



Recommendation to the Minister of Energy and Resources: Amendments to the Gas Governance (Compliance) Regulations 2008

RECOMMENDATION TO MINISTER

18 February 2022



Gas Industry Co.

Executive Summary



Gas Industry Co's Recommendation to the Minister of Energy and Resources: Information Disclosure Arrangements for Gas Production and Storage Facility Outages is recommending rules providing for the disclosure of gas production and storage facility outage information (the proposed Rules). The proposed Rules will provide for the disclosure of planned and unplanned outages of gas production and gas storage facilities over a specified threshold and monitoring of compliance with these disclosure obligations.

This recommendation relates to the Gas Governance (Compliance) Regulations 2008 (Compliance Regulations), an existing gas governance arrangement.

Gas Industry Co is recommending that the Minister of Energy and Resources recommends that the Governor General, by Order in Council, make amendments to the Compliance Regulations, so that the compliance framework in the Compliance Regulations applies to the proposed Rules. The amendments will achieve the regulatory objective of establishing an efficient and effective compliance and enforcement regime to ensure the integrity of the information disclosure framework.

The proposed amendments in this recommendation:

1. amend the Compliance Regulations to include references to the proposed Rules;
2. provide for breaches of the proposed Rules to be processed and determined in the same manner as other breaches that fall within the scope of the Compliance Regulations.



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1. Purpose and background

1.1 Purpose

This recommendation accompanies Gas Industry Co's *Recommendation to the Minister of Energy and Resources: Information Disclosure Arrangements for Gas Production and Storage Facility Outages* providing for information disclosure rules for gas production and storage facility outages (the proposed Rules).¹

The purpose of this recommendation is to recommend that the Minister amends the Gas Governance (Compliance) Regulations 2008 to provide for monitoring and enforcement of the proposed Rules.

1.2 Background

Gas Governance (Compliance) Regulations 2008

Following extensive consultation with the industry, on 31 May 2007 Gas Industry Co recommended to the Minister of Energy the making of regulations by Order in Council to establish a compliance and enforcement regime to support the Gas (Switching Arrangements) Rules 2008 and the Gas (Downstream Reconciliation) Rules 2008. The regime comprises:

1. A Market Administrator which has responsibility for receiving notices of reported breaches of gas governance regulations rules, attending to administrative tasks, determining the materiality of breaches, and attempting to resolve any immaterial breach with the agreement of the parties. The Market Administrator role is currently performed by Gas Industry Co.
2. An Investigator who investigates material or unresolved immaterial breaches, endeavours to settle the matter, and refers settlements and unresolved breaches to the Rulings Panel.
3. A one member Rulings Panel which approves or rejects settlements, determines unresolved breaches, and orders remedies.

In 2008, the Gas Governance (Compliance) Regulations (Compliance Regulations) were amended to include breaches of the Gas Governance (Critical Contingency Management) Regulations 2008 within the scope of the Compliance Regulations.

The proposed Rules

Gas production outages related to the Pohokura field in 2018 led to concerns across the gas industry and wider energy sector regarding information transparency and asymmetry in the wholesale gas market. The Minister requested that Gas Industry Co investigate the current information disclosure requirements and consider whether they are adequate. In response to this request, Gas Industry Co established a workstream to progress issues related to information availability in the wholesale gas sector.

¹ The proposed Rules are outlined in Gas Industry Co's *Recommendation to the Minister of Energy and Resources: Information Disclosure Arrangements for Gas Production and Storage Facility Outages* dated 18 February 2022

The initial phase of the workstream focussed on understanding the scope of information issues in the gas sector. This involved:

1. Gas Industry Co meeting with industry stakeholders to understand their perspectives.
2. A workshop for interested parties to share their views with Gas Industry Co and other workshop participants.
3. Development of the *Options for Information Disclosure in the Wholesale Gas Sector*² discussion paper ("Options paper") on information issues in the gas sector for consultation. Gas Industry Co received thirty-three submissions and cross submissions on this paper from a wide range of parties spanning the New Zealand energy sector.
4. Development of the *Information Disclosure: Problem Assessment paper*³ ("Problem Assessment paper") which identified and assessed ten separate information areas or "information elements" where we considered there may be information transparency or asymmetry issues. The information elements were assessed against the Government's policy objectives for the gas sector (as set out in the Gas Act 1992 and the Government Policy Statement on Gas Governance 2008). Amongst other matters, the paper concluded that gas production and storage facility outage information should be disclosed publicly. Gas Industry Co received thirty submissions and cross-submissions on the paper. In these submissions, there were no parties that disagreed that this information should be disclosed in some form. Several parties submitted that this information element was the most important area that needed to be addressed. We concluded that work on gas production and storage facility outage information disclosure should be prioritised, and that it should be advanced to a statement of proposal (SOP).

The SOP assessed options to address the identified gaps in gas production and storage facility outage information disclosure. Given the range of issues associated with the disclosure of this information, Gas Industry Co developed the SOP in two stages. The first stage consisted of a draft SOP (*Draft Statement of Proposal: Gas Production and Storage Facility Outage Information, "Draft SOP"*)⁴ which identified the problem and the associated regulatory objective and assessed options for achieving this objective. This assessment included an evaluation of the Upstream Disclosure Code, the design and assessment of a regulatory option (including a cost benefit analysis of both options) and our recommended option. We received sixteen submissions on the Draft SOP.

The Draft SOP was followed by a final SOP that incorporated stakeholder feedback on the Draft SOP (*Statement of Proposal: Gas Production and Storage Facility Outage Information, "Final SOP"*)⁵. The Final SOP was released for a further round of consultation.

The Final SOP recommended the proposed Rules to:

1. Identify the gas production and storage facilities that are required to disclose outage information.

² Options for Information Disclosure in the Wholesale Gas Sector, <https://www.gasindustry.co.nz/work-programmes/gas-sector-information-disclosure/consultation/document/6480>

³ Information Disclosure: Problem Assessment, <https://www.gasindustry.co.nz/work-programmes/gas-sector-information-disclosure/problem-assessment-october-2019/document/6634>

⁴ Draft Statement of Proposal: Gas Production and Storage Facility Outage Information, available at <https://www.gasindustry.co.nz/work-programmes/gas-sector-information-disclosure/consultation-2/document/7154>

⁵ Statement of Proposal: Gas Production and Storage Facility Outage Information, available at <https://www.gasindustry.co.nz/work-programmes/gas-sector-information-disclosure/consultation-3/document/7299>

2. Define the planned and unplanned gas production and storage facility outages that are covered by the proposed Rules
3. Provide a description of the information that should be disclosed and the quality of that information
4. Specify requirements regarding the timing of disclosures
5. Require disclosing parties to provide information to Gas Industry Co to enable it to monitor compliance with the proposed Rules

The Final SOP also contained a statement of proposal for proposed amendments to the Compliance Regulations. This followed the SOP's conclusion that lack of a meaningful compliance and enforcement framework is a key issue leading to Gas Industry Co's conclusion that the current, industry-led, Upstream Disclosure Code does not satisfactorily achieve the regulatory objective. The purpose of these proposed amendments is to establish an efficient and effective compliance and enforcement regime to ensure the integrity of the information disclosure framework.

We received nine submissions on the Final SOP.

This recommendation paper follows the Final SOP and includes a discussion of stakeholder feedback on the compliance and enforcement framework for the proposed Rules in section [3.6](#).



2. Process to amend regulations

2.1 Power to regulate compliance and enforcement arrangements

Section 43F of the Gas Act 1992 provides the Governor General, on the recommendation of the Minister of Energy and Resources, with the power to make regulations for the following purposes:

Arrangements relating to outages and other security of supply risks

- (e) *providing, in relation to wholesale or any other markets for gas, for arrangements relating to outages and other security of supply risks, including imposing requirements in connection with those matters on any industry participant or consumer (other than a domestic consumer):*

Information disclosure for whole gas industry

- (f) *providing for the provision and disclosure of data and information by any industry participant or consumer (other than a domestic consumer).*

Gas Industry Co's *Recommendation to the Minister of Energy and Resources: Information Disclosure Arrangements for Gas Production and Storage Facility Outages* recommends the making of rules providing for information disclosure for gas production and storage facility outages with reference to the powers in section 43F(2)(e), 43(2)(f) and 43Q of the Gas Act⁶

In addition to the regulation making powers in section 43F, section 43G of the Gas Act provides the Governor General, on the recommendation of the Minister of Energy and Resources, with the power to make regulations for the following purpose:

Enforcement of gas governance regulations

- (k) *providing for compliance with gas governance regulations and rules to be monitored and enforced by the industry body or the Commission or any other person or court, and the powers and procedures of that person or court:*

Gas Industry Co considers that the Minister is empowered to make the proposed amendments to the Compliance Regulations contained in this recommendation under section 43G(2)(k). Gas Industry Co notes that the Compliance Regulations were made in reliance on section 43G, 43S and 43T of the Gas Act. Gas Industry Co proposes that the existing Compliance Regulations that were made under section 43G and the supplementary empowering provisions in sections 43S and 43T would apply to the proposed Rules.

2.2 Requirements when recommending regulations

Section 43L(1) of the Act requires the body recommending gas governance regulations to the Minister to:

1. undertake an assessment under section 43N of the Act; and
2. consult with persons that the recommending body thinks are representative of the interests of persons likely to be substantially affected by the proposed regulations; and

⁶ Section 43Q of the Gas Act 1992 provides that the Minister may make a rule for any of the purposes for which a gas governance regulation may be made.

3. give those persons the opportunity to make submissions;
4. consider those submissions.

A summary of the consultation undertaken by Gas Industry Co is set out in sections 1.2 and 3.6 of this recommendation.

Section 43N(1) of the Act requires that, before making a recommendation to the Minister, Gas Industry Co must:

1. seek to identify all reasonably practicable options for achieving the objective of the regulation;
2. assess those options by considering—
 - (a) the benefits and costs of each option
 - (b) the extent to which the objective would be promoted or achieved by each option
 - (c) any other matters that the industry body considers relevant;
3. ensure that the objective of the regulation is unlikely to be satisfactorily achieved by any reasonably practicable means other than the making of the regulation (for example, by education, information, or voluntary compliance);
4. prepare a statement of the proposal for the purpose of consultation under section 43L(1).

Section 43N(2) requires that the statement of proposal referred to in section 43N(1)(d) must contain:

1. a detailed statement of the proposal;
2. a statement of the reasons for the proposal;
3. an assessment of the reasonably practicable options, including the proposal;
4. other information that the industry body or the Commission considers relevant.

Gas Industry Co considers that it has complied with the requirements of sections 43L and 43N of the Act.

2.3 Rules or regulations

Section 43Q of the Act empowers the Minister to make a rule for all or any of the purposes for which a gas governance regulation may be made. In deciding whether to make a rule rather than a regulation, the Minister must have regard to:

1. the importance of the rule, including whether the rule has a material effect on the rights and interests of individuals;
2. the subject matter of the rule, including whether the rule contains detailed or technical matters rather than matters of general principle;
3. the application of the rule, including whether the rule applies principally to a particular group (eg, industry participants) rather than the general public;
4. the expertise and rule-making procedures of the recommending body.

Gas Industry Co considers that the proposed amendments should be made by gas governance regulations for the following reasons:

1. The proposal is an amendment to existing gas governance regulations

2. The amendments have an impact on the rights of individuals, address matters of general principle.



3. Problem Assessment

3.1 Introduction

In this section, the form of a compliance and enforcement regime to support the proposed Rules is discussed. This section summarises the analysis in the Problem Assessment paper and Final SOP.

This assessment incorporates feedback that stakeholders have provided Gas Industry Co at the various stages of this work programme. A list of stakeholders that have been consulted is attached as Appendix A.

3.2 Problem Assessment

Gas Industry Co's *Recommendation to the Minister of Energy and Resources: Information Disclosure Arrangements for Gas Production and Storage Facility Outages* concluded that:

1. There are implications for efficiency and fairness in both the gas sector and related energy markets arising from limited publicly available information regarding gas production and storage outages. Limited and asymmetric information is also inconsistent with the Government's policy outcome for good, publicly available information on the present state of the gas sector (GPS Item 13 point 4).
2. The options for achieving the regulatory objective of effective and timely availability of material gas production and storage outage information for all gas and related market participants consist of disclosure of gas production and storage facility outage information under the *Upstream Gas Outage Information Disclosure Code 2020* (the industry's Upstream Disclosure Code) or rules or regulations under the Gas Act.
3. The Upstream Disclosure Code does not satisfactorily achieve the regulatory objective largely due to the absence of a meaningful compliance and enforcement framework in the Code.
4. The regulatory objective would be satisfactorily achieved by implementing information disclosure arrangements for gas production and storage facility outage information within a framework of regulations or rules under the Gas Act. This option addresses the compliance and enforcement issues identified with the Upstream Disclosure Code and should ensure that gas production and storage facility outage information is available to all interested parties on a timely basis.

The assessment undertaken in the *Recommendation to the Minister of Energy and Resources: Information Disclosure Arrangements for Gas Production and Storage Facility Outages* concluded that a compliance and enforcement regime is necessary to achieve the regulatory objective. Accordingly, the objective of this paper is to provide the Minister with a recommendation on the appropriate form of such compliance and enforcement arrangements. The objective of this paper is consistent with the outcome in the Government Policy Statement on Gas Governance 2008 (GPS) of gas governance arrangements being supported by appropriate compliance processes.

3.3 Regulatory objective

Gas Industry Co's approach to developing governance arrangements under the Gas Act requires the development of a regulatory objective. In the Final SOP, we proposed the following regulatory objective for a compliance and enforcement regime for the proposed Rules:

to establish an efficient and effective compliance and enforcement regime to ensure the integrity of the information disclosure framework

3.4 Options for achieving the objective

Section 43N of the Gas Act requires Gas Industry Co to identify and assess reasonably practicable options for addressing the regulatory objective.

The following options for achieving this objective were identified in the Final SOP:

1. A voluntary multilateral arrangement.
2. A regulated compliance and enforcement arrangement.

A multilateral arrangement would require parties impacted by the information disclosure framework to reach an agreement on an enforcement framework. In the Final SOP, we noted that such arrangement is unlikely to satisfactorily achieve the regulatory objective for the following reasons:

1. The difficulty in reaching consensus on the terms of a multilateral compliance arrangement.
2. Remedies are likely to be limited to a contractual claim, which may effectively limit compliance action being taken (and therefore the incentives for compliance).
3. The diverse nature of parties who would need to be included within the scope of the multilateral arrangement. Given that compliance with disclosure requirements may have an impact beyond the parties making disclosure, parties receiving information would need to be a party to the arrangement.
4. Parties cannot be compelled to join the multilateral arrangement.

The Final SOP noted that there is a wide range of potential options for a regulated compliance arrangement based on the empowering provisions in the Gas Act. The options were explored in detail as part of the development of the Compliance Regulations.⁷ That analysis concluded that the Compliance Regulations should lead to good levels of compliance, provide a high level of transparency around process and minimise transaction costs as far as possible.

The Compliance Regulations are also a fit-for-purpose mechanism for addressing breaches of the proposed Rules for the following reasons:

1. Any participant or other person may raise a breach of the proposed Rules.
2. The Compliance Regulations contain a tiered process for resolving breaches of the proposed Rules based on severity.
3. There is a requirement to cooperate with an investigation for the purpose of monitoring and enforcing the proposed Rules, including a requirement to make information available requested for the purpose of the investigation.

⁷ See Compliance and Enforcement Arrangements in the New Zealand Gas Industry, 12 April 2006 available at <https://www.gasindustry.co.nz/work-programmes/compliance/background/original-development-2006-2008/options-for-compliance-and-enforcement-arrangements-in-the-new-zealand-gas-industry/>

4. The Rulings Panel has the power to make a variety of orders including compliance directions, compensation orders and civil pecuniary penalties.

For that reason, we consider that the amendment to the Compliance Regulations to make the proposed Rules subject to the compliance framework in the Compliance Regulations to be the only reasonably practicable option for achieving the regulatory objective.

3.5 Cost-benefit analysis

Section 43N requires Gas Industry Co to consider the costs and benefits of each of the reasonably practicable options when recommending regulations or rules to the Minister of Energy and Resources.

In the Final SOP, we noted that the benefits of a compliance regime are linked to ensuring that the benefits of the arrangements that it enforces are achieved. The benefits of effective and timely availability of information regarding production and storage outages have been discussed in the *Recommendation to the Minister of Energy and Resources: Information Disclosure Arrangements for Gas Production and Storage Facility Outages*, including the cost-benefit analysis conducted by Sapere Research Group. That analysis concluded that a regulated set of arrangements is likely to be closer to the goal of information being disclosed where the economic benefits of disclosure outweigh the costs.

As the establishment and ongoing costs of administering the compliance regime under the Compliance Regulations have already been incurred, the incremental cost of adding the information disclosure regulations will include any additional workload for the Market Administrator, the Investigator and the Rulings Panel. While forecasting compliance activity is difficult, we do not believe it will be necessary to appoint additional personnel to any of the above functions. We would also expect any additional costs for industry participants to be low given the existence of the Upstream Disclosure Code.

3.6 Consultation and stakeholder feedback

Gas Industry Co consulted on the proposed amendments to the Compliance Regulations in our Draft SOP and Final SOP.

As we would expect, most submissions focussed on whether information disclosure regulations for gas production and storage facility outages were necessary or appropriate given the existence of the Upstream Disclosure Code. These submissions are considered in detail in our *Recommendation to the Minister of Energy and Resources: Information Disclosure Arrangements for Gas Production and Storage Facility Outages*.

In terms of the focus of this recommendation, the form of a compliance and enforcement regime to support the proposed Rules, there were no specific comments or concerns raised made regarding the appropriateness of the Compliance Regulations as the compliance framework that applies to the proposed Rules.



4. Statement of Proposal

4.1 Introduction

As noted above, we consider that the regulatory objective is likely to be satisfactorily achieved through an amendment to the Compliance Regulations to make the proposed Rules subject to the compliance framework in the Compliance Regulations.

In the Final SOP, we noted that the proposed Rules could be made subject to the compliance framework in the Compliance Regulations with little difficulty.

This section summarises aspects of the Compliance Regulations that may need to be amended make the proposed Rules subject to the compliance framework in the Compliance Regulations.

4.2 Summary of amendments to the Compliance Regulations

We believe that making the proposed Rules subject to the compliance framework in the Compliance Regulations can be achieved through a limited number of amendments to the drafting of the Compliance Regulations.

We recommend:

1. Inclusion of the proposed Rules within the scope of the Compliance Regulations through an amendment to regulation 3 of the Compliance Regulations.
2. An amendment to the definition of "rules" in regulation 4 of the Compliance Regulations to include the proposed Rules.

We note that it may also be desirable to include the parties who have obligations under the proposed Rules in the definition of a "participant" in regulation 4 of the Compliance Regulations as that has been the case for other gas governance rules and regulations.

We also recommend making consequential amendments to the Compliance Regulations consistent with the policy of making compliance with the proposed Rules subject to the process in the Compliance Regulations.

Unlike previous gas governance rules and regulations, the proposed Rules do not propose the appointment of new service providers to which additional breach reporting obligations should apply.



5. Recommendation

Gas Industry Co recommends to the Minister of Energy and Resources, under section 43G(2)(k) of the Gas Act 1992, amending the Gas Governance (Compliance) Regulations 2008 as set out in section 4 of this recommendation.

Appendix A – Consulted stakeholders



Electricity Authority

Major Energy Users Group (MEUG)

Firstgas Limited, Flexgas (owner and operator of the Ahuroa Gas Storage Facility) is an affiliate of Firstgas

Energy Resources Aotearoa (ERA), formerly known as Petroleum Exploration and Production Association of New Zealand (PEPANZ)

Beach Energy Limited

Transpower Limited

Mercury Limited

Meridian Energy Limited

Energy Link Ltd

Greymouth Gas New Zealand Limited

OMV New Zealand Limited

Todd Energy Limited and Nova Energy Limited

Trustpower Limited

Genesis Energy Limited

Contact Energy Limited

Vector Limited

Major Gas Users Group (MGUG)

New Zealand Steel Limited

Fonterra Co-operative Group Limited

Methanex New Zealand Limited

emsTradepoint Limited

Haast Energy Trading Limited

Flick Energy Ltd

Transpower

About Gas Industry Co

Gas Industry Co is the gas industry body and co-regulator under the Gas Act.

Its role is to:

- Develop arrangements, including regulations where appropriate, which improve:
 - the operation of gas markets;
 - access to infrastructure; and
 - consumer outcomes;
- Develop these arrangements with the principal objective to ensure that gas is delivered to existing and new customers in a safe, efficient, reliable, fair, and environmentally sustainable manner; and
- Oversee compliance with, and review such arrangements.

Gas Industry Co is required to have regard to the Government's policy objectives for the gas sector, and to report on the achievement of those objectives and on the state of the New Zealand gas industry.

ENQUIRIES:

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