

Market Administrator - summary of procedures

[Draft for consultation]

Introduction

1. This is a summary of the procedures of the Market Administrator (“MA”) when dealing with a breach notice alleging breach of any of the following (together, the “Rules”):
 - (a) Gas (Downstream Reconciliation) Rules 2008;
 - (b) Gas (Processing Facilities Information Disclosure) Rules 2008; and
 - (c) Gas (Switching Arrangements) Rules 2008.
2. These procedures may be amended from time to time, and on a case by case basis, with or without any written amendment to this document, provided that any amendment does not conflict with the requirements of the Gas Governance (Compliance) Regulations 2008 (“Regulations”).
3. Attached as **Appendix 1** is an indicative timeline for the MA’s handling of any breach notice. Dates in the indicative timeline are a combination of:
 - (a) deadlines prescribed in the Regulations; and
 - (b) the performance expectations of Gas Industry Co.
4. In any communications with the MA, participants should be alert to the requirements of regulation 15(2).

Receive breach notice

5. A breach notice should be submitted to Gas Industry Co in the standard form, which is available on Gas Industry Co’s website. Regulations 9(2) and 11(2) provide that a breach notice should contain the following information:
 - (a) the participant that is alleged to have breached the rules;
 - (b) the rule allegedly breached;
 - (c) the circumstances relating to the alleged breach; and
 - (d) the date and time on which the alleged breach occurred.

Acknowledge receipt and notify participants

6. The MA will use reasonable endeavours to acknowledge receipt of a breach notice within 5 business days (regulation 12(2)).
7. Unless the breach notice comes from a consumer, if the breach notice does not contain the information required by regulations 9(2) and 11(2), MA will ask for the omitted information. The breach notice may not be validly given if the information has not been provided, as the notifying party, unless a consumer, "must" provide it (regulations 9(2) and 11(2)).
8. At the same time as the MA acknowledges receipt of the breach notice (ie within 5 business days), the MA must also:
 - (a) notify the participant allegedly in breach (regulation 12(1)(b)); and
 - (b) notify all other participants (regulation 13(1)).

The MA's preferred method of communication is email, and, indicatively, the MA will notify participants of an alleged breach by emailing a copy of the breach notice to them.

Further information

9. The MA may request further information about the circumstances of the alleged breach from (regulation 14):
 - (a) the notifying participant or other person that gave the breach notice;
 - (b) the participant that is allegedly in breach;
 - (c) the registry operator or the allocation agent; and
 - (d) any other participant that has joined as a party to the breach notice,

and that information must be disclosed "as soon as practicable, to the extent practicable". Gas Industry Co's expectation is that a request for further information will be made within 10 business days of the date the MA acknowledges receipt of a breach notice, and that the information requested will be provided within a further 5 business days.

Determine materiality

10. The next step is for the MA to determine whether the alleged breach raises a material issue. Gas Industry Co expects that the MA will make a determination (as below) within 26 business days of receipt of a breach notice. If:
 - (a) the MA is unable to determine whether the alleged breach raises a material issue because the MA cannot obtain sufficient information, the MA must refer the alleged breach to an investigator (regulation 18(4)), and should notify the notifying party,

the participant allegedly in breach, and any other party to the breach notice (together, the “Parties”);

- (b) the alleged breach relates to a matter that has already been referred to, or that the MA considers is more properly dealt with by, other complaints resolution systems outlined in regulation 18(5), the MA may decline to make a determination, and should notify the Parties; and
- (c) the MA has obtained sufficient information, the MA must determine whether the alleged breach raises a material issue (regulation 18(1)). If:
 - (i) the MA determines that the alleged breach raises a material issue, the MA must refer it to the investigator and notify the Parties; or
 - (ii) the MA determines that the alleged breach does not raise a material issue, the MA may determine to take no action on the alleged breach (regulation 18(2)(a)), in which case the MA must notify the Parties as soon as practicable, or attempt to resolve the alleged breach with the agreement of the Parties (regulation 18(2)(b)).

Informal resolution by market administrator

11. The MA has a wide discretion as to a suitable informal resolution process.
12. If the alleged breach is resolved by informal means, the MA or one of the parties should document the resolution, preferably in the form of the template attached as **Appendix 2**. All Parties must notify their acceptance of the terms of the resolution in writing to the MA (regulation 21(4)).
13. If the MA has been unable to resolve the alleged breach informally within 35 business days of the date of notification (of the breach notice) to participants, one of the parties can require the MA to refer the breach to an investigator. Otherwise, it is Gas Industry Co’s expectation that, if appropriate, the MA will continue to try to resolve the alleged breach for up to a further 19 business days, after which time the MA will close the file. This will mean that, if unresolved, a file will be closed within 60 business days of receipt of the breach notice. (Note though that a further similar alleged breach by the same participant is likely to be considered “material” by the MA.)

Publication

14. The MA must provide a monthly report to Gas Industry Co and must publish all of the MA’s determinations, including the outcome of any resolutions (regulation 22). Gas Industry Co expects that the report will be provided by the 28th of each month.

Referral to investigator

15. Alleged breaches will be referred to the investigator in the following circumstances:

- (a) If, in the opinion of the MA, the alleged breach raises a material issue – regulation 18(3);
- (b) If the MA is unable to determine whether an alleged breach raises a material issue because the MA cannot obtain sufficient information – regulation 18(4);
- (c) The MA has determined not to take any action on the alleged breach, but one of the parties requires the alleged breach to be referred – regulation 24(1)(a); or
- (d) The MA has not been able to informally resolve the alleged breach by agreement within 35 business days of the MA's notification to participants, and one of the parties requires the alleged breach to be referred – regulation 24(1)(b).

Appendix 1

INDICATIVE TIMELINE¹

- Business day 1:** Breach notice is received
- By business day 6²:** MA: - acknowledges receipt;
- notifies the participant allegedly in breach;
 - notifies all other participants;
 - emails breach notice to Panel and investigator³
- By business day 11:** Any other participant may be joined as a party
- By business day 16⁴:** MA may request further information (to be provided by business day 21)
- By business day 21⁵:** Any further information to be provided to MA
- By business day 26⁶:** MA considers materiality and:
- refers to investigator if insufficient information;
 - refers to investigator if material;
 - declines to determine if another forum has already considered or is more appropriate;
 - if not material, determines to take no action OR attempts to resolve informally
- After business day 41:** If no resolution, a party may require referral to investigator
- By business day 60⁷:** If no resolution or referral to investigator, MA closes file⁸
- By 28th of each month⁹:** MA must publish monthly report

¹ Note definition of "business day" in regulation 4

² This is a "reasonable endeavours" requirement (regulation 12(2)), but GIC expects this deadline to be met

³ This deadline is a GIC performance expectation, rather than a deadline imposed by the Regulations

⁴ This deadline is a GIC performance expectation, rather than a deadline imposed by the Regulations

⁵ This deadline is a GIC performance expectation, rather than a deadline imposed by the Regulations

⁶ This deadline is a GIC performance expectation, rather than a deadline imposed by the Regulations

⁷ This deadline is a GIC performance expectation, rather than a deadline imposed by the Regulations

⁸ Note though that a further similar alleged breach by the same participant is likely to be considered "material"

⁹ The Regulations require a monthly report, but the date of it is a GIC performance expectation

Appendix 2

MARKET ADMINISTRATOR - TEMPLATE SETTLEMENT AGREEMENT

**Agreement of settlement of alleged breach *[insert breach notice identifying number]*
of Rule *[insert rule]***

Dated:

Between:

[Insert name of party]

[Insert name of party]

[Insert name of party]

Background:

A. *[Insert background]*

B. *[...continued]*

It is agreed:

1) *[Insert agreement]*

2) *[...continued]*

Executed as an agreement:

For *[insert name of party]* by:

Name:

Position:

For *[insert name of party]* by:

Name:

Position:

For *[insert name of party]* by:

Name:

Position: