



25 July 2022

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Dear Paul

Gas (Facilities Outage Information Disclosure) Rules 2022 Consultation

Firstgas Group (Firstgas) welcomes the opportunity to comment on the Gas Industry Company's (GIC) *Gas (Facilities Outage Information Disclosure) Rules 2022 Consultation*. We are making this submission on behalf of Flexgas, the owner and operator of the Ahuroa gas storage facility.

Firstgas is confident that the draft rules reflect the existing voluntary disclosure regime and will—with two exceptions—largely achieve the GIC's policy intent. We believe there are a few opportunities to improve the drafting to improve the clarity and efficiency of the arrangements.

We recommend drafting improvements to better meet the GIC's policy intent

Firstgas recommends several improvements to the drafting of the proposed rules, that we believe will improve the clarity of the rules while still meeting the GIC's policy intent. All our recommendations, and the rationale for each change, is set out in **Attachment 1**.

The most substantive recommendation we make relates to the definitions of outages. The plain meaning of an outage (some kind of equipment failure or unavailability) is not included anywhere within the three definitions ("outage", "planned outage", "unplanned outage"). This could inadvertently have the effect of expanding the scope of the information disclosure regime beyond what is sought by the GIC's process, its regulatory objective, and its advice to the Minister of Energy and Resources. For instance, low pressure in the Ahuroa gas storage facility can reduce the daily withdrawal capacity though all equipment is available and functioning but could still fall within the definition of an outage. We recommend the plain meaning of "outage" is included in these definitions.

We are also concerned that clause 8.2 ('additional disclosures') is unclear, impractical, and not applying broadly enough to achieve the policy intent. The clause should be reworded to be clear about the information to which it applies, not require simultaneous disclosure (which is impractical), and apply to any additional disclosure consistent with the purpose of the policy objective.



A well-planned implementation will create efficiency benefits

To assist with the smooth implementation of these rules, we encourage the GIC to:

- Publish the information disclosure and compliance reporting templates well in advance of the effective date. As the only gas storage owner, it would be helpful to ensure that the template will be practical and minimises risk of misunderstandings, when applied to gas storage facilities.
- Consider publishing a guide for disclosing participants that provides detailed instructions on how to source data, so that data is provided consistently. For example:
 - When estimating the end-date of an outage, different parties could take very different approaches to the level of confidence needed. Some may include contingencies on contingencies, to specify an end-date that is very unlikely to be exceeded. Some may include few contingencies to produce estimates that are exceeded about half the time (a 'P50' estimate).
 - When specifying the start- or end-date of outages, participants could take different approaches to determining whether the 20 TJ threshold has been met on a particular day. For instance, if Ahuroa operates with full availability (65 TJ of daily withdrawal capacity) for the first 18 hours of the day followed by no availability for the last 6 hours, it has a daily withdrawal capacity of 48.75 TJ averaged over the entire day. Using that approach, the 20 TJ limit for reporting is not exceeded. Alternatively, it could be interpreted the outage started that day because a 65 TJ reduction (for the last 6 hours) exceeds the 20 TJ threshold.
- Seek to develop an outage calendar that compiles and visualises the disclosures in a way that enables users to readily understand the materiality of what has been disclosed. An important enabler of this future development could be designing the information disclosure templates in a way that is future-proofed for machine-to-machine transactions.

Contact details

Firstgas Group is available to discuss any of the points we have raised in our submission. If you have any questions, please contact Callum McLean, Senior Policy & Government Affairs Advisor, on 027 201 6600 or via email at callum.mclean@firstgasgroup.co.nz.

Yours sincerely

Karen Collins
Regulatory and Policy Manager



Attachment 1 Firstgas recommended drafting improvements

| Rules reference | Recommendations | Rationale |
|--|--|---|
| Definition of “gas storage facility” | <ul style="list-style-type: none"> • Add “and is not a gas production facility” • Add the exclusion “for domestic export or sale” | <p>Gas production facilities could reinject gas for later extraction and therefore (and contrary to the policy design) meet the definitions of both production and storage facilities.</p> <p>If the exclusion for domestic export or sale is appropriate for gas production facilities, it is appropriate for gas storage facilities also.</p> |
| Definition of “gas production facility” and “gas storage facility” | <ul style="list-style-type: none"> • Add a space between “20” and “TJ” | <p>The International Organization for Standardization advocates the use of a space between the quantity and the unit of measure. Every other instance of TJ in the drafting is preceded by a space.</p> |
| Definition of “industry body” | <ul style="list-style-type: none"> • Stipulate how this definition should be interpreted if the industry body is revoked and not replaced by a Commission | <p>The Minister may revoke the industry body’s approval without establishing a Commission. The definition should account for this possibility.</p> |
| Definitions of “outage”, “planned outage” and “unplanned outage” | <ul style="list-style-type: none"> • Redefine “outage” to align with the policy intent and the commonly understood meaning of the word | <p>The overarching policy intent has the objective of ensuring the “effective and timely availability of material gas production and storage outage information for all gas and related market participants.” [our emphasis added] This reflects submitters’ understanding of what they were being consulted on and the GIC’s recommendation to the Minister.</p> <p>However, the effect of the three definitions is to require disclosure of any event or circumstance where production or withdrawal is reduced below the relevant threshold. The plain meaning of an outage is missing from the definitions. This could create an obligation to report information about ‘circumstances’ that were outside the scope of that sought by the GIC’s process.</p> <p>In particular, naturally declining gas production (where it exceeds the threshold) seems to be required for disclosure. Similarly, when enough gas has been withdrawn from storage facilities, this reduces field pressure and the rate at which further gas can be withdrawn. Both of these situations are not what people commonly think of as ‘outages’ as all equipment would be available and functioning.</p> <p>The proposed reporting regime has not been designed for the above circumstances but has instead been designed for discrete, definable outages. However, low field pressures tend to happen gradually with the cumulative effect of reducing production/withdrawal rates. The concept of a ‘start date’ or ‘end date’ is misaligned with these circumstances.</p> <p>The proposed reporting of ‘daily withdrawal capacity’ as a set number is a simplification of actual capacity. Most of the time our 65 TJ/day daily withdrawal capacity is accurate. But when field pressure is low, that</p> |



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| | | <p>performance cannot be achieved. As a gas storage owner, we cannot forecast when our customers will choose to withdraw enough gas that it materially affects Ahuroa's daily withdrawal capacity. Nor can we define with precision the notional point at which withdrawal capacity falls below the 20 TJ/day reporting threshold.</p> <p>It is not clear to us which of the two proposed definitions (planned or unplanned outages) a situation like this would fall under.</p> |
| Definition of "outage" | <ul style="list-style-type: none"> Consider deleting the two instances of "downstream" | <p>The word "customer" is used six times in the proposed rules. The two instances in this definition are preceded by the word "downstream". If there is some intended subtlety with the use of this word, consider redrafting to make the distinction clear. Otherwise, we recommend that it is deleted.</p> <p>We note that "consumer" is defined in the <i>Gas Act</i>, so consider the use of the word "customer" instead to be intentionally different.</p> |
| Definition of "planned outage" | <ul style="list-style-type: none"> Reword to avoid the use of a 'hanging paragraph' | <p>The proposed definition has a 'hanging paragraph' that reads "in each case which is planned for in advance." This unnecessarily complicates the definition for readers. There are various ways this could be reworded to avoid this. For example, deleting the 'hanging paragraph' and adding the word "planned" before the two instances of "outage".</p> |
| Definition of "unplanned outage" | <ul style="list-style-type: none"> Reword to avoid the use of a 'hanging paragraph' | <p>The proposed definition has a 'hanging paragraph' that reads "in each case not being a planned outage." This unnecessarily complicates the definition for readers. There are various ways this could be reworded to avoid this. For example, deleting the 'hanging paragraph' and adding "an outage that is not a planned outage, and" after the word "means".</p> |
| Clause 6.2 | <ul style="list-style-type: none"> Reword in accordance with Parliamentary Council Office (PCO) drafting principles | <p>The PCO recommends against starting a clause with "Notwithstanding". Refer to A3.33 to A3.44 of PCO's Principles of Clear Drafting.</p> |
| Clause 8.1 | <ul style="list-style-type: none"> Reword in accordance with PCO drafting principles | <p>The PCO recommends against starting a clause with "Subject to". Refer to paragraph A3.40 of PCO's Principles of Clear Drafting.</p> |
| Clause 8.2 | <ul style="list-style-type: none"> Add the word "material" before the first instance of "information" Replace the word "outage" with "planned outage or unplanned outage" Reword to clarify the disclosure intended to be referred to in the final instance of "the disclosure" Consider redesigning the clause to instead | <p>As drafted, this clause includes no materiality threshold. Any level of conversation with a customer about an outage appears to require disclosure. This is both impractical and contrary to the policy objective of the rules which are concerned with "material information". We recommend to add the word "material" before the first instance of "information".</p> <p>Not all outages are planned outages or unplanned outages. As this clause is intended to relate to only outages that require disclosure (planned outages and unplanned outages), it should use those definitions instead. Replace the word "outage" with "planned outage or unplanned outage".</p> |



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| | prohibit disclosure of material information to any other person in advance of public disclosure | <p>We are unclear which disclosure is being referred to in the final instance of “the disclosure” in this clause. We presume it refers to the disclosure to the customer. This ambiguity should be avoided.</p> <p>The policy intent of this clause could be more simply expressed and complied with if it read “A gas producer or a gas storage owner must not disclose to any other person material information about any planned outage or unplanned outage, unless the material information has already been disclosed publicly.” This would avoid the impractical ‘simultaneous disclosure’ present in the current drafting. The current drafting limits the circumstances to disclosures only to “a customer.” However, disclosures to other parties (such as friends, family, sharebrokers or related companies) would not be covered by this clause despite being contrary to the policy intent.</p> |
| Clause 9 | <ul style="list-style-type: none"> Avoid use of “notwithstanding” | Use simpler words where possible. |
| Clause 11.1.3 | <ul style="list-style-type: none"> Add “gas” before “storage facility” and bold the defined term | The clause would be clearer if it used the defined term. |
| Clause 11.1.5 | <ul style="list-style-type: none"> Specify which date is being referred to | The requirement to disclose “the date of the unplanned outage” is unclear. We presume the policy intent is to require disclosure of “the date on which the unplanned outage began.” |
| Clauses 11.2.6 and 11.3.6 | <ul style="list-style-type: none"> Delete these clauses | These clauses require the disclosure of the estimated duration of an unplanned outage. Clauses 11.2.7 and 11.3.7 require disclosure of the estimated end date of the unplanned outage. One can be inferred from the other. Requiring both adds little value and increases potential confusion when a disclosure specifies inconsistent durations and end-dates. Durations could be expressed in imprecise words such as “two and a half months”. As such, we recommend that the requirements for disclosing outage duration should be deleted. |
| Clauses 11.3.9 and 12.1.8 | <ul style="list-style-type: none"> Reword to avoid the use of a ‘hanging paragraph’ | The proposed clauses have ‘hanging paragraphs’ that read “due to the unplanned outage” and “due to the planned outage.” This unnecessarily complicates the clauses for readers. There are various ways this could be reworded to avoid this. |
| Clause 11.3.9 | <ul style="list-style-type: none"> Bold use of “gas storage facility” | The clause would be clearer if it bolded the defined term. |
| Clause 12.1.8 | <ul style="list-style-type: none"> Delete shading from comma | Remove inadvertent formatting. |
| Clause 12.1.8(b) | <ul style="list-style-type: none"> Add “daily” before “withdrawal capacity” and bold the defined term | The clause would be clearer if it used the defined term. |



| Rules reference | Recommendations | Rationale |
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| Clauses 16.2.1 and 16.2.2 | <ul style="list-style-type: none"> Apply consistent use of “a gas storage facility” and “the gas storage facility” | This inconsistency is unnecessary in this case. |
| Clause 17 | <ul style="list-style-type: none"> Resolve ambiguous use of “only” | <p>There are two possible interpretations of this clause.</p> <ul style="list-style-type: none"> One reading is that the industry body is not permitted to use any other kinds of information when monitoring compliance with these rules. The other reading is that the industry body has a duty not to use the disclosed information for any other purpose than monitoring compliance with these rules. <p>We believe the second interpretation is what was intended. We support that intent. The drafting should be amended to be made unambiguous.</p> |