



8 September 2023

Andrew Knight
Chief Executive Officer
Gas Industry Company Limited

Dear Andrew,

Re: Advanced Gas Metering Infrastructure Consultation Paper

Thank you for the extension. Greymouth has one matter to raise regarding the Gas Industry Company Limited (“GIC”) Advanced Gas Metering Infrastructure Consultation Paper (“paper”). Greymouth opposes the priority “A” recommendation to amend allocation methodology to apply the annual UFG factor to advanced gas meters.

Instead, Greymouth supports amendments being made to allocation methodology such that advanced gas meters (and consumption from all gas meters) do not have any UFG factor applied to underlying energy quantities (i.e. pipeline losses sit with pipeline owners).

1. Problem

It has become clear during the Commerce Commission’s DPP3 and IM review processes for gas pipeline businesses that that regime may not be consistent with the GIC regime.

The Commerce Act 1986 defines “gas pipeline services” as meaning “*the conveyance of natural gas by pipeline, including the assumption of responsibility for losses of natural gas*”.¹ UFG is defined in the Downstream Reconciliation Rules as “*unaccounted for gas, including technical and non-technical losses or gains, being the difference between the amount of gas supplied to consumers at consumer installations through a gas gate and the gas injection amounts measured at the gas gate*”.² The effect of allocations under the Downstream Reconciliation Rules together with the provisions for allocations and invoicing under the Gas Transmission Code is that downstream losses to allocated demand are charged to shippers by the gas transmission business.³

Prima facie there is a mismatch, with the Commission assuming gas pipeline businesses take responsibility for losses; whereas the GIC assumes shippers take responsibility for a subset of losses (UFG), not gas pipeline businesses.

Greymouth’s research indicates that:

¹ Commerce Act 1986, s 55A.

² r5.2 of the Gas (Downstream Reconciliation) Rules 2008 (“DRR”)

³ ref. s6.5(b) of the Gas Transmission Code.

1. The Commission referred to 'unaccounted for gas' in one of its DPP1 papers⁴ where it said that met the definition of pass-through costs for transmission pipelines. Its view at that time was that 'unaccounted for gas' could be treated in the same way as balancing gas because "*unaccounted for gas is considered under the input methodologies definition of balancing gas*".⁵ The Commission's view was limited to transmission pipelines, meaning that 'unaccounted for gas' (physical losses on transmission pipelines) meant something different to UFG in the DRR (physical and accounting losses on distribution pipelines). The Commission does not appear to have contemplated the latter.
2. The Commission's preliminary [2009] view⁶ was that 'assumption of responsibility' does not necessarily require gas pipeline businesses to assume financial responsibility for losses of natural gas'. There is no final view. Interpretation of the Commerce Act is not the sole domain of the Commission and even if the Commission formed an historical view does not mean that the Commission's view is correct. Greymouth considers the Commerce Act intends that gas pipeline businesses assume physical and financial responsibility for losses because:
 - a. The DRR came into effect on 27 June 2008⁷ before the date of assent of the Commerce Amendment Act 2008 (which introduced the new s55A provisions) on 16 September 2008,⁸ meaning that the latter must have sought to change responsibility for gas pipeline losses of natural gas from retailers (who had the prevailing financial UFG responsibility) onto gas pipeline businesses. Otherwise the Commerce Act would have expressly excluded the assumption of responsibility for losses of natural gas in its definition of gas pipeline services rather than expressly including that assumption.
 - b. By default, gas pipeline businesses have physical and financial responsibility for gas conveyance and losses unless that responsibility is moved elsewhere. To do that, e.g. via physical procurement or financially via pass-through costs, requires physical and financial responsibility to first sit with gas pipeline businesses. The legislation cannot have intended to convey the opposite of the natural and ordinary interpretation which assumes that gas pipeline businesses meet all types of responsibility for losses of natural gas.

2. Next steps

While GIC's 2007 position was clear in the Maunsell Report, which helped inform the DRR, the DRR came into effect before the Commerce Amendment Act 2008, and an apparent legislative mismatch arises in the former because of the latter.

⁴ Setting Default Price-Quality Paths for Suppliers of Gas Pipeline Services

⁵ https://comcom.govt.nz/_data/assets/pdf_file/0030/88068/Technical-update-paper-for-the-gas-default-price-quality-paths-8-February-2013.pdf page 10

⁶ https://comcom.govt.nz/_data/assets/pdf_file/0028/65188/Input-Methodologies-Discussion-Paper-19-June-2009.pdf

⁷ <https://www.gasindustry.co.nz/our-work/work-programmes/downstream-reconciliation/#background>

⁸ <https://www.legislation.govt.nz/act/public/2008/0070/latest/DLM1194512.html>

Greymouth requests GIC to research this further (including whether the DRR was reviewed after the Commerce Amendment Act 2008 came into effect) and to obtain a legal opinion on the matter.

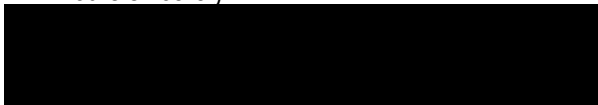
If 'responsibility' in the Commerce Act is intended to include financial responsibility, then the implications of that on UFG allocation (and shipper charges) since DPP1 will need to be considered.

This matter could be split out as a separate workstream provided the UFG decision on advanced gas metering aligned with the Commerce Act's interpretation as to responsibility for natural gas losses (and on that point the solution should not automatically adopt the status quo DRR arrangements that assign responsibility to retailers / shippers when there is legislative conflict).

In fact, therein is the answer – if losses in relation to advanced gas meters are not presently in the DRR then the DRR cannot presently seek to tag physical or financial responsibility for that UFG to retailers / shippers (a hypothetical new losses test). That can only mean that the Commerce Act intended for all responsibility for losses of natural gas (financial and otherwise) to sit with gas pipeline businesses.

Attempts to shift that responsibility onto retailers/shippers under the DRR (compared with the Commerce Act which requires that responsibility sit with gas pipeline businesses) would be ultra vires.

Yours sincerely

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Chris Boxall
Commercial Manager