation Agent and Gas Registry Operator to agree to a settlement under regulations 21 and 32.	Agree

PROPOSAL	COMMENT
Q8: The proposal to amend regulation 46 to remove the requirement for the Investigator who investigated the alleged breach to speak to his or her report if requested by the Rulings Panel.	Agree
Q9: The proposal to delete wording in regulation 49 to ensure correct cross-referencing.	Agree
Q10: The proposal to remove the references to 'internet site' from regulations 81(4), 82(2) and (4) and 83(2).	Agree
Q11: In relation to the proposal to include a new power for the Market Administrator and Investigator to amend breach notices in very limited circumstances.	Agree
Q12: The proposal to include a new power for the Market Administrator and Investigator to be able to consolidate breach notices in very limited circumstances.	Agree
Q13: The proposal to modify the interrelationship between the definition of participant, the Gas Governance (Critical Contingency Management) Regulations 2008, and the notice requirements in regulation 13.	Agree
Q14. The proposal to include a new provision that would enable a participant to join a matter at a later stage than the Regulations currently provide for under regulation 13.	Agree
Q15 The proposal to include a new threshold regime for otherwise mandatory reporting of alleged breaches by the Allocation Agent and the Gas Registry Operator.	Agree
STATUTORY CLASSIFICATION	COMMENT
Gas Industry Co is seeking submissions on whether or not submitters see the proposal to introduce a threshold regime as a minor change that will not adversely affect the interests of any person in a substantial way, and thus is an amendment that properly falls under section 43N(3).	Agree. Based on the information provided in the statement of proposal we agree with the GIC that the proposal falls under section 43N(3) as it does not affect the interests of any persons in a substantial way.