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

12 July 2013

186716.1

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.

Gas Industry Co's corporate strategy is to 'optimise the contribution of gas to New Zealand'.

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Executive summary

Gas Industry Co recommends to the Minister of Energy and Resources, under sections 43G(2)(k) and 43S of the Gas Act 1992 (Gas Act), amendments to the Gas Governance (Compliance) Regulations 2008 (Compliance Regulations) as set out in sections 3, 4 and 5 of this paper, to make better provision for compliance with gas governance rules and regulations.

The April 2008 Government Policy Statement on Gas Governance (GPS) seeks as an outcome that gas governance arrangements are supported by appropriate compliance and dispute resolution processes.

In May 2007 Gas Industry Co recommended to the Minister of Energy that the Governor-General make regulations to provide for the enforcement of the gas governance rules and regulations recommended by Gas Industry Co. That recommendation was accepted.

The Gas Governance (Compliance) Regulations 2008 (the Compliance Regulations) currently provide for the monitoring and enforcement of the following gas governance arrangements:

- the Gas (Switching Arrangements) Rules 2008; and
- the Gas (Processing Facilities Information Disclosure) Rules 2008; and
- the Gas (Downstream Reconciliation) Rules 2008; and
- the Gas Governance (Critical Contingency Management) Regulations 2008.

The Compliance Regulations allow for a range of persons to allege breaches of the above gas governance arrangements by industry participants.[1] That range includes service providers, the industry body, consumers, and other persons.

The Compliance Regulations establish:

- A Market Administrator responsible for receiving notices of alleged breaches of the rules, seeking further information where required, determining the materiality of alleged breaches, and attempting to resolve any immaterial breach with the agreement of affected parties.
- One or more Investigators, who investigate material or unresolved immaterial alleged breaches, endeavour to settle the matter, and refer settlements and unresolved alleged breaches to the Rulings Panel.
- A one member Rulings Panel, which approves or rejects settlements, determines unresolved alleged breaches, and may order remedies and/or financial penalties and compensation.

[1] In the case of the Gas Governance (Critical Contingency Management) Regulations 2008 the Compliance Regulations also allow for persons other than industry participants to have breaches alleged against them. This is to encourage compliance by end users with directions from their retailer to stop using gas during Critical Contingency events.

In Gas Industry Co's view, the Compliance Regulations generally work well and according to their purpose. There is currently a very high level of compliance with the existing gas governance rules and regulations. However after four years of operations, Gas Industry Co has undertaken a prudent review of areas for improvement based on experience of the Compliance Regulations. It has also undertaken a review of the CCM Regulations, which has identified potential improvements in the Compliance Regulations. Both reviews have included extensive consultation.

This paper provides recommendations to:

(a) correct minor and technical drafting issues with the Compliance Regulations;

(b) introduce a change to the mandatory breach reporting requirements on the Allocation Agent and Gas Registry Operator; and

(c) remove "consumers" as a participant in the Compliance Regulations (whilst retaining their ability to allege breaches), add a health and safety defence for certain breaches of the CCM Regulations and make other consequential amendments consistent with the proposed changes to the CCM Regulations.[2]

Gas Industry Co is satisfied the necessary legislative requirements have been met in proposing these amendments and a good level of industry engagement has been achieved in the development of the changes presented in this Recommendation.

[2] Refer to the Recommendation to the Minister of Energy and Resources to amend the Gas Governance (Critical Contingency Management) Regulations 2008 dated July 2013.

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1 Introduction

1.1 Background

Among the outcomes sought by the April 2008 Government Policy Statement on Gas Governance (GPS) is that gas governance arrangements are supported by appropriate compliance and dispute resolution processes. When Gas Industry Co recommended rules for customer switching, it also recommended regulations to provide for the enforcement of those and any other gas governance rules and regulations that might later be established.

The Compliance Regulations, developed in accordance with section 43G(2)(k) of the Act, came into effect on 11 September 2008. They now provide for the monitoring and enforcement of the following gas governance arrangements:

- the Gas (Switching Arrangements) Rules 2008 (Switching Rules); and
- the Gas (Processing Facilities Information Disclosure) Rules 2008; and
- the Gas (Downstream Reconciliation) Rules 2008 (Reconciliation Rules); and
- the Gas Governance (Critical Contingency Management) Regulations 2008 (the CCM Regulations).

The Compliance Regulations allow participants, service providers, the industry body, consumers, and any other persons to allege breaches of the above gas governance arrangements by industry participants (and end users in the case of the CCM Regulations).

The Compliance Regulations establish:

- A Market Administrator, who has the responsibility for receiving notices of alleged breaches of the rules; seeking further information where required; determining whether or not alleged breaches raise a material issue; and attempting to resolve any alleged breaches that do not raise material issues with the agreement of affected parties. Gas Industry Co currently performs the function of Market Administrator.
- One or more Investigators, who investigate breach allegations that are unresolved or raise a material issue; endeavour to settle the matter; and refer settlements and unresolved breach allegations to the Rulings Panel.

- A one member Rulings Panel appointed by the Minister, who approves or rejects settlements; determines unresolved breach allegations; and may order remedies and/or financial penalties and compensation.

Gas Industry Co, the Market Administrator, Investigators, the Rulings Panel and industry participants have had over four years' experience of operating under the Compliance Regulations. In Gas Industry Co's view the Compliance Regulations generally work well and according to their purpose. Partly as a result of earlier enforcement activity, there is also now a high level of compliance with the existing gas governance rules and regulations.

This paper provides recommendations to:

(d) correct minor and technical drafting issues with the Compliance Regulations;

(e) introduce a change to the mandatory breach reporting requirements on the Allocation Agent and Gas Registry Operator; and

(f) remove "consumers" as a participant in the Compliance Regulations (whilst retaining their ability to allege breaches), add a health and safety defence for certain breaches of the CCM Regulations and make other consequential amendments consistent with the proposed changes to the CCM Regulations.[3]

The proposed amendments have been identified from the following sources:

- Gas Industry Co analysis of the operation of the Compliance Regulations.
- Observations of the Rulings Panel.
- Industry feedback.
- The process of reviewing and amending the CCM Regulations following the critical contingency caused by the Maui pipeline outage in October 2011.

[3] Refer to the Recommendation to the Minister of Energy and Resources to amend the Gas Governance (Critical Contingency Management) Regulations 2008 dated July 2013.

2 Legislative Requirements

2.1 Regulatory objective

When considering the development of a gas governance arrangement – either regulatory or non-regulatory – Gas Industry Co establishes a 'regulatory objective' for the relevant workstream.

Objective setting is guided by the Act, which sets out a principal objective and certain other objectives in section 43ZN[4]. Gas Industry Co must also have regard to the Government Policy Statement on Gas Governance ('GPS'), which sets out the Government's objectives and outcomes for governance of the New Zealand gas industry, and its expectations for industry action.

The Government's overall policy objective for the gas industry, taking into account the combined effect of the objectives in the Act and the GPS, is:

> To ensure that gas is delivered to existing and new customers in a safe, efficient, fair, reliable, and environmentally sustainable manner.

In regard to compliance, the GPS includes the following outcome:

> Gas governance arrangements are supported by appropriate compliance and dispute resolution processes.

It is this outcome that underpins the proposals set out in this document.

Gas Industry Co considers that the proposed amendments will improve the operation of the Compliance Regulations that support the various gas governance arrangements.

2.2 Empowering provision

Section 43G(2)(k) of the Act provides that regulations may be made '*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'.* The proposed amendments to the Compliance Regulations come within the scope of this section.

[4] The current proposal is to amend regulations that were made under section 43G(2)(k) of the Act. When making recommendations under section 43G(2)(k), Gas Industry Co is not obliged to make a recommendation that specifically meets the objectives in section 43ZN. However these objectives guide much of our policy development, and are expanded upon by the GPS, to which the industry body must have regard when making a recommendation.

2.3 Gas Act requirements

A recommendation to amend rules or regulations is considered to be the same as a recommendation for making those regulations in the first place. As such, the provisions relating to the assessment of a recommendation by the industry body (Gas Industry Co) apply. These requirements are set out in sections 43L and 43N of the Act.

Under section 43L(1), before making a recommendation, Gas Industry Co must:

> (a) undertake an assessment under section 43N; and
>
> (b) consult with persons that the industry body (Gas Industry Co) thinks are representative of the interests of persons likely to be substantially affected by the proposed [rule changes]; and
>
> (c) give those persons the opportunity to make submissions; and
>
> (d) consider those submissions.

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

> (a) seek to identify all of the reasonably practicable options for achieving the objective of the [rule change]; and
>
> (b) assess those options by considering:
>
> (i) the benefits and costs of each option; and
>
> (ii) the extent which the objective would be promoted or achieved by each option; and
>
> (iii) any other matters considered to be relevant; and
>
> (c) ensure that the objective of the [rule change] is unlikely to be satisfactorily achieved by any reasonably practicable means other than the making of the [rule change]; and
>
> (d) prepare a statement of proposal for the purpose of consultation under section 43L(1).

However, under section 43N(3), a simplified process can apply in the following circumstances:

> The industry body … is not required to comply with subsection (1) if it is satisfied that the effect of the recommendation is minor and will not adversely affect the interests of any person in a substantial way.

Gas Industry Co considers that the proposed amendments to the Compliance Regulations outlined in this document are a mix such that:

- section 43N(1) may apply to the proposal to introduce a threshold regime, the removal of consumers from the Compliance Regulations and the addition of a defence for industry participants for certain breaches of the CCM Regulations;
- and section 43N(3) applies to minor drafting and clarification amendments including those arising from the CCM Regulation review.

3 Proposed minor amendments

3.1 General minor amendments to the Compliance Regulations

The following sets out the proposed minor amendments to the Compliance Regulations.

Amendment 1

Description of changes

Amend regulation 10(2) to remove the words ‘by other means’ when referring to the way in which Gas Industry Co becomes aware of an alleged breach and notifies the market administrator.

Reason for change

These words are redundant. The key point is that Gas Industry Co can allege a breach when it becomes aware one may have occurred.

Coverage by section 43N(3) of the Act

This change removes redundant wording and is considered to be of minor effect. Gas Industry Co does not consider it will adversely affect any person in a substantial way.

Amendment 2

Description of change

Amend the heading of regulation 11 to ensure coverage of the Critical Contingency Operator and allow for the addition of future service providers that may need to report alleged breaches by referring to ‘certain service providers’.

Reason for change

Regulation 11 refers to the mandatory requirement on the Registry Operator, the Allocation Agent, and the Critical Contingency Operator to allege breaches. The heading of regulation 11 currently refers to the Registry Operator and the Allocation Agent, but not to the Critical Contingency Operator.

Further it is possible that future gas governance arrangements may require the appointment of one or more further service providers that will be under a similar reporting obligation, hence the proposal to change the heading to ‘certain service providers’.

Coverage by section 43N(3) of the Act

This change generalises the heading of the regulation and is considered to be of minor effect. As headings are for guidance only, Gas Industry Co does not consider it will adversely affect any person in a substantial way.

Amendment 3

Description of change

Clarify that the notice requirements set out in regulation 12(1)(b) apply to the notice issued under regulation 13(1).

Reason for change

This proposal is to tidy up and clarify that the information provided to participants by the Market Administrator under regulation 13(1) in relation to an alleged breach is the same information that is provided to the party allegedly in breach by the Market Administrator under regulation 12(1)(b).

Coverage by section 43N(3) of the Act

This change is considered to be of minor effect and provides clarity in drafting. Gas Industry Co does not consider it will adversely affect any person in a substantial way.

Amendment 4

Description of change

Amend regulation 13(2) and (3) to modify the wording so that it reads that a participant may become a party to an alleged breach not to a breach notice.

Reason for change

It is more correct to say a participant is joining an alleged breach action rather than a breach notice.

Coverage by section 43N(3) of the Act

These changes are considered to be of minor effect. Gas Industry Co does not consider they will adversely affect any person in a substantial way.

Amendment 5

Description of change

Amend the regulations to include the industry body as a party from who information can be sought, and who will be provided with all notices and documents that are circulated to industry participants, and parties joined.

Reason for change

In order for the compliance regime to operate effectively, the industry body needs to have access to relevant information, and be able to provide information to the Market Administrator, Investigator, and Rulings Panel. This also reflects the industry body's role in monitoring and administering the gas governance arrangements.

Coverage by section 43N(3) of the Act

These changes are considered to be of minor effect. Gas Industry Co does not consider they will adversely affect any person in a substantial way.

Amendment 6

Description of change

Amend regulation 19(1)(k), which sets out the matters the Market Administrator must take into account when determining materiality, to clarify that the reference to orders are that of the Rulings Panel.

Reason for change

The proposed amendment clarifies that the orders referred to are those of the Rulings Panel under Part 4A of the Gas Act.

Coverage by section 43N(3) of the Act

These changes are considered to be of minor effect. Gas Industry Co does not consider they will adversely affect any person in a substantial way.

Amendment 7

Description of change

Amend the mandatory requirement that the Allocation Agent and Gas Registry Operator must be one of the parties who agree to a settlement under regulations 21 and 32.

Reason for change

Under regulations 21 and 32, any settlements must be agreed by the notifying participant or other person who alleged the breach, the participant allegedly in breach, and any other participant who has joined as a party. Where the Allocation Agent and Gas Registry Operator have alleged a breach they are caught by these provisions. The Allocation Agent and Gas Registry Operator have indicated to Gas Industry Co that they often have no view on whether the relevant alleged breaches should be settled. It can also be onerous for the Market Administrator and Investigator to obtain their agreement. The mandatory requirement would be removed but this would not preclude their involvement in the settlement process if they choose. The Allocation Agent and Registry Operator would however have a positive obligation placed on them to specify when they want no further involvement in the settlement process.

The Critical Contingency Operator would still be subject to the mandatory requirements, given the circumstances under which it alleges breaches.

Coverage by section 43N(3) of the Act

These changes are considered to be of minor effect and remove an unnecessary cost on the Allocation Agent and Gas Registry Operator. Gas Industry Co does not consider they will adversely affect any person in a substantial way.

Amendment 8

Description of change

Amend regulation 46 to address the situation where the Investigator who investigated an alleged breach must personally speak to his or her report if requested by the Rulings Panel.

Reason for change

Regulation 46 specifies what the rights of those entitled to be heard under regulation 39(2) are. It then states the Investigator who investigated must, if requested by the Rulings Panel, speak to his or her report and recommendation. This does not anticipate a situation where the original Investigator is unavailable, due, for example, to illness or their resignation from the role. On the face of it, a replacement Investigator has no standing to be heard, and the Rulings Panel can only work off the papers. The proposed change ensures the Rulings Panel is not constrained in this way.

Coverage by section 43N(3) of the Act

This change is considered to be of minor effect and will improve the practical operation of the Compliance Regulations. Gas Industry Co does not consider it will adversely affect any person in a substantial way.

Amendment 9

Description of change

Delete 'Participants may make' from the heading in regulation 49.

Reason for change

This is a drafting error in the cross-referencing of provisions. Regulation 49 refers to the rights of 'persons' referred to in regulation 39(2). These 'persons' are not limited to 'industry participants' as indicated by the heading.

Coverage by section 43N(3) of the Act

This change is considered to be of minor effect. Gas Industry Co does not consider it will adversely affect any person in a substantial way.

Amendment 10

Description of change

Delete references to 'Internet site' from regulations 81(4), 82(2) and (4), and 83(2).

Reason for change

This is redundant wording as the definition of 'publish' at regulation 4 includes the industry body's Internet site.

Coverage by section 43N(3) of the Act

These changes are considered to be of minor effect. Gas Industry Co does not consider they will adversely affect any person in a substantial way.

Amendment 11

Description of change

Include a new power for the Market Administrator and Investigator to be able to amend breach notices in very limited circumstances.

Reason for change

Currently neither the Market Administrator nor Investigator can amend breach notices once submitted. This means the Rulings Panel can only consider the specifics of an alleged breach as it is described in the breach notice at the time it was submitted. So where errors arise such as minor typographical mistakes, or incorrect referencing to a party, these cannot be rectified. The proposed

change would avoid the situation where the breach notice needs to be withdrawn, corrected and the breached alleged afresh which wastes time and resources. The scope of the power to amend breach notices would be clearly defined.

Coverage by section 43N(3) of the Act

These changes are considered to be of minor effect. Gas Industry Co does not consider they will adversely affect any person in a substantial way.

Amendment 12

Description of change

Include a new power for the Market Administrator and Investigator to be able to consolidate breach notices in very limited circumstances.

Reason for change

On occasion, subsequent to the notice being submitted, circumstances arise such that further breaches are alleged relating to substantially the same matter. A separate investigation must be carried out, and any consolidation of matters can only occur once the matter is referred to the Rulings Panel. This creates inefficiencies.

The scope of the power would be clearly established. It is proposed to limit it to alleged breaches of rules and regulations that arise out of the same factual set of circumstances or events.

Coverage by section 43N(3) of the Act

This change is considered to be of minor effect. Gas Industry Co does not consider it will adversely affect any person in a substantial way.

Amendment 13

Description of change

Amend the Compliance Regulations to modify the interrelationship between the definition of participant, the CCM Regulations, and the notice requirements in regulation 13 to ensure the Market Administrator can comply with them.

Reason for change

The definition of participant in regulation 4 includes consumers in the event of an alleged breach of the CCM Regulations. Regulation 13 then requires the Market Administrator to notify all participants of the content of a notice given under regulation 12. Regulation 16 sets out what this notice must contain.

It is not practically possible for the Market Administrator to identify every participant let alone hold their contact details. It is proposed to add a caveat to the requirement that inserts an element of practicality and best endeavours to this requirement.

Coverage by section 43N(3) of the Act

Gas Industry Co does not consider the proposed change will adversely affect any person in a substantial way. It is a practical improvement to the current statutory arrangements and reflects the reality of not being able to identify all possible consumers.

Amendment 14

Description of change

Include a new provision in the Compliance Regulations that would enable a participant to join a matter at a later stage than the Regulations currently provide for under regulation 13 (that is, at the time a breach is alleged to the Market Administrator). The effect will be that, in certain circumstances, a participant could join once a matter is referred to the Investigator and/or the Rulings Panel.

Reason for change

There are a number of reasons why a participant may wish to join at a later stage than when the initial breach allegation is referred to the Market Administrator. For example, on further consideration a participant may conclude that they may have been affected by the behaviour that resulted in the alleged breach.

There have been instances where participants have joined as a party once a matter has been referred to the Rulings Panel. The process by which this occurs is by consent. It is proposed to include in the Regulations a provision that explicitly states a participant may apply to the Rulings Panel to join once a matter has been referred to the Rulings Panel.

There may also be valid reason why a participant may wish to join at the stage that a matter has been referred to the Investigator. It is similarly proposed to include in the Regulations a provision that explicitly states a participant may apply to the Investigator Rulings Panel to join once a matter has been referred to the Investigator.

It would be important to ensure that an application to join at a later stage is premised on valid grounds. That is, there is good reason why they did not join at the time the alleged breach was referred to the Market Administrator. This would remain the default position.

One option would be to include a requirement that the participant considers that they have been affected by the alleged breach (as is the requirement in regulation 13(2)), but also could not have reasonably anticipated that impact at the time the alleged breach was reported to the Market

Administrator. The decision to enable a participant to join would then then be an exercise of statutory discretion by the Investigator or Rulings Panel.

Coverage by section 43N(3) of the Act

These changes are designed to improve the operation of the compliance regime. Gas Industry Co does not consider they will adversely affect any person in a substantial way.

Consultation

With the exception of amendment 1 and 2, Gas Industry Co consulted on these proposed amendments in its Compliance Statement of Proposal. Seven submissions were received, all in support of the proposals.

3.2 Minor amendments arising from CCM Regulation Review

Amendment – adding technical expert to the list of people covered by jurisdiction of Compliance Regulations

Description of change

Amend subsection (c) in the definition of participant to include ‘technical expert’.

Reason for change

The CCM Regulation review has identified the need for a technical expert to assist the industry body to decide whether to approve deferred curtailment designations. As a provider of services under the CCM Regulations, it is appropriate that they are covered by the Compliance Regulations like all other providers.

Putting the technical expert within the Compliance Regulation framework confers a benefit on the consumers subject to the technical expert’s expertise (i.e. applicants for deferred curtailment status), other industry participants and others who might object to the technical expert’s findings. Further, as a person cannot be compelled to be a technical expert, we do not consider that anyone is adversely affected by the addition of technical experts to the Compliance Regulations.

Coverage by section 43N(3) of the Act

Gas Industry Co does not consider the proposed change will adversely affect any person in a substantial way. It is a practical improvement to the current statutory arrangements and reflects the reality of not being able to identify all possible consumers.

Amendment – Changes to liability of critical contingency operator for breaches that it commits

Description of change

Amend regulation 58A by updating the CCM Regulation references as necessary to ensure that the regulation still references the same substantive regulations.

Reason for change

If the changes proposed by the CCM Regulation review are approved, there are likely to be numbering changes within the CCM Regulations as new regulations are added or deleted. As a result the references in regulation 58A are likely to be incorrect5 going forward unless the references are amended at the same time as the CCM Regulations.

There are no changes to the CCO's financial liability for a breach under this provision, rather we are simply aligning the Compliance Regulations to reflect the obligations the CCO has under the CCM Regulations.

Coverage by section 43N(3) of the Act

Gas Industry Co does not consider the proposed change will adversely affect any person in a substantial way. It is a practical improvement to the current statutory arrangements and reflects the reality of not being able to identify all possible consumers.

Amendment – Removing the interim injunction provision

Description of change

Delete regulation 39A from the Compliance Regulations.

Reason for change

Regulation 39A enables the industry body to apply to the High Court for the grant of interim injunctions in respect of actions in breach of the CCM Regulations.

The provision itself will remain unchanged and will be moved to the CCM Regulations. The shift is to reflect that an interim injunction power may need to be used against a consumer, whereas the Compliance Regulations are only intended to apply to industry participants. In this way, the 'compliance provisions' in the CCM Regulations will unambiguously apply to a wide set of persons, including consumers . Section 5 refers in further detail to the proposal to clarify that consumers are not subject to the Compliance Regulations.

Coverage by section 43N(3) of the Act

Gas Industry Co does not consider the proposed change will adversely affect any person in a substantial way. It is a practical improvement to the current statutory arrangements and reflects the reality of not being able to identify all possible consumers.

Consultation

Gas Industry Co has undertaken an extensive consultation process as part of the review of the CCM Regulations (that encompassed compliance related changes) that has included:

- commissioning Concept Consulting Group to undertake a comprehensive review, including stakeholder interviews, to identify the issues and lessons from the Maui outage (Concept Review);
- issuing the Concept Review for consultation and publishing an analysis of submissions;
- holding a series of meetings with large end users and the Major Gas Users Group to discuss their concerns, and to help them understand the limited options that are available to the CCO when managing the worst critical contingencies;
- holding a workshop on improvements to communications;
- consulting on a statement of proposal (SoP) that described the proposed changes to the CCM Regulations and publishing an analysis of submissions on that SoP (the consultation was notified to over 220 stakeholders known to Gas Industry Co – covering approximately 100 organisations – and was also publicised by inserting public notices in the daily papers);
- holding a workshop on that SoP to allow stakeholders an opportunity to explore and discuss the thinking that underpinned the proposed changes; and
- circulating draft amended CCM Regulations to stakeholders and holding two drafting workshops. A document containing the possible amendments will be used as the basis for drafting instructions to Parliamentary Counsel Office, which has the final say on the wording of any changes to the CCM Regulations.

The removal of the interim injunction provision from the Compliance Regulations was specifically mentioned in the SoP. The addition of the technical expert to the Compliance Regulations and the updating of the CCO liability provision were not specifically consulted on but are considered to be caught by the more general points that were consulted on, for example, the changes to essential service and minimal load consumer provisions.

4 Proposed introduction of a threshold regime

4.1 The proposed threshold regime

Under the Compliance Regulations, industry participants, Gas Industry Co, consumers, and other persons, *may* allege breaches of the gas governance rules and regulations. However certain service providers *must* allege any breaches of which they become aware.

The mandatory requirement has meant that the Allocation Agent and the Gas Registry Operator automatically generate certain reports on their systems. For example, each month Gas Industry Co receives a report from the gas registry of all switching notices that have triggered a breach due to being received on, or containing, a date which does not fall within the prescribed times set out in the Switching Rules. The mandatory wording in the Compliance Regulations means no discretion can be applied by those service providers.

With experience, it has become apparent that in certain circumstances a breach may be inadvertent or unavoidable, and negligible harm is caused. For example, a backdated move switch[5] may result in a retailer not being able to provide an end trading notification to the Allocation Agent by the required time. Or a retailer may be delayed in providing an initial response to a gas switching notice (GNT) to acknowledge and accept a switch, but the retailer will still complete the switch on time by providing a gas transfer notice (GTN) in accordance with the customer's and requesting retailer's wishes. Records show that rule breaches such as these have, to date, been found 'not material' by the Market Administrator.

Once a breach is alleged, the Compliance Regulations specify a process that must be followed by the Market Administrator and industry participant(s) so as to arrive at a determination of whether a breach is material or not. Industry participants regard this process as inefficient and costly for breaches that are clearly minor and are unlikely to raise a material issue.

The costs of processing minor breaches that are of the type unlikely to raise a material issue and which are ultimately borne by industry participants and potentially passed on to consumers, typically outweigh the benefits in terms of impact and harm caused. Gas Industry Co is proposing to amend

[5] A move switch denotes the situation where a new occupant has moved into the premises and has elected to sign up with a retailer other than the retailer that supplied the previous occupant.

the Compliance Regulations to enable it to set thresholds below which the mandatory reporting of breaches of certain rules under the Reconciliation Rules and the Switching Rules would not be required.

We set out below the rules the threshold regime will initially apply to and the reasoning. It is proposed to set these out in a Schedule to the Compliance Regulations. This Schedule will be able to be amended to delete rules or include new rules. Before any amendment is made, Gas Industry Co will consult on its proposal(s).

The application of a threshold determination is not mandatory. As noted, Gas Industry Co will consult before issuing any determination.

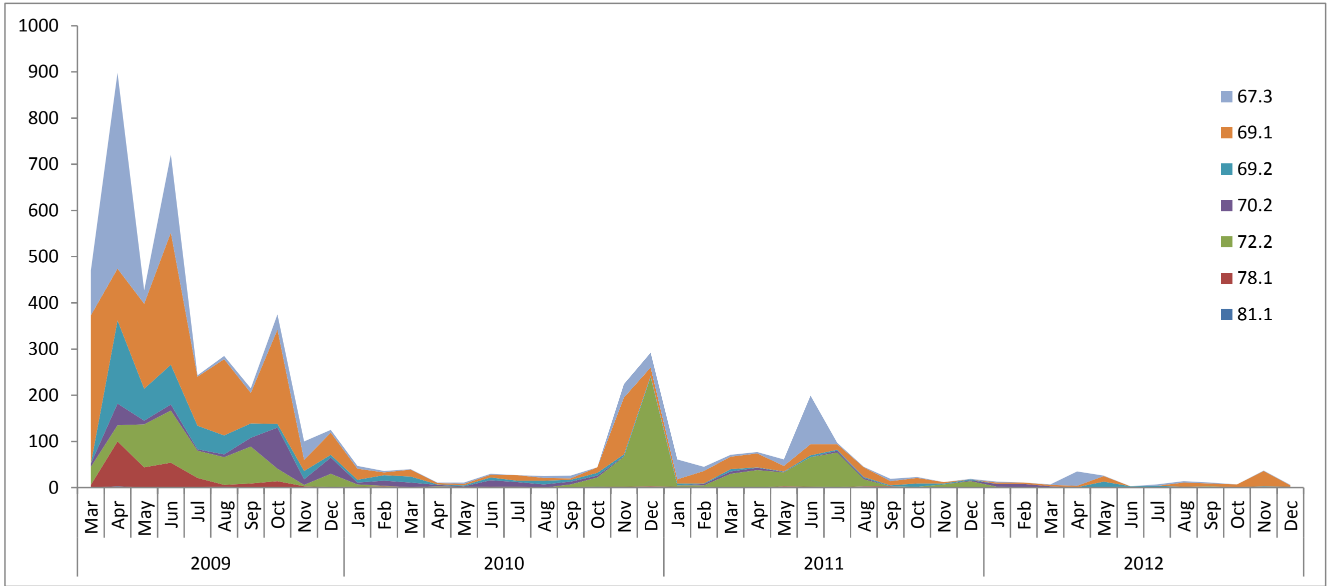
4.2 Switching Rules

Chart 1 illustrates all breaches of the Switching Rules that have been alleged by the Registry Operator to date, categorised by the rule that has been allegedly breached. A substantial amount of the non-compliance in 2009 can be explained by the adjustment of industry participants to the new switching regime, although there were instances of deliberate breaching of the switching arrangements. The bulk of breaches in 2009 are not representative of the type of recurrent non-compliance for which the threshold regime is intended to apply so have been disregarded for the sake of this analysis.

Table 1 Switching breaches alleged by Registry Operator by rule and year, 2009 to 2012

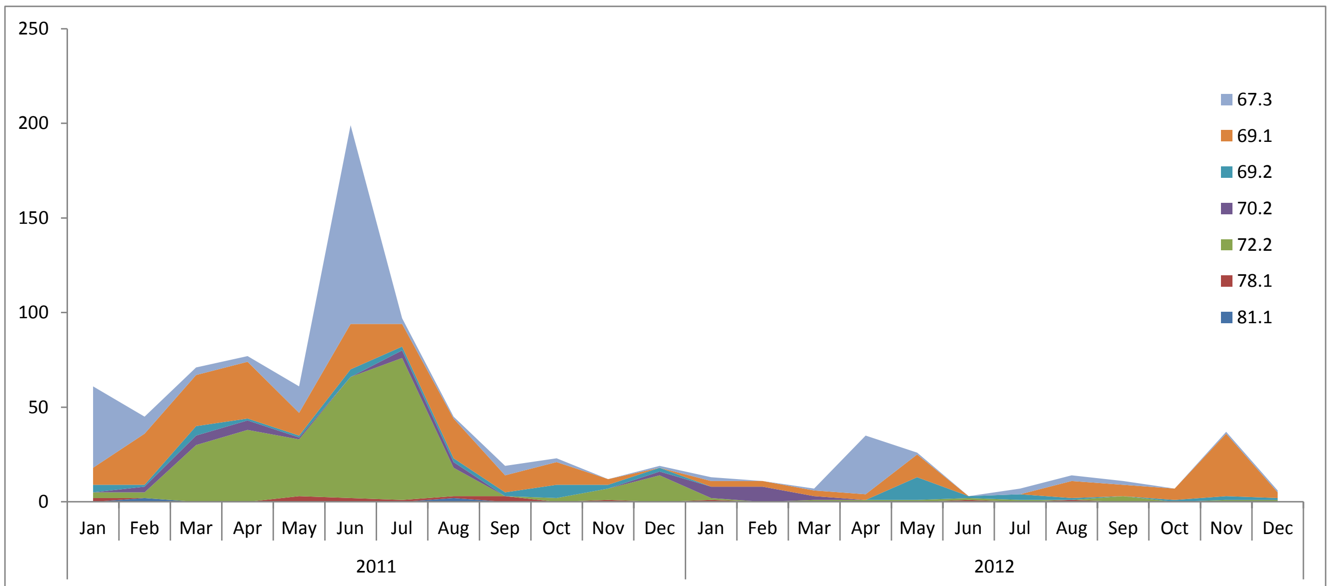
Year	67.3	69.1	69.2	70.2	72.2	78.1	81.1	Total
2009	818	1516	490	239	538	250	8	**3859**
2010	87	231	67	72	337	16	3	**813**
2011	190	186	33	23	280	13	4	**729**
2012	45	81	21	16	11	3	0	**177**
Total	**1140**	**2014**	**611**	**350**	**1166**	**282**	**15**	**5578**

Chart 1 Switching breaches alleged by Registry Operator, March 2009 to December 2012



After 2009, the number of breaches dropped significantly, with current levels around 10 to 20 breaches identified and alleged per month. Chart 2 isolates the 2011 and 2012 statistics as an example of the rules commonly breached and to which Gas Industry Co is proposing the threshold regime should initially apply.

Chart 2 Switching breaches alleged by Registry Operator, January 2011 to December 2012



With the exception of rules 78.1 and 81.1, which are not routinely breached, the rules in the above chart appeared in breach statistics with relative frequency over the last two years. Rules 67.3, 69.1 and 72.2 appear most regularly.

Rule 67.3 relates to the requested switch date and is most often breached when retailers attempt to backdate a standard switch or request a switch date more than 23 business days in the future.

Rule 72.2 relates to the actual switch date and is most often breached when an outgoing retailer completes a switch before the date requested by the new retailer. Both of these scenarios are generally consistent with giving effect to the customer's wishes and there have been no instances of a material breach of either rule since 2009.

Rules 69.1 and 69.2 set out the timeframes for responding to a switch request and completing a switch (within two business days and 23 business days respectively). In the last three years no breaches of rule 69 have been found material. It is also noteworthy that 80% of breaches of rule 69.1 were only one day overdue and 70% of rule 69.2 breaches were three or less days overdue. This points to the suitability of the threshold regime being applied to these rules to eliminate the frequent, non-material breaches.

Rule 70.2 is breached when the expected switch date supplied by the outgoing retailer does not fall within the required timeframes. Again the threshold regime is suitable for breaches of this rule as it is breached twice monthly on average but there has not been a material breach since 2009. It is perhaps even less likely that breaches of this rule would be found material, compared to rules 67.3 and 72.2, as the expected switch date does not have any particular status under the switching rules (it is the actual switch date which is more important).

On the basis of the above analysis it is proposed to initially apply the threshold regime to rules 67.3, 69.1, 69.2, 70.2 and 72.2 of the Switching Rules.

4.3 Reconciliation Rules

Chart 3 shows all breaches of the Reconciliation Rules alleged by the Allocation Agent since the beginning of 2009. Although the reconciliation arrangements went live in October 2008 there were no significant trends in breach activity before 2009. The statistics do not include breaches alleged by other parties (such as auditors) as the focus of the threshold regime is on the mandatory reporting requirements on the Allocation Agent and Registry Operator.

Table 2 Reconciliation breaches alleged by Allocation Agent by rule and year, 2009 to 2012

Year	9	26	31-33	37	39	40	41	43-45	52	Total
2009		3	146	129[6]	20	1	1		34	**334**
2010			260	1803	28	3	3	2	24	**2123**
2011	2	4	269	1694	9	6	24	5	1	**2014**
2012		6	250	2241	8	6	41	1		**2553**
Total	**2**	**13**	**925**	**5867**	**65**	**16**	**69**	**8**	**59**	**7024**

[6] Rule 37 breaches would only have been triggered and alleged late in 2009, explaining volume outlier in subsequent years.

Breaches of rule 37 are clearly the most frequent. In determining the materiality of rule 37 breaches, the Market Administrator has issued a guideline applying a volume threshold, such that any breach under 200 gigajoules will generally be considered non-material. The guideline sets out the weighting of factors applied to the materiality decision. Gas Industry Co is proposing to incorporate the volume threshold for rule 37 within the threshold regime set out in this paper.[7]

Chart 3 Reconciliation breaches alleged by Allocation Agent, January 2009 to October 2012

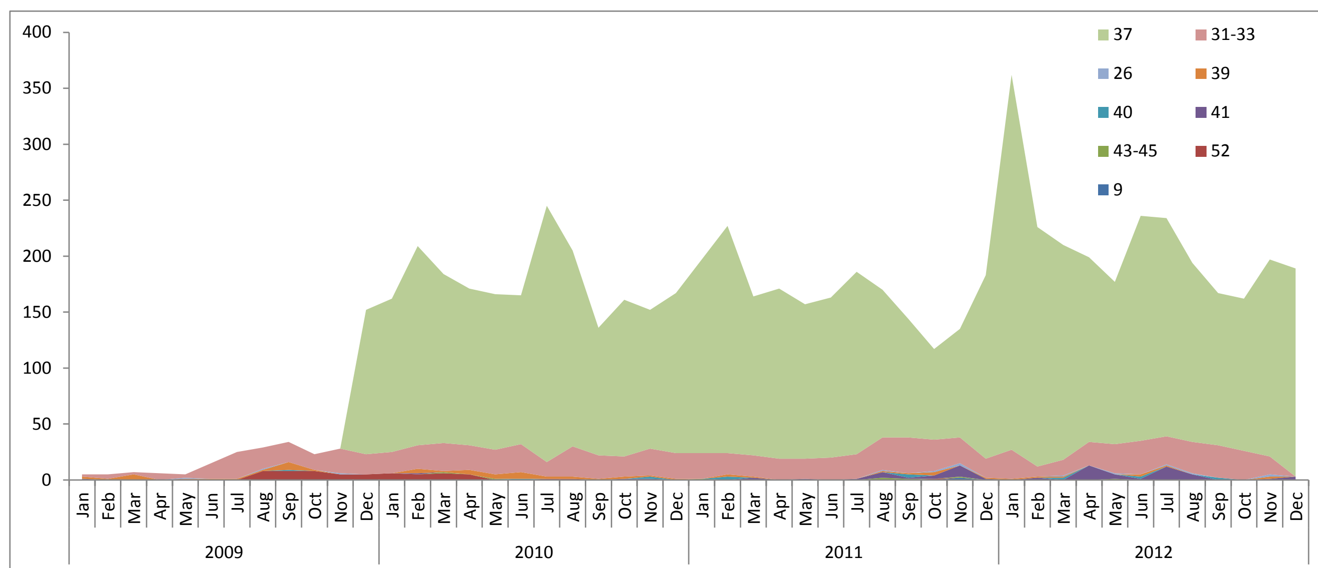


Chart 4 Reconciliation breaches alleged by Allocation Agent, Jan-11 to Oct-12 (excl. rule 37)

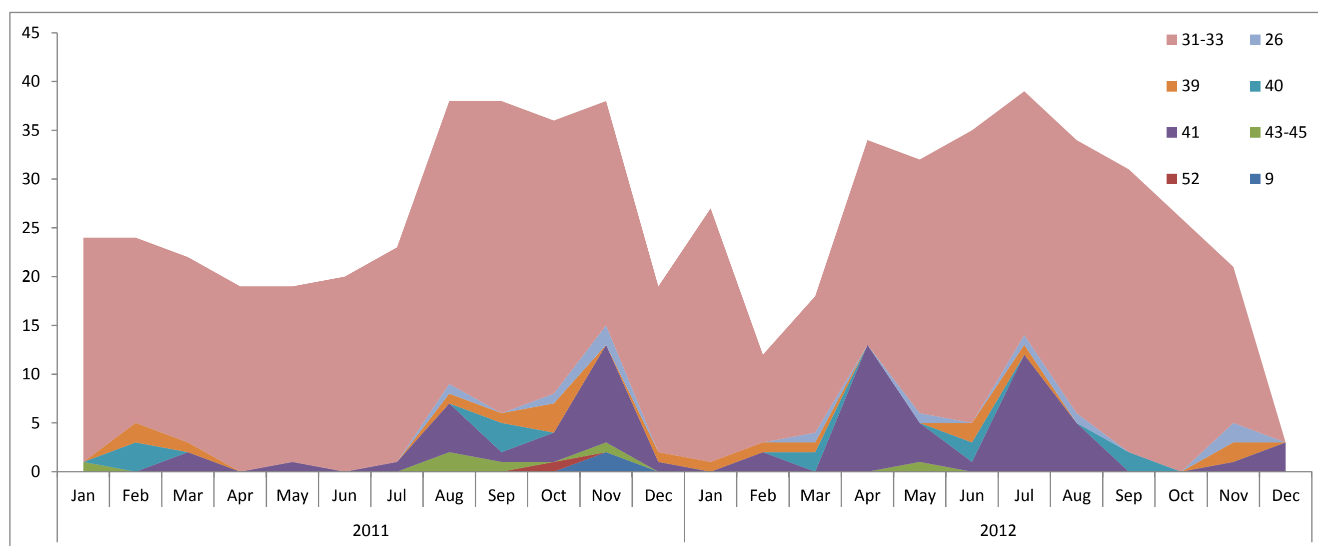


Chart 4 focuses on the rule breaches alleged in 2011 and 2012, with the rule 37 breaches removed to highlight the other rules. The majority of the remaining non-compliance (around 80%) is due to breaches of rules 31 to 33, which cover the obligations on retailers to submit consumption

[7] The difference between the market administrator guideline for rule 37 is that breaches still need to be alleged and determined, hence not addressing the compliance cost issue that the threshold regime is aimed at.

information to the Allocation Agent for the initial, interim and final allocations. These rules can be breached by missing the submission deadlines (providing a late submission) but they are more commonly breached due to retailers providing estimated rather than actual data for TOU-metered ICPs. A similar threshold could be applied to breaches of rule 41, which covers the transmission system owners' obligation to provide gas gate injection information for each allocation.

In the Statement of Proposal, and subsequent paper we put out on the threshold regime, we proposed applying the threshold regime to breaches of rules 31 to 33 and rule 41. However, the most common reason for those breaches being alleged has now been addressed through recent changes to the Reconciliation Rules in which estimated quantities are now permitted under those rules subject to certain provisos. Therefore the threshold regime is no longer applicable to breaches of those rules.

The next most common breach is of rule 39 which requires that retailers provide the Allocation Agent with trading notifications indicating the gas gates where they have active customers (or more accurately where they begin or cease to supply customers). This rule is usually breached due to backdated switching or switches completed at the end of the month, where the responsible retailer may not be aware at the time of submitting to the Allocation Agent that they have gained the customer. There does not appear to be a suitable metric for applying a threshold to these breaches.

The remaining rule breaches in 2011 to 2012 are either not frequent enough to justify a threshold (rules 9, 44 to 45 and 52) or do not lend themselves to having a threshold applied, such as rules 26 to 29 (general obligations on allocation participants and/or retailers). These latter rules can be breached in a variety of ways so there is no simple heuristic for determining which are likely to be material and which are not.

On the basis of the above analysis it is proposed to initially apply the threshold regime to rule 37 of the Reconciliation Rules.

None of these rules are problematic and they perform an important function in the overall governance regime. For example, the timeframes for switching notices are acknowledged by the industry as adequate (they are broadly similar to those in the electricity industry switching arrangements). However, introducing an element of discretion in the form of thresholds, under which service providers would not have to allege certain minor breaches to the Market Administrator, would reduce compliance costs where those costs would outweigh any potential harm and would create efficiencies for industry participants and the Market Administrator. These minor breaches would also be unlikely to raise a material issue by virtue of their nature.

Compliance with the affected rules will still be required and Gas Industry Co will monitor this closely. We will still receive from the Allocation Agent and Gas Registry Operator statistics on all apparent breaches, including those that fall below the threshold(s) and are not alleged. If it appears that the threshold level is being abused by one or more participants, resulting in a trend toward *de-facto* rule change, Gas Industry Co will be under an obligation to revoke the relevant threshold setting and the

relevant service provider will be required to recommence breach reporting based on strict compliance. As noted, an important component will be the minor nature of breaches that qualify (as identified by the history of the Market Administrator's determinations on materiality) and the frequency of those minor breaches.

The thresholds will not apply to the Critical Contingency Operator. Where a breach lies within a threshold another industry participant may still allege the breach (as can Gas Industry Co, consumers, and other persons) and any threshold will be of no relevance to the Market Administrator's determination.

The proposal is to create an empowering provision in the Compliance Regulations to introduce a threshold regime. Gas Industry Co will then work to develop any determination(s). Prior to issuing a determination Gas Industry Co will consult with industry.

4.4 Statutory requirements

The Gas Act requires Gas Industry Co to identify all reasonably practicable options for achieving the objective of any proposed regulation, where the proposal does not fall within the category of minor under section 43N(3) of the Act. The full process under section 43N(1) requires Gas Industry Co to:

- identify all reasonably practical options for achieving the objective of the regulation , and
- assess those options according to a set of criteria set out in section 43N(1)(b).

The results of this process are then detailed in a Statement of Proposal.

Gas Industry Co considers there is a strong argument that the proposed threshold regime would fit within the definition of a minor amendment under section 43N(3) of the Gas Act. Specifically that, while the proposal will reduce the numbers of breaches alleged by service providers, this would '*not adversely affect the interests of any person in a substantial way*'. The proposal creates efficiencies for industry in terms of compliance costs and administrative imposition. Industry submissions generally supported this view. However we have decided to take a cautious approach to the classification of this proposal under the Gas Act and include the full assessment required by 43N(1).

4.5 Identification of reasonably practicable options

In considering all reasonably practicable options for developing a solution to a problem, the solution may be regulatory or non-regulatory. Any possible solution should seek to achieve the objectives set out in section 43ZN of the Gas Act and in the 22008 GPS.

As noted above, the objective of the preferred option is to introduce a threshold regime to reduce the incidence of minor breaches being reported by the Allocation Agent and Gas Registry Operator, and therefore create efficiencies in the gas industry where the costs associated with alleging certain types of breaches outweigh the benefits of doing so.

In developing its approach Gas Industry Co identified three possible options:

- maintain the status quo;
- amend the Compliance Regulations so that alleged breach reporting requirements on the Allocation Agent and Gas Registry Operator is permissive rather than mandatory; or
- introduce an element of discretion for the Allocation Agent and Gas Registry Operator via the use of a threshold regime, which would be implemented through determinations issued by Gas Industry Co (the preferred option).

4.5.1 Status Quo

The status quo would not achieve the policy objective as there is no provision in the Compliance Regulations that enables service providers to exercise discretion. The reporting requirements are strictly mandatory. Retaining the status quo would not achieve the objective of creating efficiencies in the breach reporting process.

Gas Industry Co does not support the retention of the status quo.

4.5.2 Voluntary reporting by the Allocation Agent and Gas Registry Operator

The second option is to amend the Compliance Regulations so that no mandatory reporting by the Allocation Agent and Gas Registry Operator is required and, as with the reporting requirements on participants[8], and other persons[9], alleged breach reporting would be voluntary.

If service providers were not required to allege breaches then the question arises as to whether any such breaches would be alleged? The operations of the gas registry, for example, would not be made untenable by breaches of the Switching Rules; hence there would be no incentive for the Gas Registry Operator to voluntarily allege breaches. This would lead to a situation where switches could be frustrated by one or more retailers overrunning timeframes whilst endeavouring to win back outgoing customers. These kinds of issues predated the Switching Rules and, for a period, continued after those rules went live until enforcement activity provided the necessary incentives for all participants to comply. Mandatory reporting of alleged breaches by the Gas Registry Operator was a key part of that transition to the current orderly arrangements.

Gas Industry Co does not support the introduction of a regime that has the potential to undermine the rules or weaken the incentives to comply with them. If the reporting requirements on the Allocation Agent and Gas Registry Operator were no longer mandatory, Gas Industry Co would be concerned that any future non-compliance would be harder to address than was the situation in calendar 2009. Moreover having changed the mandatory requirements in certain circumstances, if

[8] Regulation 9.
[9] Regulation 10.

subsequent behaviour indicated that the change needed to be reversed then that change cannot be implemented quickly because of the processes mandated in the Gas Act.

Gas Industry Co does not support a change from the original design of the Compliance Regulations that would introduce voluntary reporting of alleged breaches by the Allocation Agent and Gas Registry Operator.

4.5.3 Introduction of a threshold regime

This option, which is the preferred option, recognises the good work that has been done in the industry in terms of overall compliance with the rules, but acknowledges that invariably inadvertent breaches will occur that cause no measurable harm. The costs of processing these alleged breaches outweigh the benefits of them having been alleged. Introducing a threshold regime in respect of mandatory reporting by the Allocation Agent and Gas Registry Operator via an amendment to the Compliance Regulations would enable Gas Industry Co to achieve its regulatory objective. A statutory protection would be introduced such that any particular threshold can be amended or revoked by Gas Industry Co at any time if abuse of the regime is detected. A key principle underpinning the regime is that continued compliance with all rules and regulations is expected.

Gas Industry Co will be required to monitor trends and react to any 'compliance creep' that is detected. Further there are certain protections in the requirement for general mandatory reporting of apparent breaches (but not alleging breaches within thresholds) across all the rules by the Allocation Agent and Gas Registry Operator. The purpose of the proposal is to target a small, select group of minor rule breaches; not a relaxation of general compliance across all the rules.

The threshold regime is preferred because Gas Industry Co believes it strikes the right balance between minimising the costs of processing associated with breaches that are unlikely to raise material issues, while retaining strong incentives for industry participants to hold the gains they have made in compliance to date. Further participants, consumers, other persons and Gas Industry Co would still be able to allege a breach at any time, regardless of whether the rule breach fell within the threshold regime.

4.6 How would the objective be promoted or achieved by each option?

4.6.1 Status Quo

The status quo would not achieve the policy objective of creating efficiencies in the breach reporting process as there is no provision in the Compliance Regulations that enable the Allocation Agent and Gas Registry Operator to exercise discretion. The reporting requirements are strictly mandatory.

4.6.2 Voluntary reporting by certain service providers

The second option is to amend the Compliance Regulations so that no mandatory reporting by the Allocation Agent and Gas Registry Operator is required, and as with the reporting requirements on participants[10], consumers, other persons, and the industry body[11], alleged breach reporting is voluntary.

The primary objective of the proposal is to create efficiencies in the breach reporting process by introducing a threshold regime. As noted earlier, the rules themselves are not problematic and perform an important function in the overall governance regime.

Removing mandatory reporting in its entirety may create short-term efficiencies. However, it would likely have the effect of undermining a regulatory regime that is working well and the long-term costs would far outweigh the benefits. As noted, if the reporting requirements on the Allocation Agent and Gas Registry Operator were no longer mandatory, Gas Industry Co would be time constrained in its ability to reverse the change because of the process requirements in the Gas Act, should de-facto rule change behaviour emerge.

4.6.3 Allowing for a threshold regime

The preferred option would best meet the objective of creating efficiencies in the breach allegation process. Any unintended consequences of the threshold regime in terms of de-facto rule change behaviour could be quickly remedied by a positive obligation on Gas Industry Co to revoke a threshold determination.

There are added protections in that the Allocation Agent and Gas Registry Operator will still be required to allege the majority of breaches. Participants, consumers, other persons and Gas Industry Co can still allege breaches.

4.7 Assessment of costs and benefits

Retailers have provided Gas Industry Co with information indicating there would be cost savings and efficiency gains from the introduction of a threshold regime. This would be achieved primarily through a reduction in time spent processing alleged breaches that are minor and where no harm is caused. In aggregate it is estimated that participants' costs would reduce by some $70,000 in aggregate per annum as a direct result of introducing the threshold regime.

There would be some cost to Gas Industry Co in developing and issuing a determination, but Gas Industry Co is of the view that this would be small, can be meet within current baseline, and the above benefit would outweigh this cost.

[10] Regulation 9.
[11] Regulation 10.

There would also be some cost for the service providers to amend their current alleged breach reports, although these changes are likely to be relatively minor. Again Gas Industry Co does not consider that this cost would be significant or outweigh the benefits of no longer having to process this class of alleged breaches.

4.8 Any other means other than the proposed amendments?

It is not possible to introduce a threshold regime without amending the Compliance Regulations. The mandatory reporting requirement is clear, and a policy cannot override legislation.

5 Other changes as a result of CCM Regulation review

5.1 Removal of consumers from the Compliance Regulations

Description of change

Remove 'consumers' from the definition of 'participant' in regulation 4(1).

Reason for change

It is proposed that the jurisdiction of the Compliance Regulations be clarified by altering the 'participant' definition to remove any reference to consumers that are not also an 'industry participant'. Consumers that do not comply with the CCM Regulations will be liable under a new strict liability offence (described further below). The Compliance Regulations continue to work well for industry participant breaches, so their application to industry participants will remain unchanged.

The Compliance Regulations were set up to provide for the monitoring and enforcement of specified gas governance rules that only apply to industry participants. The CCM Regulations are an exception in that they also place obligations on consumers; that is, on non-industry participants. It is appropriate that compliance for non-industry participants should thus be addressed via a separate mechanism.

Most gas governance arrangements are designed to regulate interactions among industry participants (a term defined in Part 4A of the Act). However, a core component of the CCM Regulations is the requirement for retailers to direct their customers to cease (curtail) their use of gas. The consequences of customers failing to follow those curtailment instructions could have a widespread impact on other gas consumers, and so it was determined necessary to bring consumers under the scope of the Compliance Regulations when the CCM Regulations were introduced.

During the October 2011 critical contingency the level of compliance was exceptional, with the vast majority of consumers ceasing to use gas when so instructed. Nevertheless, a number of consumers did not comply with their retailer's instructions. A concurrent recommendation to amend the CCM Regulations is being submitted to the Minister and includes a provision that would make it an offence

for a consumer not to comply with a curtailment direction. That offence provision does not rely on the Compliance Regulations and, therefore, consumers can be removed from the definition of participant without detriment.

For the industry participant breaches that were alleged in relation to the Maui Pipeline outage, the Compliance Regulations worked well: the three breaches were alleged and resolved through the Compliance Regime.

In contrast, the effectiveness of the Compliance Regulations when applied to breaches by non-industry participants is much less clear-cut. The jurisdiction of the Compliance Regulations is not at all clear and it is arguable (but not conclusively so) that the Compliance Regulations do not apply to consumers, as the empowering provisions in the Gas Act are primarily designed to cover industry participants.

Under section 43X of the Gas Act, the Rulings Panel can only make orders in relation to industry participants, and section 43D of the Gas Act defines *industry participants* more narrowly than the term *participant* is defined in the Compliance Regulations. This means that while the Compliance Regulations provide for investigations and settlements of alleged breaches by participants (as defined in those Regulations), the Rulings Panel can make orders only in respect of breaches by industry participants (which, as defined in the Gas Act, is a subset of the Compliance Regulations' participants). A consumer is not an industry participant unless it falls into one of the specified categories of industry participant set out in section 43D of the Act (for example, a consumer is an industry participant if the consumer purchases gas directly from a gas wholesaler). Therefore, only a handful of consumers are also industry participants.

Accordingly, when directed by a retailer to curtail gas demand, there is a risk that a (non-industry participant) consumer failing, or refusing, to comply with that direction may not face any consequences. As already noted, any non-compliance with directions in a critical contingency carries with it the potential to compromise effective management of the contingency (and widespread non-compliance would effectively make the CCM Regulations ineffective). It appears that high levels of compliance in October 2011 were supported by a belief amongst consumers that there would be penalties for not curtailing. Therefore, it is appropriate that consumers are removed from the industry participant focussed compliance regime and such requirements and penalties are put in place in the CCM Regulations.

5.2 Addition of defence for certain breaches

Description of change

The addition of a defence that relates to breaches of Part 3 of the CCM Regulations.

Reason for change

This proposal would provide better incentives for people to develop resiliency against gas outages and to take the appropriate steps towards addressing, isolating, and/or mitigating workplace risks. It also ensures the Compliance Regulations remain consistent with drafting in the CCM Regulations.

Under Gas Industry Co's recommended amendments to the CCM Regulations[12], it will be a defence to the proposed offence provision of the CCM Regulations if the defendant proves that failure to comply was necessary to prevent or lessen a serious or imminent threat to the health and safety of any person. This defence would be limited to where such a threat to health or safety could not reasonably have been foreseen and mitigated by the defendant so that the conduct that constituted the offence could have been avoided. It is therefore appropriate that an equivalent defence provision be included in the Compliance Regulations for breaches by an 'industry participant' that are alleged under the Compliance Regulations and result from similar actions that would see a consumer prosecuted under an offence provision.

Regulation 47 of the existing CCM Regulations provides that no person is required to comply with obligations during a critical contingency to the extent that compliance would unreasonably endanger the life or safety of that person or any other person. This provision is aimed at addressing workplace health and safety risks associated with gas critical contingencies. In Gas Industry Co's review of the CCM Regulations, this provision was found to be too broad and open ended to ensure that it is only used in exceptional circumstances. Further, the intent of the regulation needs to be interpreted in the context of other legislation that addresses health and safety in employment.

Under the Health and Safety in Employment Act 1992 (HSEA), gas users have to take all practicable steps to ensure that their activities do not harm their employees, contractors, or other people. Planning for a critical contingency, so that a user will be able to comply with curtailment directions without endangering people, is such a practicable step. Indeed, the obligation to take 'all practicable steps' requires that proactive steps be taken, and this threshold is a high one. It is important that the CCM Regulations and Compliance Regulations provide incentives that are consistent with these provisions of the HSEA.

Similar provisions are contained in a range of other legislation, including the Resource Management Act 1991, the Hazardous Substances and New Organisms Act 1996, the Crown Minerals Act 1991, the Building Act 2004, the Historic Places Act 1993 and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

[12] Refer to section 4.7 of the Recommendation to the Minister of Energy and Resources to amend the Gas Governance (Critical Contingency Management) Regulations 2008 dated July 2013.

5.3 Statutory requirements

The Gas Act requires Gas Industry Co to identify all reasonably practicable options for achieving the objective of any proposed regulation, where the proposal does not fall within the category of minor under section 43N(3) of the Act. The full process under section 43N(1) requires Gas Industry Co to:

- identify all reasonably practical options for achieving the objective of the regulation , and
- assess those options according to a set of criteria set out in section 43N(1)(b).

The results of this process are then detailed in a Statement of Proposal.

5.4 Identification of reasonably practicable options

In considering all reasonably practicable options for developing a solution to a problem, the solution may be regulatory or non-regulatory. Any possible solution should seek to achieve the objectives set out in section 43ZN of the Gas Act and in the 2008 GPS.

The CCM Statement of Proposal contained detailed analyses of the issues identified in previous work, possible options for addressing those issues, evaluation of those options, and Gas Industry Co's preferred options.

5.5 Assessment of costs and benefits

The changes to the Compliance Regulations were considered as part of the assessment of costs and benefits of the compliance changes proposed in the CCM Regulations review. Please refer to the CCM Recommendation for the overall assessment of the changes to the CCM Regulations which includes compliance changes. In summary, overall those changes create more effective risk management, enhanced security of supply, allocative efficiency, dynamic efficiency and provide appropriate incentives for resilience.

In relation to the specific compliance changes proposed in this section 5:

- The CCM Regulations Recommendation assesses that the changes proposed in this section along with the other compliance changes proposed in the CCM Recommendation will clarify the operation of the compliance provisions as they pertain to the CCM Regulations, avoiding the confusion that arose out after the Maui outage in October 2011. These changes will make the CCM Regulations more effective.
- It is considered that the defence provision will improve the existing provision for health and safety in the CCM Regulations, particularly by providing incentives that better align with employers' obligations under the HSE Act. Provided employers are meeting their HSE obligations, the change will be cost neutral.

In Gas Industry Co's opinion, the changes to the Compliance Regulations relating to the CCM Regulations, along with the compliance changes in the CCM Regulations will improve the efficiency and effectiveness of the CCM Regulations.

6 Recommendation

Gas Industry Co recommends to the Minister of Energy and Resources, under sections 43G(2)(k) and 43S of the Gas Act 1992 (Gas Act), amendments to the Gas Governance (Compliance) Regulations 2008 (Compliance Regulations) as set out in section 3, 4 and 5 of this paper, to make better provision for compliance with gas governance rules and regulations.