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By Email

Dear Ian

Draft Gas Governance (Balancing) Rules (Draft Updated @15 December 2009)

1. Vector Gas Limited (**Vector**) appreciates the opportunity to comment further on the draft Gas Governance (Balancing) Rules (**Rules**) following the GIC Workshops held on 2, 4, and 5 February 2010.

Vector's Position

2. Vector supports the GIC's decision not to extend the ICD process and welcomes the decision of the GIC to recommend Rules to the Minister to give effect to the participative regulation option. Notwithstanding this, we still have some issues with the Rules being proposed by the GIC in both form and substance and we comment further on those matters below. A marked-up copy is also **attached**.

Substance of Rules (Particularly Relating to the Appointment, Funding and Indemnifying the Balancing Agent)

3. In our submission, on the Statement of Proposal, we raised 3 main areas of concern:
 - appointment of the Balancing Agent by the TSOs;
 - funding the costs of the Balancing Agent by the TSOs; and
 - TSOs indemnifying the Balancing Agent.
4. We briefly deal with each of these matters in turn, and make some further comments.

Appointment of Balancing Agent by TSOs [Rule 28]

5. Vector confirms the position stated in our submission on the Statement of Proposal, that the GIC has not provided any policy justification for the obligation on TSOs to attempt to appoint the Balancing Agent. We consider that it would be appropriate for the GIC to clearly state the reason why it believes that the TSOs should have this primary obligation under the Rules and the GIC only be required to appoint the Balancing Agent as a default position. As the GIC has not provided that policy justification in its Analysis of Submissions, Vector therefore remains unsure of the GIC's reasoning for this requirement.
6. Further, it is also relevant that Vector currently provides a balancing service for the community of users on the Transmission System to ensure the 'cost to

causer' principle is met. This service is in addition to its transmission service. Vector has experienced, within the context of disputes, that users tend to merge these 2 activities when reasoning their position. Even within the framework of Rules it is foreseeable that this 'merging' within that context will continue if TSOs are required to appoint the Balancing Agent. This wider context in these circumstances would therefore not facilitate costs to causers. This risk can be avoided if the Balancing Agent is appointed by the GIC.

7. In its Analysis of Submissions the GIC has stated that consistency is desirable for economic efficiency reasons but that there is no requirement for it to be across legislation particularly for 'arrangements in different circumstances.' (page 27, GIC's Analysis). In other words, although the GIC has appointed the 'agent' under Rules or Regulations covering gas governance for downstream reconciliation, switching, and critical contingency, there is no requirement for the GIC to continue that trend with the Balancing Rules.
8. Part 4A of the Gas Act 1992 is silent on whether the regulator or the TSOs should have the primary obligation in this regard. Accordingly, it is open for the statutory function to rest with either. This position is similar to the Electricity Commission under Part 15 of the Electricity Act 1992. The Electricity Commission is however required to appoint service providers under reg 30 of the Electricity Governance Rules 2003. It is clear that the GIC has, over the past 18 months since promulgating Regulations and Rules in a specialised commercial industry, taken the lead to progressively establish a regulatory scheme covering gas governance. An important feature of that scheme is the appointment of the agent responsible for operational activities under the various gas governance legislation. Further, the GIC has assumed the authority for appointing the Balancing Agent under Part 2, Subpart 2 of the draft Rules if the TSOs attempt but are unable to agree on the Balancing Agent. Accordingly, the scheme would continue in those circumstances.
9. In the absence of policy justification why TSOs should have the primary obligation to appoint the Balancing Agent, the flexibility in Part 4A of the Gas Act for either party to appoint, and the precedent the GIC has set in other gas governance Rules and Regulations, Vector considers that consistency is the principal factor in this matter. The GIC's appointment of the other agents has worked successfully, and Vector can think of no valid reason why the same approach should not be taken with the Balancing Rules.

Funding of Balancing Agent by TSOs [Rules 52, 54 and 57]

10. Vector confirms the position stated in our submission on the Statement of Proposal, that the Balancing Agent exists to resolve Shipper imbalance. Users cause the imbalance but nevertheless benefit from that activity as they are able to meet the demands of their customers. Economic efficiency supports the 'causer pays' principle. Further, socialisation of the balancing costs through pipeline tariffs only exacerbates the issue among users and does not benefit those that act as reasonable and prudent operators to manage their imbalance rationally. A direct recovery mechanism between the Balancing Agent and the real causers of the imbalance would therefore more efficiently address this problem.
11. Vector appreciates the acknowledgement by the GIC that:

... the draft Rules did not specify that the Balancing Agent costs were to be passed through to users, or how they were to be passed through. We will amend the Draft Rules to provide for the charges to be passed to users on the basis of the volumes of gas transmitted, or by some other means proposed by a TSO and approved by the Gas Industry Co. (page 28, GIC *Analysis*)

12. Vector notes that the draft Rules have been amended in this regard. The new Rule 57.4 provides a process of how TSOs may recover the costs of the Balancing Agent, however the authority for recovering the costs is only implied. The power needs to be prescribed in the draft Rules to give legislative authority to that recovery activity. Without that specific authority Vector may unintentionally breach the Commerce Commission's pricing determination when passing-on the costs of the Balancing Agent to users.
13. Despite this new rule, we consider that a better mechanism would be for the Balancing Agent to recover the costs direct from the users rather than that responsibility resting with the TSOs. A direct regulatory recovery mechanism between the Balancing Agent and users would:
- Avoid the risk to Vector of breaching the price control determination;
 - Avoid the TSOs simply acting as an intermediary;
 - Enable TSOs to focus on their regulatory obligations to the Balancing Agent under rules 9 to 11 (to provide sufficient information, transmission services and the more general obligation of co-operation and facilitation); and
 - Better promote the purpose of the Rules, especially 'efficiency'.
14. Direct recovery could be by way of invoice or levy to users based on throughput or use of the balancing service, backed-up perhaps by an overdraft to enable trading in the interim. This would also reflect a closer nexus to causers.

Indemnifying the Balancing Agent by TSOs [Rule 29]

15. Vector acknowledges that the draft Rules do not oblige it to provide the Balancing Agent with an indemnity against costs incurred which are unable to be recovered from users. However, we believe that Vector would be required to justify not granting an indemnity if a prospective Balancing Agent requested one due to the specific reference in the draft Rules. We do not consider that appropriate in a situation where terms and conditions are likely to be the subject of negotiation as the legislative reference tips the bargaining position in favour of the prospective Balancing Agent. Accordingly, it would be more appropriate if that rule was omitted or at least included a provision which clearly negated the expectation that an indemnity will be granted.
16. Vector is encouraged by the fact that the GIC intends to do further work on the possibility of prudential requirements on users to limit the default risks to the Balancing Agent, but notes that these are only helpful in cases of default due to solvency issues.

Rules for Allocation of Balancing Gas [Rule 19]

17. Allocating unallocated balancing gas to the TSOs rather than the Balancing Agent imposes an unfair risk and liability on TSOs. It is not clear why TSOs must bear this obligation. The scheme of the draft Rules does not support it. It is a form of 'indemnification' but is obligatory not permissive. Vector considers that the purpose of the draft Rules would be better served if the Balancing Agent was required to ensure that unallocated gas was pro-rated across all users. This would be the fairest and most efficient way of 'managing imbalance in the transmission system'.

Further Comment

18. For completeness, Vector takes this opportunity to make 4 further comments concerning the purpose of the Rules, Rules for Allocating balancing gas,

appointment of the Balancing Agent and developing the balancing plan, and MDL's MPOC Change Request concerning Balancing.

Purpose [Rule 3]

19. The purpose of the draft Rules has been a constant and general concern for many industry participants. There was a suggestion at the 5 February workshop that the purpose provision could be omitted from the draft Rules as its inclusion was not a strict requirement of drafting practice. Vector would be concerned if the GIC adopted that view. The importance of the purpose provision cannot be overstated to assist in understanding the meaning of the draft Rules and for their interpretation. This has been recognised by the Legislation Advisory Commission:

Purpose provisions are of key importance given the injunction in section 5(1) of the Interpretation Act 1999 that enactments are to be interpreted in the light of their purpose. Every provision of an Act should, if possible, be interpreted consistently with that purpose provision. Moreover, if the Act confers powers on persons or institutions those powers should be exercised consistently with the purpose so stated." *[Guidelines on Process and Content of Legislation 2001 edition and amendments, page 66, <http://www.justice.govt.nz/lac/index.html>]*

20. Given that the draft Rules contain obligations on TSOs, the Balancing Agent, users and the GIC, it is vital that the purpose provision be retained and that all of those obligations promote the purpose. If enforcement of a breach of any of those obligations (say through the Compliance Regulations) is proposed, the purpose provision will also be vital for the Rulings Panel as the modern approach to statutory interpretation by courts and tribunals is also 'purposive' (as opposed to literal).
21. Vector considers that just as important as retaining the purpose provision is the need to ensure that it is accurate. There was much discussion on this at the workshops. Concerns were that the purpose provision needs to reflect the fact that the draft Rules deal mainly with 'residual' balancing (ie the primary function of the Balancing Agent in rule 13), and the need to clarify what is meant by 'efficient'.
22. Vector accepts that 'efficiency' is an objective standard and its meaning will therefore depend on the circumstances prevailing on the transmission system at any one time. Defining the term is therefore inappropriate (it is also not defined in section 43ZN(a) of the Gas Act). Further, as we understand the scheme of the draft Rules is to deal efficiently with 'residual' balancing gas, that term should be inserted in rule 3.

TSOs obligations to appoint the Balancing Agent and prepare balancing plan [Rule 28]

23. These 2 obligations are inextricably linked. The scheme of Part 2, Subparts 1 and 2 is that whichever body appoints the Balancing Agent must also develop the balancing plan. We consider that greater flexibility around these 2 obligations is needed. For instance, the GIC could appoint the Balancing Agent but the TSOs still develop the balancing plan.
24. Further flexibility is also needed in developing the balancing plan. For instance, if the TSOs have made a reasonable and genuine effort to develop a balancing plan but are unable to agree on some of its details, the GIC should (in addition to its facilitating role) have the power to complete the plan and deem that as the TSOs balancing plan. Subpart 2 (in relation to the GIC developing the balancing plan) should therefore be omitted from the Rules.

Relationship with transmission system codes [Rule 69]

25. Rule 69 needs to be expanded to cover Interconnection Agreements in addition to the 2 Pipeline Transmission Codes to ensure that that ICAs do not sit outside the regulatory regime for balancing gas.

MPOC Change Request

26. Vector notes the relevance to the draft Rules of the MPOC Change Request, concerning balancing, issued by MDL on 17 December 2009. Vector has not consented to that Change Request as the proposal:

- does not support a unified approach across the entire transmission system; and
- will have a material adverse effect on Vector's transmission business.

27. We further note that the GIC has indicated that it made a complete analysis of MDL's work programme as part of the Second Options Paper (Appendix A) and while encouraging MDL's proposal to meet balancing objectives, nevertheless:

noted that the changes will not achieve a unified balancing regime, which is at the core of Gas Industry's proposal.' (page 9 and footnote 5, GIC's *Analysis*)

28. Vector supports a unified approach to a balancing regime across both pipelines. We look forward to achieving that through agreement with MDL on a Balancing Plan in terms of Rule 28.1.1(b), provided through Rules, supporting the participative regulation approach. Vector cannot therefore endorse an isolated approach to such a plan nor one which is not amenable to negotiation at a later date.

29. Finally, Vector understands the mandate for this important matter and supports the decision of the GIC to recommend to the Minister that Rules be made. The GIC can be assured of Vector's continued support on the development of the implementation of Rules and complying with our obligations under them. However, we do urge the GIC to give close consideration to the matters we have raised. Favourable consideration of those matters will enable Vector to operate within the regulatory regime in a manner which supports the purpose of the draft Rules while also managing its regulatory and commercial risk at the appropriate level.

Yours sincerely

A handwritten signature in blue ink, reading "John Rampton".

John Rampton
Manager, Industry Governance and Policy

DRAFT GAS GOVERNANCE (BALANCING) RULES (UPDATED @ 15 DECEMBER 2009)

1. Title

These rules are the Gas Governance (Balancing) Rules 2009. [Note: Implementing these requirements via gas governance rules rather than gas governance regulations may deprive the balancing agent of the service provider protection against tort claims set out in section 43Z of the Gas Act 1992. It is desirable from the perspective of all industry participants, not to mention transmission service owners, that the balancing agent has the benefit of this protection. Also, given the importance of these requirements and the effects they will have on industry participants' rights and interests, Vector considers they should be implemented by way of gas governance regulations, not rules]

2. Commencement

- 2.1 Rules 6 to 11 and Part 2 come into force, if the industry body publishes a statement in the *Gazette* in accordance with rule 33.1 or 46.2, -
- 2.1.1 on a date that is before the 25th of the month, on the 1st day of the month following the month in which the statement is published; or
- 2.1.2 on a date that is the 25th, or after the 25th, of a month, on the 1st day of the 2nd month after the month in which the statement is published.
- 2.2 The rest of these rules come into force on the 28th day after the date of their notification in the *Gazette*.

3. Purpose

The purpose of these rules is to achieve an efficient, unified balancing arrangement for managing residual imbalance in the transmission system.

4. Outline

- 4.1 These rules provide for –
- 4.1.1 the ~~appointment of a single balancing agent and~~ development of a unified balancing plan (to be approved by the industry body) by transmission system owners; or
- 4.1.2 ~~in certain circumstances,~~ the appointment of a single balancing agent and development of a unified balancing plan by the industry body; and

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- 4.1.3 the powers and functions of the balancing agent to manage linepack in the transmission system [in accordance with rule 15](#) and allocate gas and costs associated with that management; and
- 4.1.4 the rights and obligations of users and transmission system owners in relation to the balancing agent's functions.

General provisions

5. Interpretation

- 5.1 In these rules, unless the context otherwise requires -

Act means the Gas Act 1992

balance has the meaning in rule 5.2

balancing action means one or more transactions to sell [and/or](#) purchase balancing gas committed at the same time [in respect of the same underlying linepack event](#) for the purposes of managing linepack under rule 15.1 or 15.2

balancing agent means ~~(a)~~ the person appointed as the balancing agent by the ~~transmission system owners~~ [industry body](#) under rule ~~28.1.3; or~~ [42](#)

~~(b) if subpart 2 of Part 3 applies, the person appointed as the balancing agent by the industry body under rule 42~~

balancing gas means gas that is sold or purchased as part of a balancing action

balancing market means the market established or accessed by the balancing agent to comply with rule 16.1

balancing plan—

(a) means the plan —

(i) approved by the industry body under rule 32; or

(ii) if subpart 2 of Part 3 applies, set and approved by the industry body under rule 45; and

(b) includes any amendment to the plan approved by the industry body under —

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- (i) rule 36; or
- (ii) rule 48.5;
- (iii) or 50.1

balancing zone means a part of the transmission system defined as a balancing zone in the balancing plan

business day means any day of the week except—

- (a) Saturday and Sunday; and
- (b) any day that Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day, Christmas Day, Boxing Day, New Year's Day, the day after New Year's Day, or Waitangi Day are observed for statutory holiday purposes; and
- (c) any other day that the industry body has determined not to be a business day as published by the industry body] [Note: Suggest this definition is conformed with the VTC/MPOC definitions]

cash-out amount, in relation to a balancing action, means the product of the cash-out price (per GJ) for balancing gas allocated to a user in ~~the~~respect of a balancing action and the quantity of balancing gas allocated to the user in respect of the same balancing action (GJ)

cash-out price means the per GJ price determined by the balancing agent under rule 20.1.2 in respect of the sale or purchase of balancing gas allocated to a user

clearing price means, -

- (a) in relation to the purchase of balancing gas by the balancing agent in a ~~single~~ balancing action, the highest sum of—
 - (i) the offer price (per GJ) for any balancing gas accepted in that balancing action, plus
 - (ii) any transmission charges payable by the balancing agent to transmit that balancing gas from the purchase location to the reference location (per GJ); and
- (b) in relation to the sale of balancing gas by the balancing agent in a ~~single~~ balancing action, the lowest sum of—

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- (i) the offer price (per GJ) for any balancing gas accepted in that balancing action, less
- (ii) any transmission charges payable by the balancing agent to transmit that balancing gas from the reference location to the purchase location (per GJ).

commencement date means the date referred to in rule 2.2

directly managed, in relation to a balancing zone, means ~~managed~~the management of balance within that balancing zone directly through the sale and purchase of balancing gas

go-live date means the day rules 6 to 11 and Part 2 come into force under rule 2.1

imbalance has the meaning in rule 5.2

indirectly managed, in relation to a balancing zone, means ~~managed~~the management of balance within that balancing zone via management of a directly managed balancing zone, for example, by pressure regulator
[Note: This definition needs to be clarified. What, in practice, does the term mean?]

industry body means—

- (a) the industry body approved by Order in Council under section 43ZL of the **Act**; or
- (b) in the event that the approval of the industry body is revoked under section 43ZM of the **Act** and no other industry body is approved, the Energy Commission to be established under section 43ZZH of the **Act**

information exchange means –

- (a) any online open access transmission information system that is used to facilitate information exchange in respect of access to all or part of the transmission ~~pipelines~~system; and
- (b) includes OATIS, the online interactive open access transmission information system that is used to facilitate information exchange in respect of the open access regime under MPOC and VTC

interconnected party means any person who is a party to an interconnection agreement with a transmission system owner

interconnection agreement means any agreement or customary arrangement between a transmission system owner and another person relating to the [connection of that person's pipeline to the transmission system and the receipt of gas into or delivery of gas out of the transmission system](#) [Note: To more effectively allocate balancing gas costs to large station owners, producers and non-open access transmission system owners ("interconnected parties"), it may be preferable to separately define each of these interconnected parties, and not by reference to any form of agreement with the transmission system owner. This is because Vector's interconnection agreements do not currently contain gas nomination provisions, because they do not entitle the interconnected party to receive and deliver gas and because of the uncertainty around the form of the sometimes unwritten agreements between transmission system owners and these interconnected parties. This would avoid transmissions system owners being required to put new-form interconnection agreements in place with all of these interconnected parties, in order to allocate these balancing costs to them. Separately, these rules could require these interconnected parties to make nominations to the relevant transmission system owner in relation to their receipts and deliveries of gas. Finally, we understand that the industry body intends that this definition will catch Vector's interconnection agreement with MDL (which it does not currently). If this is the case, Vector will be liable for all balancing gas costs which cannot be allocated to downstream users under E (b) of the schedule to the rules. Vector is not willing to take the risk on this residual balancing gas and considers that these costs should be allocated to users directly and not via Vector. Alternatively, MDL could take the risk on operational imbalance at the welded point with the Vector system]

linepack means the quantity of gas in any part of the transmission system at any time

[linepack event](#) has the meaning given to it in rule 15.1

Maui Pipeline Operating Code or MPOC means the code, issued by the owners of that part of the transmission system identified as the Maui pipeline on the map published in accordance with rule 12, covering operation of the Maui pipeline, as amended from time to time

publish, in respect of information to be published by a person, means to make that information available on the person's website

reference location means the location or balancing zone used by the balancing agent to evaluate balancing gas offers in respect of a proposed balancing action

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shipper means a person who is a party to an agreement with a transmission system owner to have gas transmitted through all or part of the transmission system

target linepack, in relation to a balancing zone, means the target quantity of linepack for the balancing zone as specified in or determined in accordance with the balancing plan

trader means a person who buys or sells gas within the transmission system

transmit in relation to gas, ~~includes~~means to receive a quantity of gas at one point on the transmission system and deliver an equivalent quantity of gas to another point on the transmission system

transmission charge means any amount payable to a transmission system owner in relation to it transmitting balancing gas

transmission system arrangements means the rules of access to and use of a part of the transmission system, and includes –

- (a) a transmission system code;
- (b) any ~~arrangements~~agreements entered into under a transmission system code (for example, a transmission services agreement or a gas transfer agreement); and
- (c) any bilateral agreements relating to access to and use of a part of the transmission system not entered into under a transmission system code [Note: Is this intended to catch non-code TSAs? These agreements may need some amendment prior to the go-live date]

transmission system code means MPOC, VTC, and any other ~~multilateral agreements~~[industry] codes relating to access to and use of a part of the transmission system [Note: The codes are not “multilateral agreements”]

transmission system means the system of interconnected high pressure open access gas transmission pipelines depicted on the map published by the industry body in accordance with rule 12

transmission system owner means a person who owns all or any part of the transmission system

user –

(a) means –

- (i) a shipper, or
- (ii) a trader; or
- (iii) an interconnected party; or
- (iv) a transmission system owner in relation to –

(A) its activities as a shipper, trader, or interconnected party; and

~~(B) its obligation to ensure that the line pack of a part of the transmission system owned by it matches the aggregate of the target linepack, all other users' imbalances; and any balancing gas allocated to a transmission system owner under rule 19.3 and not yet settled by the balancing agent under rule 23~~

(B) its obligation to balance

(b) does not include –

- (i) the balancing agent in relation to the performance of the balancing agent's functions; or
- (ii) [a transmission system owner in respect of balancing gas allocated to that transmission system owner under rule 19.3.] [Note: Is this consistent with a transmission system owner's obligation to balance having regard to balancing gas allocated to it under rule 19.3? Not clear what is intended here]

Vector Transmission Code or VTC means the code, issued by the owners of that part of the transmission system identified as the Vector pipeline on the map published in accordance with rule 12, covering operation of the Vector pipeline, as amended from time to time.

5.2 For the purposes of these rules, -

balance means, in relation to –

- (a) a shipper, to ensure that ~~the~~its receipts and deliveries of gas ~~allocated to the shipper~~ under relevant transmission system arrangements ~~match;~~ and (excluding any receipts and deliveries of an interconnected party

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under an interconnection agreement)] match; and [Note: Shippers on the Maui system must be liable to the balancing agent directly for their imbalances (currently these imbalances are allocated to Vector under the terms of its ICA with MDL)]

- (b) a trader, to ensure that ~~the~~its quantities of gas purchased and sold ~~allocated to the trader~~ under relevant transmission system arrangements match; and
- (c) an interconnected party, to ensure that ~~the same quantity~~that its receipts and deliveries of gas ~~as agreed or scheduled~~ under the terms of an interconnection agreement with the relevant transmission system owner ~~is taken from or injected by that party into the transmission system; and~~and under these rules, match; and [Note: Shippers on the Maui system must be liable to the balancing agent directly for their imbalances (currently these imbalances are allocated to Vector under the terms of its ICA with MDL)]
- (d) a transmission system owner (other than in regard to its activities as a shipper, trader, or interconnected party), to ensure that the linepack in a part of the transmission system owned by that owner matches the net aggregate of the following:
 - (i) the target linepack of that part of the transmission system:
 - (ii) all other users' **imbalances** in that part of the transmission system:
 - (iii) [any balancing gas allocated to transmission system owners under rule 19.3 in respect of that part of the system and not yet settled under rule 23]; and

imbalance means, in relation to -

- (i) a shipper, the amount by which receipts and deliveries of gas ~~allocated to the shipper~~ under relevant transmission system arrangements ~~do not match; and~~[(excluding any receipts and deliveries of an interconnected party under an interconnection agreement)] do not match; and [Note: Shippers on the Maui system must be liable to the balancing agent directly for their imbalances (currently these imbalances are allocated to Vector under the terms of its ICA with MDL)]

- (ii) a trader, the amount by which ~~the~~its quantities of gas purchased and sold ~~allocated to the trader~~ under relevant transmission system arrangements do not match; and
- (iii) an interconnected party, the amount by which ~~the quantity of gas taken from or injected into the transmission system by that party differs from that agreed or scheduled~~its receipts and deliveries of gas under the terms of an interconnection agreement; ~~and with the relevant transmission system owner and under these rules, do not match; and [Note: Shippers on the Maui system must be liable to the balancing agent directly for their imbalances (currently these imbalances are allocated to Vector under the terms of its ICA with MDL)]~~
- (iv) a transmission system owner (other than in regard to its activities as a shipper, trader, or interconnected party), the amount by which the linepack of a part of the transmission system owned by that person differs from the net aggregate of the following:
 - (A) the target linepack of that part of the transmission system:
 - (B) all other users' **imbalances** in that part of the transmission system:
 - (C) [any balancing gas allocated to transmission system owners under rule 19.3 in respect of that part of the system and not yet settled under rule 23]; and
- (v) a balancing zone, the aggregate net **imbalance** of all users in that zone.

[Note: The definitions of “balance” and “imbalance” should deal only with balance and imbalance conceptually and not relate to final balance/imbalance positions as determined under the transmission system codes/the allocation rules. A separate definition of “allocated imbalance” (or similar) needs to be created which deals with the allocation of costs associated with finally allocated balance/imbalance quantities]

Users' obligations

6. Users' obligation in relation to balancing

- 6.1 Subject to rule 6.5, a **user** must [use reasonable endeavours] at all times –

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- 6.1.1 to **balance** within each **balancing zone**; and
- 6.1.2 if, despite rule 6.1.1, the **user** has an **imbalance** in any **balancing zone**, to return the **user's imbalance** to zero. [\[Note: This reasonable endeavours obligation may be insufficient incentive to encourage users to balance and a best endeavours obligation may be more appropriate subject to the qualification that transmission system owners should not be required by this obligation to invest in new systems or hardware to facilitate balancing; this incentive will be provided by the balancing cost allocation mechanism. Making this an absolute obligation was suggested at the workshops but will be difficult and require the inclusion of a series of heavy qualifications relating to users' access to necessary information, access self balancing tools, and carving out any obligation to invest in new systems or hardware to facilitate balancing \(amongst other things\)\]](#)

6.2 If a **user** has an **allocated** imbalance in a **balancing zone** –

- 6.2.1 the allocation of gas in the **transmission system** to the **user** under relevant **transmission system arrangements** is subject to adjustment to reflect any **balancing gas** purchased or sold by the **balancing agent** and allocated to that **user** in accordance with these rules; and
- 6.2.2 the **user** is –
- (a) liable to pay to the **balancing agent** the **cash-out amount** of any **balancing gas** purchased by the **balancing agent** and **allocated** to the **user** in accordance with these rules; or
 - (b) entitled to receive from the **balancing agent** the **cash-out amount** of any **balancing gas** sold by the **balancing agent** and **allocated** to the **user** in accordance with these rules.

6.3 Despite anything in these rules, if 2 or more **transmission system owners** own parts of the **transmission system** that are within a single **balancing zone**, those **transmission system owners** ~~are~~[shall](#) –

- 6.3.1 ~~jointly responsible to each~~ use [\[reasonable endeavours\]](#) to ensure – [\[Note: See the comments above\]](#)
- (a) that the **linepack** in the **balancing zone** matches the aggregate of the following:

- (i) the **target linepack** for that **balancing zone**;
 - (ii) the aggregate net imbalance of all **shippers, traders, and interconnected parties** in that **balancing zone** (including the **imbalance** of the **transmission system owners** in those capacities);
 - (iii) any **balancing gas** allocated to **transmission system owners** under rule 19.3 in relation to the **balancing zone** and not yet settled under rule 23; and
- (b) any amount by which the **linepack** of the **balancing zone** differs from the aggregate of the matters listed in paragraph (a)(i) to (iii) is returned to zero.

6.3.2 be jointly liable or entitled, as the case may be, to be **allocated balancing gas** by the **balancing agent** in respect of any allocated imbalance that has arisen from the failure of the **transmission system owners** to ensure that the **linepack** in the **balancing zone** matches the aggregate of the matters listed in rule 6.3.1(a)(i) to (iii); and

6.3.3 be jointly liable to pay or entitled to receive the **cash-out amount** of any **balancing gas allocated** to them in accordance with rule 6.3.2. [Note: Vector considers that joint liability to balance in these “shared” zones is inappropriate; this will require Vector and MDL to agree a basis for allocating this liability between themselves, before the go-live date. Without this, each transmission system owner will be liable for the other’s failure to pay for balancing gas/be entitled to cash out payments in respect of the other’s balancing gas. Vector’s preferred alternative would be to specify in advance the extent of each TSO’s several liability to balance within these shared zones]

6.4 The provisions of these rules and the **balancing plan** apply with any necessary modifications in the circumstances specified in rule 6.3 as if the 2 or more **transmission system owners** were a single **transmission system owner**, and the definitions of **balance**, **imbalance**, allocated imbalance and **user** in rule 5 were read in light of the joint obligations in rule 6.3.1.

6.5 Rules 6.1 and 6.3.1 do not apply in relation to a **balancing zone** during any period where a critical contingency has been ~~declared~~determined and not terminated under the Gas Governance (Critical Contingency

Management) Regulations 2008 in respect of a part of the **transmission system** that falls within the **balancing zone**.

- 6.6 [To avoid doubt, for the purposes of rule 6.1, an **interconnected party** who is entitled under the terms of an **interconnection agreement** to receive gas from or deliver gas into the **transmission system** at any point, on demand, is to be treated as being balanced in respect of the gas received or delivered by that person at that point in accordance with that agreement.] [Note: The purpose of this rule is not clear if it is the industry body's intention that Vector's ICA with MDL will be caught]

7. **Users' obligation to provide information**

- 7.1 A **user** must, if requested by the **balancing agent**, provide such information to the **balancing agent** –
- 7.1.1 that is in its possession, or over which it has control; and
- 7.1.2 that is reasonably necessary to enable the balancing agent to carry out its functions, provided that the disclosure of such information is lawful and not in breach of any duty of confidentiality owed by the user.

Transmission system owners' obligations

8. **Transmission system owners' obligation to facilitate balancing**

- 8.1 Each **transmission system owner** must use reasonable endeavours to ensure that its operating procedures and contractual arrangements are consistent with ~~and do not unreasonably prevent users complying with the obligations in rule 6.1~~ these rules. [Note: The extension of a transmission system owner's obligations to reference the obligations of users should be avoided for a number of reasons. It forces transmission system owners to form a view on the extent of a user's obligations under the rules; it indirectly exposes the transmission system owner to the users' performance of those obligations; it may provide users with an excuse for non-performance; and it could be construed to require transmission system owners to make further investments in the transmission system to better enable users to balance. Also, the transmission system codes and non-code TSAs will require significant amendment to be consistent with these rules. The go-live date for the rules should be conditional on successful implementation of the necessary code amendments to ensure that transmission system owners are able to comply with this rule]

- 8.2 ~~However, nothing~~Nothing in rule 8.1, or in rule ~~10 or 10, rule~~ 11.1.1 or rule 11.2 requires a **transmission system owner** to take any action that would unreasonably interfere with the transmission of gas in a part of the **transmission system** that is owned by that **transmission system owner** or do anything or omit to do anything that would cause it to be in breach of any law or any transmission system arrangements.

9. Transmission system owners to provide transmission system information

- 9.1 Each **transmission system owner** must ensure that, if reasonably required by the **balancing agent** for the performance of its functions under these rules, any of the following information is made available to the **balancing agent** in relation to any of the parts of the **transmission system** owned by the transmission system owner, whether via an **information exchange** or otherwise:

- 9.1.1 information about the threshold(s) specified in the **transmission system owner's** critical contingency management plan under the Gas Governance (Critical Contingency Management) Regulations 2008:
- 9.1.2 information about **linepack**:
- 9.1.3 information about the pressure at each of the measurement points specified in the **balancing plan**:
- 9.1.4 information necessary to ~~confirm that~~enable the balancing agent to determine whether particular **balancing gas** transactions have been carried out:
- 9.1.5 information about the **imbalance** in each **balancing zone** including a breakdown of the **imbalance** per **user** in sufficient detail to enable the **balancing agent** to **allocate balancing gas** and its associated **cash-out price** under these rules:
- 9.1.6 historical **imbalance**, **linepack**, or pressure data:
- 9.1.7 metering (or other equipment) data on the amount of gas received into or taken from each **balancing zone**:
- 9.1.8 the quantity of gas agreed between the **transmission system owner** and an **interconnected party**, or otherwise expected or scheduled, to pass between each **balancing zone**:

- 9.1.9 any relevant notices issued in accordance with a **transmission system code** by the **transmission system owner**:
- 9.1.10 any other information reasonably requested by the **balancing agent** for the purpose of carrying out its functions under these rules.

9.2 The information provided under rule 9.1 must be the best information available (including real time information if applicable) that, in the particular circumstances, is in the **transmission system owner's** possession or can be obtained or derived by the **transmission system owner** without unreasonable difficulty or expense provided that the disclosure of such information must be lawful and not in breach of any duty of confidentiality owed by the transmission system owner.

10. Transmission system owners to provide transmission services for balancing gas

10.1 ~~Each~~ Subject to rule 8.2, each **transmission system owner** must provide the **balancing agent** with transmission services for the transmission of **balancing gas** on its customary terms and conditions ~~which include~~ provided that the balancing agent must be offered:

10.1.1 [fully variable pricing; ~~and~~]; and [Note: Pricing should be in accordance with Vector's current pricing regime]

10.1.2 priority access to pipeline capacity not already ~~committed~~ [committed] by the transmission system owner under its transmissions system arrangements, subject to prevailing or expected pipeline operating conditions [(for example, to approved nominations)-]. [Note: What is this reference to approved nominations intended to do? Also, how does the term "committed" sit with Vector's system of reserved capacity and supplementary capacity entitlements where shippers have fixed capacity available to them but some of which may be unutilised at any point in time. Also, how will interruptible supplementary capacity be treated in priority terms against balancing gas?]

11. Other obligations of transmission system owners in relation to balancing

11.1 ~~Each~~ Subject to rule 8.2, each **transmission system owner** must –

11.1.1 reasonably cooperate with ~~and facilitate~~ the **balancing agent** in the performance of the **balancing agent's** [functions ~~with a view to minimising the quantity of balancing gas sold and purchased through balancing actions, and in particular by ensuring that none~~

~~of the following actions by the transmission system owner cause unnecessary or uncoordinated balancing actions—~~; [Note: The obligation to “facilitate” the balancing agent in respect of its functions is insufficiently clear and should be deleted. Also, the cooperation obligation should be reciprocal and a comprehensive list of the balancing agent’s functions included in the rules (only primary functions are set out currently)]

~~(a)—operation of compressors:~~

~~(b)—use of curtailment:~~

~~(c)—intervention for safety or maintenance; and~~

11.1.2 use reasonable endeavours to give access to the **balancing agent** to any **information exchange** provided by the **transmission system owner** on reasonable terms and conditions; and

11.1.3 ensure **users’** allocations of gas under the relevant transmission system arrangements are adjusted (if required) to reflect allocations made by the **balancing agent** under rule 19 and notified to the **transmission system owner** under rule 20; and [Note: A user’s delivery quantity under the VTC will necessarily comprise any balancing gas allocated under the rules and the balancing rules will ensure that title to this gas is allocated to the correct end-user]

11.1.4 **publish –**

(a) its current compressor operation policy; and

(b) as soon as practicable, any written operational communications between the **transmission system owner** and the **balancing agent** that impact on how the **balancing agent** carries out its functions.

11.2 A **transmission system owner** may (at its sole discretion and subject to agreed conditions), but is not required to, give the **balancing agent** the right to control any compressor to assist in the **balancing agent** carrying out its functions. [Note: It needs to be clear that Vector has complete discretion over the grant of rights in respect of its compressors]

12. Publication of transmission system

- 12.1 No later than 5 **business days** after the **commencement date**, each person who owns any part of New Zealand's system of interconnected high pressure open access gas transmission pipelines must provide the **industry body** with the information specified in clause 1(2) of Part 5 of Schedule 1 of the Gas (Information Disclosure) Regulations 1997.
- 12.2 As soon as practicable after receiving the information described in rule 12.1, the **industry body** must consult with the persons who have submitted the information on a draft map depicting the **transmission system** for the purposes of these rules.
- 12.3 As soon as practicable after that consultation and no later than the **go-live date**, the **industry body** must **publish** a map depicting the **transmission system**.
- 12.4 A **transmission system owner** must give notice to the **industry body** of any error or change in the boundaries of, and pipelines comprising, the **transmission system owner's** part of the **transmission system** as soon as practicable after becoming aware of the error or change.
- 12.5 The **industry body** ~~may~~shall if required amend or update the boundaries of, and pipelines comprising, the **transmission system** in response to any notice given by a **transmission system owner** under rule 12.4 and, where applicable, must **publish** an updated map depicting the **transmission system**.

Balancing

Balancing agent functions

13. Functions of the balancing agent

- 13.1 The primary functions of the **balancing agent** are to –
- 13.1.1 manage the **linepack** of the **transmission system** by –
- (a) buying or selling **balancing gas** to manage **linepack** in **balancing zones** that are **directly managed** in accordance with rule 15; or

- (b) taking any other action provided for in the **balancing plan**, to manage **linepack** in an **indirectly managed balancing zone**; and

13.1.2 enter into transmission agreements in relation to the transmission of **balancing gas** to and from the **reference location** (or for the purposes of rule 23); and

13.1.3 **allocate balancing gas** and its associated **cash-out amount** in accordance with this Part in respect of each **balancing action** taken by the **balancing agent**; and

13.1.4 notify the relevant **transmission system owner** or owners of any adjustments required to be made under **transmission system arrangements** to users' (or, under rule 19.3 to **transmission system owners**') allocations of gas in the **transmission system** to reflect allocation of **balancing gas** by the **balancing agent** in accordance with this Part. [Note: What other functions will the balancing agent perform? These should be specified (for example, we assume the balancing agent will be responsible for determining, recording and reporting to transmission system owners, all imbalance positions)]

14. Functions to be carried out independently

14.1 The **balancing agent** must carry out its functions under these rules-

14.1.1 independently of any other functions carried out by that person; and

14.1.2 if the agent is, or is related to, a **user** or **transmission system owner**, at arm's length from the other business operated by that **user** or **transmission system owner**.

14.2 The **balancing agent** must use information provided to it under these rules only for the purpose of performing its functions under these rules: and shall (except as otherwise required by these rules) keep such information confidential. [Note: The confidentiality of information in the balancing agent's possession, should be recognised]

15. Management of linepack [Note: The Vector transmission code will require significant amendment to be consistent with this part of the rules. The go-live date

[for the rules should be conditional on successful implementation of the necessary code amendments\]](#)

- 15.1 If the **linepack** of a **balancing zone** that is **directly managed** falls below, or in the **balancing agent's** reasonable opinion is likely to fall below, the lower threshold specified in the **balancing plan** for the zone if **balancing action** is not taken [\(a “linepack event”\)](#), the **balancing agent** must–
- 15.1.1 use [\[reasonable endeavours\]](#) to purchase the amount of gas that, in the **balancing agent's** opinion, is necessary to return the **linepack** to, or close to, the threshold, or prevent the **linepack** falling below the threshold; and [\[Note: Vector's preference is that the balancing agent must procure the sale/purchase of balancing gas, subject only to the availability/price exceptions set out below\]](#)
- 15.1.2 if necessary [to return the linepack to, or close to, the threshold, or prevent the linepack falling below the threshold](#), ensure that the **balancing gas** purchased is transmitted to the relevant **balancing zone**.
- 15.2 If the **linepack** of a **balancing zone** that is **directly managed** exceeds, or in the **balancing agent's** reasonable opinion is likely to exceed, the upper threshold specified in the **balancing plan** for the zone if **balancing action** is not taken, the **balancing agent** must–
- 15.2.1 use [\[reasonable endeavours\]](#) to sell the amount of gas that, in the **balancing agent's** opinion, is necessary to return the **linepack** to, or close to, the threshold, or prevent the **linepack** exceeding the threshold; and [\[Note: Vector's preference is that the balancing agent must procure the sale/purchase of balancing gas, subject only to the availability/price exceptions set out below\]](#)
- 15.2.2 if necessary [to return the linepack to, or close to, the threshold, or prevent the linepack falling below the threshold](#), ensure that the **balancing gas** sold is transmitted from the relevant **balancing zone**.
- 15.3 If there is insufficient gas available for sale or purchase within the price thresholds specified in the **balancing plan** to return the **linepack** in a **balancing zone** to, or close to, the relevant threshold (or to stop it falling below or exceeding the threshold, as the case may be), then the **balancing agent** must immediately notify –

- 15.3.1 the **transmission system owner** or owners who own the part or parts of the **transmission system** covered by the affected **balancing zone**; and [Note: A transmission system owner liability carve-out will need to be added to the transmission system codes and non-code TSAs to relieve transmission system owners from any liability in the event a failure to deliver gas is caused by any act or omission of the (independent) balancing agent, including if the balancing agent fails to purchase balancing gas. The rules should specify that transmission system owners shall not have any liability to users in this event]
- 15.3.2 the critical contingency operator appointed under the Gas Governance (Critical Contingency Management) Regulations ~~2008~~2008, if the **linepack** will fall below the relevant threshold.
- 15.4 ~~For~~[Solely for the purposes of buying and selling **balancing gas** under rules 15.1 and 15.2, the **balancing agent** is the agent of each and every **user** (severally) and may–
- 15.4.1 in accordance with rule 15, purchase gas on behalf of the **users** to whom the **balancing agent** later allocates the **balancing gas** purchased under rule 19.1; and
- 15.4.2 in accordance with rule 15, sell gas on behalf of the **users** to whom the **balancing agent** later allocates the **balancing gas** sold under rule 19.1.
- 15.5 The liability of a **user** as principal under rule 15.4.1 is limited to the obligation to pay the **cash-out amount** of the **balancing gas** allocated to that **user** to the **balancing agent**.] [Note: Vector's preference is that the balancing agent does not act as the agent of users in the completion of balancing gas transactions. This raises liability issues for users, and for buyers and sellers of gas – as principals, and buyers and sellers of gas, will be directly liable to each other for cash-out amounts. We assume this is not intended. Title to balancing gas purchases can be deemed to pass to the balancing agent by a provision in these rules; the creation of an agency relationship is not necessary to effect title transfer. Sales of balancing gas by the balancing agent can be made on appropriate contract terms, with payment risk addressed either by suitable prudential requirements or the pay when paid principle in rule 18.1.3 below]

Balancing market

16. Rules for transactions relating to balancing gas market

- 16.1 The **balancing agent** must establish or access the services of a market for buying and selling **balancing gas**.
- 16.2 The **balancing market** must be open to any person who –
- 16.2.1 has gas available for sale, or who wishes to purchase gas, no matter where on the **transmission system** the gas is made available or where on the **transmission system** the person wishes to take the gas from, so long as the gas is able to be **transmitted** to or from the required **balancing zone**, by the required time; and
 - 16.2.2 meets ~~any~~all technical requirements relating to procurement of **balancing gas** specified in the **balancing plan**; and
 - 16.2.3 meets and agrees to be bound by the reasonable terms and conditions for the sale and purchase of **balancing gas published** by the **balancing agent** under rule 18.
- 16.3 Subject to rule 17, the **balancing agent** must purchase or sell **balancing gas** only through the **balancing market**. [Note: Why is this exclusivity required? It would appear to potentially reduce competition for balancing gas sales]
- 16.4 Subject to rule 16.6, when purchasing **balancing gas** through the **balancing market** the **balancing agent** must –
- 16.4.1 ~~accept offers to sell gas, or changes to offers to sell gas, as~~ closehold open, for as long as is reasonably practicable prior to taking the ~~time of the balancing action; and~~ necessary balancing action under rule 15, the period during which the balancing agent will consider offers to sell gas (or changes to such offers) in respect of a linepack event; and
 - 16.4.2 accept, or partially accept, the lowest priced offers necessary to meet the **balancing agent's** obligation under section 15.1 ~~or, if necessary, offers available~~, (where each offer price is first increased by any transmission charges that will be incurred by the **balancing agent** in the course of transmission of that gas from its receipt point to the **reference location**); and

16.4.3 pay the same **clearing price** to each person whose offer to sell gas is fully or partially accepted as part of a **balancing action**, less any transmission charges incurred by the **balancing agent** for transmission of that gas from its receipt point to the **reference location**.

16.5 Subject to rule 16.6, when selling **balancing gas** through the **balancing market** the **balancing agent** must –

16.5.1 ~~accept offers to purchase gas, or changes to offers to purchase gas, as close~~ hold open, for as long as is reasonably practicable prior to taking the ~~time of the balancing action; and~~ necessary balancing action under rule 15, the period during which the balancing agent will consider offers to purchase gas (or changes to such offers) in respect of a linepack event; and

16.5.2 accept, or partially accept, the highest priced offers necessary to meet the **balancing agent's** obligation under section 15.2, (where each offer price is first decreased by any transmission charges that will be incurred by the **balancing agent** in the course of transmission of that gas from the **reference location** to its delivery point); and

16.5.3 require the payment of the same **clearing price** from each person whose offer to purchase gas is fully or partially accepted as part of a **balancing action**, plus any transmission charges incurred by the **balancing agent** for transmission of that gas from the **reference location** to the delivery point.

16.6 The **balancing agent** must not accept any offer to sell or purchase **balancing gas** where the resulting **clearing price** would be, -

16.6.1 in the case of purchase of gas, higher than the maximum purchase price specified in the **balancing plan**; or

16.6.2 in the case of sale of gas, lower than the minimum sale price specified in the **balancing plan**.

17. Rules for transactions outside balancing gas market

17.1 The **balancing agent** may, for the purposes of rule 15, sell or purchase balancing gas other than through the **balancing market** if the **industry body** has given notice to the **balancing agent** that in its opinion the

balancing market is not meeting the purpose of these rules, which notice must include reasons for that opinion.

17.2 If rule 17.1 applies, the **industry body**, in consultation with the **balancing agent**, must determine how the **balancing agent** will purchase and sell **balancing gas** until the **industry body** notifies the **balancing agent** that in its opinion the **balancing market** meets the purpose of these rules, which notice must include reasons for that opinion.

17.3 If the **balancing agent** receives a notice from the **industry body** under rule 17.2, the **balancing agent** must purchase or sell **balancing gas** only through the **balancing market**, until given a further notice by the **industry body** under rule 17.1. [\[Note: The requirements in rule 16.5 should apply equally to off-market transactions. Also, the procedures set by the industry body for buying and selling balancing gas in off-market transactions should be published by the balancing agent\]](#)

18. Terms of balancing gas transactions

18.1 The **balancing agent** must **publish** the terms and conditions on which it will purchase or sell gas for the purposes of meeting its obligations under rule 15, which—

18.1.1 must be consistent with the intent of rule 16.2 to allow the **balancing market** to be as inclusive as possible; and

18.1.2 must reflect reasonable commercial practice; and

18.1.3 [\[may include a condition that the balancing agent will only pay the seller of balancing gas for that gas or for any part of that gas, following receipt of the cash out amount of the gas from users to whom the balancing gas is allocated under rule 19.\] \[Note: In the absence of suitable prudential requirements between buyers and sellers of gas, it seems that pay when paid will be a necessary term in all gas sale agreements, to protect the balancing agent, and in turn the TSOs \(as effective underwriters of the balancing agent\), from buyer payment and credit risk. It seems somewhat unreasonable, however, to expect sellers of balancing gas to take these risks and this will may dampen the supply of balancing gas.\]](#)

Allocation

19. Rules for allocation of balancing gas

- 19.1 The **balancing agent** must in respect of each **balancing action** taken by the agent, **allocate** the **balancing gas** sold or purchased to **users**–
- 19.1.1 in accordance with the allocation model specified in the **balancing plan**; and
- 19.1.2 as soon as practicable after the taking of the **balancing action**.
- 19.2 In applying the allocation model, the **balancing agent** must have regard to the best information available to the **balancing agent**.
- 19.3 In the event that the **balancing agent** is ~~unable~~[unable] [Note: It needs to be clear that this inability cannot be due to a user disputing a gas allocation] to allocate any **balancing gas** to a particular user under the allocation model the **balancing agent** must allocate the unallocated **balancing gas** to ~~the transmission system owner or owners who own the part or parts of the transmission system within the balancing zone in respect of which the balancing gas is unable to be allocated.~~ users in accordance with the allocation model specified in the balancing plan, as soon as practicable after the taking of the balancing action. [Note: Why is it proposed that unallocated balancing gas be allocated to a TSO, causing it to take the price risk on such gas, rather than the risk being shared by the causers of imbalance/the industry as a whole? TSOs may not be able to recover these costs from users and cannot rely of the Gas Governance (Compliance) Regulations to encourage performance. Vector considers that unallocated balancing gas should be allocated to all users in accordance with a pre-agreed allocation plan]
- 19.4 [Title to balancing gas sold or purchased by the balancing agent on behalf of a user (or allocated to a transmission system owner under rule 19.3) is deemed to have passed at the time of the balancing action.] [Note: This needs to be reconsidered in light of the suggested amendment to the current agency approach to the buying and selling of balancing gas]

20. Notification of allocations and cash-out price of balancing gas

- 20.1 As soon as practicable after allocating **balancing gas** in respect of a **balancing action** and in any event within [] business days of such allocation, the **balancing agent** must –

20.1.1] notify the **transmission system owners** of any adjustments to be made to **users’** allocations under **transmission system arrangements** to reflect the **balancing agent’s** allocation of the gas (including allocation of **balancing gas** to a **transmission system owner** under rule 19.3); and] [Note: The type and frequency of these adjustments should be clarified. How, for example, does this fit with errors in allocations (rule 25)? We assume this rule deals with initial allocations and that adjustments for “errors” (both manifest and arising from the downstream allocation process) will be addressed under rule 25]

20.1.2 determine the **cash-out price** for the **balancing gas allocated** to each **user** which –

(a) in relation to the purchase of **balancing gas**, is the sum of–

- (i) the **clearing price** for the gas (per GJ); and
- (ii) any transmission charges (per GJ) incurred by the **balancing agent** in **transmitting** the **balancing gas** from the **reference location** to the location of the **user’s imbalance**, and

(b) in relation to the sale of **balancing gas**, is–

- (i) the **clearing price** for the gas (per GJ); less
- (ii) any transmission charges (per GJ) incurred by the **balancing agent** in **transmitting** the **balancing gas** from the location of the **user’s imbalance** to the **reference location**, and

20.1.3 notify –

- (a) each affected **user** of the amount of **balancing gas** (GJ) from the **balancing action** that the **balancing agent** has allocated to that **user**, and the associated **cash-out price** (per GJ) of that **balancing gas**; and
- (b) if **balancing gas** has been allocated to a **transmission system owner** under rule 19.3, the **transmission system owner** of the amount of **balancing gas** (GJ) from the **balancing action** that the **balancing agent** has allocated to the **transmission system owner** under that rule.-

21. Payment for balancing gas purchased

21.1 As soon as possible after the end of each month in which **balancing gas** is purchased (the **balancing action month**), the **balancing agent** must issue an invoice to each affected **user** –

21.1.1 for the total **cash-out amount** of **balancing gas** purchased that the **balancing agent** has **allocated** to the affected **user** during or in respect of the **balancing action month**; and

21.1.2 which itemises the quantity and **cash-out amount** of the purchased **balancing gas** allocated to the **user** during or in respect of the **balancing action month** by reference to each **balancing action**.

21.2 Each affected **user** must pay the total amount stated in the invoice issued under rule 21.1 to the **balancing agent** –

21.2.1 if the invoice is received before the 10th of the month, no later than the 20th of the month in which the invoice was issued; or

21.2.2 if the invoice is received on or after the 10th of the month, no later than 10 days after the invoice was received. [\[Note: To be clear, a statement that users cannot withhold payment on disputed invoices could be added\]](#)

22. Payment of proceeds of sales of balancing gas

22.1 ~~As~~[Subject to rule 22.2, as](#) soon as possible after the end of each month in which **balancing gas** is sold (the **balancing action month**), the **balancing agent** must issue a credit note to each affected **user** –

22.1.1 for the total **cash-out amount** of **balancing gas** sold that was allocated to the affected **user** during or in respect of the **balancing action month**; and

22.1.2 which itemises the quantity and **cash-out amount** of the sold **balancing gas** allocated to the **user** during or in respect of the **balancing action month** by reference to each **balancing action**.

22.2 The **balancing agent** must, in relation to each **balancing action** recorded in the credit note issued under rule 22.1, pay the affected **user** the amount calculated in accordance with the following formula as soon as possible after the beginning of the month following the month in which the credit note was issued (and if necessary the beginning of each month following that):

$$P = R \times (C/\Sigma C)$$

where

- P is the total amount in dollars to be paid to the **user** in respect of the ~~balancing action for~~ credit note issued in the preceding month
- R is the total amount of money in dollars received by the **balancing agent** in the preceding month from purchasers of the **balancing gas** sold in the **balancing action** (“the **sold balancing gas**”)
- C is the **cash-out amount** of the **sold balancing gas** allocated to the **user** in respect of the **balancing action**
- ΣC is the total **cash-out amount** of the **sold balancing gas** allocated to **users** in respect of the **balancing action**

22.3 [Subject to rule 22.4, the **balancing agent** must make subsequent payments to **users** calculated in accordance with rule 22.2 so that the amount stated in the credit note is fully paid out to those **users**.] [Note: This rule is not at all clear. Also, whilst the intent of rule 22.2 is sensible, it will be administratively difficult to manage]

22.4 The **balancing agent** -

22.4.1 [is not required to pay out an amount greater than the total amount of payments received for **balancing gas** sold in a **balancing action**; but] [Note: This seems to be unnecessary (it duplicates rule 22.2) and is somewhat imprecise. Please clarify]

22.4.2 must use reasonable endeavours to pursue each purchaser of **balancing gas** for any outstanding monies relating to **balancing gas** purchased by that person. [Note: The inclusion of suitable prudential provisions that all users are required to comply with could significantly simplify this debt recovery process]

23. **Balancing agent must settle any balancing gas allocated to the transmission system owners under rule 19.3**

23.1 The **balancing agent** must –

- 23.1.1 keep a separate record of any **balancing gas allocated** to a **transmission system owner** under rule 19.3 and the **balancing action** to which the **balancing gas** relates; and
- 23.1.2 sell any purchased **balancing gas** allocated to a **transmission system owner** under rule 19.3 on behalf of that owner regularly on the New Zealand Gas Exchange, or any other market or on an over the counter basis, with a view to minimising any losses or maximising any gains in relation to the gas; and [Note: Transmission system owners should be given the ability to manage these positions themselves]
- 23.1.3 purchase regularly on behalf of each **transmission system owner** to whom sold **balancing gas** is allocated under rule 19.3 sufficient gas to reimburse the **transmission system owner** for the **balancing gas** sold, with a view to minimising any losses or maximising any gains in relation to the gas.

23.2 [For the purposes of rule 23.1 – [Note: See our earlier comments regarding the proposed agency arrangements. They apply equally to these proposed agency arrangements]

- 23.2.1 the **balancing agent** is the agent of each **transmission system owner** to whom **balancing gas** is allocated under rule 19.3; and
- 23.2.2 the **balancing agent** must pay the proceeds of any gas sold under rule 23.1.2, less any transmission charges, to the relevant **transmission system owner**; and
- 23.2.3 a **transmission system owner** on whose behalf the **balancing agent** purchases gas under rule 23.1.3 is liable to pay the **balancing agent** for the price of that gas, plus any transmission charges.

23.3 The liability of a **transmission system owner** as principal under rule 23.2 is limited to the obligation under rule 23.2.3. ↓

24. Records of transactions

- 24.1 The **balancing agent** must maintain a separate record -
 - 24.1.1 in relation to each **balancing gas** transaction of -
 - (a) the offer and final prices;

- (b) the quantity;
- (c) the counterparty
- (d) the transmission charges (if any); and
- (e) the **balancing action** with which the transaction is associated; and

24.1.2 in relation to each **balancing action** of –

- (a) the time the **balancing action** was committed to;
- (b) the **clearing price**;
- (c) the total quantity of **balancing gas** purchased or sold; and
- (d) the **balancing zone** or zones to which the **balancing gas** purchased or sold is allocated, and in relation to each **user** to whom **balancing gas** is allocated in respect of that **balancing zone**–
 - (i) the quantity of **balancing gas** allocated to the **user**; and
 - (ii) the **cash-out price** (per GJ) of the **balancing gas** allocated to the **user**,

24.1.3 of any other details of the transactions associated with **balancing actions** that the **balancing agent** considers ~~desirable~~reasonably necessary.

24.2 The **balancing agent** must **publish** in respect of each **balancing action** taken, -

24.2.1 the total quantity of **balancing gas** sold or purchased; and

24.2.2 the **clearing price** for the gas; and

24.2.3 details of any **balancing gas allocated** to a **transmission system owner** (or owners) under rule 19.3; and

24.2.4 the transmission charges for any **balancing gas** transmission services used by the **balancing agent**.

- 24.3** The **balancing agent** must publish in relation to each quantity of gas sold or purchased on behalf of a **transmission system owner** under rule 23.1.2 or 23.1.3–
- 24.3.1** the quantity of that gas that related to each **balancing action**, the **balancing zone** to which the **balancing action** related, and the **clearing price** received or paid for the gas;
 - 24.3.2** the details of the price received or paid on the New Zealand Gas Exchange, or other market.
- 24.4** The **balancing agent** must keep the records referred to in rule 24.1 for at least 5 years following the relevant **balancing action**.
- 25. Errors in allocations** [\[Note: Suggest this rule deals with manifest errors in balancing gas allocations, as well as subsequent adjustments made to the initial allocations as a result of the downstream reconciliation process\]](#)
- 25.1** If a **user** who has been allocated **balancing gas** under rule 19 (or a **transmission system owner** who has been allocated **balancing gas** under rule 19.3) considers that the allocation of balancing gas or the determination of its associated **cash-out amount** was calculated in error, the person must advise the **balancing agent** of the error as soon as ~~possible~~[reasonably practicable](#).
 - 25.2** If the **balancing agent** considers that an error has occurred and has resulted in a materially different allocation of **balancing gas** or a materially different **cash-out amount** than would have resulted had the error not occurred, the **balancing agent**–
 - 25.2.1** must assess the difference between the amount of **balancing gas allocated**, and the amount that should have been **allocated** or the amount of the **cash-out amount** that was determined for the **balancing gas**, and the amount that should have been determined, and must make a new allocation of **balancing gas** or determine a new **cash-out amount** that reflects the difference between the two amounts; and
 - 25.2.2** must give notice of the error and the new allocation or the new **cash-out amount** to -
 - (a) affected **users**; and
 - (b) the relevant **transmission system owner** or owners; and

25.2.3 if an invoice or credit note has already been issued in relation to the original allocation of **balancing gas**, the **cash-out amount** associated with the new allocation or the new determination of the correct **cash-out amount**, must be included in the next invoice or credit notice sent to ~~the~~all affected ~~user~~users.

25.3 A **transmission system owner** who is notified under rule 25.2 of a new allocation, must ensure the affected **users**' (or where **balancing gas** has been allocated under rule 19.3 the **transmission system owner's**) allocations of gas under the relevant **transmission system arrangements** are adjusted to reflect the new allocation—(to take effect from the time of the original balancing action). [Note: We assume the balancing agent will be responsible for keeping the ongoing imbalance records, not transmission system owners]

25.4 The **balancing agent** –

25.4.1 must make a decision in relation to any errors advised to it as soon as practicable after receiving the advice; and

25.4.2 may not make a new allocation of **balancing gas** or a new determination of a **cash-out amount** under rule 25.2 unless the **balancing agent** has received notification of the error within [6] months after the date of notification of the allocation and its associated **cash-out amount** to **users** (or a **transmission system owner**) under rule 20.1.3. [Note: 14 months would be required to allow corrections in respect of final downstream allocations]

Reporting

26. Monthly reports

26.1 The **balancing agent** must, within 10 **business days** of the end of each month, provide a written report to the **industry body** and to the **transmission system owners** that sets out the following information -

26.1.1 a summary of the information referred to in rule 24.2 for the month; and

26.1.2 any breaches of these rules by the **balancing agent** or any other person of which the **balancing agent** is aware at the date of the report and which have not previously been notified in a report.

- 26.2 The **industry body** may **publish** the information in the monthly report that is provided under rule 26.1.1 and such information that is provided under rule 26.1.2 as in its opinion is ~~desirable~~reasonably necessary.

~~Appointment of balancing agent, development~~Development of balancing plan,
and funding

Subpart 1

~~Appointment of balancing agent by joint transmission system owners~~Preparation of balancing plan by transmission system owners [Note: Vector considers that it is more appropriate for the industry body to appoint the balancing agent and levy users under the rules for the costs and liabilities associated with the balancing agent's appointment and ongoing operation (either directly or via the balancing agent). Transmission system owners may not be able to pass these costs onto users due to the imposition of price control regulation under the Commerce Amendment Act. Even if transmission system owners are able to pass these costs on, it is inappropriate that transmission system owners should take the ultimate payment risk on these liabilities. It would be more efficient and fair if the industry body paid the balancing agent's costs and liabilities directly, and allocated these to the causers of imbalance/users, as fees levied under the rules. The Gas Governance (Compliance) Regulations would encourage payment of these fees. An entitlement to set off unpaid fees against payments due to users could also be added to the rules, to further facilitate payment. See also our earlier comments on prudential requirements applying to users. Alternatively, the balancing agent could be authorized in the rules to levy users a charge which in effect pays the balancing agent's costs. This would help manage the risk that transmission system owners cannot recover these fees from users under their transmission system code arrangements. Furthermore, this should help facilitate users' payment of these costs as the balancing agent can utilise the Gas Governance (Compliance) Regulations to encourage payment]

27. **Application of subpart**

27.1 This subpart applies subject to subpart 2.

28. ~~Joint obligations~~Obligations of transmission system owners in relation to ~~appointment of balancing agent and~~ preparation of balancing plan [Note: We

31

~~1054189v1~~

1053789v4

152576.1

consider any obligations on transmission system owners to appoint the balancing agent and to agree a balancing plan, should be split so the transmission system owners agreeing a balancing plan is not effectively conditional on them appointing a balancing agent/that balancing agent not being removed by order of the industry body]

28.1 If this subpart applies, all **transmission system owners** must together –

28.1.1 attempt to agree on –

(a) ~~the identity of a person to act as the **balancing agent** under these rules; and (b) —~~the contents of a draft balancing plan; and

(b) changes to the **transmission system codes** and **transmission system arrangements** necessary as a consequence of these rules; and [Note: The go-live date under these rules should be conditional on the changes being made/agreed to by users]

28.1.2 if they agree on ~~the identity of a **balancing agent** and on~~ a draft balancing plan and the required changes to the **transmission system codes** and **transmission system arrangements**, consult upon and seek approval of that plan from the **industry body** in accordance with the procedure in rule 31; and

~~**28.1.3** if the **balancing plan** is approved by the **industry body** under rule 32, as soon as practicable following receipt of such approval, appoint the person named in the **balancing plan** to act as the **balancing agent** for the purposes of these rules; and~~

28.1.3 ~~**28.1.4**~~ if they cannot agree on ~~the identity of a **balancing agent** or on~~ a draft balancing plan or the required changes to the **transmission system codes** and **transmission system arrangements** within 60 **business days** from the **commencement date**, notify the **industry body** accordingly, together with information about the status of their negotiations.

28.2 ~~If the **transmission system owners** have appointed a **balancing agent** and the **industry body** has approved a **balancing plan** under rule 32 then, subject to rule 39, the **transmission system owners** must use their best endeavours to ensure that there remains at all times a **balancing agent** appointed by the **transmission system owners**. [Note: The term of the balancing agent's appointment is not dealt with by the rules. Nor is the process for appointing subsequent balancing agents (see rule 43.3 in~~

relation to industry body appointments). Will the appointment be long or short term? Will the balancing agent expect compensation if its appointment is terminated because these rules are repealed? These issues would be better managed by the industry body]

29. Terms of appointment of balancing agent

~~29.1 — The terms and conditions of appointment of a~~ [Note: The balancing agent ~~by the~~ is very likely to expect to be indemnified for these costs. The transmission system owners ~~may provide for~~ will, therefore, almost certainly need to give such an indemnity, and take the risk of not being able to pass these costs on to users. Each transmission system owner may also face the prospect of being liable in full for these costs unless the balancing agent is willing to allow such an indemnity to be several, in agreed proportions]

~~29.1.1 reasonable remuneration to be paid to~~ [the right to terminate the balancing agent ~~by the transmission system owners; and~~'s appointment if required by the industry body under rule 41.1.1; and]

~~29.1.2 an indemnity by the transmission system owners of any costs incurred by the balancing agent that are unable to be recovered from—~~

~~(a) — users under rule 6.2.2(a); or~~

~~(b) — contracting parties in relation to the purchase and sale of balancing gas; and~~

~~29.1.3 any other terms and conditions not inconsistent with these rules.~~

~~29.2 — The transmission system owners must publish—~~

~~29.2.1 the terms and conditions of appointment of any balancing agent appointed by them; and~~

~~29.2.2 any amendment to or replacement terms and conditions of appointment of any balancing agent appointed by them.~~

~~29.3 — To avoid doubt, only one person must be appointed as balancing agent in respect of the whole transmission system.—~~

30. Contents of draft balancing plan

30.1 The draft balancing plan must –

- 30.1.1 comply with the requirements in the Schedule; and
- 30.1.2 be consistent with the purpose of these rules, including by containing processes and procedures that support a unified regime for **balancing** the whole **transmission system**; and
- 30.1.3 be consistent with the Gas Governance (Critical Contingency Management) Regulations 2008; and
- 30.1.4 be consistent with **MPOC**, **VTC**, or any other **transmission system code** except to the extent necessary to comply with these rules. [\[Note: The transmission system codes and non-code TSAs will require amendment to be consistent with the rules. The go-live date for the rules should be conditional on successful implementation of the necessary code amendments\]](#)

Process for approval of balancing plan

31. Procedure for approval of balancing plan

31.1 If the **transmission system owners** agree on a draft balancing plan, the owners must -

- 31.1.1 provide a copy of the draft balancing plan to the **industry body**; and
- 31.1.2 consult on the draft balancing plan with persons that the **transmission system owners** consider are representative of the interests of persons likely to be substantially affected by the draft balancing plan; and
- 31.1.3 give persons consulted with under rule 31.1.2 at least 20 **business days** to make submissions to the **transmission system owners** on the draft balancing plan; and
- 31.1.4 provide copies of the submissions to the **industry body** and **publish** the submissions as soon as practicable after those submissions have been received.

- 31.2** The **industry body** must **publish** the draft balancing plan.
- 31.3** After the consultation required by rule 31.1, the **transmission system owners** may amend the draft balancing plan and –
- 31.3.1** if the amendment does not materially impact on the contents of the draft balancing plan, may submit a proposed final **balancing plan** to the **industry body** for approval; or
- 31.3.2** if the amendment materially impacts on the contents of the draft balancing plan, must produce a new draft balancing plan, provide it to the **industry body**, and consult on it again in accordance with rule 31.1, (however, in this circumstance, the minimum number of days for the making of submissions is 10 **business days**).
- 31.4** This rule 31 applies with any necessary modifications to a new draft balancing plan.

32. Approval of balancing plan

- 32.1** The **industry body** must, within 20 ~~working~~business days, approve a proposed **balancing plan** submitted under rule 31.3.1 if it is satisfied that it meets the requirements of rule 30.
- 32.2** If the **industry body** declines to approve the proposed **balancing plan** –
- 32.2.1** it must give reasons; and
- 32.2.2** it may propose any amendments to the plan necessary to ensure it meets the requirements of rule 30; and
- 32.2.3** the **transmission system owners** must consider the reasons and any proposed amendments and may amend the proposed **balancing plan** accordingly, and –
- (a) if the amendment does not materially impact on the contents of the plan, may resubmit the proposed **balancing plan** to the **industry body** for approval; or
- (b) if the amendment materially impacts on the contents of the plan, must produce a new draft balancing plan, provide it to the **industry body**, and consult on it again in accordance with rule 31.1 (however, in this circumstance, the minimum number of days for the making of submissions is 10 **business days**).

- 32.3** Rule 31.2 and 31.3 apply to the new draft balancing plan referred to in rule 32.2.3.

33. Publication of initial balancing plan

- 33.1** As soon as practicable after the **industry body** has approved a **balancing plan** under rule 32, the **industry body** must –

33.1.1 notify the transmission system owners that the plan has been approved; and

33.1.2 **publish** the approved **balancing plan**; and

33.1.3 publish, both in the *Gazette* and on the **industry body's** website, a statement specifying—

(a) that it has approved a **balancing plan**; and

(b) the go-live date on which, in accordance with rule 2, rules 6 to 11 and Part 2 come into force.

- 33.2** No later than 5 **business days** after the **industry body** publishes a statement under rule 33.1, the **transmission system owners** must **publish** the **balancing plan** on all relevant **information exchanges**.

Amendment to balancing plan [Note: The amendment and consultation provisions are somewhat complex and confusing (both in rules 34 and 35, and rules 48 and 49) and may benefit from some simplification.]

34. Process for amendment to approved balancing plan

- 34.1** A **balancing plan** that has been approved by the **industry body** may be amended at any time in accordance with the procedure in this rule 34.

- 34.2** An amendment to the **balancing plan** may be proposed by –

34.2.1 all **transmission system owners** together; or

34.2.2 the **industry body**.

- 34.3** The **transmission system owners** may submit a proposed amendment directly to the **industry body** without complying with rule 35 if the proposed amendment—

34.3.1 is minor and technical; or

34.3.2 in the **transmission system owners'** opinion, is not minor and technical but needs to be made urgently.

34.4 A proposed amendment submitted under rule 34.3 must be accompanied by an explanation as to –

34.4.1 the reasons for the proposed amendment; and

34.4.2 the reasons why the proposed amendment is considered to fit within the scope of rule 34.3.

34.5 The **industry body** must immediately approve an amendment under rule 36 if in the **industry body** ~~agrees that's opinion~~ the amendment fits within the scope of rule 34.3 and complies with rule 30.

34.6 If an amendment is proposed by the **industry body**, and the amendment is not, in the **industry body's** opinion, minor and technical and does not need to be made urgently, the **industry body** must submit the proposed amendment to the **transmission system owners**, together with an explanation for the proposed amendment.

34.7 If an amendment is proposed by the **industry body**, and the amendment is in the **industry body's** opinion ~~minor and technical or needs to be made urgently, the industry body~~ –

34.7.1 minor and technical, the industry body may approve the amendment if it complies with rule 30; but

34.7.2 ~~must in the case of an amendment that is, in its opinion, urgent but~~ not minor and technical but needs to be made urgently, ~~also~~ submit the amendment to the **transmission system owners**, together with an explanation for the proposed amendment.

34.8 One or more **transmission system owners** or other **users** may request the **industry body** to propose an amendment under this rule, and for that purpose may submit a suggested amendment to the **industry body**, who may, if the proposed amendment complies with rule 30, in its discretion decide whether or not to take up the suggested amendment.

34.9 Amendments approved by the **industry body** under rules 34.5 or 34.7 shall take effect immediately on the **industry body's** approval provided that amendments approved under rule 34.7.2 are subject to rule 38.

35. Consultation on proposed amendment to balancing plan

35.1 This rule applies if the **transmission system owners**—

35.1.1 receive ~~a proposed amendment or~~ an approved urgent amendment to the **balancing plan** ~~from~~ made by the **industry body** under rule 34.7.2; or

35.1.2 wish to propose an amendment that does not fall within rule 34.3 (including one which was proposed to the **industry body** under that rule, but which the **industry body** has advised the **transmission system owners** it does not agree falls within the scope of that rule); or

35.1.3 have proposed an amendment under rule 34.3.2, whether or not it has been approved by the **industry body**.

35.2 If this rule applies, the **transmission system owners** must—

35.2.1 unless the amendment is an approved urgent amendment, ~~to the~~ to the balancing plan made by the industry body under rule 34.7.2, provide the proposed amendment to the **industry body** together with an explanation for the proposed amendment; and

35.2.2 consult on the proposed amendment (or approved urgent amendment) to the **balancing plan** with persons that the **transmission system owners** consider are representative of the interests of persons likely to be substantially affected by the proposed amendment; and

35.2.3 give persons consulted with under rule 35.2.1 at least 20 **business days** to make submissions to the **transmission system owners** on the proposed amendment; and

35.2.4 provide copies of the submissions to the **industry body** and **publish** the submissions as soon as practicable after those submissions have been received; and

35.2.5 consider the submissions made and, —

- (a) if the **transmission system owners** wish (in conjunction with the **industry body** if it is the proposer), may make any minor amendment to the proposed ~~or approved urgent~~ amendment to the balancing plan that the **transmission system owners**

consider necessary and submit the proposed amendment to the **industry body** for approval; or

- (b) if the **transmission system owners** wish to make any material amendment to the proposed ~~or approved urgent~~ amendment, to the balancing plan, they must propose a new amendment and follow the procedure in this rule again (however, in this circumstance, the minimum number of days for the making of submissions is 10 **business days**).

35.3 The **industry body** must **publish** each proposed amendment to the **balancing plan**, together with the explanation by the proposer.

36. Approval of amendment to balancing plan

36.1 If the **industry body** receives a proposed amendment under rule 34.3 or ~~35.2.4~~35.2.5(a), the **industry body** must immediately approve (or, in the circumstances in rule 38, confirm) the amendment if it is satisfied that it meets the requirements of rule 30.

36.2 If the **industry body** declines to approve the proposed amendment to the **balancing plan** –

36.2.1 it must give reasons; and

36.2.2 may propose any amendments to the **balancing plan** amendment; and

36.2.3 the **transmission system owners** must consider the reasons and any proposed amendments, and may amend the proposed amendment to the **balancing plan** accordingly and –

- (a) if the amendment does not materially impact on the contents of the **balancing plan** amendment, may resubmit the proposed **balancing plan** amendment for approval; or
- (b) if the amendment materially impacts on the contents of the **balancing plan** amendment, must produce a new **balancing plan** amendment, and consult on it again in accordance with rule 35.2.

36.2.4 Rule 35.3 applies to any new balancing plan amendment referred to in rule 36.2.3(b).

37. Publication of amended balancing plan

- 37.1 The **industry body** must as soon as practicable after approving an amendment to the **balancing plan** –
- 37.1.1 notify the **transmission system owners** that the amendment has been approved; and
 - 37.1.2 **publish** the amended **balancing plan**.
- 37.2 The **transmission system owners** must as soon as practicable following receipt of notification under rule 37.1, **publish** the amended **balancing plan** on all relevant **information exchanges**.
- 37.3 An amendment to the **balancing plan**, that is approved by the **industry body**–
- 37.3.1 on a date that is before the 25th of a month, comes into force on the 1st day of the month following the month in which the amended plan is **published** in accordance with rule 37.1.2; or
 - 37.3.2 on a date that is the 25th, or after the 25th, of a month, comes into force on the 1st day of the 2nd month after the month in which the amended plan is **published** in accordance with rule 37.1.2.
- 37.4 Despite rule 37.3 an urgent amendment to the **balancing plan** comes into force on the date it is notified to the **transmission system owners** under 37.1.

38. Expiry of urgent amendments

- 38.1 An amendment to the **balancing plan** ~~that is, in the industry body's opinion urgent, but not minor and technical, and that is~~ approved by the **industry body** under rule ~~34.6.2~~34.3.2 or ~~36.1~~34.7.2 prior to consultation expires after 60 **business days** unless by that date –
- 38.1.1 the amendment has been consulted upon by the **transmission system owners** under rule 35; and
 - 38.1.2 confirmed by the **industry body** under rule 36.1.
- 38.2 If an urgent amendment expires, the **industry body** must –
- 38.2.1 notify the **transmission system owners** that the amendment has expired; and

38.2.2 publish the **balancing plan** as it was before the urgent amendment.

38.3 The **transmission system owners** must as soon as practicable following receipt of notification under rule 38.2.1, **publish** the **balancing plan** [as it was before the urgent amendment] [was received/made?] on all relevant **information exchanges**.

Subpart 2

~~Appointment~~Preparation of balancing ~~agent~~plan by industry body

39. Application of this Part

39.1 This subpart applies if –

39.1.1 the **transmission system owners** have failed to submit a proposed final **balancing plan** to the **industry body** under rule 31.3.1 within 60 **business days** of the **commencement date** and in the **industry body**'s opinion the process in rules 28 to 33 –

(a) is deadlocked; or

(b) is unlikely to be completed in a timely manner; ~~or~~

~~**39.1.2** there is no **balancing agent** appointed by the **transmission system owners** carrying out the functions in Part 2 following the **go-live date**; or~~

~~**39.1.3** in the **industry body**'s opinion the **balancing agent** appointed by the **transmission system owners** under subpart 1 is failing to carry out its functions in accordance with these rules.~~

39.2 To avoid doubt, no person is required to comply with this subpart unless it applies.

40. Industry body's duties if subpart applies

40.1 If this subpart applies, the **industry body** must –

40.1.1 give the **transmission system owners** written notice that, subject to any submissions it may receive under rule 40.1.2, from a date specified in the notice it will -

~~(a) — appoint a **balancing agent** in accordance with rule 42; and~~

~~(b) — set and approve a **balancing plan** under rule 45; and~~

40.1.2 give the **transmission system owners** 15 **business days** to make submissions to the **industry body** in response to the notice given under rule 40.1.1; and

40.1.3 if not satisfied after receiving any submissions from the **transmission system owners** that by the date specified in the notice given under rule 40.1.1 there will be a proposed final balancing agent appointed by the transmission system owners in place who is carrying out functions plan submitted to the industry body in accordance with these rules, -

(a) prepare and approve a **balancing plan** under rule 45; and

~~(b) — appoint a **balancing agent** in accordance with rule 42 to carry out the functions in Part 2 from the date the **balancing plan** comes into force under rule 46 or 47; and~~ (e) notify the **transmission system owners** accordingly.

40.2 The date specified in the notice under rule 40.1.1 must not be earlier than 30 **business days** from the date of the notice.

41. Consequences of ~~appointment of balancing agent and~~ setting of balancing plan by industry body

41.1 If the **industry body** ~~appoints a **balancing agent** under rule 42, and~~ publishes a **balancing plan** under rule 46 or 47 then, subject to rule 41.4 on the date the **balancing plan** comes into force -

~~41.1.1 — the appointment of any person as **balancing agent** by the **transmission system owners** under subpart 1 is terminated and ceases to have effect; and~~

41.1.1 ~~41.1.2~~ any **balancing plan** approved by the **industry body** under subpart 1 ceases to apply; and

41.1.2 ~~41.1.3~~ the following provisions of these rules expire and are deemed to be revoked –

(a) subpart 1:

~~(b) paragraph (a) of the definition of **balancing agent** in rule 5.1; and~~

(b) ~~(c)~~ paragraphs (a)(i) and (b)(i) of the definition of **balancing plan** in rule 5.1.

~~41.2 A **balancing agent** whose appointment is terminated under rule 41.1.1 must—~~

~~41.2.1 cooperate with the **balancing agent** appointed by the **industry body**; and~~

~~41.2.2 provide copies of all records kept under rule 24 to the **balancing agent** appointed by the **industry body**; and~~

~~41.2.3 provide copies of all other relevant documents held by the **balancing agent** that relate the **balancing agent**'s functions to the **balancing agent** appointed by the **industry body**.~~

~~41.3 The **industry body** must pay the former **balancing agent** reasonable costs associated with the transfer of the **balancing agent** function, including if agreed between the relevant parties, any transitional arrangements necessary in relation to balancing gas transactions and payment for **balancing gas** that have been entered into by the **balancing agent** before termination of the appointment.~~

~~41.4 Despite rule 41.1.1, and subject to any contractual arrangements entered into with the **industry body** under rule 41.3, the **balancing agent** whose appointment is terminated by operation of that rule—~~

~~41.4.1 may exercise the powers of the **balancing agent** under Part 2 in relation to any **balancing actions** undertaken before the termination of the **balancing agent**'s appointment; and~~

~~41.4.2 remains liable in respect of any breaches of these rules, or obligations incurred by the **balancing agent**, on or before the date of termination (including, in relation to any **balancing gas**~~

~~transactions undertaken, the obligation to pay the cash-out price of any sold balancing gas allocated to affected users in accordance with rule 22); and~~

~~41.4.3 remains entitled to be paid the cash-out amount of any balancing gas allocated to users on or before the termination date.~~

Appointment of balancing agent [Note: Vector considers that it is more appropriate for the industry body to appoint the balancing agent and levy users under the rules for the costs and liabilities associated with the balancing agent's appointment and ongoing operation (either directly or via the balancing agent)]

42. Appointment of balancing agent by industry body

42.1 ~~If this subpart applies, the~~ The **industry body** may by agreement with any person appoint that person to act as the **balancing agent** under these rules.

42.2 In determining whether to appoint a person under rule 42.1, the **industry body** must have regard to –

42.2.1 the person's capacity to carry out the functions of a **balancing agent** under these rules; and

42.2.2 any other matter that in the **industry body's** opinion is relevant to the appointment.

~~**42.3** — To avoid doubt if a balancing agent is appointed by the industry body at a time when a balancing agent appointed by the transmission system owners is carrying out functions under these rules, the balancing agent appointed by the industry body is not required to carry out functions under Part 2 until the date the other balancing agent's appointment is terminated under rule 41.1.1.~~

43. Terms of appointment of balancing agent by industry body

43.1 The **industry body** and the person proposed to be appointed as the **balancing agent** under rule 42 must –

43.1.1 agree the terms and conditions of the **balancing agent's** appointment under rule 42; and

43.1.2 record those terms and conditions in a **balancing agent** service provider agreement.

43.2 The terms and conditions of the **balancing agent** service provider agreement—

43.2.1 may not be inconsistent with the obligations of the **balancing agent** under these rules; and

43.2.2 may provide for—

- (a) reasonable remuneration to be paid to the **balancing agent** by the **industry body**; and
- (b) the **industry body** to indemnify the **balancing agent** for any costs incurred by the **balancing agent** that are unable to be recovered from –
 - (i) **users** under rule 6.2.2(a); or
 - (ii) contracting parties in relation to the purchase and sale of **balancing gas**; and
- (c) any other terms and conditions not inconsistent with these rules.

43.3 The **industry body** may at any time terminate, or change the appointment of, or reappoint, any person as the **balancing agent**, subject to the terms of the **balancing agent** service provider agreement. [\[Note: If the transmission system owners are to assume liability for the losses of the balancing agent, they should be entitled to approve the terms of the appointment of the balancing agent by the industry body, and to require the industry body to take enforcement action under the service provider agreement\]](#)

44. Publication of balancing agent service provider agreement

44.1 The **industry body** must **publish** –

44.1.1 any **balancing agent** service provider agreement entered into by the **industry body**; and

44.1.2 any amendment to any **balancing agent** service provider agreement.

Balancing plan

45. Balancing plan

45.1 If this subpart applies, the **industry body** must –

45.1.1 prepare and **publish** a draft balancing plan that complies with rule 30 and to the extent reasonably practicable and provided they are consistent with rule 30, incorporate into the draft balancing plan parts of any **balancing plan** or draft balancing plan that have been previously agreed between **the transmission system owners**; and

45.1.2 consult on the draft balancing plan with the **transmission system owners** and other persons that the **industry body** considers are representative of the interests of persons likely to be substantially affected by the proposed balancing plan; and

45.1.3 give persons consulted with under rule 45.1.2 at least 20 **business days** to make submissions to the **industry body** on the draft balancing plan and **publish** those submissions; and

45.1.4 consider the submissions made and make any amendment to the draft balancing plan that the **industry body** considers necessary.

45.2 After following the procedure in rule 45.1, the **industry body** may set and approve the final **balancing plan**. [Note: The timing of this needs to be specified]

45.3 Despite anything in these rules, if a draft balancing plan has been consulted upon by the **transmission system owners** under rule 31, but the **transmission system owners** are unable to agree on the final **balancing plan** to be submitted to the **industry body**, or the **industry body** considers that further consultation is unnecessary, the **industry body** may set and approve a **balancing plan** under rule 45.2 without following the procedure in rules 45.1.2 to 45.1.4.

46. Publication of initial balancing plan

46.1 This rule applies if the **balancing plan** approved by the **industry body** under rule 45 is the first **balancing plan** approved by the **industry body** under these rules.

46.2 If this rule applies, as soon as practicable after the **industry body** has approved the **balancing plan**, it must –

46.2.1 **publish**, in the *Gazette* and on the **industry body's** website, a statement specifying—

- (a) that it has approved a **balancing plan**; and
- (b) the **go-live date** on which, in accordance with rule 2, rules 6 to 11 and Part 2 come into force; and

46.2.2 **publish** the approved **balancing plan**.

46.3 No later than 5 **business days** after the **industry body publishes** a statement under rule 46.2.1, the **transmission system owners** must **publish** the **balancing plan** on all relevant **information exchanges**.

47. Publication of approved balancing plan

47.1 If rule 46 does not apply, -

47.1.1 the **industry body** must **publish** the plan approved under rule 45 as soon as practicable; and

47.1.2 the **transmission system owners** must within 5 **business days** of approval of the **balancing plan** under rule 45 **publish** the **balancing plan** on all relevant **information exchanges**; and

47.1.3 the **balancing plan** approved under rule 45 comes into force, if the plan is **published** under rule 47.1.1 -

- (a) on a date that is before the 25th of a month, on the 1st day of the month following the month in which the plan is **published**; or
- (b) on a date that is the 25th, or after the 25th, of a month, on the 1st day of the 2nd month after the month in which the plan is **published**.

Amendment to balancing plan

48. [Process for amendment to approved balancing plan [Note: The amendment and consultation provisions are somewhat complex and confusing (both in rules 34 and 35, and rules 48 and 49) and may benefit from some simplification.]
- 48.1 A **balancing plan** that has been approved by the **industry body** under rule 45 may be amended at any time in accordance with the procedure in this rule 48.
- 48.2 An amendment to the **balancing plan** may be proposed by –
- 48.2.1 all **transmission system owners** together; or
- 48.2.2 the **industry body**.
- 48.3 If the **transmission system owners** submit a proposed amendment to the **industry body** they may also submit that the amendment–
- 48.3.1 is minor and technical; or
- 48.3.2 in the **transmission system owners’** opinion, not minor and technical but needs to be made urgently.
- 48.4 A proposed amendment submitted by the **transmission system owners** must be accompanied by an explanation as to –
- 48.4.1 the reasons for the proposed amendment; and
- 48.4.2 if relevant, the reasons why the proposed amendment is considered to fit within the scope of rule 48.3.
- 48.5 The **industry body** may immediately approve an amendment to the **balancing plan** if in the **industry body’s** opinion the amendment (whether proposed by the **industry body** or the **transmission system owners**) complies with rule 30 and –
- 48.5.1 is minor and technical; or
- 48.5.2 not minor and technical but needs to be made urgently.
- All such amendments shall take effect immediately on the **industry body’s** approval provided that amendments approved under rule 48.5.2 are subject to rule 51.

- 48.6 One or more **transmission system owners** or other **users** may request the **industry body** to propose an amendment under this rule, and for that purpose may submit a suggested amendment to the **industry body**, who may, if the proposed amendment complies with rule 30, in its discretion decide whether or not to take up the suggested amendment.

49. Consultation on proposed amendment to balancing plan

- 49.1 This rule applies if the **industry body** –

- 49.1.1 receives a proposed amendment to the **balancing plan** from the **transmission system owners** that is not, in the industry body's opinion, minor and technical; or
- 49.1.2 wishes to propose itself an amendment that is not, in its opinion, minor and technical; or
- 49.1.3 has approved an amendment in accordance with rule ~~48.5.2, which is not, in the industry body's opinion minor and technical.~~ 48.5.2.

- 49.2 If this rule applies, the **industry body** must-

- 49.2.1 consult on the proposed amendment (or approved urgent amendment) to the **balancing plan** with persons that the **industry body** consider are representative of the interests of persons likely to be substantially affected by the proposed amendment; and
- 49.2.2 give persons consulted with under rule 49.2.1 at least 20 **business days** to make submissions to the **industry body** on the proposed amendment; and
- 49.2.3 **publish** the submissions as soon as practicable after those submissions have been received; and
- 49.2.4 consider the submissions made and, following such consideration, –
- (a) may make any minor amendment to the proposed amendment ~~or urgent approved amendment~~ to the **balancing plan** and approve or confirm the amended balancing plan under rule 50; or

- (b) if the **industry body** wishes to make any material amendment to the proposed ~~amendment or urgent approved~~ amendment to the **balancing plan**, and -
 - (i) the **industry body** proposed the amendment, must amend the proposed amendment and follow the procedure in this rule 49.2 again (however, in this circumstance, the minimum number of days for the making of submissions is 10 **business days**); or
 - (ii) the **transmission system owners** proposed the amendment, must consult the **transmission system owners** on any amendment, amend the proposed amendment and follow the procedure in this rule 49.2 again (however, in this circumstance, the minimum number of days for the making of submissions is 10 **business days**).

49.3 The **industry body** must **publish** each proposed amendment to the **balancing plan**, together with an explanation by the proposer. [1](#)

50. Approval of amendment to balancing plan

50.1 The **industry body** may approve (or, in the circumstances in rule 51, confirm) an amendment to the **balancing plan** if the industry body –

50.1.1 has followed the process in rule 49; and

50.1.2 is satisfied that the amendment meets the requirements of rule 30.

50.2 The **industry body** must as soon as practicable after approving an amendment to the **balancing plan** under rule 48.5 or 50.1–

50.2.1 notify the **transmission system owners** that the amendment has been approved; and

50.2.2 **publish** the amended **balancing plan**.

50.3 The **transmission system owners** must as soon as practicable following receipt of notification under rule 50.2.1, **publish** the amended **balancing plan** on all relevant **information exchanges**.

50.4 An amendment to the **balancing plan**, that is approved by the **industry body**—

50.4.1 on a date that is before the 25th of a month, comes into force on the 1st day of the month following the month in which the amended plan is **published** in accordance with rule 50.2.2; or

50.4.2 on a date that is the 25th, or after the 25th, of a month, comes into force on the 1st day of the 2nd month after the month in which the amended plan is **published** in accordance with rule 50.2.2.

~~**50.5**—Despite rule 50.4 an urgent amendment to the **balancing plan** comes into force on the date it is notified to the **transmission system owners** under 50.2.1.~~

51. Expiry of urgent amendments

51.1 An amendment to the **balancing plan** approved by the industry body under rule 48.5 expires after 60 **business days**, unless by that date, -

51.1.1 the amendment has been consulted upon by the **industry body** under rule 49; and

51.1.2 confirmed by the **industry body** under rule 50.1.

51.2 If an urgent amendment expires, the **balancing agent** must –

51.2.1 notify the **transmission system owners** that the amendment has expired; and

51.2.2 **publish** the **balancing plan** as it was before the urgent amendment.

51.3 The **transmission system owners** must as soon as practicable following receipt of notification under rule 51.2.1, **publish** the **balancing plan** as it was before the urgent amendment on all relevant **information exchanges**.

Subpart 3

Funding[Note: Vector considers that it is more appropriate for the industry body to appoint the balancing agent and levy users under the rules for the costs and liabilities associated with the balancing agent's appointment and ongoing operation (either directly or via the balancing agent). Transmission system owners may not be able to pass these costs onto users due to the imposition of price control regulation under the Commerce

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Amendment Act. Even if transmission system owners are able to pass these costs on, it is inappropriate that transmission system owners should take the ultimate payment risk on these liabilities. It would be more efficient and fair if the industry body paid the balancing agent's costs and liabilities directly, and allocated these to the causers of imbalance/users, as fees levied under the rules. The Gas Governance (Compliance) Regulations would encourage payment of these fees. An entitlement to set off unpaid fees against payments due to users could also be added to the rules, to further facilitate payment. See also our earlier comments on prudential requirements applying to users. Alternatively, the balancing agent could be authorized in the rules to levy users a charge which in effect pays the balancing agent's costs. This would help manage the risk that transmission system owners cannot recover these fees from users under their transmission system code arrangements. Furthermore, this should help facilitate users' payment of these costs as the balancing agent can utilise the Gas Governance (Compliance) Regulations to encourage payment]

52. Development fee

52.1 The development fee is a fee to meet the balancing regime development costs.

52.2 The balancing regime development costs are—

52.2.1 if subpart 1 applies, -

- (a) the costs of the **industry body** associated with reviewing and approving a **balancing plan** under subpart 1; and
- (b) the costs of the **industry body** in connection with the development and establishment of the balancing arrangements under subpart 1; and

52.2.2 if subpart 2 applies-

- (a) the costs of the **industry body** associated with the appointment of the **balancing agent** under subpart 2; and
- (b) the costs (if any) payable by the **industry body** to the **balancing agent** to be appointed under subpart 2 before the **go-live date** in respect of the development and establishment of any balancing arrangements required under these rules; and

- (c) the costs of the **industry body** in connection with the development and consultation on the **balancing plan** under subpart 2; and
- (d) the costs payable by the industry body to any balancing agent appointed under subpart 1 under rule 41.3.

52.3 A person who—

- 52.3.1** is a ~~transmission system owner~~user at the **commencement date**, is liable to pay the development fee referred to in rule 52.2.1 in accordance with the allocation model set out in the balancing plan; and.
- 52.3.2** is a ~~transmission system owner~~user at the date a **balancing plan** approved under subpart 2 comes into force is liable to pay the development fee referred to in ~~52.2.2~~52.2.2 in accordance with the allocation model set out in the balancing plan.

52.4 To avoid doubt, -

- 52.4.1** the balancing regime development costs do not include costs incurred before the **commencement date**; and
- 52.4.2** if a development fee is payable in relation to the costs in rules 52.2.1 and 52.2.2, the same costs may not be included in both fees;
- 52.4.3** a ~~transmission system owner~~user may be liable to pay a development fee under both rules 52.3.1 and 52.3.2.

53. How and when development fee must be paid

53.1 A development fee is payable to the **industry body**.

53.2 Every person to whom –

- 53.2.1** rule 52.3.1 applies must supply to the **industry body** a return as at a date that is as soon as practicable after the **commencement date** and no later than 38 days after the **commencement date**; and
- 53.2.2** rule 52.3.2 applies must supply to the **industry body** a return as at a date that is as soon as practicable after the date a **balancing plan** published under rule 46 or 47 comes into force and no later than 38 days after that date (in each case “the deadline for supplying returns”)

53.3 A return under rule 53.2 must state— [Note: This rule will need to be reformulated, consistent with charging users directly]

53.3.1 [the total ~~number of~~ gigajoules of gas that were injected or received into any part of the **transmission system** owned by the **transmission system owner** that did not come from another part of the **transmission system** not owned by the owner, during the 12 months prior to the month in which the deadline for supplying returns occurred; and

53.3.2 the total number of gigajoules of gas that were taken out of any part of the **transmission system** owned by the **transmission system owner**, other than gas taken into another part of the **transmission system** not owned by the owner, during the 12 months prior to the month in which the deadline for supplying returns occurred.

53.4 As soon as practicable after the deadline for supplying returns, the **industry body** must determine and **publish** a breakdown of the estimated **balancing** regime development costs.

53.5 As soon as practicable after the deadline for supplying returns, the **industry body** must invoice every ~~transmission system owner~~user to whom the relevant paragraph of rule 52.3 applies for that ~~transmission system owner~~user's share of the estimated **balancing** regime development costs calculated in accordance with the following formula:

$$[S = A \times B/C$$

where—

A is the estimated balancing regime development costs

B is the sum of –

- (a) the total quantity of gas injected or received into the **transmission system owner's** part of the **transmission system** that did not come from another part of the **transmission system** not owned by the owner during the 12 month period covered by the return; and
- (b) the total quantity of gas taken out of the **transmission system owner's** part of the **transmission system**, other than gas taken into another part of the **transmission system** not

owned by the owner, during the 12 month period covered by the return; and

C is the sum of –

- (a) the total quantity of gas injected or received into all parts of the **transmission system** that did not come from another part of the **transmission system** during the 12 month period covered by the return; and
- (b) the total quantity of gas taken out of all parts of the **transmission system**, other than into another part of the **transmission system**, during the 12 month period covered by the return; and

S is the amount that must be invoiced to the **transmission system owner**.] [Note: Consistent with the comments above, this formula should be reformulated to levy these costs directly to users, not transmission system owners]

53.6 As soon as practicable after each of the following dates, the **industry body** must determine and **publish** the actual balancing regime development costs–

53.6.1 the **go-live date**; and

53.6.2 if subpart 2 applies and the **balancing plan** approved under rule 45 is not the first **balancing plan** approved by the **industry body**, the date the **balancing plan** comes into force under rule 47.

53.7 No less than 10 **business days** after publication of the actual **balancing** regime development costs, the **industry body** must invoice or issue a credit note to every person to whom rule 52.3.1, or if relevant 52.3.2 applies for the difference between—

53.7.1 that person's share of the actual **balancing** regime development costs calculated in accordance with the formula in rule 53.5, with the necessary modifications; and

53.7.2 the amount of the estimated **balancing** regime development costs invoiced to that person under rule 53.5.

~~**53.8** —To avoid doubt, revocation of subpart 1 does not affect the liability of a transmission system owner to pay a development fee under rule 52.3.1.~~

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54. Ongoing fees [\[Note: See our comments at the start of this subpart 3 in respect of transmissions system owners' liability for these fees\]](#)

54.1 The ongoing fees are monthly fees to meet the balancing regime ongoing costs.

54.2 The balancing regime ongoing costs are—

54.2.1 ~~in respect of any period in a year in which a **balancing agent** appointed by the **transmission system owners** is carrying out the functions in Part 2—~~

~~(a) the costs of the **industry body** associated with its obligations under these rules, including in relation to any **balancing plan** amendments, during that year; and~~

~~(b) the costs payable to any auditor appointed by the **industry body** under rule 58; and~~

54.2.2 in respect of any period in a year in which a **balancing agent** appointed by the **industry body** is carrying out the functions in Part 2—

(a) the costs payable by the **industry body** to the **balancing agent** in respect of that year under the balancing agent service provider agreement; and

(b) the costs payable to any auditor appointed by the **industry body** under rule 58; and

(c) any other costs of the **industry body** associated with its obligations under these rules, including in relation to any **balancing plan** amendments, during that year.

54.3 Each person who is a ~~**transmission system owner**~~[user](#) in a month is liable to pay ongoing fees for that month in accordance with these rules.

54.4 In this rule and rules 55 and 56, **year** means the financial year of the **industry body** unless the context otherwise requires.

55. How and when estimated ongoing fees payable

55.1 The estimated ongoing fees are payable to the **industry body**.

55.2 Rule 55.3 applies to each month after (and including the month of) the **go-live date**.

- 55.3 Every person to whom rule 54.3 applies must supply to the **industry body** a return no later than the tenth day of each month, unless otherwise agreed by the **industry body**.
- 55.4 [The return must state—
- 55.4.1 the total number of gigajoules of gas that were injected or received into any part of the **transmission system** owned by the **transmission system owner**, other than from another part of the **transmission system not owned by the owner**, during the preceding month; and
- 55.4.2 the total number of gigajoules of gas that were taken out of any part of the **transmission system** owned by the **transmission system owner**, other than into another part of the **transmission system not owned by the owner**, during the preceding month.
- 55.5 As soon as practicable after the **go-live date**, the **industry body** must determine and **publish** a breakdown of the estimated balancing regime ongoing costs for the first year or part year of operation of the **balancing plan**.
- 55.6 As soon as practicable after the publication of those estimated balancing regime ongoing costs, the **industry body** must notify every **transmission system owner** to whom rule 54.3 applies of the estimated balancing regime ongoing costs, and that ongoing fees will be payable by that person in that year or part year in accordance with the following formula:

$$S = A \times B/C$$

where—

- A is the estimated balancing regime ongoing costs divided by the number of months in the applicable year or part year
- B is the sum of –
- (a) the total quantity of gas injected or received into the **transmission system owner's** part of the **transmission system**, other than from another part of the **transmission system not owned by the owner** during the month before the month in which the relevant invoice is issued under rule 55.8; and

- (b) the total quantity of gas taken out of the **transmission system owner's** part of the **transmission system**, other than gas taken into another part of the **transmission system** not owned by the owner during the month before the month in which the relevant invoice is issued under rule 55.8; and

C is the sum of –

- (a) the total quantity of gas injected or received into all parts of the **transmission system** that did not come from another part of the **transmission system** not owned by the owner during the month before the month in which the relevant invoice is issued under rule 55.8; and
- (b) the total quantity of gas taken out of all parts of the **transmission system**, other than gas taken into another part of the **transmission system** not owned by the owner, during the month before the month in which the relevant invoice is issued under rule 55.8; and

S is the amount that must be invoiced to the **transmission system owner** for the month. [Note: Consistent with the comments above, this formula should be reformulated to levy these costs directly to users, not transmission system owners]

55.7 For each year following the first year or part year of operation, the **industry body** must—

55.7.1 estimate and **publish**, at least 2 months before the beginning of the year, a breakdown of the estimated balancing regime ongoing costs for that year; and

55.7.2 as soon as practicable after publication of those estimated balancing regime ongoing costs, notify every person to whom rule 54.3 applies of the estimated balancing regime ongoing costs, and that ongoing fees will be payable by that person in that year calculated in accordance with the formula in rule 55.6.

55.8 On the first **business day** of each month following the notification in rule 55.6, the **industry body** must invoice every person to whom rule 54.3 applies for that person's share of the estimated **balancing** regime ongoing costs payable during that month, calculated in accordance with the formula in rule 55.6.

~~55.9 — If during a year a **balancing agent** appointed by the **transmission system owners** under rule 28.1.3 ceases to carry out functions under these rules and a **balancing agent** appointed by the **industry body** commences to carry out functions, the **industry body** must, in respect of the remainder of the year —~~

~~55.9.1 — estimate and **publish**, as soon as practicable, a breakdown of the estimated balancing regime ongoing costs for the remainder of the year; and~~

~~55.9.2 — **as soon as practicable after** publication of those estimated balancing regime ongoing costs, notify every person to whom rule 54.3 applies of the estimated balancing regime ongoing costs, and that ongoing fees will be payable by that person in that year calculated in accordance with the formula in rule 55.6 using those estimated balancing regime ongoing costs.~~

56. How and when actual ongoing fees payable

56.1 The actual ongoing fees are payable to the **industry body**.

56.2 As soon as practicable after the end of each year of operation, the **industry body** must determine and **publish** a breakdown of the actual balancing regime ongoing costs for that year.

56.3 No less than 10 **business days** after publication of those actual balancing regime ongoing costs, the **industry body** must invoice, or issue a credit note, to each person who has paid estimated balancing regime ongoing costs during the year for the difference between—

56.3.1 that person's share of the actual balancing regime ongoing costs calculated in accordance with the formula in rule 55.6, with the necessary modifications; and

56.3.2 the amount of the estimated balancing regime ongoing costs invoiced to that person in respect of the year.

~~56.4 — To avoid doubt, revocation of subpart 1 does not affect the liability of a **transmission system owner** to pay an ongoing fee in respect of a period referred to in rule 54.2.1.~~

57. General provisions regarding fees

57.1 The due date for the payment of any invoice or refund of any credit under this subpart is—

57.1.1 the 20th day of the month in which the invoice or credit note was received; or

57.1.2 if the day referred to in rule 57.1.1 is not a **business day**, the following **business day**.

57.2 The fees payable under rules 52 to 56 are exclusive of any goods and services tax payable under the Goods and Services Tax Act 1985, and goods and service tax on those fees (if any) must be added to the invoices or credit notes issued under rules 52 to 56.

57.3 The **industry body** must ensure that all information and returns that are supplied under rules 52 to 56 are used only for the purposes of collecting the development fee or fees and ongoing fees.

57.4 ~~A transmission system owner who passes on the cost of any fees payable under these rules to users of its part of the transmission system, must do so in proportion to the quantities of gas transmitted by that user through the transmission system owner's part of the transmission system or on such other basis as may be agreed by the industry body.~~ [Note: Critically, this rule does not provide that transmission system owners *can* pass these costs on. Such a power should be added to the rules]

Part 4 Miscellaneous

Audit of Balancing Agent's Performance

58. Industry body to commission performance audits

58.1 The **industry body** may, from time to time, arrange performance audits of the **balancing agent**.

58.2 The purpose of a performance audit is to assess—

58.2.1 the performance of the **balancing agent** in terms of compliance with these rules; and

58.2.2 the systems and processes of the **balancing agent** that have been put in place to enable compliance with these rules.

58.3 The **industry body** must appoint as auditor a person who –

58.3.1 is independent of and not in a position of conflict of interest with the **balancing agent** or a **transmission system owner**; and

58.3.2 is not an officer or employee of the **industry body**.

58.4 In conducting an audit under this rule, the auditor must not consider any action, circumstance, event, or inaction that occurred 30 months or more before the date the audit was requested by the **industry body**.

59. Provision of information to auditor

59.1 In conducting an audit under rule 58, the auditor may:

59.1.1 request any information from the **balancing agent**, the **industry body** and any **transmission system owner**; and

59.1.2 request to examine any processes, systems and data of the **balancing agent**, provided such processes, systems and data are directly relevant to the performance of the **balancing agent** in terms of compliance with these rules.

59.2 Any request under rule 59.1 must be reasonable and strictly for the purposes of the audit.

59.3 The **balancing agent**, the **industry body** and every **transmission system owner** must comply with a request under 59.1 but nothing in this rule limits any claim for legal professional privilege.

59.4 In providing information to the auditor, a **transmission system owner** or the **balancing agent** may indicate to the auditor where such information is considered to be confidential.

60. Auditor to prepare draft audit report

60.1 The auditor must prepare, in writing, a draft audit report on the conclusions reached and recommendations formulated as a result of conducting an audit under rule 58.

60.2 Subject to rule 62, the auditor must give a copy of the draft audit report to –

60.2.1 the **balancing agent**; and

60.2.2 each **transmission system owner**; and

60.2.3 the **industry body**.

60.3 The persons referred to in rule 60.2, have 10 **business days** from the date the report is received to provide the auditor with comments on the report.

61. Auditor to prepare final audit report

61.1 Before the auditor prepares a final audit report on the conclusions reached and recommendations formulated as a result of conducting an audit under rule 58, the auditor must take into account any comments received on the draft audit report.

61.2 The final audit report must be in writing and, if so requested by the **balancing agent**, must include as an appendix any comments from the **balancing agent** on the draft audit report.

61.3 The auditor must give a copy of the final audit report to –

61.3.1 the **balancing agent**; and

61.3.2 any **transmission system** owner who the auditor considers has a material interest in the report; and

61.3.3 the **industry body**.

61.4 Subject to rule 63, once the auditor has given a final audit report under this rule, the report may not be altered in any way.

62. Confidential information in audit reports

62.1 In providing a draft audit report or final audit report, the auditor must provide a complete version to the **industry body**.

62.2 However, at the discretion of the auditor, the versions of the draft audit report and the final audit report provided to any other person or published under these rules may exclude any confidential information obtained in the conduct of the audit.

63. Publication of final audit reports

63.1 The **industry body** must **publish** a version of each final audit report received under rule 62 that reproduces that final report as fully and accurately as is reasonably practicable while ensuring it does not contain any confidential information obtained in the conduct of the audit.

64. Use of final audit reports

64.1 To avoid doubt, a final audit report may be used –

64.1.1 for the purposes of the Gas Governance (Compliance) Regulations 2008;

64.1.2 for the purposes of considering any amendment to these rules;

64.1.3 by the **industry body** -

- (a) for the purpose of reviewing the performance of the **balancing agent** under these rules, or under the **balancing agent** service provider agreement;
- (b) for the purpose of reviewing the performance of an auditor; and
- (c) for any other purposes that it considers necessary.

Notices

65. Giving of ordinary notices

65.1 If these rules require any notice to be given, the notice must be in writing and be—

65.1.1 delivered by hand to the nominated office of the addressee; or

65.1.2 sent by post to the nominated postal address of the addressee; or

65.1.3 sent by fax to the nominated fax number of the addressee; or

65.1.4 sent by electronic transmission or any other similar method of electronic communication to the appropriate nominated electronic address of the addressee.

65.2 Despite rule 65.1, it is sufficient notice for the purposes of these rules if notice to **users** of the **balancing agent's** allocation of **balancing gas** and **cost** is notified via an **information exchange** accessible to the **user**.

65.3 This rule does not apply to the giving of urgent notices, but does apply to the confirmation of urgent notices under rule 67.

66. When ordinary notices taken to be given

66.1 In the absence of proof to the contrary, notices are taken to be given,—

66.1.1 in the case of notices delivered by hand to a person, when actually received at that person's address:

66.1.2 in the case of notices sent by post, at the time when the notice would in the ordinary course of post be delivered, and in proving the delivery, it is sufficient to prove that the notice was properly addressed and posted:

66.1.3 in the case of notices sent by fax, at the time indicated on a record of its successful transmission:

66.1.4 in the case of notices sent by electronic transmission or any other similar method of electronic communication, including via an **information exchange** —

(a) at the time the computer system used to transmit the notice has received an acknowledgment or receipt to the electronic address of the person transmitting the notice; or

(b) at the time the person who gave the notice proves the notice was transmitted by computer system to the electronic address provided by the addressee.

66.2 This rule does not apply to the giving of urgent notices, but does apply to the confirmation of urgent notices under rule 67.

67. Urgent notices

67.1 Despite rule 65 and 66, an urgent notice may be given orally where the person issuing a notice considers that the urgency of the situation means the notice should not be given in writing.

- 67.2** If an urgent notice is given orally under rule 67.1 the person who gave that notice must, as soon as practicable, confirm that urgent notice in writing in accordance with rules 65 and 66.

Miscellaneous

68. Safety override

- 68.1** No person is required to comply with a provision of these rules to the extent that compliance would unreasonably endanger the life or safety of that person or any other person.

69. Relationship with transmission system codes

- 69.1** Every **transmission system code** must be read subject to these rules.
- 69.2** If both a **transmission system code** and these rules impose an obligation or liability in respect of the same matter, the obligation or liability under these rules prevails to the extent that the obligation or liability in the code is inconsistent with these rules.

70. Relationship with Gas Governance (Critical Contingency Management) Regulations 2008

- 70.1** If the **balancing agent** receives notice under regulation 51 of the Gas Governance (Critical Contingency Management) Regulations 2008 that a critical contingency has been ~~declared~~determined in respect of a part of the **transmission system** -

70.1.1 the **balancing agent** must cease to carry out its functions under rule 15 in relation to any **balancing zone** in which that part of the **transmission system** falls until a notice is received under regulation 62 of those regulations to advise that that the critical contingency has been terminated; and [Note: Should the balancing agent only cease to act to the extent instructed to do so by the Critical Contingency Operator? The balancing agent may perform valuable service during a Critical Contingency and perhaps should not automatically cease acting?]

70.1.2 to the extent that there is any inconsistency between the Gas Governance (Critical Contingency Management) Regulations 2008 and these rules in respect of the actions to be taken during a critical

contingency, the Gas Governance (Critical Contingency Management) Regulations 2008 prevail.

- 70.2** Rule 70.1.1 does not affect the validity of any **balancing action** taken by the **balancing agent** in relation to a part of the **transmission system** in respect of which a critical contingency has been declared before receiving notice of the declaration of the critical contingency, or affect the **balancing agent's** ability to allocate **balancing gas** and the associated **cash-out amount** in respect of that **balancing action**.

SCHEDULE

Requirements for Balancing plan

A Balancing agent

Details about the person appointed or to be appointed as the **balancing agent** under rule 28 or 42, including the name and contact details of the person.

B Management of linepack

Details of the boundaries of each part of the **transmission system** that is to constitute a separate **balancing zone** which -

- a. must be set to ensure all parts of the **transmission system** are within a **balancing zone**; and
- b. to avoid doubt, may define the entire **transmission system** as a single **balancing zone**.

The following information in relation to each **balancing zone**:

- a. whether the **balancing zone** will be **directly managed** or **indirectly managed** by the **balancing agent**:
- b. the upper and lower threshold for the taking of **balancing** action by the **balancing agent**, which –
 - (i) must be set to give the maximum practicable flexibility for managing **linepack** without unreasonably interfering with the transmission of gas; and
 - (ii) may be different for different periods of the day, week or year; and
 - (iii) may be defined by reference to a formula with measurable variables; and

- c. the target linepack, which must be the midpoint between the upper and lower thresholds referred to in paragraph b:
- d. if the **balancing zone** is to be **indirectly managed**, the process by which the **balancing zone** will be managed (for example, by pressure regulator feed from a zone that is **directly managed**), including any rights to compressor operation, if agreed to by the relevant **transmission system owner** under rule ~~11.2~~[11.2](#).
- e. any points for measuring pressure that are reasonably necessary for the purposes of the **balancing agent** carrying out its functions.

The processes for each of the following:

- a. notification by a **transmission system owner** to the **balancing agent** in the event of any curtailment by the **transmission system owner** in its parts of the **transmission system**:
- b. notification and, if relevant, coordination by the **balancing agent** with a **transmission system owner** if a safety issue or other matter detrimentally affecting transmission services arises in relation to a part of the **transmission system** owned by that owner:
- c. notification of any maintenance activities that may impact upon **linepack**:
- d. coordination of the operation of compressors: ~~if agreed to by the~~ [relevant transmission system owner under rule 11.2](#).

C Provision of information

The procedures for the giving of the information in rules 7 and 9 to the **balancing agent** by **users** and **transmission system owners**

D Balancing gas

Details relating to the procurement of **balancing gas** including the following

- a . reasonable technical requirements for the provision of **balancing gas**:
- b. the times and decision process for **balancing actions**:
- c. price thresholds for procuring **balancing gas**, which must be a dollar per gigajoule amount set –
 - (i) in the case of purchase of **balancing gas**, at a level which is a pre-estimate of the critical contingency price that would be applied after a critical contingency under the Gas Governance (Critical Contingency Management) Regulations 2008, and
 - (ii) in the case of sale, at a level which is a pre-estimate that is representative of the marginal cost of non-production of gas to producers of gas (and which, to avoid doubt, may be a negative number).

E Allocation model

An allocation model for the allocation of **balancing gas** and associated **cash-out amount** that has the following features:–

- (a) **balancing gas is allocated–**
 - (i) to the **users** who have an **imbalance** at the time the **balancing agent** commits to a **balancing action**; and
 - (ii) in the proportions that the **user’s imbalance** contributed to the need to take the **balancing action**:
- (b) if a **balancing action** is made necessary in a **balancing zone (balancing zone A)** due in part or in whole to an **imbalance** in another **balancing zone (balancing zone B)** allocates–
 - (i) the relevant proportion of **balancing gas** and cost to the **users in balancing zone B** who contributed to the **imbalance in balancing zone A**; and

- (ii) within **balancing zone B**, **allocates** the **balancing gas** sold or purchased and associated costs of that gas
 - (A) to the **users** who have an **imbalance** at the time the **balancing agent** commits to a **balancing** action;
and
 - (B) in the proportions that the **user's imbalance** contributed to the need to take the **balancing** action:
 - (C) all **balancing gas** purchased or sold as part of the **balancing** action is **allocated** to a **user**. [Note: Adjustments to balancing zone imbalance positions pursuant to (b) above should provide for suitable adjustments being made to the balancing zone in which the balancing action was taken, in order to track imbalance positions and title to gas, through the transmission system to the zone in which the costs are ultimately allocated]

Consequential amendments to other regulations

~~1054189v1~~

[1053789v4](#)

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