

Revision of Essential Services and Minimal Load Guidelines - Summary of Submissions

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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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Introduction

1.1 Background

The Gas Governance (Critical Contingency Management) Regulations 2008 (the CCM Regulations) have as their purpose the effective management of critical gas outages and other security of supply contingencies without compromising long-term security of supply. Under the CCM Regulations, gas consumers may be designated as Essential Service Providers (ESPs) or Minimal Load Consumers (MLCs), depending on the nature of the services they provide and the risk that gas curtailment poses to their plant or to the surrounding environment. It is gas retailers who make the ESP and MLC designation decisions, except for gas consumers using more than 15 TJ of gas a day and disputed cases; for these exceptions, the decision is made by Gas Industry Co as the industry body.

As a way of providing guidance about the definition of ESPs and MLCs, and thereby promoting consistent decisions between retailers, Gas Industry Co originally released the document *Essential Services and Minimal Load Guidelines* (Guidelines) in February 2009.

In August of this year, Gas Industry Co released a proposed revision of the Guidelines, the purpose of which was to reflect experience to date on the designation process, and particularly arising from the Maui Pipeline outage in October 2011. The proposed revised Guidelines were meant as an interim measure, as the Gas Industry Co is undertaking a comprehensive review of the CCM Regulations, and it may be that this review will lead to changes in how ESPs and MLCs are defined and designated. It can, however, be a lengthy process to make changes to regulations, and industry participants have indicated a desire for an interim measure. As such, Gas Industry Co considered it appropriate to provide greater clarity to industry participants through a revision of the current Guidelines, so that lessons from recent experiences can be implemented in a timely fashion and as far as possible within the scope of the current CCM Regulations.

A total of seven submissions have been received on the proposed Guidelines¹ from:

- Contact Energy Limited (Contact)
- Energy Direct NZ Limited (Energy Direct)

¹ Submissions are available on the Gas Industry Co website at <http://gasindustry.co.nz/work-programme/discussion-papers-presentations-and-reports/revision-essential-services-and-minimal-load-guidelines>

- Fonterra Co-operative Group (Fonterra)
- Genesis Power Limited (Genesis)
- Greymouth Gas New Zealand Limited (Greymouth)
- Mighty River Power Limited (MRP)
- Vector Limited (Vector)

The purpose of this document is to summarise the submissions received and to respond to the issues they raise.

2

Summary of submissions received

2.1 Summary

Overall there is general agreement with the proposed revision to the Guidelines, with many submitters believing that this revision is a good first step or stop gap measure while the larger task of the CCM Regulations review takes place.² Submitters have provided specific comments on the following aspects of the proposed Guidelines, which are discussed in the sections below:

- ESP categories
- Designation process for ESPs
- MLC designations
- Drafting issues

While Fonterra, Genesis and Vector acknowledge that this revision of the Guidelines is an interim measure and provides positive value while the larger review of the CCM Regulations takes place, Greymouth Gas believes that proceeding with this revision before the larger review is “back-to-front and inefficient”.

As we explained in the consultation document, although it is likely that the review will lead to changes in the criteria and process for ESP and MLC designation, the amending of Regulations can be a lengthy process. The purpose of revising these Guidelines is to provide as much clarity to industry participants as possible on these matters.

However, it must also be kept in mind that Guidelines cannot overwrite Regulations; that is, until the CCM Regulations are amended, the criteria and designation processes they include are still in effect. The Guidelines can only interpret the existing provisions and are not binding on retailers. As discussed below, some submitters propose more extensive changes to the criteria and designation process, but these suggestions need to be progressed through the CCM Regulations review, not through the Guidelines. Such proposals are nevertheless useful, and we have responded to key elements in this report.

² An overview of the CCM Regulations review can be found here: <http://gasindustry.co.nz/work-programme/discussion-papers-presentations-and-reports/review-gas-critical-contingency-managemen>

2.2 ESP categories

Essential Nature of Service

Proposal: ESP designations should only be granted to parties who are themselves providing essential services

Two submissions address this point: Fonterra states that ESP designation should be based upon the effect of curtailment on the emergency response objectives (and taking into account what mitigating steps are available or unavailable); while Vector supports the proposed new wording that it is *the service itself*, rather than *the possible consequences of curtailing a particular gas user*, that should be considered in assessing applications for ESP designations.

It is uncontroversial that priority status should go to such essential services as critical care providers and critical infrastructure. The more difficult issue is whether priority should also extend to preventing other consequences gas curtailment could have. For that, one needs to assess the context and size of the gas use. In simple terms, no matter how big the effect, there may well not be gas to manage it, and it may not be equitable or efficient to allocate it that way anyway.

In the case of dairy processing, for example, allocating priority gas during a critical contingency to that use would not be to allow the provision of an “essential service” but rather to avoid milk disposal, an undesirable consequence that should preferably be controlled otherwise. In this case, the Resource Management Act 1991 contains controls on the discharge of contaminants into the environment, and regional councils provide guidance on what farmers can do to dispose of milk that isn’t able to be processed (which can happen for a range of reasons aside from a gas critical contingency). Awarding priority access to gas to prevent an undesirable consequence therefore is inappropriate from a policy point of view – since such consequences are dealt with under other statutes – and doing so could dilute the incentives that are in place for the people responsible to plan for and manage such situations.

Further, it needs to be kept in mind that, in any contingency event, there are a range of possible scenarios, ranging from a modest reduction in gas supply to a complete loss of gas transmission. In a minor event, only bands 0 and 1 may be affected. If the CCO also calls for curtailment of bands 2 and 3, the supply situation is more severe. In such a situation, it may be that there is simply not the gas available to provide priority access to gas users to prevent undesirable consequences. Gas Industry Co’s analysis of ESP designations for the dairy industry shows that they are the majority of ESP load; and are together of such a volume that they could materially reduce the CCO’s ability to meet the aims of the CCM Regulations in terms of system integrity and restoration. The annual load of bands 2 and 3 is about 20 PJ, whereas the annual load of dairy processors designated as ESPs, for example, is about 7 PJs, or about one-third of the band 2 and 3 load. In other words, the scale of gas volumes in many cases is such that it is inconceivable that it would be possible to allocate gas to such users in most critical contingency scenarios where cuts below bands 1a and 1b are required.

A related consideration is that, were such large loads to be included in the ESP band, it would be difficult for the CCO to keep the band on. That is, the band would represent such a large load, proportionally, that there are a number of situations where it would need to be curtailed. This, in turn, would mean all ESPs would be curtailed – even those that uncontroversially deserve priority, such as hospitals.

For these reasons, Gas Industry Co intends to keep the wording that it is *the service itself*, rather than *the possible consequences of curtailing a particular gas user*, that should be considered in assessing applications for ESP designations.

Care of sick, injured, and dependent people

Proposal: This principle can be applied to vulnerable communities such as hospitals, respite care, aged care facilities, and prisons

Contact suggested that this criterion should also apply to kindergartens and early childhood centres. While Gas Industry Co is sympathetic to the desire to look after young children and babies, we question whether childhood centres can generally be considered vulnerable communities, since, if the centres needed to be closed due to a lack of heating or any other reason (e.g. loss of electricity or water supply), the children could be sent home with their parents.

Further, it must be remembered that, to be eligible for ESP designation, a gas consumer must consume more than 2 TJ of gas per year. The question is whether an early childhood centre would consume more gas than this threshold. To analyse this issue, Gas Industry Co has looked at the data on ESPs provided to it by retailers. At the moment, there are 56 ESPs on the gas registry that are involved in primary or secondary education. Most of these ICPs are in allocation group 6; by definition, these are customers who consume less than 250 GJ per year. Eighteen of the school ESPs are in allocation group 4, which means that they consume more than 250 GJ but less than 10 TJ of gas per year. The point is that many, if not all, early childhood centres would fall into curtailment band 6, and therefore already have the highest priority access to gas during a contingency.

Provision of essential services

Proposal: Lifeline utilities would include water and wastewater treatment facilities; food would include suppliers of fresh milk and fresh bread for domestic consumption

Only one submission mentions this issue: Vector agrees with the proposal.

Protection of natural and physical resources

Proposal: would include facilities operated by Department of Conservation or the Ministry for Primary Industries

Two submissions address this point. Fonterra believes that the proposal is inconsistent: prevention of environmental harm should be as, if not more, important as improving the environment or repairing damage to the environment. Its submission states that

an ESP designation should be based upon the effect of curtailment on the emergency response objectives, taking into account what mitigating steps are available.

Vector, on the other hand, agrees that narrowing the types of consumers that would qualify under this category would be consistent with the consideration that it is not the possible consequences of the curtailment that are relevant but the nature of the service in question. It points out that alternatively, customers could apply for MLC designation for the orderly shutdown of their plant or facilities.

As outlined above, using priority to avoid undesirable consequences does not seem to be a workable or appropriate use of the ESP designation provision. This is particularly the case where applying priority to band 3 customers causes band 4 customers to be curtailed (with, potentially, a greater loss to the economy). Gas Industry Co does not understate the potential scale of environmental harm, including the damage possible due to disposing of milk in waterways. This potential scale makes it all the more important that gas users develop robust contingency plans for gas outages (and other causes of plant outage). ESP designation cannot be assumed to be an effective mitigation for the reasons we set out above.

Preservation of Economic Activity

Proposal: would include such entities as NZ Stock Exchange and the Reserve Bank

Four submissions address this point:

- Contact and MRP question the need for this category, as organisations such as the NZ Stock Exchange and the Reserve Bank should only need gas for heating and hot water.
- Fonterra sees an inconsistency in allowing infrastructural services that support normal economic activity to be designated as ESPs, but not the businesses that directly contribute to economic activity.
- Vector agrees with the proposal, saying that, for example, the Reserve Bank should be an ESP but not a clothing shop.

It is important to remember that any critical contingency in which curtailments are necessary will have an economic impact, and the size of the impact will depend on the length and severity of the gas shortage. It is not possible to preserve the range of economic activity through ESP designations, which is why Gas Industry Co interprets section (i) of the CDEM Plan Order 2005 as applying to those institutions that can be regarded as part of the economic infrastructure.

Gas Industry Co agrees with Contact and MRP that perhaps the consideration of economic activity is not entirely relevant in the case of a critical contingency. At the moment, the criterion is included in the CCM Regulations by virtue of its inclusion in

the CDEM Plan Order 2005, but the issue will be considered further in the review of the CCM Regulations.

Other criteria

Energy Direct suggests two categories of gas users that should be considered for ESP status: crematoria and animal farming and slaughtering processes. These suggestions reflect understandable concerns about human and animal health and dignity. However, animal welfare and human dignity do not fit within any of the CDEM objectives. This issue will be considered further in the review of the CCM Regulations.

2.3 Designation process for ESPs and MLCs

Approving body

The issue of who should have the responsibility for designating ESPs and MLCs is discussed in five submissions. Contact, Genesis, Greymouth, MRP, and Vector all suggest that it should be Gas Industry Co who has this role. The submissions state that having a single body assess ESP and MLC applications would be a more efficient and consistent way of making the designations.

The idea of having a central approving body for ESP and MLC applications is something that has been raised in the context of the CCM Regulations review, and Gas Industry Co is progressing the proposal through that avenue. Until the CCM Regulations are amended, though, it remains the responsibility of retailers to assess applications for all consumers except for those defined as large consumers (those with the potential to consume more than 15 TJ per day).

Consumption thresholds

Energy Direct suggests that the definition of “large consumer” in the CCM Regulations could be clarified, as some large loads are seasonal: is it over 15 TJ per day on average over the year, or over 15 TJ per day for a certain number of days of the year?

Gas Industry Co notes that the CCM Regulations define “large consumer” as

a consumer that is supplied gas at a consumer installation that is connected directly to the transmission system and has the potential to consume gas at rates that in aggregate exceed 15 terajoules a day

Thus it is the potential to use over 15 TJ per day, rather than actual usage that defines a large gas consumer. Gas Industry Co will revise the wording in the Guidelines to clarify this point.

Designating a minimum level of gas

Proposal: only the gas supply required to provide the essential services is protected under the designation

Two submissions address this point:

Genesis supports the approach that only the essential component of gas usage is protected by the ESP designation. However, it notes that the CCM Regulations do not currently require ESPs to provide information on how much gas they require to maintain the essential elements of their service, and without this information, it would be difficult to enforce compliance with this condition.

Vector echoes this concern, stating that a consumer is either an ESP (with indivisible rights) or not, and there is no distinction between an ESP's essential and non-essential consumption. Both submissions suggest that the CCM Regulations should be amended to provide for this proposal.

Gas Industry Co intends to progress the issue of essential gas usage by ESPs in the CCM Regulations review. In the meantime, we would expect that the proposal can be implemented to the extent possible on a voluntary basis.

Reassessing designations

Vector suggests that processes should be put in place to make sure that designations remain current. It recommends that Gas Industry Co request retailers to reassess their designations once the Guidelines are issued in final form, and that designations be reviewed regularly, such as every two years.

On the first suggestion, Gas Industry Co is aware that a number of commercial and industrial gas users are considering backup fuel arrangements following last year's Maui outage. The CCM Regulations already provide that (reg 44(5)):

If a retailer reasonably considers a consumer who has been approved as an essential service provider no longer meets the criteria [for ESP designation]... the retailer must give notice requiring the consumer to reapply ... for approval...

Because of this requirement in the CCM Regulations, Gas Industry Co does not consider it necessary to add something similar to the Guidelines.

Gas Industry Co agrees that it is important that ESP and MLC designations remain current. The idea of regular reassessments is an issue that will be progressed in the CCM Regulations review.

2.4 MLC designations

Curtailement of MLCs

Energy Direct and MRP have concerns with the requirement that MLCs are required to curtail fully when Band 4 is curtailed. They note that the reason that MLC status is granted is because of significant risks due to complete shutdown and submit that it is therefore unreasonable to expect MLCs to curtail completely when band 4 is curtailed.

Gas Industry Co notes that the requirement for MLCs to curtail at band 4 is written into the CCM Regulations, so this is an issue that can be considered further in the context of the review. However, we note that the current drafting recognises, at least

implicitly, that when gas supplies are tight enough to require the curtailment of band 4, the need to conserve gas overrides MLC concerns. Again, it is important to recognise that contingencies could arise that require the immediate curtailment of gas usage. Neither MLC nor ESP status should be relied on as a contingency measure.

Minimum load

MRP suggests a statement in the Guidelines to emphasise that the MLC status only allows minimum load usage for an agreed shut down period, not for continuous use. Gas Industry Co agrees with this suggestion.

MLC criteria

Energy Direct suggests that avoiding serious health and safety risks should be added to the criteria for MLC designation. Gas Industry Co intends to examine the criteria for MLC designation as part of the CCM Regulations review.

2.5 Drafting issues

Contact suggests deleting the last sentence in the first paragraph under 3.1, Consideration 1. The text can be found on page 5 of the Guidelines (emphasis added):

Considerations

The following considerations have gone into the development of these Guidelines:

1. *Essential Service Provider designations should be assessed in the context of a gas critical contingency lasting only a matter of days.*

*Critical contingencies are most likely to develop as a result of a physical issue with either a production station or a gas pipeline. The majority of contingency events have lasted less than 24 hours, and the longest six days (the 2004 Pohangina River Bridge failure, which affected supply to Hawkes Bay, lasted five days; the 2011 failure of the Maui Pipeline lasted six days). **By way of contrast, contingencies in other countries often arise due to longer-term reductions in gas supply due to commercial or political issues.***

The sentence was put in to emphasise that the considerations the New Zealand gas market faces in a critical contingency are different from those in other countries. Gas Industry Co intends to retain the sentence.

Contact suggests deleting the second paragraph under 4.1. In the draft, the sentence said (highlighted in boldface):

2.6 Application process

Each retailer shall notify their consumers that, if they wish to be classified as either Essential Service Providers or Minimal Load Consumers, they must apply to the retailer in writing. In the case of large consumers with no retailer, Gas Industry Co shall provide this notification.

Notification shall be made as soon as practicable after the commencement date (4 December 2008).

Gas Industry Co agrees and considers that the sentence should be replaced with "Retailers are expected to remind their consumers of the ESP and MLC categories and the application procedure on a regular basis, and at least once every two years." The amended version is on p. 13 of the revised Guidelines.

Vector recommends inserting the word "only" in Table 2 under objective (d) "*Care of sick, injured, and dependent people (first aid, medical, and evacuation facilities, and welfare)*" and column "*Types of consumer that do not qualify*" "Facilities listed that are engaged only in elective and/or cosmetic procedures that can be deferred" (under types of consumer that do not qualify under the Care of sick, injured, and dependent people objective). Gas Industry Co agrees. The revised version is on p. 8 of the attached Guidelines.

Vector recommends inserting "Essential" in Table 2 under objective (h): "*Protection of natural and physical resources (to the extent reasonably possible in the circumstances)*" and column "*Types of consumer that qualify*" at the start of the sentence "facilities operated by the Department of Conservation...." Gas Industry Co agrees. The revised version is on p. 8 of the revised Guidelines.

3

Conclusion

3.1 Summary

Overall, there was general consensus that the revision of the Essential Services and Minimal Load Guidelines was a good interim or stop gap measure while the large task of revising the CCM Regulations takes place.

A number of suggestions have been made that have been taken in to account in the revision of the Guidelines while a number of issues were raised that will be further investigated in the larger revision of the CCM Regulations.

Again, it must be kept in mind that until the CCM Regulations are amended, the criteria and designation processes they include are still in effect. The Guidelines can only interpret the existing provisions and are not binding on retailers.

A version of the Guidelines showing all marked up changes is attached as an appendix.



Draft

Proposed Revision of
Essential Services and
Minimal Load Guidelines
2012

Date issued: 2 August 2012
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About Gas Industry Co.

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- develop arrangements, including regulations where appropriate, which improve:
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 - 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
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1

Introduction

1.1 Context

~~The Gas Governance (Critical Contingency Management) Regulations 2008 (the CCM Regulations) came into effect in 2010, replacing the previous industry arrangement. The purpose of the CCM Regulations is to achieve the effective management of critical gas outages and other security of supply contingencies without compromising long-term security of supply.~~

~~The Gas Governance (Critical Contingency Management) Regulations 2008 (the Regulations) The CCM Regulations require that all gas consumers are classified for the purpose of curtailing groups of similar consumers. This classification is based on annual consumption volumes. The curtailment bands provide a convenient and efficient way for the CCO to direct groups of customers to curtail their demand, and they provide a means for the CCO ensure consistency between consumers and improve curtailment efficiency. In addition to simplifying the curtailment instruction process, the CCO can use the band information to predict the quantum and rate of load reduction in response to a curtailment order. The curtailment bands ensure that customers with similar annual gas demands are treated consistently.~~ Consumers also benefit from being able to use their classification to make business decisions around their own contingency arrangements.

The CCM Regulations recognise that some consumers provide essential services and should not be curtailed unless all other options have been exhausted. The designation of essential service providers is addressed in reg 44.

The CCM Regulations also recognise that, for some consumers, maintaining a relatively small gas flow to enable an orderly plant shut-down would prevent significant damage to capital plant and/or the environment. Where the potential damage is disproportionate to curtailment objectives, these consumers may be designated as minimal load consumers. The designation of minimal load consumers is addressed in reg 45.

Approval of a consumer's designation is the responsibility of its retailer except for large consumers (those using more than 15TJ per day). In this case, Gas Industry Co is responsible for approving the designation.

1.2 ~~Arrangements prior to the Regulations~~ Purpose of the Guidelines

~~The National Gas Outage and Contingency Plan (NGOCP) provides for a categorisation of consumers based on their gas consumption, ability to operate on alternative fuels, potential for product loss and~~

~~environmental damage, and whether they are an essential service provider. The categories are summarised in Appendix A.~~

~~The meaning of 'essential service provider' is not defined in the NGOCP but has been historically linked to the provisions of the Civil Defence Emergency Management (CDEM) plan.~~

1.3—Purpose

These Guidelines provide principles and procedures for the relevant retailers and Gas Industry Co to ensure:

- designations support the objectives of the CCM Regulations;
- there is consistency in making designations; and
- consumers have clarity regarding processing of applications~~clarity for consumers.~~

1.41.3 Scope of guidelines

The Guidelines apply to the designation of consumers as essential service providers (ESPs) and minimal load consumers (MLCs).

The Guidelines do not cover the allocation of consumers to specific curtailment bands except band five (essential service providers).

~~Until Parts 3 and 4 of the Regulations come into force, the provisions of the NGOCP including the curtailment bands set out in the NGOCP continue to apply.~~

1.51.4 Status of guidelines

These Guidelines are not required under the Regulations. Gas Industry Co intends to use the Guidelines as a means of ensuring a consistent approach to designations in respect of large consumers and in considering designation disputes from consumers generally.

Although the Guidelines do not have any particular status under the CCM Regulations, it is hoped that retailers will perceive value in the Guidelines when processing applications from their customers. In this way, classifications could be expected to be reasonably consistent across retailers and Gas Industry Co.

Please note these Guidelines are not legally binding and need to be read in conjunction with the Regulations. The general approach set out in these Guidelines in no way reduces the requirement upon participants to know and comply with their obligations under the Regulations.

2 Glossary

CCO	Critical Contingency Operator as defined in r5 of the Regulations
CDEM	Civil Defence Emergency Management
<u>CCM Regulations</u>	<u>Gas Governance (Critical Contingency Management) Regulations 2008</u>
<u>ESP</u>	<u>Essential Service Provider</u>
<u>MLC</u>	<u>Minimum Load Consumer</u>
<u>NGOCP</u>	<u>National Gas Outage Contingency Plan—voluntary contingency plan created and administered by a GANZ sub-committee</u>
<u>Regulations</u>	<u>Gas Governance (Critical Contingency Management) Regulations 2008</u>
RPO	Reasonable and Prudent Operator - a standard for performance of obligations equal to or better than good industry operating practice relative to recognised international practice

3

Principles Guidelines

3.1 Essential service provider

Regulation 44(3) states that 'A retailer must approve a consumer's application to be an essential service provider if both of the following criteria are met:

- (a) *the consumer provides services that are necessary to further the emergency response objectives set out in clause 59(4) of the Schedule of the National Civil Defence Emergency Management Plan Order 2005; and*
- (b) *the consumer can demonstrate that its annual gas consumption-*
 - (i) *was greater than 2 terajoules in any 12-month period within the 2 years before the consumer's application; or*
 - (ii) *will be greater than 2 terajoules in the 12-month period after the consumer's application.'*

Principles

The emergency response objectives in the Schedule of the CDEM Plan Order include:

- (a) *preservation of life; and*
- (b) *prevention of escalation of the emergency; and*
- (c) *maintenance of law and order; and*
- (d) *care of sick, injured, and dependent people (first aid, medical, and evacuation facilities, and welfare); and*
- (e) *provision of essential services (lifeline utilities, food, shelter, public information, and media); and*
- (f) *preservation of governance (continuity of the machinery of government); and*
- (g) *asset protection, including buildings and historic heritage assets (including structures, areas, landscapes, archaeological sites, and wahi tapu); and*
- (h) *protection of natural and physical resources (to the extent reasonably possible in the circumstances); and*
- (i) *preservation of economic activity.*

The Regulations and the Schedule of the CDEM Plan Order provide that the activities and products that are eligible for designation as ESPs are only those 'necessary to further the emergency response objectives'. The decision to grant an ESP designation should accordingly be based on what are truly 'essential services' for managing during a gas critical contingency, rather than what might be convenient or which may fall within a broader category (e.g. 'food') that may contain non-essential elements.

These emergency response objectives apply broadly to a variety of emergency situations and must be considered in the context of a gas critical contingency.

In particular, the test under regulation 44(3) requires the consumer to be providing services that are necessary to further these emergency response objectives. In the context of a gas critical contingency, the relevant objectives that must be considered will be those that would be affected by the curtailment of the relevant consumer's gas supply.

These Guidelines have been developed on the basis of a gas critical contingency lasting up to three days. It is expected to be extremely rare for a gas critical contingency to last beyond three days, and in the past the majority of contingency events have lasted less than 24 hours. The Guidelines also operate on the assumption of a gas-only contingency rather than, for instance, a gas outage that gives rise to an electricity shortage.

If the essential service provider designations were assessed in the context of a wide-ranging emergency of an extended duration, it would lead to excessive designations in this band, which would reduce the effectiveness of curtailments to manage a gas-only contingency — contrary to the purpose of the Regulations. In the event that a Civil Defence Emergency is declared, instructions issued pursuant to the Civil Defence Emergency Management Act 2002 take precedence over curtailment instructions issued by the CCO (refer to r14 of the Regulations).

Considerations

The following considerations have gone into the development of these Guidelines:

1. Essential Service Provider designations should be assessed in the context of a gas critical contingency lasting only a matter of days.

Critical contingencies are most likely to develop as a result of a physical issue with either a production station or a gas pipeline. The majority of contingency events have lasted less than 24 hours, and the longest six days (the 2004 Pohangina River Bridge failure, which affected supply to Hawkes Bay, lasted five days; the 2011 failure of the Maui Pipeline lasted six days). By way of contrast, contingencies in other countries often arise due to longer-term reductions in gas supply due to commercial or political issues.

If the essential service provider designations were assessed in the context of a wide-ranging emergency of an extended duration, it would lead to excessive designations in this band, which would reduce the effectiveness of curtailments to manage a gas-only contingency.

However, instructions issued pursuant to the Civil Defence Emergency Management Act 2002 (CDEM Act) take precedence over curtailment instructions issued by the CCO (refer to r14 of the Regulations). Therefore, in the event of a protracted gas outage, it is open to Ministry of Civil Defence Emergency Management to declare a civil defence emergency and to use the powers under the CDEM Act to adjust gas allocations in light of the prevailing circumstances. This means that longer or broader contingency events can be addressed through this mechanism, rather than through more extensive interpretation or application of ESP and MLC determinations.

~~These Guidelines also assume that the essential service provider designation does not apply to essential service providers that have alternative fuel sources. Consumers with alternative fuel sources are unlikely to be affected by the curtailment of gas such that the services they provide would compromise furthering the emergency response objectives.~~

2. Essential Service Provider designations should normally apply only for gas needed in the production of the essential services for which there are no alternative fuel sources.

Consumers with alternative fuel sources should still be able to function if their gas supply were curtailed, so providers of essential services without such alternative fuel sources should get priority access to gas during a critical contingency.

3. Only the gas supply required to provide the essential services is protected under the designation; any non-essential production should adhere to the curtailment instructions followed by other non-essential gas consumers.

For example, a baker with an ESP designation¹ who normally produces a range of baked goods should, during a contingency when it would otherwise be curtailed, only be able to use gas to bake fresh bread as part of the emergency response. Similarly, an ESP-designated consumer falling under the 'vulnerable communities' category² would be able to use gas for space heating of living quarters, hot water and food preparation for such communities, but not for non-essential consumption such as heating swimming pools or recreational facilities.

4. ESP designations should only be granted to parties who are themselves providing essential services.

In other words, supplying goods or services to an essential service provider is not normally a sufficient reason for granting an ESP designation. A party with an ESP designation should make appropriate arrangements for its other dependencies that may be affected by a critical contingency. For example, that may mean that such a gas customer needs either to maintain sufficient stocks of inputs to ride out a critical contingency, require its suppliers to maintain

¹ Under (e) of clause 59(4) of the NCDEM Plan Order 2005: provision of essential services

² Under (d) of clause 59(4) of the NCDEM Plan Order 2005: care of sick, injured, and dependent people

inventories, choose suppliers that are already resilient to a gas outage, or be willing to use import substitution where necessary.

5. ESP designations should not normally be sought or granted to manage potential environmental damage resulting from gas curtailments.

Gas users who potentially face creating environmental damage from a lack of access to gas (such as risks of having to discharge milk to the environment as a result of interruption to dairy processing facilities) should ensure that they have appropriate contingency plans in place. For example, a number of regional councils³ have published guidance on the appropriate methods for disposing of surplus milk. Gas users for whom an orderly plant shutdown would minimise the chances of environmental damage should consider applying for a MLC designation.

Above all, it should be remembered that obtaining an ESP designation is no guarantee of uninterrupted gas supply. It is incumbent on all gas consumers to have contingency plans in case gas is not available to them on a temporary basis.

Assessment criteria for essential service provider designations – r44(3)

In assessing whether a consumer can demonstrate its annual gas consumption is or will be greater than 2TJ per annum, the decision maker should consider the following criteria:

Table 1: Volume assessment for ESP designations

Standard	Criteria
<i>Consumption > 2TJ p/a</i>	<ul style="list-style-type: none">• Actual records showing consumption at that ICP for the previous 12 month period exceeded 2TJ.• Actual records showing consumption at that ICP for a period of 12 months exceeded 2TJ, provided that 12-month period occurred in the previous 2 years.
<i>Consumption likely to be > 2TJ p/a</i>	<ul style="list-style-type: none">• Actual records showing consumption at that ICP for a minimum of three previous months which, when extrapolated to 12 months, would exceed 2TJ p/a.• Where a minimum of three previous months consumption records cannot be provided, the decision maker must be satisfied on the balance of probabilities that the applicant consumer will consume more than 2TJ in the 12 months immediately following the decision.

In assessing whether ~~the applicant a gas~~ consumer provides essential services, ~~that are necessary to further the emergency response objectives, the following objectives are those likely to be affected during a gas critical contingency. The relevant types of consumers listed are generally considered to be those that do or do not qualify as essential service providers: the decision maker should consider the emergency response objectives in the CDEM Plan Order in the context of a gas critical contingency. As~~

³ For an example, please see <http://www.trc.govt.nz/assets/taranaki/environment/land/pdfs/milk+disposal.pdf>

noted above, these Guidelines have been developed on the basis that a critical contingency is likely to last a matter of days. The table below assesses each of the emergency response objectives in the Schedule of the CDEM Plan Order in the context of a gas critical contingency, and, where applicable, provides examples of types of consumers that would or would not qualify as essential service providers:

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Table 2: Service assessment for ESP designations

CDEM Plan Order 2005 – Relevant Objectives in clause 59(4) of Schedule		<u>Assessment</u>	Types of consumer that qualify	Types of consumer that do not qualify
(a)	<i>Preservation of life</i>	<u>Unlike electricity, supply of gas is not typically associated with medical dependency. However, there may be examples where other gas users can demonstrate that supply is material in preservation of life during contingency events.</u>	Hospitals, doctors' surgeries, hospices, nursing homes, rest homes, sheltered accommodation, maternity hospitals and medical laboratories Any emergency services dependent on gas supply	Manufacturers of medical products, <u>unless not shelf stable</u>
(b)	<i>Prevention of escalation of the emergency</i>	<u>This objective would be relevant in situations where gas needed to be directed to uses that support the gas system itself. One possible example of this could be gas used for compressor fuel (though this is unlikely to require a significant volume of gas)</u>		
(c)	<i>Maintenance of law and order</i>	<u>This objective could relate to facilities such as those operated by police, armed forces, civil defence, and other key government agencies.</u>	<u>Police, armed forces, civil defence, and other key government agencies</u>	
(d)	<i>Care of sick, injured, and dependent people (first aid, medical, and evacuation facilities, and welfare)</i>	<u>This principle can be applied to vulnerable communities such as hospitals, respite care, aged care facilities, and prisons.</u>	Hospitals, doctors' surgeries, hospices, nursing homes, rest homes, sheltered accommodation, maternity hospitals and medical laboratories Any emergency services dependent on gas supply <u>Prisons</u>	Manufacturers of medical products, <u>unless not shelf stable.</u> <u>Facilities listed that are engaged only in elective and/or cosmetic procedures that can be deferred.</u>
(e)	<i>Provision of essential services (lifeline utilities, food, shelter, public information, and media) – food</i>	<u>Of the five categories listed parenthetically, only two appear to be particularly relevant in the case of a gas shortage. Lifeline utilities would include water</u>	<u>Fresh milk processors, bread bakeries, CDEM facilities, water supply and treatment, waste water treatment</u>	Restaurants, cafes, fast food outlets, supermarkets, food processors other than <u>bread bakeries and fresh milk processors those listed left, suppliers to food processors with ESP designations</u>

		<p><u>and wastewater treatment facilities that use gas, as well as any CDEM facilities dependent on gas.</u></p> <p><u>Food: Some types of food production are dependent on gas, but, given the relatively short-term nature of most gas outages, it is unlikely that a gas outage would lead to widespread food shortages.</u></p> <p><u>Where relevant, this objective should normally be applied to the production of short shelf-life goods such as bread and fresh milk for domestic consumption.</u></p>	<p><u>Milk processors for supplying fresh milk for domestic consumption;</u></p> <p><u>Bakeries for supplying fresh bread for domestic consumption</u></p>	
	<i>Provision of essential services – lifelines utilities</i>		CDEM facilities, water supply and treatment, waste water treatment	
(f)	<i>Preservation of governance (continuity of the machinery of government)</i>	<u>Unlikely to be a relevant objective.</u>		
	<i>Provision of essential services – shelter</i>			<u>Hotels, motels, educational establishments</u>
(g)	<i>Asset protection, including buildings and historic heritage assets (including structures, areas, landscapes, archaeological sites, and wahi tapu)</i>	<u>May only be relevant in situations where gas is part of the climate-control arrangements for preservation of historic assets – unlikely to be a significant volume of gas required.</u>		
(h)	<i>Protection of natural and physical resources (to the extent reasonably possible in the circumstances)</i>	<u>May be relevant in cases where gas is used for activities such as conservation or biosecurity efforts.</u>	<u>Essential facilities operated by Department of Conservation or the Ministry for Primary Industries</u>	
(i)	<i>Preservation of</i>	<u>In the context of 'essential services'.</u>	<u>New Zealand Stock Exchange</u>	<u>Manufacturing facilities, food processors</u>

	<i>economic activity</i>	<u>this objective should not be construed as seeking to preserve the range of 'normal' economic activity. It could apply to preserving activities such as those of the New Zealand Stock Exchange, trading banks or the Reserve Bank.</u>	<u>Reserve Bank</u> <u>Trading banks</u>	other than bread bakeries and fresh milk processors
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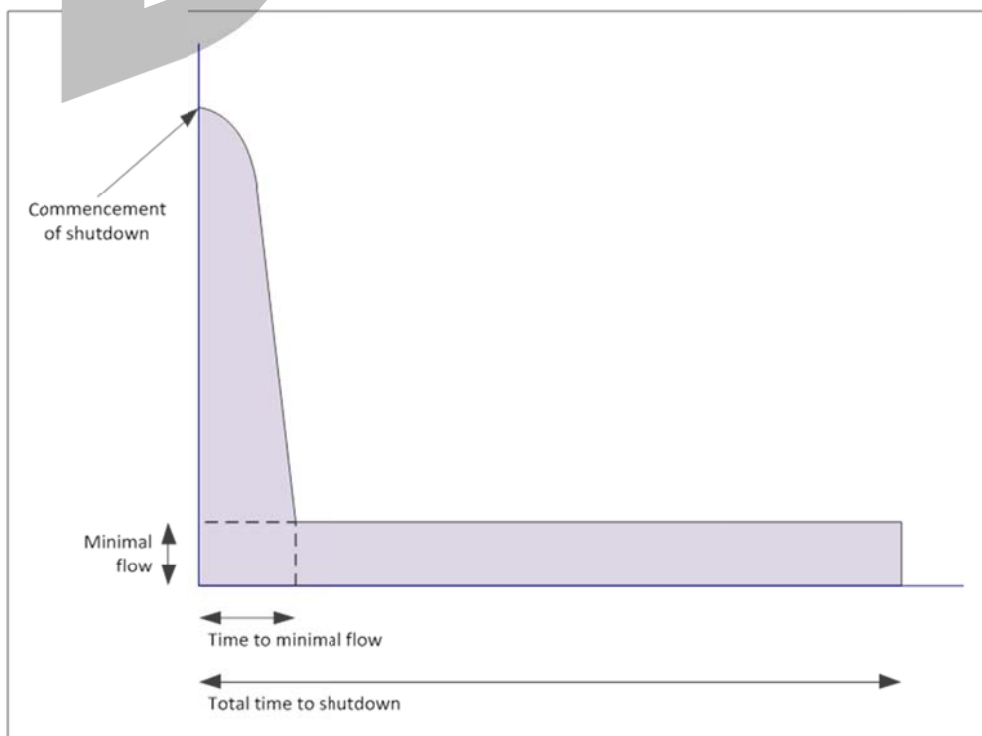
3.2 Minimal load use consumer

Regulation 45(5) states that 'A retailer must approve a consumer's application to be a minimal load consumer if all of the following criteria are met:

- (a) the consumer would have no alternative arrangements that are economically feasible if gas supply was curtailed; and
- (b) the consumer is operating a major item of capital plant and that plant would sustain serious damage or significant environmental damage would likely be caused if gas supply was curtailed; and
- (c) the consumer can demonstrate that its annual gas consumption—
 - (i) was greater than 10 terajoules in any 12-month period within the 2 years before the consumer's application; or
 - (ii) will be greater than 10 terajoules in the 12-month period after the consumer's application.'

Principles

The minimal load use designation is not a tariff band *per se* but is a conditional status that can apply to consumers in bands 1a to 1e. If any of these bands are curtailed, all consumers in the relevant band are required to reduce consumption as quickly as possible. However, a **Minimal Load use** consumer may maintain a pre-agreed minimal flow for a pre-agreed time period to achieve an orderly shutdown. An illustration of how a **Minimal Load** consumer would be expected to respond to a curtailment instruction is shown below:



If band 4 is curtailed, **Minimal Load Consumers** are required to shut down fully (their entitlement to the 'Minimal Flow' in the above diagram ceases).

The term '**Minimal Load Consumer**' reiterates that, to be eligible to receive that designation, the consumer must be able to specify a low level minimal load, ie a consumer claiming a minimal load that is only a small reduction in its typical gas load will not be considered eligible. Accordingly, in agreeing on the load reduction profile, the Guidelines indicate an expected minimal load of approximately 5-15% of a consumer's typical gas load.

The **Minimal Load Consumer** should, regardless of its designation agreement, respond to a curtailment instruction as quickly as reasonably possible acting as an RPO. Response speed is an important criterion in the load reduction profile to be agreed and the onus is on the applicant consumer to provide sufficient information on how the time taken to reach minimal load is the quickest time possible.

The consumer's load reduction profile shall be sufficiently accurate to enable the CCO to predict the overall effectiveness of curtailment.

Assessment criteria for minimal load consumer designations – r45(5)

In assessing whether an applicant consumer can demonstrate its annual gas consumption is or will be greater than 10TJ per annum, the decision maker should consider the following criteria:

Table 3: Volume assessment for MLC designations

Standard	Criteria
<i>Consumption > 10TJ p/a</i>	Actual records showing consumption at that ICP for the previous 12 months exceeded 10TJ. Actual records showing consumption at that ICP for a period of 12 months exceeded 10TJ, provided that 12 months occurred in the previous two years.
<i>Consumption likely to be > 10TJ p/a</i>	Actual records showing consumption at that ICP for a minimum of three previous months, which when extrapolated to 12 months would exceed 10TJ p/a. Where a minimum of three previous months consumption cannot be provided, the decision maker must be satisfied on the balance of probabilities that the applicant consumer will consume more than 10TJ in the immediately following 12 months.

In assessing the alternative arrangements for the applicant consumer, and the likelihood and degree of plant or environmental damage, the decision maker should consider the following criteria:

Table 4: Other criteria for MLC designations

Standard	Criteria
<i>No alternative arrangements that are economically feasible</i>	Consumer to demonstrate that it is not economically feasible for it to implement or maintain alternative energy or fuel arrangements to deal with curtailment of gas supply. Relevant factors include cost of alternative arrangements, financial resources of the consumer, business implications in respect of alternative arrangements and any other relevant circumstances.
<i>Avoid serious damage to capital plant</i>	Consumer to demonstrate that damage would be greater than \$100k and cannot be economically mitigated by the owner acting as an RPO.
<i>Avoid environmental damage</i>	Consumer to demonstrate that significant environmental damage would occur and cannot be economically mitigated by the owner acting as an RPO.

Minimum standards for load reduction profile – r45(6)

Where an applicant consumer has been approved as a ~~Minimal~~ ~~Load~~ ~~Consumer~~, in agreeing on the characteristics of the load reduction profile, the following standards should be followed:

Table 5: Standards for load reduction profile

Standard	Criteria
<i>Initial curtailment of the majority of load</i>	Minimal load level of approximately 5-15% of typical gas demand (or less) when operating at full load/capacity, unless exceptional circumstances apply.
<i>Minimise total time to shut down</i>	Consumer to demonstrate total time to reach the minimal flow, and to reach zero flow, meets an RPO standard. Consistent with the overall objective in the Regulations, there needs to be consideration of the quantity of gas required to achieve an orderly shut-down compared with the volume of gas which the CCO needs to have available in order to manage the critical contingency. It is clearly contrary to the intent of the Regulations to designate, as Minimal Load Consumers , parties who would deplete line pack to such an extent that prudent management of a critical contingency was rendered unlikely.

4 Procedure

4.1 Application process

Each retailer shall notify their consumers that, if they wish to be classified as either **e**Essential **s**Service **p**Providers or **m**Minimal **L**oad **e**Consumers, they must apply to the retailer in writing. In the case of large consumers with no retailer, Gas Industry Co shall provide this notification.

~~Notification shall be made as soon as practicable after the commencement date (4 December 2008). Retailers are expected to remind their consumers of the ESP and MLC categories and the application procedure on a regular basis, at least once every two years.~~

Consumers may apply for these designations at any time. If an application is declined and the consumer wishes to dispute the decision then the consumer may refer the matter to Gas Industry Co for review (discussed later in section 4.3).

The Regulations are silent on the issue of whether a retailer must entertain subsequent applications after an application has been declined. However, re-applications should be considered where the consumer can demonstrate a material change in its circumstances that is relevant to the designation criteria.

An application shall be made in writing and include all the information laid out in the Designation Request form, as shown in Appendix **BA** and summarised below:

Essential service providers

- evidence to demonstrate that their annual consumption has exceeded 2 TJ for any 12 month period in the past 24 months or evidence to show that their consumption is expected to exceed 2 TJ for the 12 month period following the application. Predicted energy consumption may be based on historic growth or company business planning information;
- evidence to show that their business activity is consistent with the principles set out in these Guidelines for an **e**Essential **s**Service **p**Provider; and
- a signed declaration by an authorised signatory that the information provided in the application is true and correct, and that changes to the business operations that would materially affect their designation will be promptly notified to the retailer or industry body, as applicable.

Minimal load consumers

- evidence to demonstrate that their annual consumption has exceeded 10 TJ for any 12 month period in the past 24 months or evidence to show that their consumption is expected to exceed 10 TJ for the 12 month period following the application. Predicted energy consumption may be based on historic growth or company business planning information;
- the minimum gas flow required during the shutdown phase;
- the full-load gas flow;
- the time taken to reduce from full-load to minimum-load gas flow and associated supporting information;
- the time taken to reduce from full-load to zero gas flow and associated supporting information;
- evidence to show that they would have no alternative arrangements that are economically feasible if gas supply was curtailed;
- evidence to show that maintenance of a minimum gas flow is required to avoid serious damage, either to capital equipment or the environment;
- evidence that this damage cannot be economically mitigated through use of alternative fuel sources or otherwise mitigated by the owner acting as an RPO; and
- a signed declaration by an authorised signatory that the information provided in the application is true and correct, and that changes to the business operations that would materially affect their designation will be promptly notified to the retailer or industry body, as applicable.

4.2 Determinations

The retailer shall provide its determination to the consumer, either approving or declining the application, within 10 business days. The retailer shall also give notice of the determination to the associated gas distributor (where applicable).

If the retailer declines the application, the notice should include adequate supporting reasons.

If the retailer approves a minimal load application, the retailer and consumer shall, within 10 business days of notifying the determination, agree in writing the minimum gas flow, the time allowed to reduce from full load to minimum gas flow, and the time to shut down completely from the minimum gas flow level. This agreement may be made by the retailer countersigning the application.

If the retailer reasonably considers that a consumer no longer meets the designation criteria, the retailer shall notify that consumer in writing, and advise it of the retailer's reasons for considering the designation to no longer be valid. The retailer shall advise the consumer to reapply for the designation

if the consumer believes that the designation is valid, otherwise the designation will lapse 20 business days after the notice is received by the consumer.

In accordance with reg 39(1)(b) the retailer will provide a notice to the CCO setting out the number of consumers who are designated as minimal load consumers who are supplied through each gas gate and who are in each curtailment band.

4.3 Referral of the designation determination to the industry body

If a consumer disputes a retailer's determination the consumer may, by notice, refer the application to Gas Industry Co for review. A form for this purpose is provided in Appendix B. The referral process cannot be repeated.

The consumer's notice shall include the original application, the retailer's determination and relevant supporting information.

Gas Industry Co must, within 10 business days of receipt of the notice, review the decision by the retailer and either:

- confirm the retailer's ruling;
- refer the application back to the retailer for reconsideration; or
- may approve or decline the application itself (in accordance with reg 44 or reg 45).

In the case of a large consumer with no retailer, Gas Industry Co shall fulfil the role of the retailer.

Appendix A—Curtailment Bands

Gas Governance (Critical Contingency Management) Regulations 2008

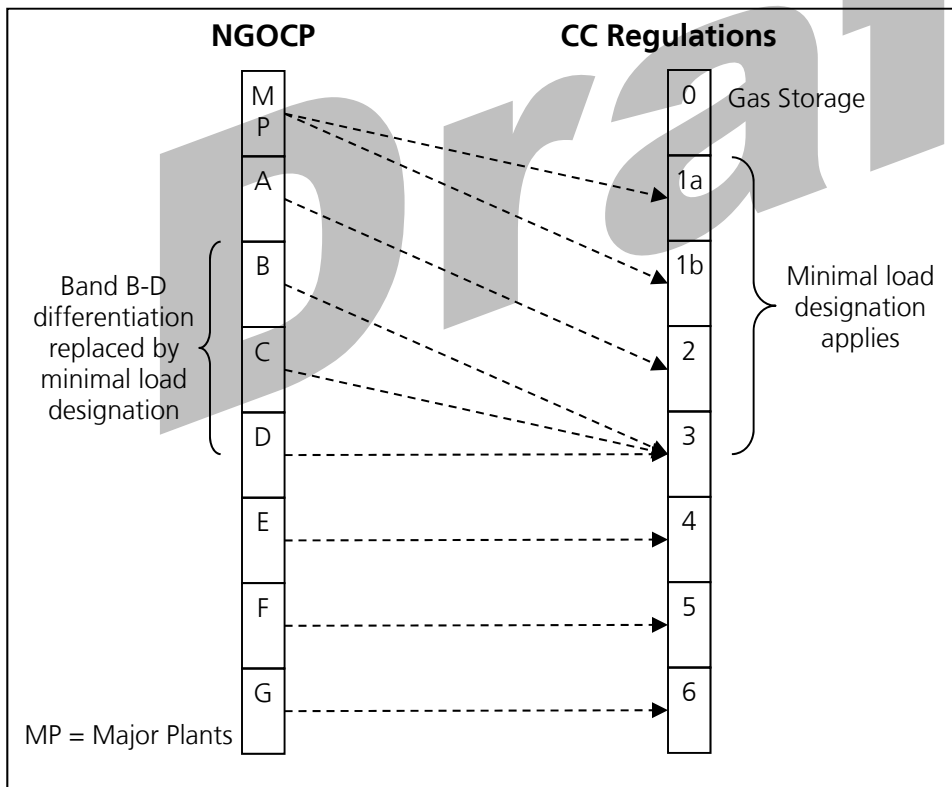
Curtailment band	Consumption (in tera-joules (TJ))	Description
0	N/A	Gas offtaken for injection into gas storage.
1a	More than 15 TJ/day	Consumers (excluding essential service providers) supplied directly from the transmission system and that have an alternative fuel capability. If minimal load consumer, then manage wind-down of plant.
1b	More than 15 TJ/day	Consumers (excluding essential service providers) supplied directly from the transmission system and that do not have an alternative fuel capability. If minimal load consumer, then manage wind-down of plant.
2	More than 10 TJ/annum and up to 15 TJ/day	Consumers (excluding essential service providers) with alternative fuel capability. If minimal load consumer, then manage wind-down of plant.
3	More than 10 TJ/annum and up to 15 TJ/day	Consumers (excluding essential service providers) without alternative fuel capability. If minimal load consumer, then manage wind-down of plant.
4	More than 2 TJ/annum and up to 10 TJ/annum	Consumers, excluding essential service providers. Minimal load consumers in curtailment bands 1a to 3 curtailed in full.
5	More than 2 TJ/annum	Essential service providers.
6	2 TJ/annum or less	All remaining consumers ⁴ .

⁴ Note that domestic consumers are excluded from the definition of consumer in the Regulations and, therefore, do not appear in the curtailment bands.

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Band	Description
A	Industrial and commercial consumers with an annual gas consumption of >10 TJ who are interruptible, eg with alternative fuel facilities.
B-	Industrial and commercial consumers with an annual gas consumption of >10 TJ where curtailment of gas supply will not affect plant or product.
C	Industrial consumers with an annual gas consumption of >10 TJ where curtailment of supply could cause product loss.
D	Industrial consumers with an annual gas consumption of >10 TJ where curtailment of supply could cause plant damage and/or environmental damage as well as product loss.
E	Consumers with an annual consumption of > 2TJ but < 10TJ not in category F.
F	Industrial and Commercial consumers with an annual consumption > 2TJ classed as essential service providers in emergency situations.
G	All Residential consumers irrespective of size, and all other consumers with an annual consumption of < 2TJ.

Comparison of Bands



~~Appendix B~~ Appendix A Designation Requests

Designation Request for Essential Service Provider – regulation 44

[Date of Application]

[Consumer Name and Contact Details]

[ICP Number]

[ICP Address]

[Distributor]

Summary of designation request and justification. Please include the amount of daily gas consumption associated with the provision of the services that are the subject of this application.

Information attached

Evidence to demonstrate >2 TJ/annum consumption.

Tick

Supporting evidence to show the business activity at this location provides services that are necessary to further the emergency response objectives during a critical contingency.

Declaration

I, _____, as authorised signatory of _____, confirm that the information provided in this designation request is an accurate and a true representation of the business activities at this address for the purpose of applying for ~~e~~Essential ~~s~~Service ~~p~~Provider designation under Regulation 44 of the Gas Governance (Critical Contingency Management) Regulations 2008. Furthermore, changes to the business operation at this address that would materially affect this designation will be promptly notified to the retailer.

Signed _____ Date _____

Designation Request for Minimal Load Consumer – regulation 45

[Date of Application]

Designation Request for Minimal Load Consumer – regulation 45

[Date of Application]

[Consumer Name and Contact Details]

[ICP Number]

[ICP Address]

[Distributor]

Summary of designation request and justification

Information attached

Tick

Evidence to demonstrate >10 TJ/annum consumption.

The full load gas flow.

The minimum gas flow required during the shutdown phase and time taken to reach this minimum gas flow.

The time taken to reduce from full load to zero gas flow.

Evidence to show that the consumer would have no alternative arrangements that are economically feasible if gas supply was curtailed.

Evidence to show that maintenance of a minimum gas flow is required to avoid serious damage, either to capital equipment or the environment.

Evidence that this damage cannot be economically mitigated through use of alternative fuel sources or otherwise mitigated by the owner acting as an RPO.

Declaration

I, _____, as authorised signatory of _____, certify that the information provided in this designation request is an accurate and true representation of the business activities at this address for the purpose of applying for ~~an~~Minimal ~~Load~~ ~~€~~Consumer designation under Regulation 45 of the Gas Governance (Critical Contingency Management) Regulations 2008. I confirm that any changes to the business operation at this address that would materially affect this designation will be promptly notified to the retailer.

Signed _____ Date _____

Retailer agreement of minimum flow and time to shut-down

Signed _____ Date _____

For _____

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~~Appendix C~~ Appendix B Referral Notice

Referral Notice of Designation Decision

[Date of Referral]

[Consumer Name and Contact Details]

[ICP Number]

[ICP Address]

[Retailer]

[Distributor]

I, _____, give notice that [Consumer company name] disputes the designation determination [reference] pursuant to reg 46 of the Gas Governance (Critical Contingency Management) Regulations 2008.

Summary of reasons for disputing designation determination

Information attached

Tick

Copy of designation request.

Retailer's determination.

Further supporting evidence.

Signed _____ Date _____

For _____