

# Consultation on Exemption Application under the Gas (Downstream Reconciliation) Rules 2008

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Application DR09-12-U from Nova regarding its bypass networks

## 1 Introduction

This consultation paper deals with an exemption application from Nova Gas Limited (Nova), seeking to exempt its five bypass networks from the allocation processes set out in the Gas (Downstream Reconciliation) Rules 2008.

The application effectively seeks to reinstate a previously granted transitional exemption in respect of its bypass gas gates – see the [Gas \(Downstream Reconciliation\) Rules 2008 \(Transitional Exemption DR08-27-U: Bypass Gas Gates\) Notice 2008](#) which is attached as Appendix C. This previous exemption expired on 30 June 2009.

The application requested that Gas Industry Co exercise its discretion under rule 20 to grant an exemption on an urgent basis. However, Gas Industry Co has declined to grant an urgent exemption in respect of the application, as it does not consider it is necessary or desirable that the exemption applied for be made urgently. As a consequence, the application will be processed in accordance with the usual standard exemption process set out in rule 19.

Accordingly this consultation paper publishes the application and seeks submitters' views for the purposes of consultation under rule 19.3.

Two weeks are being allowed for consultation. Submissions are sought no later than Monday 31 August 2009. It is noted that these issues have been previously consulted in prior exemption consultation papers. Submissions can be made by registering on Gas Industry Co's website [www.gasindustry.co.nz](http://www.gasindustry.co.nz) and uploading your submission, preferably in the form of the submissions template attached to the consultation document.

All submissions will be published on the website after the closing date. For further information, see *Help for New Users* on the Gas Industry Co homepage. Submitters should discuss any intended provision of confidential information with Gas Industry Co prior to submitting the information.

A general information paper on the exemptions process and criteria has been issued by Gas Industry Co and can be viewed by downloading from Gas Industry Co's website at the following link: <http://www.gasindustry.co.nz/work-programme/market-administration/exemptions>

## 2 Application DR09-12-U from Nova

### Summary of application

The full application is attached as Appendix B. A summary of the application follows:

**GIC Code:** DR09-12-U                      **Applicant:** Nova Gas Ltd

#### Exemption sought:

An exemption is sought from the application of rules 16.3, 31, 32, 33, 39, 48, 49, 50, 51, 52, 53, 78 and 79 for each of the following gas gates:

FLB15601 Nova Flatbush	HST05203 Nova – Hastings
HWA20802 Nova – Hawera 2	HUN15302 Nova – Hunua 2
TWB24810 Nova – Tawa B	

#### Reasons given by the applicant:

- These gas gates are interconnection to private (non-open access) pipelines of Nova that deliver gas to its customers only. The gross consumption for these gates is fully accounted for and is metered at the interconnection point to the transmission system. These bypass pipelines are for use by Nova only and as such there is no requirement for allocation of gas between retailers. All gas is allocated to Nova based on the gas gate meter and UFG is therefore solely a matter for Nova to manage – making the application of the Rules to Nova’s bypass networks redundant.
- Nova’s bypass pipeline competes with the open access Powerco and Vector networks. Benefits of that competition are improved security of supply, service and lower distribution charges.
- As there are no other retailers able to distribute gas on Nova’s network then no customer on the Nova network can switch to another retailer – instead they must disconnect and reconnect to the open access network. All gas that flows from the transmission system into Nova’s distribution network can thus only be allocated to Nova
- The exemption is sought without prejudice to Nova’s legal position with the respect to the applicability of the Rules to its bypass pipelines, as Nova is not a ‘gas distributor’ as defined by the Gas Act 1992.
- Under s43ZN of the Act, not granting an exemption would mean additional costs for Nova and reduce competitive tension and provide a barrier to investment in new bypass pipelines. It would not be fair or efficient to impose costs on Nova where there is no allocation of gas between multiple retailers and no benefit to be achieved in doing so.

#### Additional information

- The exemption is sought without prejudice to Nova’s legal position with respect to the application of the Rules to its private bypass networks. Nova maintains it is not subject to the Rules as it considers it is not a distributor under the Gas Act 1992 in respect of its bypass networks.

- Gas Industry Co is not aware of any problems with the operation of the previous bypass exemption which expired on 30 June 2009. However, this may not be surprising, given that the effect of the exemption was simply not to apply the allocation process set out in the Rules to bypass networks.
- All gas gates, apart from upstream direct connect gas gates<sup>1</sup>, are currently allocated in accordance with the Rules, including all single retailer open-access gas gates and multiple retailer open-access gas gates. The previous bypass exemption was issued on a transitional basis to reflect the interim nature of the exemption granted and the limited time period for which it applied, ie to 30 June 2009. It provided for an exemption on essentially the same terms sought by Nova here ie exempting its bypass networks from the application of the allocation processes set out in the Rules and the requirement to provide bypass customer consumption data to the allocation agent. Gas Industry Co considered there would be benefits in having more information on which to fully assess the merits or otherwise of applying the consumption information and allocation provisions in the Rules to bypass networks. A term of that previous exemption was that Nova and other participants provide necessary information so as to enable Gas Industry Co to prepare a report on the application of the Rules to bypass gas gates. This report was commissioned by Gas Industry Co and Dr Geoff Bertram undertook an assessment of the application of gas governance arrangements to privately owned gas networks. The report on the '*Application of Gas Governance Arrangements to Private Networks*'<sup>2</sup> was published and consulted on. Gas Industry Co is currently reviewing those submissions.
- Nova complied, on a without prejudice basis, with the rule 31 requirement to provide consumption information for the initial allocation for the June and July consumption period. Those bypass gas gates were accordingly allocated in the usual manner under the Rules. The summary allocation and UFG GAS070 reports for the initial allocations at the bypass gas gates for the June and July consumption periods are set out below:

#### Initial allocation for June 2009

Gas Gate	Distbr	Injection (GJ)	AUFG factor	MUFG factor	UFG total (GJ)	UFG %	Retailer	Allocation (GJ)
FLB15601	NOVA	39483.41	1.0289	0.716483	-360.135	-0.91	GNVG	36984.43
FLB15601	NOVA	39483.41	1.0289	0.716483	-360.135	-0.91	AGCL	2498.977
HST05203	NOVA	15710.33	1.0289	0.991868	344.578	2.19	AGCL	2276.037
HST05203	NOVA	15710.33	1.0289	0.991868	344.578	2.19	GNVG	13434.29
HUN15302	NOVA	8176.45	1.0289	-0.027358	12.252	0.15	GNVG	8176.45
HWA20802	NOVA	10869.84	1.0289	-0.049168	-214.127	-1.97	GNVG	10869.84
TWB24810	NOVA	53346.29	1.0289	1.12697	4007.084	7.51	AGCL	18673.28
TWB24810	NOVA	53346.29	1.0289	1.12697	4007.084	7.51	GNVG	34673.01

<sup>1</sup> See the [Gas \(Downstream Reconciliation\) Rules 2008 \(Exemption: Direct Connect Gas Gates\) Notice 2008](#) and [Gas \(Downstream Reconciliation\) Rules 2008 \(Exemption DR09-01-U: Direct Connect Gas Gate\) Notice 2009](#).

<sup>2</sup> This report is available, along with copies of submissions received, on Gas Industry Co's website at the following link: <http://www.gasindustry.co.nz/work-programme/downstream-reconciliation/consultation>.

### Initial allocation for July 2009

Gas Gate	Distbr	Injection	AUFG factor	MUFG factor	UFG total	UFG %	Retailer	Allocation
FLB15601	NOVA	43836.8	1.0289	-0.0289	0	0	GNVG	43836.8
FLB15601	NOVA	43836.8	1.0289	-0.0289	0	0	AGCL	0
HST05203	NOVA	16593.67	1.0289	-0.0289	0	0	AGCL	0
HST05203	NOVA	16593.67	1.0289	-0.0289	0	0	GNVG	16593.67
HUN15302	NOVA	8728.214	1.0289	-0.0289	0	0	GNVG	8728.214
HWA20802	NOVA	9140.914	1.0289	-0.0289	0	0	GNVG	9140.914
TWB24810	NOVA	54319.61	1.0289	-0.0289	0	0	AGCL	0
TWB24810	NOVA	54319.61	1.0289	-0.0289	0	0	GNVG	54319.61

- Nova's application indicates that its pipelines are for use by Nova only and that there is no requirement for an allocation of gas between retailers. However, gas gate trading notifications status and allocation data submitted for the June and July consumption periods appear to contradict this statement for three of the five bypass gas gates. At the Hastings HST05203, Flatbush FLB15601 and Tawa B TWB24810 gas gates, consumption data have been submitted for both Nova and The Auckland Gas Company Limited (Auckland Gas), albeit for the July consumption period, zero consumption data was submitted by Auckland Gas. While these companies are both Todd Energy subsidiaries, they are separate legal entities and therefore receive separate allocated quantities and UFG amounts.
- Gas quantities at the Tawa B (TWB24810) bypass gas gate have an impact on the Tawa A TWA35610 gas gate. This is because the injection quantities at Tawa A (TWA35610) are calculated by difference, using the quantities measured at the Waitangirua (WTG06910) and Tawa B (TWB24810) gas gates which connects to the Nova bypass network. While there is apparently a meter at the Tawa A (TWA35610) gas gate (owned by Powerco), it has never been calibrated and certified as a revenue meter but has always functioned as a check meter. Vector as the transmission system owner for the Tawa A (TWA35610) gas gate does not consider the meter there is positioned to correctly measure the quantity of gas supplied into Powerco's distribution network (and accordingly considers gas is actually delivered into Powerco's network at the end of Vector's pipeline).

### 3 Issues for consideration

For Gas Industry Co to grant the exemption sought by Nova, it must be satisfied that the exemption is desirable to better achieve the objectives set out in section 43ZN of the Gas Act 1992 and the purpose of the Rules. Issues considered relevant to this assessment are set out below:

- As noted above, the Rules apply equally to all downstream gas gates including all single retailer open-access gas gates, as well as multiple retailer open-access gas gates. The major difference between Nova's bypass gas gates and other single retailer gas gates (such as Vector's and Powerco's) is that they are not open access ie Nova currently only allows Todd

Energy subsidiary retailers to supply consumers on its bypass network. Nova contends that this difference means that its five non-open access networks should be exempted from the Rules on the basis that there is no retail competition.

Gas Industry Co acknowledges that, given the current non-contestable status of the Nova bypass network, the competition benefits in having its bypass networks subject to the Rules may be more limited than at open-access gas gates. However, Gas Industry Co's preliminary view is that there are still information benefits in reconciling consumption information against billed quantities for Nova's consumers and also assessing UFG at these gas gates.<sup>3</sup> In addition, at the retailer level, applying the Rules to bypass gas gates has the potential to further assist competition for bypass consumers through the transparency and quality of consumption and UFG information. Do participants agree or disagree with the preliminary views outlined here?

- These benefits are likely to be more evident where more than one retailer supplies gas to consumers on these networks – and the allocation of UFG to those parties will also vary depending on each retailer's consumption quantities. As noted above, the gas gate trading notifications status and allocation data submitted for the June and July consumption periods indicate that both Nova and Auckland Gas are supplying gas from the Hastings HST05203, Flatbush FLB15601 and Tawa B TWB24810 bypass gas gates. As a result, the Rules allocate consumption quantities and UFG between these two retailers and their different customer allocation groups at these bypass gates. Noting that these two retailers are both Todd Energy subsidiaries, do participants view these circumstances as being material or not to the granting of the exemption sought?
- Nova claims that the incremental costs it will incur could affect competition by reducing incentives to build and extend competing distribution networks, thereby cross subsidising retailers/consumers on open access networks (all of which is inconsistent with the objectives set out in section 43ZN of the Gas Act 1992). Gas Industry Co notes that this argument impliedly assumes that it is efficient to duplicate natural monopoly assets where spare capacity exists – something which many economists would regard as inefficient. Do participants consider the level of costs likely to be incurred by Nova will have a materially negative effect on its ability to compete with other distributors or retailers, or the incentives for distribution investment incentives?
- Nova considers it is not fair to impose requirements and cost on a participant where there is no allocation of gas quantities between multiple retailers and there is no benefit achieved in doing so. Gas Industry Co notes that single retailer open-access gas gates are not exempt from the Rules, and all retailers and distributors participate on an equal basis. If transparency is required of individual retailer allocated quantities traded through open-access gas gates, would fairness issues arise by not requiring transparency of the quantities traded through

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<sup>3</sup> For example, there is the potential for ICPs to be allocated to the incorrect network/gas gate (as some open access and non-open access networks are installed parallel in the same streets). Such an incorrect allocation could be identified through low or negative UFG on one network/gas gate versus high UFG on the other network/gas gate. Also a further factor in this regard is that the calculation of allocated quantities and UFG at the Tawa A shared gas gate can be directly affected and distorted by the level of UFG at Nova's Tawa B gas gate. Continuing to apply the Rules at Tawa B will ensure transparency of UFG for both gas gates and will help identify any potential metering issues.

single retailer bypass gas gates? Alternatively, are the characteristics of bypass networks such that there is good reason for an exemption to be granted?

- Nova also relies on aspects of the Bertram report in support of its application:

...the cost of employing an independent agent to undertake a task which can be performed adequately in-house by the private network owner-operator looks hard to justify.

The clearest case for pragmatic exemption of a merchant network from regulatory oversight relates to reconciliation, because the operational need for independent reconciliation disappears when a network is utilised by only a sole gas retailer rather than several competitors.

To the extent that the application raises policy matters considered in the Bertram report, Gas Industry Co will have regard to those matters in its decision-making process. However, Gas Industry Co notes that the comments quoted by Nova above do not relate to the overall conclusions expressed in the Bertram report with respect to downstream regulation of bypass networks. One of the key conclusions was that sweeping exemptions ought not to be available for bypass networks so long as the gas distribution sector remains an arena of limited competition, and that a distributor in a bypass or monopoly situation ought not to be granted a general exemption from the reconciliation rules. The mere fact that a private network is bringing competitive pressure to bear in a restricted market segment conveys no presumption of a right to be exempted from regulations or rules directed to wider purposes at the level of the gas market as a whole. While the report noted that reconciliation arrangements come closest to meeting the criteria for generalised physical reconciliation on a network with only one user, any case for exemption faces strong provisos<sup>4</sup> ie provided that there are no external effects from the operation of private networks on the ability of other industry participants to carry out allocation and reconciliation processes efficiently and fairly, and provided that there are no other grounds for making private networks subject to the Rules. The report also notes that bypass network operators face less stringent incentives to ensure accurate metering of their customer loads and that rules which require the calculation and disclosure of UFG on private as well as open-access networks can have important efficiency and customer-protection roles. Do participants have any comments on those issues in relation to the exemption sought?

*Q1: Do you consider that the exemption sought for Nova's bypass networks should be granted? Please give your reasons.*

*Q2: Do you consider granting an exemption is desirable to better achieve the objectives set out in section 43ZN of the Act and the purpose of the Rules?*

*Q3: Do submitters have any other comments on the application from Nova seeking exemption from the allocation of gas for its bypass networks?*

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<sup>4</sup> The report also notes exemptions for particular categories of market participants inevitably set up incentives for gaming behaviour, including manipulation of regulatory boundaries, which will usually be detrimental rather than beneficial for acquirers of the final service and to the efficient functioning of the market as a whole.

# Appendix A Recommended format for submissions

To assist Gas Industry Co in the orderly and efficient consideration of stakeholders' responses, a suggested format for submissions has been prepared. This is drawn from the questions posed in the body of this Consultation Paper. Submitters are also free to include other material on the exemption applications in their responses.

Submission from:..... (company name and contact)

Question	Comment
<i>Q1: Do you consider that the exemption sought for Nova's bypass networks should be granted? Please give your reasons.</i>	
<i>Q2: Do you consider granting an exemption is desirable to better achieve the objectives set out in section 43ZN of the Act and the purpose of the Rules?</i>	
<i>Q3: Do submitters have any other comments on the application from Nova seeking exemption from the allocation of gas for its bypass networks?</i>	





# Appendix B Application DR09-12-U from Nova

<p><b>Gas Industry Company Limited</b></p> <p><b>Application for an Exemption from the Gas (Downstream Reconciliation) Rules 2008</b></p> <ol style="list-style-type: none"><li>1. Please complete a separate form for each type of exemption sought.</li><li>2. Complete sections 1 to 4 of the form for all exemption types. Complete section 5 only in addition for urgent exemptions, and section 6 only in addition for transitional exemptions.</li><li>3. Please provide all relevant information. Expand the sections of the form as necessary to provide reasonably full information, but detailed supporting information should be set out in attachments to the form.</li><li>4. Gas Industry Co may request additional information after receiving and reviewing the application</li></ol>						
<p><b>1. Name and contact details for the participant(s) seeking exemption:</b></p> <table><tr><td>Company name: Nova Gas Ltd</td><td>Phone: 04 917 8851</td></tr><tr><td>Contact Name: Charles Teichert</td><td>Fax:</td></tr><tr><td>Email: cteichert@tpm.co.nz</td><td>Mailing Address:</td></tr></table>	Company name: Nova Gas Ltd	Phone: 04 917 8851	Contact Name: Charles Teichert	Fax:	Email: cteichert@tpm.co.nz	Mailing Address:
Company name: Nova Gas Ltd	Phone: 04 917 8851					
Contact Name: Charles Teichert	Fax:					
Email: cteichert@tpm.co.nz	Mailing Address:					
<p><b>2. Type of exemption sought (delete all but one):</b></p> <p>Urgent (under rule 20)</p>						
<p><b>3. Provisions of the Rules from which the exemption is sought:</b></p> <p>Rules 16.3,31, 32, 33, 39, 48, 49, 50, 51, 52, 53, 78, 79.</p> <p>For each of the following gates:</p> <p>FLB15601 Nova - Flatbush</p> <p>HST05203 Nova - Hastings</p> <p>HWA20802Nova - Hawera 2</p> <p>HUN15302 Nova - Hunua 2</p> <p>TWB24810 Nova - Tawa B</p>						
<p><b>4. State the reasons on why you are seeking the exemption and why the exemption</b></p>						

**sought should be granted**

(see notes attached which set out the requirements for different types of exemptions):

**Why the Exemption is sought.**

The exemption is sought without prejudice to Nova's legal position with respect to the applicability of the Gas (Downstream Reconciliation) Rules (the Rules) to Nova private (non open access) pipelines as Nova is not a "gas distributor" as defined by the Gas Act 1992.

Application of the Rules to private networks would mean that Nova would incur unnecessary costs associated with:

- the provision of data to the allocation agent; and
- processing of data by the allocation agent; and
- levies for recovery of allocation agent fees

The gas gates listed above are interconnections to private (non open access) pipelines of Nova Gas that deliver gas to its customers only. The gross consumption for these gas gates is fully accounted for and is metered at the interconnection point to the Vector high pressure transmission system.

Nova's private pipelines are for use by Nova only and as such there is no requirement for allocation of gas between retailers. All gas at the pipeline interconnection point is allocated to Nova and is based on the meter at the interconnection point and not downstream metering. UFG on the Nova network is a matter solely for Nova to manage.

Nova's private pipeline competes with the Powerco and Vector open access distribution networks for the delivery of gas to customers of Nova. Benefits of that service include improved security of supply, quality of service through higher pipeline pressures and the absence of UFG, as well as lower distribution charges.

Rule 65.2.3 of the Switching Rules require a retailer to have a distribution services agreement before a valid switch can be completed. As there are no other retailers able to distribute gas on Nova's pipelines then no customer on the Nova pipeline can switch to another retailer – instead they must disconnect (and they do from time to time) from the Nova pipeline and reconnect to the open access network.

Following on from this, then all gas that flows from the transmission system into Nova's pipelines can only be allocated to Nova and this is consistent with what has occurred historically.

This makes redundant the application of the Rules to Nova with respect to volumes delivered to its customers on its own private pipelines.

### **Why the Exemption should be granted**

Section 19 provides the criteria for the granting of exemptions which are:

1) Section 43ZN objectives:

Section 43ZN of the Gas Act 1992 provides:

*"Objectives of industry body in recommending regulations for wholesale market, processing facilities, transmission, and distribution of gas*

- *The objectives of the industry body, in recommending gas governance regulations under section 43F, are as follows:*
  - *(a) the principal objective is to ensure that gas is delivered to existing and new customers in a safe, efficient, and reliable manner; and*
  - *(b) the other objectives are—*
    - *(i) the facilitation and promotion of the ongoing supply of gas to meet New Zealand's energy needs, by providing access to essential infrastructure and competitive market arrangements:*
    - *(ii) barriers to competition in the gas industry are minimised:*
    - *(iii) incentives for investment in gas processing facilities, transmission, and distribution are maintained or enhanced:*
    - *(iv) delivered gas costs and prices are subject to sustained downward pressure:*
    - *(v) risks relating to security of supply, including transport arrangements, are properly and efficiently managed by all parties:*
    - *(vi) consistency with the Government's gas safety regime is maintained."*

If the Rules are applied to private (non open access) networks then additional costs would be incurred by Nova with respect to its competitive bypass pipelines that disadvantages it compared to its Powerco/Vector open access network competitors.

Open access networks derive benefits from the allocation arrangements as increased volumes of gas can be distributed – and the costs associated with that process are 'socialised'. However, that benefit is traded off against the necessity to provide for the allocation of gas quantities among multiple parties trading on that network.

Requiring a non open access pipeline that competes with an open access network to incur costs associated with compliance with the Rules will represent a reduction in competitive tension and introduce a barrier to investment in new bypass pipelines.

Granting the exemption is consistent with the objectives set down in S43ZN of the Act in relation to:

- (a) maintaining economic efficiency, and reliability of supply created by having multiple competing distribution networks
- (b) (i) ensuring that there not disincentives to new investment in competitive distribution

networks;

- (b) (ii) barriers to competition in the market for distribution services are minimised;
- (b) (iii) maintaining incentives for development and investment in new distribution networks and in particular those that compete with existing monopoly networks;
- (b) (iv) delivered gas costs are subject to downward price pressure through competition in not only the energy part of the supply chain but also the distribution segment.

2) The purpose of the Rules:

The purpose of the rules as per Section 2 of the Rules states:

*" The purpose of the rules is to establish a set of uniform processes that will enable the fair, efficient and reliable downstream allocation and reconciliation of downstream gas quantities"*

We believe granting an exemption is consistent with the purpose because:

- it would not be fair or efficient to impose requirements and costs on a reconciliation participant where there is no allocation of gas quantities between multiple retailers and there is no benefit achieved from doing so. Ultimately, this leads to higher costs being passed through to consumers.
- granting an exemption will not affect the reliability of allocation processes.

**Describe how the exemption sought may affect other participants (including service providers) and any costs and benefits to them:**

The exemption will not affect other participants. Service providers will simply have fewer gates to be responsible for in their allocation activities.

**Specify how long the exemption sought is to be in effect for. Give reasons for the period that you specify:**

From 1 July 2009.

**Specify what conditions and/or alternative arrangements relating to the exemption sought are appropriate:**

It may be appropriate to consider conditions such as:

- 1) the exemption is only valid until such time as it is made redundant by a future rule

change: and

- 2) the exemption is only valid while Nova maintains its non open access policy on its bypass pipelines.

**5. Additional information for an urgent exemption:**

If your application is urgent, specify the date(s) by when a decision is needed:

Monday 20 July 2009

State the reasons for seeking an urgent exemption rather than a standard exemption:

Nova requested and received an exemption from the Rules (Transitional Exemption DR08-27-U: Bypass Gates) in November 2008. The transitional nature of the exemption provided for an exemption until 30 June 2009.

As per the Notice of Exemption provided by the GIC:

\*The reasons for granting the transitional exemption are:

(a) There is currently incomplete information on which to assess in detail the costs and benefits in applying the provision of consumption information and allocation requirements in the Rules to bypass gas gates.

(b) The exemption is being granted on a transitional basis to allow Gas Industry Co time to determine, and report on, whether it is appropriate that the provision of consumption information and allocation requirements in the Rules apply to bypass gas gates.

(c) Consistent with achieving the purpose of the Rules, an alternative arrangement has been provided to ensure consumption information, and other related bypass gas gate and distribution network information, will be available to Gas Industry Co.

To date, the GIC has not shown that there are any adverse consequences of the exemption being granted and has begun (but not completed) a consultation process on the issue of application of regulations to private networks.

Dr Bertram's February 2009 report made the following comments regarding reconciliation:

"The operational need for independent reconciliation and allocation disappears as soon as the relevant network is utilised by only a sole gas retailer rather than several competitors. On private networks there are no competing retailers sharing the facilities, and hence no problem of allocating and reconciling across multiple parties. At first sight, therefore, the cost of employing an independent agent to undertake a task which can be performed adequately in-house by the private network owner-operator looks hard to justify." (page 38)

"The clearest case for pragmatic exemption of a merchant network from regulatory oversight relates to reconciliation, because the operational need for independent reconciliation disappears when a network is utilised by only a sole gas retailer rather than several competitors".

To date the GIC has not advised Nova of any sensible reason for the application of the Rules to Nova's private non open access pipelines. Further, the GIC has ignored the issue of other embedded networks (eg. in commercial premises or apartment buildings) being captured by the Rules.

Nova was expecting the previous exemption to be made permanent following the consultation on application of regulations to private networks and is surprised at the position by the GIC recorded in its letter of 17 June 2009: namely that Nova needs to apply for a further exemption, and that the GIC's preliminary view is the Nova will need to comply with the Rules.

As stated during consultation on previous exemptions and the application of regulations to private networks, Nova's view is that the Rules do not actually apply to private networks , as Nova does not provide distribution services to other parties.

#### **6. Additional information for a transitional exemption**

State the reasons for seeking a transitional exemption rather than a standard exemption:

The exemption is requested under urgency as provided for by Rule 20.

**Please email this form to [bas.walker@gasindustry.co.nz](mailto:bas.walker@gasindustry.co.nz)**

# Appendix C Previous bypass exemption

## Gas (Downstream Reconciliation) Rules 2008 (Transitional Exemption DR08-27-U: Bypass Gas Gates) Notice 2008

Pursuant to rule 81 of the Gas (Downstream Reconciliation) Rules 2008, Gas Industry Company Limited ("Gas Industry Co"), as the industry body appointed pursuant to s43ZL of the Gas Act 1992, gives the following notice.

### Notice

#### 1. Title and commencement

- (a) This notice is the Gas (Downstream Reconciliation) Rules 2008 (Transitional Exemption DR08-27-U: Bypass Gas Gates) Notice 2008.
- (b) This notice comes into force on the date of this notice.

#### 2. Interpretation

- (a) In this notice, Rules means the Gas (Downstream Reconciliation) Rules 2008 made by the Minister of Energy under sections 43F, 43Q and 43S of the Gas Act 1992 by notice published in the New Zealand Gazette, as may be amended from time to time.
- (b) Any term that is defined in the Rules and used, but not defined, in this notice has the same meaning as in the Rules.
- (c) Bypass gas gates means the gas gates that supply consumers via a non-open access distribution system and are either set out below or otherwise determined and published by Gas Industry Co to be bypass gas gates for the purposes of this notice.

FLB15601 Flat Bush (Nova)
HST05203 Hastings (Nova)
HWA20802 Hawera (Nova)
HUN15302 Hunua (Nova)
TWB24810 Tawa B (Nova)

#### 3. Transitional Exemption

A transitional exemption from the application of rules 31, 32, 33, 39, 48, 49, 50, 51, 52, 53, 78 and 79 is granted in respect of bypass gas gates subject to the following terms and conditions:

- (a) To avoid doubt, as no quantities of gas will be allocated to a retailer by the allocation agent in an initial allocation under rule 48 in respect of bypass gas gates, ongoing fees payable under rule 16 of the Rules do not apply to bypass gas gates.
- (b) This exemption expires on 30 June 2009.

- (c) Any retailer and distributor supplying gas through the bypass gas gates must provide any information and assistance requested by Gas Industry Co in relation to the operation of the Rules or this transitional exemption, so as to enable Gas Industry Co to prepare a report assessing the costs and benefits of this transitional exemption, the application of the Rules in general to bypass gas gates and setting out a recommended course of action on the expiry of the transitional exemption.

#### **4. Reasons for granting the transitional exemption**

The reasons for granting the transitional exemption are:

- (a) There is currently incomplete information on which to assess in detail the costs and benefits in applying the provision of consumption information and allocation requirements in the Rules to bypass gas gates.
- (b) The exemption is being granted on a transitional basis to allow Gas Industry Co time to determine, and report on, whether it is appropriate that the provision of consumption information and allocation requirements in the Rules apply to bypass gas gates.
- (c) Consistent with achieving the purpose of the Rules, an alternative arrangement has been provided to ensure consumption information, and other related bypass gas gate and distribution network information, will be available to Gas Industry Co.

**DATED** at Wellington this 6th day of November 2008.

For and on behalf of Gas Industry Company Limited:

RT HON JAMES BOLGER, O.N.Z, Chair.