



**Submission to the Gas Industry Company
on its Statement of Proposal Transmission
Pipeline Balancing, October 2009**

From

Contact Energy Limited

30 October 2009

Introduction

Contact Energy Limited (“Contact”) welcomes the opportunity to provide feedback to the Gas Industry Company (“GIC”) on its Statement of Proposal, Transmission Pipeline Balancing, October 2009.

At this stage, Contact does not support the GIC’s Statement of Proposal. Contact has not changed its position from that set out in its 17 August submission on the GIC’s Transmission Balancing Second Options Paper. Industry resolution of the issues remains the preferred approach because that is likely to yield a lower cost more flexible outcome, better tailored to meet the needs of transmission system users.

Unhelpfully, because of the Statement of Proposal, the GIC has imposed a very tight deadline on the opportunity available to the industry to resolve the issues addressed in the Statement of Proposal. This means the industry may not have sufficient time and resources to address the issues. As a consequence there is greater risk that the ICD process, that has been established to achieve industry resolution of the issues, will fail.

The GIC’s proposal has not been adequately assessed against the objectives of the Gas Act and the GPS. The approach the GIC has taken of assessing the proposal against criteria derived from the Gas Act and GPS objectives, rather than directly against those objectives, means important aspects of the Gas Act and GPS objectives have been overlooked such as minimisation of barriers to competition, continued downward pressure on the delivered price of gas and the focus on meeting the needs of consumers and end users. The requirement in the Gas Act for an assessment of the cost and benefits of the proposal has also not been adequately addressed. The GIC’s qualitative assessment lacks rigour and is inappropriate when expenditure of the magnitude of \$2 million per annum is contemplated.

More positively the GIC has attempted to address some of the concerns arising from a regulated solution in that the TSOs are provided with the opportunity to develop the detail of the balancing regime and a change process is included in the proposed arrangements. Regrettably these provisions to improve the efficiency of the GIC’s proposal are offset by users’ limited opportunity to participate in those processes. This approach also means the outcome of the regulated solution is uncertain.

The approach requiring TSOs to develop a plan to address the detail of regulations has been followed in developing the critical contingency arrangements. Difficulty has arisen in obtaining TSO agreement and in integrating those arrangements into the MPOC and VTC arrangements. The greater complexity of the balancing arrangements, the requirement for a single balancing plan agreed by the TSOs, the need to agree a single balancing agent and the reluctance of the TSOs to take responsibility for balancing suggests the balancing arrangements will generate similar but harder to resolve issues.

The GIC indicates a timetable for implementation of the rules as the end of the 3rd quarter of 2010. From the experience of implementing the critical contingency arrangements implementation of the balancing rules by that date seems optimistic. It is unreasonable to require commitment at least to the main principles of industry agreed solution by the end of November 2009 when almost a year is allowed for development of a regulated solution.

The principles that underlie the GIC's proposals give rise to a number of concerns:

- there is a high risk of confusing the responsibility and the accountability of each TSO and the balancing agent for providing transmission services (delivering gas);
- the proposal does not create the correct incentives such as users having an incentive to balance to notified gas requirements;
- the proposal does not capture wider balancing issues such as daily determination of imbalances and ensuring that all users across the transmission system have the same obligation to balance and the same tools to manage balancing; and
- there is no comprehensive design or end goal captured in the proposal.

Contact believes that if the GIC spends resources on addressing balancing issues that resource should be directed towards delivering the more difficult to achieve aspects of a comprehensive solution for transmission system balancing. That would encompass implementation of a single balancing regime across the whole transmission system with all users having good access to the information and the balancing tools necessary for users to self balance. Those arrangements would be supported by a liquid spot market for gas that would allow users to flexibly source gas. TSOs would remain responsible for delivering gas to users' notified requirements. The MPOC arrangements, including the BGX, with some adjustment to

better specify circumstances in which balancing actions will occur and to better direct balancing costs to the causers of imbalance provides a good model for such arrangements.

Contact has many detailed concerns with the rules that the GIC proposes to recommend. Those concerns are described in the attached preliminary comments on the proposed rules. This analysis suggests the rules require considerable clarification and further development. The limited time available to consider the effectiveness of the proposed rules means that Contact has not been able to comment comprehensively.

Contact's responses to the questions that the GIC has set out in the Statement of Proposal follow together with the appendix that provides comment on the individual rules.

If required Contact is happy to clarify these responses.

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Discussion Paper Questions

| QUESTION | |
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| <p>Q1: Do you agree with Gas Industry Co's decision to pursue the ICD process? If not, why?</p> | <p>Yes.</p> <p>The high cost, low flexibility, lack of innovation and lack of responsiveness to users' needs of regulated solutions should be avoided as far as possible. This is consistent with section 43N of the Gas Act which requires the GIC to:</p> <ul style="list-style-type: none"> • seek to identify all reasonably practicable options for achieving the objective of regulation; and • ensure that the objective of the regulation is unlikely to be achieved by any reasonably practicable means other than the making of regulation. <p>Unfortunately, the short time frame, the conflicting demands on participants' resources and the lack of prepared discussion papers means there is a high probability that the ICD process will not deliver the agreement required from industry participants. The GIC's difficulty in clearly specifying the matters that it requires the industry to address to avoid regulation or to specify the reasons why it considers regulation is required has not assisted.</p> <p>It is acknowledged that the under the GIC's proposal that much of the detail of the balancing arrangement would be contained in a TSO negotiated balancing plan and that would be subject to a change process. This reduces some of the concern about the low flexibility and lack of innovation of regulated solutions.</p> |
| <p>Q2 Do you agree with Gas Industry Co's proposal to pursue the participative regulation option? If not, why?</p> | <p>No.</p> <p>It was unnecessary to embark on the participative regulation option until it was determined that the industry could not make the required improvements to balancing arrangements. Embarking on the participative regulation option seems to have unnecessarily imposed a very tight timetable on the industry negotiated solution. The tight deadline has substantially increased the risk that the industry resolution process will fail.</p> <p>In addition, the participative regulation option is competing for scarce industry resources that would be better focussed on an industry negotiated solution. Costs and resources spent on the participative regulation option will have been wasted if the industry negotiated solution succeeds. Contact made these points in its 17 August 2009 submission to the Gas Industry Company on its Transmission Balancing Second Options Paper dated July 2009.</p> <p>Contact is also concerned that the proposed participative regulation relies heavily on TSOs developing an agreed balancing plan with little opportunity for other user input. That approach creates significant risks that the arrangements will not meet the needs of other users and gas consumers who ultimately will bear the costs of the arrangements.</p> <p>The limitation on user input seems contrary to the focus on meeting consumers' and end users' needs set out in section 12 of the GPS.</p> |

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| <p>Q3: Do you agree that the draft rules adequately address the balancing issues raised throughout this review? If not, why?</p> | <p>The issues raised in the review are:</p> <ul style="list-style-type: none"> • identification of balancing issues; • the legislative framework; • enforcement of regulations and rules; • general objectives and outcomes; • the regulatory objective; • the scope of regulations; • assessment of practicable options; and • the ICD process. <p>Identification of balancing issues</p> <p>It is unclear whether the draft balancing rules will address the identified balancing issues because the balancing rules do not specify the detail of the balancing plan or the operation of the balancing market. That will remain unclear until the balancing plan is approved by the GIC.</p> <p>There are identified balancing issues that the balancing rules do not adequately address. Examples include:</p> <ul style="list-style-type: none"> • the role of the balancing agent; • the accountability of the TSO and the balancing agent for delivering gas; • poor information available to users on balancing position (D + 1); • multi-day balancing (cash out of imbalance at end of each transmission day or on the basis of running imbalances); • tolerances; • treatment of UFG; • allocation of costs to causers (extended nominations); and • availability of balancing tools (extended nominations). <p>The legislative framework</p> <p>The Gas Act requires the GIC to assess the costs and benefits of its recommendation to regulate. This requires a quantitative assessment. A qualitative assessment does not adequately address the requirements of the Gas Act. The GIC's proposal could generate significant ongoing costs that have been assessed to be around \$2 million per annum. It is likely that the cost of transactions associated with imbalance will settle out at around \$3 million to \$4 million per annum. It seems highly unlikely that the GIC's proposal will generate sufficient efficiency gains from implementing its proposal to offset the likely increased cost of its proposal.</p> <p>The Gas Act also requires the GIC to show that the regulation is unlikely to be satisfactorily achieved by any reasonably practicable means. The GIC has not demonstrated that. At this time it remains likely, given an adequate opportunity, that the industry will be able to resolve the balancing issues set out in the rules sufficiently to avoid regulation.</p> |

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| Q3: Continued | <p>Enforcement of rules and regulations</p> <p>Contact has misgivings whether use of the Gas Governance (Compliance) Regulations will result in timely, low cost, quality determinations. The doubts arise because these regulations were set up to address issues arising from switching. Issues arising in relation to balancing are likely to be more complex and may involve substantially higher value. The one person status of the Rulings Panel creates significant risk of bias and vested interest capture. Establishing a governing body dedicated to resolving gas issues is likely to generate significant standing costs. It is uncertain whether there are adequate checks and balances within the Gas Governance (Compliance) Regulations to redress poor quality determinations.</p> <p>General objectives and outcomes</p> <p>In recasting the objectives of the Gas Act and the GPS the GIC has lost the essence of those objectives. In particular the GIC has not shown how its proposal will minimise barriers to competition and also will ensure delivered gas costs are subject to downward pressure. Vector shippers and interconnected parties lack of access to balancing tools and ability to offer balancing services means those shippers and interconnected parties are disadvantaged compared to welded parties connected to the Maui pipeline. Establishment of a single balancing agent, that is not a TSO offering transmission services, seems likely to increase costs.</p> <p>The regulatory objective</p> <p>The stated regulatory objective is too high level and general and does little to demonstrate the purpose of the regulations. The outline of the proposed rules set out in section 4 of the rules provides a more useful and pertinent statement of the purpose of the proposed rules.</p> <p>However, there is a concern that the scope of the proposed rules is too narrow and that once those rules become effective the wider balancing issues will not be addressed. This includes matters such as:</p> <ul style="list-style-type: none"> • a single balancing regime across the transmission system; • ownership of linepack; • following day allocation of all gas deliveries (D + 1); and • provision of balancing tools to all users. <p>So far there does not seem to be any better comprehensive solution to balancing issues than implementing the MPOC balancing arrangements, with some minor improvement, across the whole transmission system together with D + 1 allocation. Contact would like to see commitment to pursue this wider solution. This could be reflected in a regulatory purpose such as the following:</p> <p><i>To develop an efficient single balancing regime extending across the transmission system that ensures:</i></p> <ul style="list-style-type: none"> • <i>reliable delivery of gas;</i> • <i>all uses have the information and tools necessary to efficiently manage balancing; and</i> • <i>balancing activity is undertaken at least cost.</i> |

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| Q3:Continued | <p>The scope of regulations</p> <p>Contact is concerned that matters such as provision of information on daily imbalance (D+1 allocations), extended nominations, tolerances, balancing tools (nomination cycles, the ability to renominate if an FM event occurs, the trading of imbalances) are outside the scope of the proposed regulations. The GIC should commit to pursuing these issues.</p> <p>Assessment of practicable options</p> <p>The GIC should have assessed the options against the criteria set out in the Gas Act and the GPS rather than developing a new set of criteria that makes an indirect assessment. As indicated above the development of a derived set of criteria means some important aspects of the criteria set out in the Gas Act and GPS have been overlooked.</p> <p>The status quo should have been used as a bench mark to assess the options.</p> <p>The qualitative assessment is flawed because the GIC was unable to assess how well the participative option delivered against the objectives with development of that option uncompleted. A far more meaningful qualitative assessment would have been to assess the options against criteria such as innovation, cost, and adaptability.</p> <p>In any event, a recommendation that involves estimated expenditure of \$2 million per annum demands a proper quantitative assessment of the costs and benefits as required by the Gas Act.</p> <p>The ICD process</p> <p>As indicated above the short time frame and the conflicting claims of the proposed regulation on the resources of participants in the ICD process have increased the likelihood that the ICD process will fail.</p> <p>The GIC's assessment of the possible outcomes of the ICD process suggests that the GIC intends to regulate whatever the outcome of the ICD process. Industry participants have embarked on the ICD process in the belief that a successful conclusion to that process will avoid the need for regulation.</p> |
| Q4: Do you have any comments on the major operational provisions? | <p>Contact agrees that it is important that participants have a clear understanding of the main operational provisions of the proposed rules. That requires rules that are simple and avoid ambiguity. Contact has not had time to undertake a detailed examination of the rules, however, the appendix to this submission provides preliminary comment.</p> <p>The main comments are summarised as follows:</p> <ul style="list-style-type: none"> • Similar types of users should all have the same obligation and tools to balance. Since the balancing tools available to VTC shippers are limited and there are no tools available to VTC interconnected parties this means the MPOC nominations regime, balancing obligations and access to balancing tools should extend across the whole transmission system. • The obligation on TSOs to provide arrangements that allow users to balance requires them to ensure that users have the information and balancing tools to do that. |

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| <p>Q4: Continued</p> | <ul style="list-style-type: none"> • The role of the balancing agent is unclear. There should be clear separation of the TSOs' obligations related to provision of a transmission service and the balancing agent's obligations related to provision of balancing services. This could be achieved by limiting the balancing agent's role to buying and selling balancing gas when defined thresholds are exceeded and allocating those costs to the causers of imbalance. Allowing the balancing agent discretion to buy or sell balancing gas confuses the role of the balancing agent and the TSO. • Contrary to the point made under the preceding bullet point removing the balancing agent's discretion may reduce flexibility available to users and reduce the efficiency of the arrangements. It is not clear where the appropriate trade off lies between the benefits of a limited and prescribed role for the balancing agent and the benefits of allowing the balancing agent discretion to act. • The identity of the principal should be made clear if the balancing agent acts as an agent as implied. • Restrictions on use of information seem to prevent a TSO acting as the balancing agent and a TSO. That eliminates the potential efficiency gains of a TSO acting as the balancing agent. • The balancing agent's obligation to "endeavour" to manage linepack is very weak and raises questions as to the balancing agent's liability in the event it fails to do that. • There should be clearer integration of the transmission system operating codes, the balancing rules, the critical contingency regulations and the downstream reconciliation arrangements. • It is unclear whether clearing prices are set for each intraday cycle or for a day. Clearing prices should be set for a day and not shorter periods. • The rules set out no principles on how balancing costs are allocated to causers. • The time allowed for the TSOs to agree the balancing plan and for users to make submissions on the draft plan is too short. • The meaning of a "unified regime" in respect of balancing is unclear • It seems unlikely that TSOs will be prepared to indemnify the balancing agent if the balancing agent is able to exercise any discretion. • Users should be able to seek changes to the balancing plan. • Users should be able to request an audit of the balancing agent's activities. • The proposal to cap the price of balancing gas that the balancing agent can purchase and to limit the price of balancing gas that the balancing agent can sell to the pre-estimates of the equivalent critical contingency prices appears unworkable. |

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| <p>Q5: Do you agree with Gas Industry Co's decision not to include curtailment, damages and tolerances? If not, why?</p> | <p>Curtailment, damages payable in the event of delivery failure and tolerances are all fundamental aspects of an effective balancing regime as are the Critical Contingency Regulations and the Downstream Reconciliation Rules. These matters should have all been addressed in designing the transmission service as was done under the MPOC. Separation of these issues creates a high risk of uncoordinated outcomes where the contractual arrangements and various regulations and rules conflict.</p> |
| <p>Q6: Do you agree with the detail of the balancing plan? If not, why?</p> | <p>This question is similar to question 4.</p> <p>It is difficult to determine whether or not the detail of the balancing plan will adequately address balancing issues because much of that detail has not been developed. Until that is done the adequacy of the arrangements is unclear.</p> <p>It is notable that the approach of requiring TSOs to develop the detail of regulations through a plan was taken in developing the critical contingency arrangements. It has proved a difficult task to develop the detail of those arrangements and to integrate the arrangements into the MPOC and VTC. Some shortcomings in the regulations have only become apparent as the plans have been developed.</p> <p>The similar task faced under the proposed balancing rules will be substantially more difficult because of:</p> <ul style="list-style-type: none"> • the complexity of the arrangements; • the reluctance of the TSOs to shoulder the credit risk of balancing; and • because the MPOC and VTC arrangements remain alive while the balancing rules are also in effect. <p>There are some fundamental aspects of the arrangements where difficulties will arise. These include:</p> <ul style="list-style-type: none"> • conflict between the scope of the transmission service provided by the each of the TSOs and the balancing service provided by the balancing agent; • potential conflict and double jeopardy arising from the rules and contractual rights between users, TSOs and the balancing agent; • identification of the party responsible for failure to deliver a user's gas entitlement on a day and the liability for that failure; • the liability of the balancing agent and whether diminishing the TSO's transmission service will effect user's right to claim compensation for delivery failure; • identification of the party responsible for imbalance and meeting other requirements such as the provision of information; • assumptions made about provisions of the MPOC and VTC such as the requirement for a nominations regime; • the nature of users' obligation to make reasonable endeavours to balance; • the criteria that define a balancing zone and whether it is necessary to subdivide the transmission system into zones; |

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| Q6: Continued | <ul style="list-style-type: none"> • the potential impact on existing agreements on the priority afforded to balancing gas and whether that will limit the availability of balancing gas • ;the meaning of “reasonable commercial practice” in context of the terms and conditions of a transaction involving the purchase or sale of balancing gas; • the difficulty in setting a cap and floor for the balancing agent’s purchases and sales of balancing gas; • the lack of detail on how balancing costs are allocated; • the lack of coordination between the proposed rules, the downstream reconciliation rules and the critical contingency regulations; • the difficulty TSOs will have in indemnifying the balancing agent for costs it is unable to recover, particularly when the balancing agent has acted incorrectly; • the uncertain nature of the requirement that the balancing plan must contain processes and procedures that support a unified regime for balancing the whole transmission system; • the drawn out change process but very restricted consultation opportunities; • the lack of users’ rights to call for an audit of balancing activity and the possible limitations on use of those reports; and • the lack of users’ rights to access the balancing agent’s records. |
| Q7: Do you have any other comments on any aspects of the proposal? | <p>There has been no quantitative assessment of the costs and benefits of the GIC’s proposed regulations. Such an assessment is required under section 43N of the Gas Act. A qualitative assessment is not adequate.</p> <p>Establishing a separate balancing agent, market for sales and purchases of balancing gas and governance arrangements will incur significant costs. The balancing agent will need to be available on a 24 hour 7 day a week basis. Those costs are likely to be in the region of \$2 million per annum. Experience so far suggests that the cost of balancing transactions will level out at about \$3 million to \$4 million per annum. It is inconceivable that efficiency gains at this level of expenditure will be sufficient to justify the level of expenditure that the GIC’s proposal will entail. It may be possible to avoid some of this cost if one of the TSOs took on the role of balancing agent. The TSOs will require the same information flows and will be performing similar duties to the balancing agent so that appointing a TSO will avoid duplication of effort. However, neither TSO shows interest in becoming the balancing agent.</p> <p>The incentive for TSOs to agree a balancing plan and appoint a balancing agent is unclear. If the TSOs do agree a balancing plan and appoint a balancing agent then TSOs effectively become responsible for balancing as they have to indemnify the balancing agent for any costs it is unable to recover from users. Alternatively if the TSOs fail to agree, the GIC becomes responsible for balancing as it has to prepare the balancing plan and is responsible for indemnifying the balancing agent for any costs that the balancing agent cannot recover from users. The TSOs’ failure to agree seems to meet their requirement that they do not wish to take responsibility for balancing.</p> |

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| Q7: Continued | <p>Contact has previously said that because the GIC has recast the objectives set out in the Gas Act and the GPS that the proposed rules have not been properly assessed against those objectives. Contact remains of that view.</p> <p>Some of the important principles of the Gas Act that the GIC has not considered are:</p> <ul style="list-style-type: none"> • barriers to competition are minimised; • delivered gas costs are subject to sustained downward pressure; and • risks relating to security of supply, including transport arrangements are properly and efficiently managed by all parties. <p>Removing barriers to competition requires all users of the transmission system to have access to the same means of balancing gas. Currently users of the Maui transmission system have access to self balancing arrangements that are not available to users of the Vector transmission system. These include the ability to amend notifications at any time in the event of a force majeure event, the ability to trade imbalances and the ability to offer balancing services. This discriminatory treatment of users of the Vector transmission system should be addressed. There is nothing in the GIC's proposal that addresses this issue. Extension of MPOC balancing arrangements to the Vector transmission system would overcome this deficiency.</p> <p>The GIC's proposal seems likely to increase the cost of balancing rather than to decrease the cost. If this is incorrect the GIC should demonstrate that.</p> <p>The lack of balancing tools available to users of the Vector transmission system and the lack of daily information on gas takes limits the ability of transmission system users to properly and efficiently manage balancing. Contact notes the emphasis in the ERGEG's gas balancing conclusion paper on users having the information and tools available necessary to manage balancing.</p> |
| Q8: Do you agree with the proposed next steps? If not, why? | <p>Contact does not agree with the next steps.</p> <p>The GIC has allowed insufficient time for the ICD process to reach a conclusion. Preparation of change requests addressing each issue is fundamental to the success of this approach. ICD participants are still engaged in wide ranging discussion of balancing issues and little of the required change requests have been discussed. There is now opportunity for only 6 more ICD meetings.</p> <p>Very limited time has been provided to comment on the draft rules. Most industry participants have insufficient resource to review the draft rules and to manage their participation in the ICD process at the same time. As identified at the 16 October ICD meeting and in the appendix of this submission the rules seem to require significant further development. Perhaps a better approach would have been to allow more time to complete the ICD process and for the GIC to regulate through prescriptive regulation if that fails. That would have provided more time for the ICD process and would have meant that industry participants were not trying to address regulations and a negotiated solution at the same time.</p> <p>As indicated above Contact does not believe that the GIC has adequately demonstrated the need for regulation and the costs and benefits of regulation.</p> |

Appendix

Comment on Draft Rules

Introduction

In the limited time available Contact has not been able to undertake a detailed analysis of the proposed rules. The following are preliminary conclusions.

Rule 3, Purpose

The purpose is too high level to be of any use. The purpose is better addressed in rule 4.

The purpose could better establish the end goal for balancing.

Rule 4, Outline

The meaning of “unified” is contentious and unclear. Contact believes the objectives of the Gas Act, particularly minimisation of barriers to competition, can only be addressed if there is a single balancing regime extending across the whole transmission system.

The responsibility for managing linepack is also contentious and unclear. Either the balancing agent should have full responsibility both for managing linepack and for providing the transmission service or those responsibilities should remain with the TSO. This is because the provision of a transmission service is inseparably intertwined with the management of linepack.

To clearly separate the balancing agent’s role from provision of transmission services the balancing agent’s role could be limited to buying and selling balancing gas and allocating those costs to causers. This approach which removes balancing agent discretion may, however, result in a less efficient outcome.

Rule 5, Interpretation

“balancing agent”

The use of the term balancing agent implies the balancing agent acts for a principal. If the balancing agent acts for a principal then the principal should be allocated the responsibility under the rules.

“balancing zone”

The concept of balancing zones seems unnecessary. If balancing zones are considered necessary then some criteria should be provided to define what can be a balancing zone. Multiple balancing zones inevitably reduce flexibility and add complexity because accounting for flows of gas between balancing zones is required.

“business day”

The definition seems unnecessarily complex. The standard definition used in the VTC and MPOC would be better and allow better coordination with those arrangements.

“clearing price”

Setting the clearing price of balancing gas purchased as the marginal cost and the clearing price of balancing gas sold as the marginal price increases the cost of balancing activity and is inconsistent with the objective of the Gas Act that the delivered price of gas should be subject to downward pressure. In addition, setting prices at these levels allows users to fully hedge imbalance destroying the reason for notifications. These prices also create a barrier to competition for those users who do not have either flexible gas supply or flexible gas demand.

“linepack”

The meaning of “part of the transmission system” is unclear.

“balance”

Shipper deliveries to mass market delivery points are not allocated until month end. It would be better if shippers were responsible for balancing the quantity of gas injected at a receipt point and the quantity of gas taken at a delivery point.

Since shippers can only schedule gas flows, another and better approach would be to define shipper balance as scheduling injections at a receipt point equal to scheduled take at a delivery points. This would be consistent with the definition of interconnected party balance and consistent with the MPOC. The approach proposed in the rules is consistent with the requirement in the VTC but the VTC inadequately addresses the issue.

Rule 6, Users’ obligation in relation to balancing.

This relates to the points made under the definition of “balance”.

The MPOC provides that shippers and interconnected parties should balance. MPOC shippers balance by submitting balanced notifications. MPOC interconnected parties balance by injecting or taking gas to notifications. Under the VTC interconnected parties have no obligation to balance. Rule 6 is therefore confusing in relation to the VTC. To address this confusion a nomination regime should extend to the Vector transmission system and VTC interconnected parties and shippers should have a requirement to balance as under the MPOC.

As indicated above the concept of balancing zones is unnecessary.

Rule 6.4

Critical contingencies are declared and terminate at particular points in time but the allocation arrangements under the critical contingency arrangements apply to full days. Because of this the interrelationship between critical contingency arrangements and the rules requires clarification.

Rule 7, Users’ obligation to provide information

Shippers, interconnected parties and TSOs could all provide information to the balancing agent. The linkage of rule 7 to transmission system codes and the responsibility to provide information requires clarification.

Rule 8, Transmission system owners’ obligation to facilitate balancing

Rule 8.1

This provision requires interconnected parties to have a scheduled quantity in order to allow them to balance. Contact supports that requirement.

The rules should set out the TSOs' obligation to provide balancing tools such as the obligation to allow users to nominate, the right of users to amend nominations, the right of users to trade imbalances, the right of users to offer balancing services etc.

Rule 9, Transmission system owners to provide transmission system information

Rule 9.1.8

This rule allows TSOs to impose a transmission system wide nominations regime.

Rule 9.2

This rule requires TSOs to provide real time metering information to the balancing agent. This would allow the balancing agent to implement an hourly balancing regime or a regime for even shorter periods. This would create significant additional balancing costs. At this stage daily balancing appears the optimum solution. The need for intraday balancing and limits on peaking is unresolved.

Rule 10, Transmission system owners to provide transmission services for balancing gas

Rule 10.1.2

Would the balancing agent's priority access to capacity override a shipper's priority access to Vector transmission system reserved capacity under the VTC? To avoid this conflict VTC shippers should be required to nominate intention to use Vector transmission system pipeline capacity.

Rule 10.1.3

This requirement that TSOs provide transmission services for the balancing agent with no limits on capacity seems physically unworkable.

Rule 11, Other obligations of transmission system owners in relation to balancing

Rule 11.1.1

Rule 11.1.1 creates confusion about the role of the TSO and the balancing agent. The roles and accountability of each should be clearly established. In addition, safety and maintenance concerns should always override balancing. Is this rule consistent with rule 65?

Rule 11.1.4

What liability does the publication of this information create? For example, could a user make a claim against a TSO for failure to adhere to a compressor operation policy? Would publication of a compressor operation policy provide benefits or would it unnecessarily constrain TSOs and reduce flexibility?

It is unclear how availability of compression relates to balancing and to provision of delivery capacity. Potentially this provision could constrain delivery capacity provided by the TSOs.

Rule 12, Publication of transmission system

Rule 12.1

The future of the Gas (Information Disclosure) Regulations is in doubt because of the Commerce Commission's proposal to implement a new information disclosure regime.

Rule 13, Functions of the balancing agent

The role of the balancing agent is unclear. Is the balancing agent's role limited to:

- buying and selling gas when the predetermined linepack thresholds determined by the TSO are exceeded and allocating the costs of imbalance to causers; or
- does the role extend to physically managing linepack and exercising discretion on how to act?

The former limited role would allow separation of the transmission service provided by the TSOs from the balancing agent's role. The latter role creates confusing TSO and balancing agent accountabilities but may offer more flexibility.

Rule 14, Functions to be carried out independently

Rule 14.2

It is understood that a TSO could be the balancing agent under the rules. In those circumstances the restriction on use of information under rule 14.2 would require ring fencing of the balancing agent's role. That eliminates the potential efficiency gains of a TSO providing both transmission and balancing services. Ring fencing of the balancing agent's role is not addressed in the rules.

Rule 15, Management of linepack

The requirement that the balancing agent should "endeavour" to purchase or sell sufficient balancing gas creates a very weak obligation and raises the issue as to the liability of the balancing agent if it fails to do that.

Rule 15.3

Would the critical contingency arrangements become effective or could the TSO curtail gas injections or takes if the availability of balancing gas was insufficient to return linepack to the relevant threshold? There should be clearer integration of transmission system operating codes, the critical contingency regulations and balancing rules.

Rule 16, Rules for transactions relating to balancing gas market

Rule 16.2

Currently the BGX is not open to Vector transmission shippers and interconnected parties because lack of scheduling information makes it impossible to determine if the balancing service has been provided. Making the balancing market available to all users seems to require an extended nominations regime.

Rule 16.4

It is unclear whether clearing prices are set in relation to an intraday cycle, a transmission day or some other time period. Use of intraday cycle time bounds would considerably complicate balancing arrangements and would require hourly metering.

Rule 16.6

No mechanisms are provided on how the maximum price of balancing gas that the balancing agent can purchase, and the minimum price of balancing gas that the balancing agent can sell, will be set in the balancing plan. It is proposed in the schedule that these could be set as a pre-estimate of critical contingency prices but that seems unworkable.

Rule 18, Terms of balancing gas transactions

Rule 18.1.2

What does “reasonable commercial practice mean”? For example should the balancing agent only purchase balancing gas at prices close to the price of gas under prevailing gas supply contracts?

Rule 19, Rules for allocation of balancing gas

The method of allocating balancing gas and in particular to ensure that the allocation is made to the causer has been one of the more contentious aspects of the balancing arrangements of the MPOC and VTC. The rules provide no principles or detail on how that allocation should be made. For example, an allocation via a general pipeline tariff would seem acceptable under the rules.

Rule 19.3

It is unclear how this provision works when the balancing agent has sold gas to balance. The balancing agent would require title to gas that it could sell in such circumstances.

Rule 20, Notification of adjustments to allocations and cash-out price of balancing gas

Rule 20.1.2

The mechanism for the allocation of the balancing agent’s overhead and profit is unspecified.

Rule 23, Balancing agent must regularly settle any balancing gas allocated to the balancing agent

Rule 23.1.2

It is unclear how the balancing agent could trade gas it sold under rule 19.3 on the NZ Gas Exchange. What is the expected implementation date for the NZ Gas Exchange? Sale via the NZ Gas Exchange would require the balancing agent to have a transmission services agreement under the MPOC and VTC. Would the balancing agent be able to meet the prudential requirements of the MPOC, the VTC and the NZ Gas Exchange? Who would fund the balancing agent’s purchases of capacity on the Vector transmission system?

Rule 25, Errors in allocation

Rule 25.4.2

The 6 monthly limit on error corrections is inconsistent with the ability to adjust allocations made under the downstream reconciliation arrangements for a period up to one year after the first allocation.

Rule 28, Joint obligations of transmission system owners in relation to appointment of balancing agent and preparation of balancing plan

Rule 28.1.4

The TSOs have 60 business days (3 months), from the date the regulations become effective, to agree the balancing agent and the balancing plan. The time allowed is too short given the complexity of the arrangements and the need to integrate the arrangements with the MPOC, the VTC, the critical contingency arrangements and the downstream gas reconciliation arrangements.

Rule 29, Terms of appointment of balancing agent

Rule 29.1.2

It seems unlikely that TSOs would want to indemnify the balancing agent for costs it is unable to recover from users, particularly if the balancing agent is able to exercise discretion.

Rule 30, Contents of draft balancing plan

The balancing plan must also be consistent with the requirements of the downstream reconciliation arrangements.

Rule 30.1.3

The meaning of “unified regime” is unclear.

Rule 34, Process for amendment to approved balancing plan

Users should have rights to request amendment of the balancing plan.

Rule 40, Industry body’s duties if subpart applies

Users should have opportunity to make submissions on the GIC’s proposals to appoint a balancing agent and to approve a balancing plan.

The GIC should confirm that appointment of a balancing agent and approval of a balancing plan does not exceed the powers the GIC holds under the Gas Act relating to recommendation of gas governance arrangements.

Rule 43, Terms of appointment of balancing agent by industry body

Rule 43.2.2

Does this requirement mean that the balancing agent would be acting as the agent of the GIC? Does the GIC have the ability to commit the shareholders of the GIC in this way?

Rule 49, Development fee

Is the GIC able to estimate the development fee?

Rule 51, Ongoing fees

Is the GIC able to estimate the ongoing balancing agent costs?

Rule 55, Industry body to commission performance audits

Users should be able to commission audits of the balancing agent’s activities.

Rule 56, Provision of information to auditor

Rule 56.4

Given that much of the information held by the balancing agent will be user information users should also have a right to specify information that belongs to them and is confidential.

Rules 57.2, 58, 59 and 60, Preparation and publication of audit reports

Users should also have the opportunity to comment on the auditor's reports before those reports are finalised and published.

Rule 61, Use of final audit reports

It is unclear whether this provision is intended to restrict usage of audit reports. It does not appear to do that and therefore the provision is meaningless.

Rule 66, Relationship with transmission system codes

Rule 66.2

The priority given to the rules requires careful consideration, particularly in relation to how the provision could impact on a user's rights to claim compensation for a failure to deliver gas.

Rule 67, Relationship with Gas Governance (Critical Contingency Management) Regulations 2008

The provision is unclear in circumstances when the balancing agent has made a balancing transaction in a day and a critical contingency event has occurred during that same day.

Schedule, Requirements for balancing plan

Section B, Management of linepack

The numbering of section B requires correction.

Force majeure events as well as maintenance should be recognised.

Section D, Balancing gas

Section D,c (i)

It difficult to imagine how TSOs or the GIC would determine the cap on purchases of balancing gas. Critical contingency prices are calculated after the event and are supposed to reflect the highest value use during the critical contingency. That is likely to reflect the net back from electricity generation during the critical contingency period. Loss of thermal capacity can have a huge effect on the value of gas for electricity generation and depends on matters such as the magnitude of curtailment and generators' response to the contingency. Those matters are impossible to foresee.

Section D,c (ii)

Estimating the marginal cost of non production would also be very difficult. This is likely to substantially vary across gas fields depending on the matters such as the ability to restore production after a period of curtailment and the value of associated liquids lost during the period of curtailment.

Section E (a) (i)

Allocating balancing gas to users who have imbalance at the time the balancing agent commits to a balancing transaction seems to require hourly or possibly more frequent determination of users' imbalance. This would be impracticable and uneconomic. Allocations should be based on imbalances determined at the end of a day in which the balancing transaction occurred. It is necessary to determine whether peaking is a material issue.

Section E (b)

The division of the transmission system into balancing zones seems unnecessary unless TSOs continue to own the linepack contained in their pipelines. The arrangements could be substantially simplified if the balancing agent had access to all linepack and did not have to account for flows of linepack between TSOs.