Statement of Proposal

Gas Outage and Contingency Management Arrangements

August 2007

The Gas Industry Co was formed to be the co-regulator under the Gas Act. As such, its role is to:

- recommend arrangements, including rules and regulations where appropriate, which improve:
    - the operation of gas markets;
    - access to key infrastructure; and
    - consumer outcomes;
- administer, oversee compliance with, and review such arrangements; and
- report regularly to the Minister of Energy on the performance and present state of the New Zealand gas industry, and the achievement of Government's policy objectives for the gas sector.

Authorship

This Statement of Proposal has been prepared by Ian Dempster and Nicole MacFarlane of Gas Industry Co with support from Lee Wilson and Ben Farrington of Concept Consulting Group and Joanne Robinson from Simpson Grierson.

Table of Contents

1 Executive Summary

Background

1.1 Currently, the National Gas Outage Contingency Plan (NGOCP) is the key industry arrangement dealing with risks relating to security of supply. The NGOCP is a voluntary arrangement between industry participants, and does not attempt to impose any additional enforceable obligations on any industry participant.

1.2 It is commonly recognised that the NGOCP is no longer appropriate and that it does not provide the degree of certainty that is necessary to cope with a gas security contingency.

1.3 Accordingly, the Gas Industry Co was asked to assist the industry participants to develop more a appropriate set of arrangements that would address the deficiencies identified with the current arrangements.

Summary of key points

1.4 The key points made in this paper are summarised in the following table:

Section		Key Points
2	Introduction	• Industry participants are dissatisfied with the current voluntary arrangements (NGOCP). • Key shortcomings are lack of certainty and lack of commercial arrangements. • Shortcomings leave gas industry at risk that major events are not well-managed which is inefficient.
3	Background	• NGOCP is currently the key arrangement for dealing with outages and contingencies. • NGOCP outlines processes for managing gas events by progressively curtailing demand. • Outage and contingency management is separate from, and subordinate to, safety management. • Focus is on national and regional outages and contingencies. • Badly managed events risk incurring very high costs (for example reinstating supply to mass-market customers). • Inclusion of pricing into outage and contingency management is expected to provide appropriate incentives and increase overall efficiency.

Section		Key Points
4	Process to Consider Outage and Contingency Arrangements	• Wholesale Markets Working Group (WMWG) has been involved since inception of this work stream. • WMWG endorsed an approach based on "ex post fair price determination". • Discussion paper issued in 2006 proposed codifying NGOCP into Regulations under the Gas Act (with inclusion of pricing framework). • Submissions generally agreed that arrangements should be mandatory but views were split on Regulations versus a pan-industry agreement.
5	Problems with the Current Arrangements	• Current arrangements are not mandatory and cannot be relied upon. • Some parties consider the current arrangements as not suited to the post-Maui era. • Lack of legal clarity increases the risk of poor management of outages and contingencies. • Commercial arrangements are inadequate – those who assist by leaving gas in the system receive no benefit from doing so.
6	Identifying Reasonably Practicable Options	• Status quo is not a reasonably practicable option. • Industry agreement is too uncertain, particularly as some key industry players may be prevented from signing due to existing commitments. • A hybrid approach using Regulations under Gas Act (to eliminate uncertainty) and industry arrangements (to implement the detail) is reasonably practicable. • A fully-prescribed regulatory approach incorporating the detailed plans in regulations appears to be the only other reasonably practicable option.
7	Legislative Framework and Requirements	• The Gas Act and GPS contemplate regulation in this area if required. • Regulatory Objective: that arrangements are in place to achieve effective handling of a national or regional gas contingency without compromising long-term security of supply. • The proposed extent of intervention suggests Regulations rather than Rules under the Gas Act.
8	Proposed Framework for Outage and Contingency Arrangements	• A hybrid approach is proposed. • Outage and Contingency Management Regulations (OCMRs) under the Gas Act are intended to provide for mandatory arrangements. • Industry expertise and experience to be used in developing the detailed transmission network owner plans.

Section		Key Points
9	Proposed Outage and Contingency Management Arrangements	• Regulations provide for: definition of Gas Contingency; establishment of Gas Contingency Operator (GCO); requirement for transmission network owners to prepare Outage and Contingency Management Plans (OCMP); process for deriving contingency pricing; and process for cashing out imbalances. • OCMPs to be consulted on and to include: processes to be followed and communications plan. • Curtailment bands will initially be grand-parented from NGOCP. Gas Industry Co is required to undertake a study and recommend a modified schedule within three years. • Contingency pricing is to be determined by an industry expert (industry members can nominate experts). • Limitations on liability are proposed for the GCO.
10	Compliance and Enforcement	• Propose to amend the switching and compliance regulations and extend them to cover the proposed OCMRs. • Incremental costs are likely to be small.
11	Implementation	• Depending on the outcome of consultation (i.e. whether there is a need to re-consult) the earliest a recommendation could be made to the Minister is November 2007. • The new arrangements are unlikely to be fully effective until at least 18-20 weeks following the Minister's approval and gazetting of the Regulations.

The proposal

1.5 Gas Industry Co has concluded that the only practicable means of making outage and contingency management arrangements mandatory, and to remove doubt about compliance with the arrangements during a contingency, is to implement them within a framework of regulations (and/or rules) under the Gas Act.

1.6 Gas Industry Co has developed a proposal based on Outage and Contingency Management Regulations (OCMRs). The approach combines the application of regulations with a requirement for industry participants to develop much of the detailed planning and arrangements to apply during a gas contingency. Thus the proposal represents somewhat of a hybrid between a fully regulated set of arrangements and a pan-industry agreement.

1.7 The OCMRs will set out the roles and responsibilities of participants; define powers to direct certain actions during a gas contingency; and require the Transmission Network Owners (TNO) to develop Outage and Contingency Management Plans

(OCMP). The OCMPs will be developed by the TNOs in consultation with all affected stakeholders.

Submission requirements

1.8 This paper invites stakeholder feedback on the Statement of Proposal for outage and contingency management arrangements. Parties who wish to make a submission on the proposal are invited to respond by 5:00 pm on **Friday 14 September 2007**. Please note that submissions received after this date may not be able to be considered.

1.9 Gas Industry Co's preference is to receive submissions in electronic form (MS Word format or pdf). Please email your submission to submissions@gasindustry.co.nz with "Submission on Gas Outage and Contingency Management" in the subject line. A hard copy would also be appreciated and should be posted to:

Ian Dempster
Gas Industry Co
Level 9, State Insurance Tower
1 Willis Street
PO Box 10-646
Wellington

Tel: +64 4 494 2467
Fax: +64 4 472 1801

1.10 Gas Industry Co will acknowledge receipt of all submissions electronically. Please contact Ian Dempster if you do not receive electronic acknowledgement of your submission within two business days.

1.11 Submissions should be provided in the format shown in Appendix E. Gas Industry Co values openness and transparency and, therefore, submissions will generally be made available to the public on Gas Industry Co's website. Submitters should discuss any intended provision of confidential information with Gas Industry Co prior to submitting the information.

2 Introduction

2.1 The New Zealand gas industry is in a phase of transition, from an industry made up of a small number of participants managing larger fields to a developing industry made up of a larger number of participants managing a larger number of smaller fields. The arrangements that govern how the industry manages issues of common interest need to adapt and evolve in order to ensure they remain appropriate to the industry as it changes.

2.2 Recognising that this transition has implications for how security of supply is managed in the gas sector, the New Zealand gas industry participants have requested that Gas Industry Company Limited ("Gas Industry Co") review the current arrangements for managing gas outage and contingency situations. These arrangements are currently constituted as the NGOCP.

2.3 This request was prompted by:

- a general view among industry participants that current arrangements are no longer appropriate;
- the absence of any contingency pricing regime in respect of non-compliance and/or gas supply imbalances during gas outage and contingency situations; and
- the lack of certainty that voluntary arrangements provide, as evidenced by the public withdrawal of Contact Energy from the current arrangements.[1]

2.4 In response to the industry request, and noting the pivotal importance of security of supply on the national gas transmission system, and consistent with Gas Industry Co's deliverables under paragraph 5(h) of the Government Policy Statement on Gas Governance, dated October 2004 ("GPS") that "*Risks relating to security of supply, including transport arrangements, are properly and efficiently handled by all parties*", Gas Industry Co has been reviewing arrangements for managing gas outage and contingency situations.

2.5 The purpose of this Statement of Proposal is to:

- identify and discuss the problems with the current arrangements for outage and contingency management;
- outline the process for considering outage and contingency management issues that has taken place up to this point;
- summarise the issues emerging from consultation in 2006;
- examine a range of possible solutions to identify those that best meet the needs of the industry within the Government's overall policy objectives for the gas industry;

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[1] Contact Energy has nevertheless committed to acting "reasonably and responsibly" during gas contingencies.

- outline the legislative framework applying to outage and contingency management issues;
- propose a hybrid approach combining a regulatory framework with a set of detailed arrangements developed by industry participants to replace the current NGOCP;
- describe and discuss the key elements that comprise the design of the proposed hybrid approach;
- provide a Statement of Proposal for consultation in order to meet the requirements of Section 43N of the Gas Act;
- assess the costs and benefits of the proposal; and
- provide a set of draft regulations designed to implement the proposal.

Industry request to review

2.6 This proposal has its origins in a request made by the Gas Association of New Zealand (GANZ) in May 2005, on behalf of the gas industry, for Gas Industry Co to oversee a review of the arrangements for managing gas outages and contingencies.

2.7 That request stemmed from the observation that the current arrangements were no longer meeting the need of the industry and that some participants were not comfortable with the lack of commercial arrangements covering gas supplies during a contingency.

2.8 Gas Industry Co wrote to industry participants to request continued support for the NGOCP whilst it worked on new arrangements. Subsequently a letter was received from Contact Energy indicating that it no longer supported the NGOCP arrangements and was not willing to commit formally to act in accordance with the current form. The letter stressed that a commercial arrangement was necessary to ensure that all parties who benefited from the actions taken during a contingency were faced with the cost of those actions. The letter also stressed that Contact Energy would continue to act reasonably and responsibly during outage and contingency situations.

Existing NGOCP arrangements

2.9 Currently, the NGOCP is the key industry arrangement dealing with risks relating to security of supply. The NGOCP is a voluntary arrangement between industry participants that outlines the activities that would occur in the event of a major gas outage, regardless of whether national or regional, and whether due to loss of supplies from producers or due to transmission system capacity limitations.

2.10 The key requirement is to stabilise the transportation systems, preserve line pack and prevent pressures falling to pre-set levels that might trigger automatic shutdowns. Under the NGOCP all parties volunteer to take whatever reasonable actions are

appropriate and within their control, and to co-operate where necessary to achieve "stabilisation".[2]

Problems with the existing arrangements

2.11 The requests from industry participants to review the NGOCP and the submissions in response to the July 2006 consultation paper confirm that most stakeholders see an urgent need to develop and clarify the arrangements for dealing with security of supply events. This is because most stakeholders appear to consider that the existing arrangements are inadequate.

2.12 The problems that have received most prominence include the lack of a mandatory framework with clear responsibilities and obligations on all participants during a gas contingency, and the lack of incentive for suppliers of mass market consumers and essential service providers to arrange back-up supplies.

2.13 Gas Industry Co has also taken the opportunity to consider how gas storage could be affected during a gas contingency and has included mechanisms for this in the proposal.

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[2] Effectively the aim is to balance injections and off-takes so that the pipeline inventory is stable.

3 Background

3.1 This section of the Statement of Proposal describes the existing outage and contingency management arrangements under the NGOCP, outlines the nature of security of supply contingencies and distinguishes these from safety emergencies, and highlights the need to consider both national and regional contingencies.

3.2 The potential cost that curtailment of supply to a gas consumer can have is also described. The potential costs of a security of supply contingency are a compelling reason to have outage and contingency management arrangements that provide effective management whilst having regard to managing the wider costs to the economy. Commercial arrangements to pay for any gas taken during a contingency are highlighted as important to provide incentives for retailers, shippers and gas consumers to invest appropriately in security of supply.

NGOCP arrangements

3.3 At present, the NGOCP is the key industry arrangement dealing with risks relating to security of supply.[3] The NGOCP is a voluntary arrangement between industry participants, and does not attempt to impose any additional enforceable obligations on any industry participant.

3.4 The plan outlines the activities that would occur in the event of a major gas outage, regardless of whether national or regional, and whether due to loss of supplies from producers or due to transmission system capacity limitations.

3.5 The key requirement is to stabilise the transportation systems, preserve line pack, and prevent pressures falling to pre-set levels that might trigger automatic shutdowns. Under the NGOCP all parties volunteer to take whatever reasonable actions are appropriate and within their control, and to co-operate where necessary to achieve stabilisation.

3.6 The plan also identifies the most likely order of curtailment, essentially starting with the major users who provide the most ready and accessible source of savings in the short-term. Appendix A of the NGOCP contains the category definitions that have been agreed for shedding load within the distribution networks (referred to as “curtailment bands” in this paper).

3.7 The NGOCP recognises (at least implicitly) that turning off mass-market consumers and essential service providers represents a potentially higher cost to the economy and/or a protracted gas restoration process.

3.8 At the heart of the plan is the Contingency Communications Team (CCT) which provides a forum for oversight and coordination of the industry response to a gas contingency. The CCT is expected to liaise with senior managers within the gas

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3 The current version of the NGOCP may be found at http://ganz.org.nz/file_download/11 and the appendices at http://ganz.org.nz/file_download/76. They can also be found in the “publications” section of the MDL website www.mauipipeline.co.nz.

industry, seek cooperation from industry participants during a gas contingency, interface with government departments and other outside agencies, and provide a forum for developing and managing communications with the public and concerned groups.

3.9 The plan outlines a five phase process for managing a gas contingency and the actions that would be expected to take place during each phase of the plan.

3.10 The plan envisages that the gas consumed during a contingency will be accounted for by each participant (i.e. there is a physical balance for each party). The arrangements amount to a loan of gas that is paid back at a later date once the contingency has been lifted and normal conditions have been resumed. The plan contains no reference to the value of the gas during a contingency.

Safety and security – gas contingencies

3.11 Outage and contingency management arrangements are intended to address the issue of security of supply at a wholesale level. At a wholesale level the issue is either that there is insufficient gas supply coming into the transmission system to meet current demand, or that there has been an incident on the transmission network that has restricted the ability of the transmission system and it is no longer able to supply all of the current gas demand downstream of the incident. Given the number of organisations potentially affected, and the obsevation that many of those organisations will lack timely access to information to make good decisions, it is most appropriate that such events be managed in a co-ordinated fashion. This contrasts with incidents in distribution networks which are best managed at the local level.

3.12 Safety is governed by other sections of the Gas Act[4] and relates to the safe operation of the gas transportation system and to the safe use of gas at consumer premises. A significant loss of pressure in the distribution network could potentially trigger a safety contingency. The outage and contingency management arrangements being proposed are not intended to replace or intrude on the existing arrangements for managing safety.

3.13 The focus of outage and contingency management arrangements is to manage gas contingencies in such a way as to prioritise gas supply in a manner which minimises the cost to the economy.

3.14 As noted above, security contingencies can lead to safety events. For example, ineffective curtailment of demand on a network could lead to a significant loss of pressure and this, in turn, could lead to a safety contingency. It is therefore important that gas contingencies are well-managed to avoid a contingency developing into a safety problem.

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4 See Gas Act Section 54A (safety management systems)

Nomenclature

3.15 Gas Industry Co has grappled with the best way to refer to security of supply issues in the gas sector. The phrase “emergency management” has been adopted in previous discussion papers and workshops as shorthand for security of supply management. However feedback from some stakeholders has suggested that this term is more appropriate to describe “safety events” and may create uncertainty about the correct form of response. We have therefore decided to use the phrases “outage and contingency management”, “contingencies”, “Gas Contingency Operator” and “security of supply event” in this paper and the associated draft regulations.

National and regional contingencies

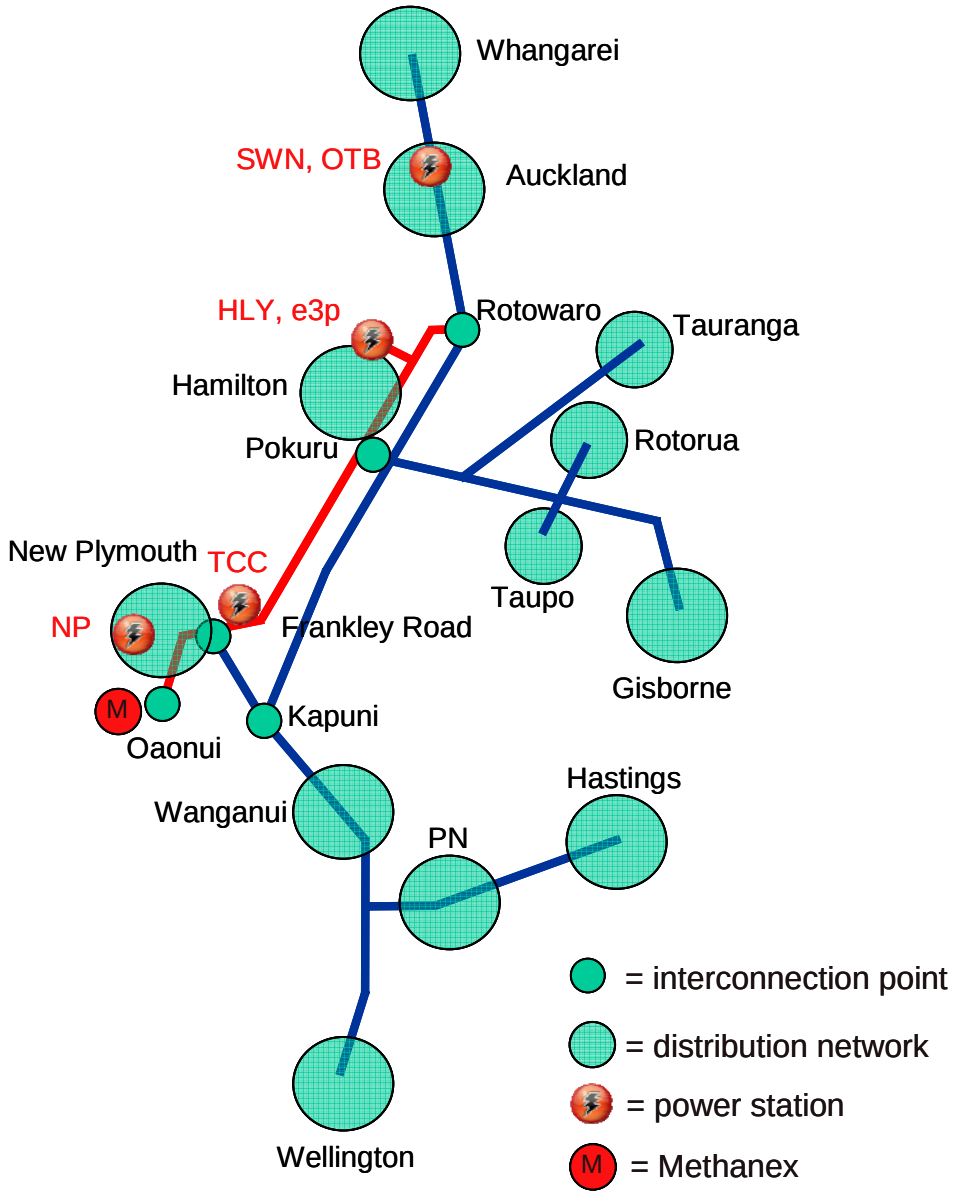
3.16 Figure 1 shows a schematic of the gas transmission system in New Zealand including the distribution networks and those large consumers supplied directly from the transmission system. This schematic is used to illustrate the possible impact of different contingencies within the integrated gas supply network.

3.17 A loss of supply or an incident that resulted in damage to the central onshore transmission system could trigger a contingency that affects supply right across the transmission network and that could potentially impact all of the various gas networks. This type of incident would have an impact on a widespread basis and is described as a national emergency.

3.18 Damage to a spur of the onshore transmission system that triggered a contingency would only affect supply to that part of the system which is downstream of the incident and only those networks downstream of the incident would be affected. This type of incident would have an impact on a more confined basis and is described as a regional emergency.

3.19 An event at a gate station, or on the distribution system itself, would affect supply within that distribution network but would have no impact on the supply to other distribution networks or to the wider system. Contingencies triggered by incidents on distribution networks are therefore not covered by the proposed outage and contingency arrangements, which are intended to address security of supply at a wholesale level.

Figure 1 – Schematic of gas transmission system showing distribution networks



Potential cost of security of supply contingencies

3.20 The costs of a security of supply contingency to the economy and to individual consumers can be high – particularly if the contingency is not well-managed and leads to the supply to particular consumers being curtailed. For example:

- curtailing the gas supply to an industrial consumer may lead to a loss of production and there may be additional costs due to damage to inventory (for example raw materials that are perishable);
- for certain industrial processes there may be damage to the plant which means that when the gas supply has been restored, production cannot resume until parts of the plant have been rebuilt or replaced;

- curtailing supply to a commercial consumer, although unlikely to damage plant, can have an impact on productive output due to interruption to certain processes (for example the loss of hot water and heating); and
- curtailing the gas supply to residential customers will have widespread impact as there will be a prolonged period before heating and cooking processes using gas are able to operate again due to the requirement to ensure customer installations are safe prior to reinstating gas supply.

3.21 The cost of reconnecting consumers can also be significant. When supply is restored, it can simply be a case of consumers switching appliances back on. However, where the lack of supply and/or ineffective management of a supply contingency have led to a network being decommissioned, the cost of reconnection could be very high. For example, in its response to the industry consultation of July 2006, Powerco stated that:

> *"a distribution network can take months to re-commission (for example, in the Wellington region, the gas network would take between three to four months to recommission)."*

3.22 The potential costs of a security of supply contingency are a compelling reason to have outage and contingency management arrangements that provide effective management whilst having regard to the wider costs to the economy.

Commercial issues with gas contingencies

3.23 Under the NGOCP arrangements, gas consumed during an outage or contingency is currently "borrowed" at no cost. The arrangements amount to a loan of gas that is paid back at a later date once the contingency has been lifted and normal conditions have been resumed. The NGOCP contains no reference to the value of the gas during a contingency. The problem with such arrangements is that a shipper whose load is curtailed has two choices:

- call force majeure under the contract with its supplier to reduce gas flows into the system (so as to reduce its liability to pay for gas which it is unable to consume) and, thereby, escalate the seriousness of the situation; or
- leave its contracted gas flowing into the system and run the risk of receiving a low cash-out price (if gas "borrowed" is not physically repaid).

3.24 A set of arrangements is required that recognises gas has a higher value at the time of a contingency.[5] The potential to earn this higher value (or be faced with paying for it) will provide the necessary incentives to support investment in a range of potential measures that enhance the overall security of supply of the gas supply system in New Zealand.

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[5] In its letter to Gas Industry Co of January 2006 Contact Energy stated that "Contact is particularly concerned to ensure that all parties who may benefit from actions taken in a contingency are faced with the costs of those actions."

4 Process to Consider Outage and Contingency Arrangements

4.1 This section outlines the recent history of the development of outage and contingency arrangements since April 2005.

The Wholesale Markets Working Group

4.2 An initial request was received from GANZ in 2005 for Gas Industry Co to assist with the development of the NGOCP. This was discussed by the Board of Gas Industry Co which decided that the Wholesale Markets Working Group (WMWG) would be best placed to balance the commercial issues being considered within the wholesale market work stream with the requirement for effective outage and contingency management.

4.3 WMWG considered various approaches to the issues surrounding the development of the NGOCP over the course of several meetings in 2005. These issues included the need to consider the modifications that might be required in response to the introduction of open access arrangements for the Maui pipeline from October 2005. Of particular concern to some WMWG members was the intention to settle gas taken (but not paid for) during contingency situations by repaying physical gas at a later time.

4.4 The advice received from Contact Energy that it would not formally commit to act in accordance with the NGOCP was designed to help focus attention on the need to develop new arrangements sooner rather than later.

The Farrier Swier report

4.5 At the end of 2005 Gas Industry Co commissioned Farrier-Swier Consulting (FSC) to undertake a review of outage and contingency pricing arrangements in other jurisdictions. The paper produced by FSC reviewed a range of possible options and concluded that the most economically efficient way of dealing with the contingency pricing issue was to utilise a “fit for purpose” wholesale market. FSC reasoned that such a market would reallocate gas to its most efficient use in times of scarcity.

4.6 The WMWG considered the FSC paper and was uniformly of the view that:

- it would be difficult in a market as small as New Zealand to develop a “fit for purpose” wholesale gas market; and
- even if it were possible to design and implement such a market, the lead time for doing so is such that an interim solution is required as soon as possible.

4.7 The second best option offered by FSC was an “ex-post fair pricing determination”. Under this option a contingency gas price(s) would be determined “ex-post” based on a defined set of principles. The contingency price would be determined either by the system operator, an appointed expert, or an arbitrator. Payments would subsequently be made and received depending on the net of each party’s injections and off-takes.

4.8 WMWG considered that this option offered a reasonable prospect of being able to be implemented within a short period of time which gave it a practical advantage over the wholesale market option. In addition, it was considered that the ex-post option could even have a useful life beyond the implementation of a “fit for purpose” wholesale market (if that option ultimately proved to be feasible) as there could be instances where the wholesale market did not produce acceptable outcomes. In such circumstances the ex-post fair price determination would offer a way to compensate for market failure.

Previous consultation paper

4.9 The July 2006 Discussion paper set out a number of issues and observations and invited stakeholders to comment. The paper raised the following specific issues:

Issue	Key Observations
Voluntary nature of NGOCP arrangements	The voluntary nature of the current industry-developed arrangements in the NGOCP means that there is a significant (and, Gas Industry Co suggested, an inappropriate) level of risk associated with security of supply and the ability of the gas industry (and the wider country) to minimise the impact of any material gas outage.
Definitions require clarification	The existing definitions set out in the NGOCP (and, in particular, the definitions of "Gas Contingency" and "Transmission System") require clarification and expansion to reflect the actual state of the gas market and to make these (technically and factually) neutral over time.
Roles and obligations unclear	Although the existing processes set out in the NGOCP may be appropriate, the roles and obligations of the various industry participants need clarification (in particular in relation to communications).
Gas contingency operator role	The role of the entity which is responsible for implementing the NGOCP in the event of a gas contingency needs further consideration, especially in respect of the powers which this entity has under mandatory gas outage and contingency arrangements and the scope of any liability imposed on that entity.
Participant obligations	The specific obligations of industry participants, and the potential liabilities of industry participants, will also need to be considered if industry participants are required to comply with directions given pursuant to mandatory gas outage and contingency arrangements.
Contingency pricing	A gas contingency pricing regime may be appropriate, if the gas outage and contingency arrangements are compulsory. This would assist in balancing the gains and losses between industry participants which arise as a result of complying with directions given under the gas outage and contingency arrangements. Gas Industry Co has received input from the WMWG that the most suitable option for defining contingency gas prices may be an ex-post fair pricing determination.

4.10 The discussion paper concluded by indicating a clear preference for developing regulations to establish a mandatory structure with clear roles and responsibilities for all participants in the gas market. However, the paper also indicated that Gas Industry Co was seeking feedback from stakeholders and had not reached a firm view on the issues raised in the paper.

Submissions on previous consultation paper

4.11 Submissions on the discussion paper were received from the following stakeholders:

Retailers	Distributors	Producers/Others
Genesis Energy	Powerco	OMV
Contact Energy	Vector	Ministry of Consumer Affairs
Wanganui Gas	Nova Gas	
Mighty River Power		

4.12 All stakeholders agreed that outage and contingency arrangements need to be mandatory and there appeared to be a consensus that development of such arrangements should be progressed as soon as possible. Given that, and the other issues identified with pan-industry arrangements, it appeared to Gas Industry Co that the likely most reasonably practicable option for outage and contingency arrangements was regulations.

4.13 However, there was significant support from Contact, Genesis, MRP and OMV for an attempt at reaching a pan-industry agreement before regulations were promulgated. All of these parties recognised that reaching consensus can be difficult and for that reason accepted that strict timeframes would need to be applied, particularly if Gas Industry Co was to meet its strategic plan milestone of a recommendation to the Minister by March 2007.

4.14 Contact, Genesis and MRP submitted that Gas Industry Co was over-stating the Commerce Act risk, considering that to be a risk which stakeholders themselves would carry in entering into any pan-industry agreement.

4.15 However, both the submissions and the subsequent workshop revealed additional and significant impediments to a pan-industry agreement being the appropriate mechanism for outage and contingency arrangements. For example, Vector advised Gas Industry Co that it has long-term delivered gas supply agreements which only give it the ability to curtail supply where there is a force majeure event related to Vector's own supply arrangements. Vector therefore considers that it has no legal right to curtail supply where its own supply is not affected, but curtailment is requested by the system operator for (for example) the security of the transmission system as a whole or even (potentially) an unrelated regional distribution system. As a consequence, Vector considers it would be unable to enter into an agreement that would require it to take actions which would cut across its existing contractual obligations.

4.16 The discussion paper had proposed that the framework for outage and contingency arrangements be based on the current NGOCP, suitably updated to take account of current conditions. However, it was clear in the submissions that there was considerable doubt about whether the current NGOCP provided a sufficient basis for drafting regulations.

4.17 Overall there was a reasonable consensus on the content of outage and contingency management arrangements, although there is likely to be continuing debate around

the intersection between regulations and existing arrangements such as the Maui Pipeline Operating Code (MPOC) and downstream contracts. It is also clear that different considerations applying to the different pipeline systems may need to be accommodated.

Key issues emerging from consultation

4.18 Gas Industry Co's review of submissions in response to the July 2006 discussion paper, and subsequent reconsideration of the issues surrounding gas outage and contingency management, have highlighted several key issues that need to be addressed in order to establish an effective outage and contingency management regime. These issues include the need for:

- mandatory arrangements covering gas security of supply contingencies;
- arrangements that recognise the change to a multi-field era lacking the flexibility associated with the Maui gas field;
- more clarity of the roles, the obligations, and the liabilities of participants during a gas contingency;
- more efficient arrangements to pay for (or get paid for) gas inadvertently traded during a gas contingency; and
- arrangements that can be specified by industry participants, and adapted as necessary, to accommodate the evolving requirements of the gas sector.

5 Problems with the Current Arrangements

5.1 As previously noted, there are four key problems that need to be addressed in order to establish an effective outage and contingency management regime. This section describes these key problems in more detail.

NGOCP is not mandatory

5.2 The NGOCP is a voluntary arrangement to which the industry players are not contractually bound. This creates a potential problem during a gas contingency because it is uncertain whether all participants will comply with instructions. It may also be possible that other contractual commitments could prevent a participant complying with instructions.

5.3 Arguably, this problem could be addressed by making the arrangements mandatory, for example by forming a binding, multilateral agreement amongst all the participants involved, however:

- it will almost certainly be difficult to secure the necessary agreement amongst all the participants. In particular, Contact Energy has already indicated to Gas Industry Co that it is not willing to commit formally to act in accordance with the current form of the NGOCP; and
- in some cases existing contractual rights to curtail gas demand are linked to specific gas fields and this could prevent certain parties from being able to enter into an industry agreement that may require them to override these existing contractual rights.

5.4 Gas Industry Co has concluded that the only practicable means of making the arrangements mandatory is regulations under the Gas Act.

NGOCP is not suited to the post-Maui era

5.5 Initial work on replacement arrangements focused on the NGOCP and on developing those arrangements into a more effective and binding set of arrangements to address gas contingencies. Some submissions in response to the July 2006 discussion paper suggested this approach was too narrowly focussed on Maui and MPOC and that it could be inadequate to deal with contingencies in a multiple gas field environment with reduced flexibility from the Maui field.

5.6 By contrast, other submitters regarded MPOC as having most of the tools required to effectively manage gas contingencies. Although MPOC does contain an arrangement to assist with the management of gas contingencies, in practice it is not always the case that shippers comply with revisions to scheduled quantities. This has led Gas Industry Co to focus on alternative arrangements which are capable of being enforced and, therefore, will more likely be complied with.

5.7 There have been a number of changes to the physical make-up of the gas industry suggesting that the principles of the existing outage and contingency arrangements, as embodied in the NGOCP, may no longer be appropriate. These include:

- Maui gas supply, once the dominant source of supply to New Zealand, is becoming less important;
- new gas supplies are less flexible than Maui and are more diverse; and
- gas-fired electricity generation is a higher proportion of total electricity supply.

5.8 Gas Industry Co acknowledges the need for a broader-based set of arrangements for gas contingencies that recognises the changes that have taken place in the energy sector since the NGOCP was established.

Lack of legal clarity to manage contingencies

5.9 Under the current arrangements there is a lack of clarity of roles and responsibilities that leads to potential confusion about what will happen during a gas contingency. In particular:

- there is no clearly defined role for any party to act in the role of Gas Contingency Operator during a gas contingency;
- the obligations for participants to follow instructions from a contingency operator during a gas contingency are ambiguous and may not override contracts; and
- there is ambiguity about potential consequential liability of participants acting to curtail gas demand.

5.10 This lack of clarity of roles, obligations and potential liability could lead to poor management of a gas contingency.

5.11 The lack of a clearly defined Gas Contingency Operator means that there is no focus for managing outcomes during a contingency with the current arrangements relying on participants to cooperate through the vehicle of the Contingency Communications Team. Although cooperation has been very good in the past, the ownership structures of the industry have changed, with associated changes in the commercial drivers. This further suggests that a cooperative model is no longer adequate.

5.12 The arrangements set out in the NGOCP do not impose any legal obligations on participants to take actions such as curtailing demand in accordance with the plan. This suggests that where there is any risk of participants being in breach of an existing contract or risks of creating a legal liability to a third party, participants are less likely to comply with the plan. This creates uncertainty about the effectiveness of the arrangements.

5.13 Gas Industry Co has concluded that the best means of addressing these deficiencies is to implement a set of mandatory arrangements so as to establish clear roles, responsibilities and obligations for all participants.

Inadequate commercial arrangements during contingencies

5.14 The current arrangements provide no recognition of the premium value of gas at the time of a contingency. Instead gas taken during a contingency is effectively "borrowed" until a later point in time. A possible consequence is that there may be a

perverse incentive for some suppliers to get-by on tight supplies and to instead rely on an outage and contingency situation to be ‘let off the hook’.

5.15 Contact Energy has also suggested that there could be perverse incentives that arise from the current arrangements for a gas contingency (as expressed in NGOCP) in combination with the operation of the electricity market during a gas contingency.

5.16 The consequence of the inadequate commercial arrangements could be that a security of supply situation may be more likely to occur, and that longer-term security of supply may be eroded.

5.17 Gas Industry Co has concluded that a set of cash out arrangements which recognise the value of gas under a contingency are required in order to provide a means of ensuring those parties who continue to provide gas during a contingency are paid an efficient price for that gas. These arrangements should also provide shippers and consumers with an incentive to maintain adequate backup supply, where it is more efficient to do so, rather than rely on “borrowing” gas during a contingency and paying it back later.

5.18 The new arrangements need to provide the necessary certainty which is sought by stakeholders such as Contact – specifically that gas “taken” in a contingency by a party which has no contractual right to take that gas is legally obliged to pay for that gas.

Q1: Do you agree the four problems described in this section are key issues needing to be addressed in any new arrangements for outage and contingency management?

Q2: Are there other key problems with the current arrangements which also need to be addressed?

6 Identifying Reasonably Practicable Options

6.1 Gas Industry Co has a number of choices in recommending gas governance arrangements. These range from industry arrangements, which may be underpinned by contracts, through to formal Rules and/or Regulations under the Gas Act. The selection of the particular instrument to use (industry codes, contractual arrangements or formal regulation) is driven in large part by the form of the solution and which instrument is likely to provide the most effective implementation having regard to the objective of the governance arrangements.

6.2 The process prescribed in the Gas Act for evaluating options when recommending regulations (or rules) to the Minister is equally applicable to non-regulatory recommendations and that approach has been adopted in the evaluation of options which follows.

6.3 Section 43N of the Gas Act requires the Gas Industry Co, prior to making a recommendation to the Minister of Energy, to seek to identify all reasonably practicable options, to assess the costs and benefits of each option, and to ensure that the objective of the regulation is unlikely to be satisfactorily achieved by any reasonably practicable means other than the making of the regulation. The Statement of Proposal is required to include consideration of these issues.

Options considered

6.4 The July 2006 discussion paper identified the possible mechanisms for implementing outage and contingency management arrangements as:

- a continuation of the status quo;
- a multi-lateral industry agreement (or pan-industry agreement); and
- rules or regulations under the Gas Act.

Status quo is not an option

6.5 The July 2006 discussion paper concluded that any mechanism to implement arrangements for outage and contingency management needed to be mandatory and that a continuation of the status quo would fail to meet the requirements for effective outage and contingency management.

6.6 The analysis outlined in section 5 of this paper identified a number of deficiencies with the status quo which are unlikely to be readily rectified.

6.7 Further analysis, supported by many submissions, suggests that retaining the status quo fails to meet the regulatory objective because the existing arrangements are ambiguous, lack enforcement provisions, and may not optimise security of supply during a gas contingency. The shortcomings in those arrangements may also create problems for future security of supply.

6.8 Gas Industry Co has concluded that the status quo is not a reasonably practicable option and should not be considered further.

An industry agreement provides an uncertain outcome

6.9 Developing an industry agreement was also considered in the July 2006 discussion paper. The paper concluded that pan-industry arrangements are also unlikely to achieve the regulatory objective given the:

- difficulty in reaching consensus to allow execution of a pan-industry agreement that is legally binding;
- nature of provisions that would need to be included;
- diverse nature of the parties that would be required to agree the provisions to be included in a pan-industry agreement and the fact that they include direct competitors;
- inability to compel new participants to execute and join a pan-industry agreement; and
- possible Commerce Act risks associated with such an agreement.

6.10 Gas Industry Co has concluded that a pan-industry agreement fails to meet the regulatory objective because it requires either a consensus to be reached among industry players, or for boycott arrangements that effectively bind all industry participants.[6]

6.11 Even if a consensus is reached or a boycott arrangement agreed, there remains a risk that the agreement reached by the industry for managing contingencies cannot override existing contracts, or cannot be readily implemented. The likelihood remains that one or more of the required parties is simply unable to enter into such an agreement and/or it requires Commerce Commission approval. Further, the cost of enforcement and the difficulties in assigning penalties under a pan-industry agreement suggest that a pan-industry agreement remains vulnerable to shippers and/or consumers failing to comply when notified to curtail demand.

6.12 Gas Industry Co has concluded that a pan-industry agreement is not a reasonably practicable option and should not be considered further.

Rules or regulations under the Gas Act

6.13 Gas Industry Co has concluded that the most practicable means of making outage and contingency management arrangements mandatory, and removing doubt about

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6 A boycott arrangement could be implemented by seeking the agreement of the monopoly network providers to include, as a requirement of access, that participants are required to comply with certain outage and contingency management arrangements. However, there is the potential for such an approach to grant undue leverage to the network owners used to implement the boycott. In addition, such an approach is ineffectual in binding parties who are not transmission customers.

compliance with the arrangements during a contingency, is to implement them within a framework of regulations (and/or rules) under the Gas Act.

6.14 Gas Industry Co has therefore developed a proposal based on Outage and Contingency Management Regulations (OCMRs). The approach combines the application of regulations with a requirement for industry participants to develop much of the detailed planning and arrangements to apply during a gas contingency. Thus the proposal represents somewhat of a hybrid between a fully-regulated set of arrangements and a pan-industry agreement.

6.15 The OCMRs will set out the roles and responsibilities of participants and powers to direct during a gas contingency and provide a requirement for the TNOs to develop OCMPs. The OCMPs will be developed by the TNOs in consultation with all affected stakeholders.

6.16 The framework for the proposal is outlined in section 8 and the detailed proposal is described in section 9 of this paper. Gas Industry Co has concluded that the proposal meets the regulatory objective and is a reasonably practicable option.

Counterfactual – a more prescribed set of regulations

6.17 Gas Industry Co has further concluded that the only other reasonably practicable alternative to the proposal is to fully prescribe outage and contingency arrangements in regulations and rules under the Gas Act. This would involve setting out in regulations and/or rules the detail that would otherwise be included in the OCMPs.

6.18 Thus there is a potential choice between the mix of regulation and industry arrangements proposed in this paper and a more fully-prescribed approach.

6.19 The advantage of the proposal is that the scope for industry involvement in the operational details is maximised while removing the legal uncertainties associated with the status quo.

6.20 The more fully-prescribed approach requires Gas Industry Co, with support from industry participants, to set out detailed arrangements in regulations and rules. This has two key disadvantages as it:

- covers detailed operational matters which Gas Industry Co staff are not necessarily expert on; and
- requires a high level of detail, to fully prescribe the outage and contingency arrangements, to be set out in regulations and rules.

6.21 The cost-benefit analysis, required for inclusion in the Statement of Proposal, assesses the proposal using the more fully prescribed regulatory approach as the counterfactual.

Q3:	*Given the difficulties in assigning penalties for non-compliance under a pan-industry agreement and, therefore, the inability to ensure a high-level of compliance, do you agree that the only reasonably practicable alternative to the proposal is a more fully prescribed regime incorporating the detailed arrangements for contingencies in regulations and/or rules?*

7 Legislative Framework and Requirements

The Gas Act and the GPS

7.1 Section 43F(2)(a) of the Gas Act contemplates the Government making regulations and rules in relation to wholesale markets, and in particular:

> *"…providing for the establishment and operation of wholesale markets for gas, including for–… arrangements relating to outages and other security of supply contingencies".*

7.2 The GPS, at paragraph 4, states that the Government's overall policy objective for the gas industry is:

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

7.3 The GPS also states at paragraph 5(h) that, consistent with this overall objective, the Government is seeking some specific outcomes, including:

> *"…risks relating to security of supply, including transport arrangements, are properly and efficiently managed by all parties".*

7.4 This review of gas outage and contingency arrangements is consistent with the outcomes specified in the GPS. Having a robust set of processes in place to appropriately deal with risks relating to the security of gas supply (including transport arrangements) is an essential part of optimising the security of supply of gas and the overall efficiency of the gas sector (including the supply to large and small end-users).

7.5 The GPS set December 2005 as the date for delivery of gas outage and contingency arrangements. However, Gas Industry Co has, on behalf of the industry, agreed with the Minister of Energy to extend the deadlines. The new milestones are for a recommendation to the Minister by November 2007 and implementation of the new arrangements by June 2008.

Regulatory objective

7.6 Gas Industry Co's approach to developing governance arrangements under the Gas Act requires the development of a regulatory objective as part of the process. In this case it is proposed that the objective should be:

> *"that arrangements are in place to achieve effective handling of a national or regional gas contingency without compromising long-term security of supply."*

7.7 The first part of the proposed objective is self-evident. The second part of the proposed objective is included because of the risk that ineffective short-term arrangements can lead to unintended consequences and problems with longer-term security of supply. The lack of an appropriate cash-out arrangement in the existing arrangements may be a case in point.

Legal requirements when recommending regulations

7.8 Section 43F(2)(a)(vi) of the Gas Act directly contemplates rules or regulations as a mechanism to implement deliverables under the GPS in respect of "*arrangements relating to outages and other security of supply contingencies*".

7.9 Therefore, rules or regulations can be made for gas outage and contingency arrangements provided Gas Industry Co complies with the process under section 43L of the Gas Act in making a recommendation for any rules or regulations to the Minister of Energy.

7.10 This process involves:

- making an assessment of the proposed regulation or rule against any reasonably practicable alternatives taking into account: the benefits and costs, the extent to which the objective would be promoted, and any other matters considered relevant;
- preparing a statement of proposal containing specified matters and consulting with persons likely to be affected by the proposal; and
- considering submissions from those persons, before making a recommendation to the Minister.

7.11 The consultation requirements under the Gas Act (undertaken prior to Gas Industry Co recommending rules or regulations to the Minister of Energy for approval) provide an opportunity for participants in the gas industry, as well as other stakeholders, to express their views and have input on any proposed rules or regulations.

7.12 This Statement of Proposal is intended to meet these requirements.

Regulations or rules

7.13 Section 43Q(1) of the Gas Act allows the Minister of Energy to make a rule for all or any of the purposes for which a gas governance regulation may be made. In deciding whether to make a rule rather than recommend a recommendation, section 43Q(2) requires the Minister to have regard to the following:

> *(a) the importance of the rule, including whether the rule has a material effect on the rights and interests of individuals.*
>
> *(b) the subject matter of the rule, including whether the rule contains detailed or technical matters rather than matters of general principle.*
>
> *(c) the application of the rule, including–*
>
> > *(i) whether the rule applies principally to a particular group (e.g. industry participants) rather than the general public;*
> >
> > *(ii) whether the benefits of publication in accordance with section 43R rather than the Acts and Regulations Publication Act 1989 outweigh the costs of publication by that method.*
>
> *(d) the expertise and rule-making procedures of the recommending body.*

7.14 In this context, Gas Industry Co notes that the proposed gas outage and contingency arrangements:

- govern security of supply issues which are likely to have material effects on the rights and interests of individuals;
- are not confined to detailed and technical matters;
- apply to industry participants but also potentially affect all consumers; and
- include pivotal issues that are matters of national importance, requiring certainty.

7.15 Accordingly, Gas Industry Co proposes to recommend to the Minister of Energy that the gas outage and contingency arrangements should be implemented by regulations rather than rules. The proposed arrangements for implementation have therefore been drafted as regulations.

Detailed statement of the proposal

7.16 The proposal is to make a recommendation to the Minister of Energy under section 43F of the Gas Act for regulations covering arrangements to provide outage and contingency management in the event of incidents affecting gas security of supply.

7.17 Section 8 of this paper describes the proposed framework for outage and contingency management arrangements and section 9 of this paper describes the key elements of the design. These two sections constitute a detailed statement of the proposal.

7.18 A draft of the proposed regulations is contained in Appendix C.

Reasons for the proposal

7.19 The reasons for the proposal are to address the shortcomings with the current arrangements for outage and contingency management as identified in section 5 by implementing more efficient and effective arrangements. The way in which the proposal addresses these shortcomings is outlined in section 8.

Assessment of the reasonably practicable options

7.20 The reasonably practicable options are considered in section 6 of this paper, which concludes that:

- the status quo is not a reasonably practicable option because it fails to meet the regulatory objective;
- a pan-industry agreement is not a reasonably practicable option because it fails to meet the regulatory objective;
- the proposal meets the regulatory objective; and
- the only reasonably practicable alternative to the proposal is to fully prescribe the detail proposed to be contained in the Outage and Contingency Management

Plans in regulations and/or rules (this is described as the counterfactual in section 6).

7.21 The assessment of the benefits and costs of the proposal therefore focuses on the proposal and the counterfactual.

Assessment of the benefits and costs of the reasonably practicable options

7.22 Section 43N of the Gas Act requires that, before making a recommendation to the Minister for a gas governance regulation, Gas Industry Co must assess the benefits and cost of the reasonably practicable options, including the proposal, and the extent to which the objective would be promoted by or achieved by each option.

7.23 Section 6 concluded that the only other reasonably practicable option to the proposal is to fully prescribe outage and contingency arrangements in regulations and rules under the Gas Act. This is because all other options that were considered were unlikely to achieve the regulatory objective.

7.24 Accordingly, the assessment of costs and benefits should be between the proposal (which is a mix of regulation and industry arrangements as proposed in this paper) and the more fully prescribed approach (which involves setting out the detailed outage and contingency arrangements in regulations, rules and schedules to the rules).

7.25 The key advantage of the proposal is that the scope for including industry expertise and experience on the operational details is maximised while removing the legal uncertainties associated with the status quo. Thus the proposal deals with the key problems identified with the current arrangements in section 5, while allowing industry participants to develop and implement the operational detail to meet the criteria set out in the regulations.

7.26 The more fully prescribed approach requires Gas Industry Co, with support from industry participants, to prescribe detailed arrangements in regulations and rules.

7.27 The following table evaluates, compares and contrasts the proposal and the counterfactual against a number of qualitative criteria:

Criterion	Proposal	Counterfactual
Minimise transaction costs	The proposal establishes clear accountabilities and responsibilities for particular industry participants during contingencies. It also establishes criteria that must be met by any outage and contingency management arrangements. Crucially, it allows the industry participants with detailed operational knowledge to design and implement OCMPs. The proposal should allow the implementation and ongoing development of outage and contingency management arrangements that minimise ongoing transaction costs.	The counterfactual also establishes clear accountabilities and responsibilities for particular industry participants during contingencies. However, it requires the detailed outage and contingency arrangements to be set out in regulations and rules, or schedules to the rules. In order to do that Gas Industry Co would need to design and recommend the detailed arrangements to the Minister. Any changes to those arrangements would need to follow a similar process. The counterfactual appears to offer an inefficient and costly process relative to the proposal.
Efficient decision-making on key issues	The proposal provides for TNOs to prepare the OCMPs, consult on these, and for Gas Industry Co to approve them based on recommendations from the GCO and expert adviser. The OCMPs are required to meet certain criteria, set out in the regulations, before they can be approved. This process should ensure that decision-making on key issues is efficient and focussed on overall national welfare criteria.	The counterfactual provides for Gas Industry Co, in consultation with stakeholders, to recommend arrangements to the Minister. This process should also ensure that decision-making on key issues is efficient and focussed on overall national welfare criteria.
Efficient decision-making on operational details	The proposal should allow industry participants to implement effective outage and contingency arrangements through the OCMP development process. The process of consultation and approval should provide for efficient decision-making on operational details. TNOs will also be required to maintain OCMPs in an up-to-date form, reflecting industry developments.	The counterfactual requires a high level of operational detail, to fully prescribe the outage and contingency arrangements, to be set out in regulations and rules. The rules would need to cover detailed operational matters that Gas Industry Co staff are not necessarily expert on. By prescribing those matters in rules or regulations there is a risk of the arrangements being less responsive to change.
Maximise overall national welfare	Overall the proposal provides for a high level of industry determination of the detailed design while ensuring that key national welfare criteria are met in the process.	Overall the counterfactual provides for a high level of Gas Industry Co determination of the detailed design. Key national welfare criteria should be met in the process but less adaptive arrangements may mean this option does not achieve the same standards as the proposal. Overall costs of implementation are expected to be higher than for the proposal.

7.28 The detailed analysis of the benefits and costs of the proposal has been undertaken by the New Zealand Institute of Economic Research (NZIER) and the NZIER Report is included as Appendix A.

7.29 The NZIER Report identifies that, relative to the counterfactual, the proposal offers:

- slightly lower development costs;
- materially lower establishment cost;
- slightly lower future amendment costs;
- similar compliance and enforcement costs;
- potentially significant contingency benefits;[7]
- similar efficiency benefits.[8]

7.30 Overall the NZIER Report concludes that the proposal provides modest present value net benefits over the counterfactual totalling between $0.762m and $6.907m, depending upon the assessment of contingency benefits. Under a range of sensitivities the proposal remains of positive net benefit relative to the counterfactual.

7.31 Gas Industry Co has concluded that the net benefits (benefits less costs) of the proposal are materially higher than the net benefits of the counterfactual.

Q4:	*Do you agree with the proposed regulatory objective?*
Q5:	*Do you agree that the net benefits of the proposal are materially higher than the net benefits of the counterfactual?*

[7] Potentially shorter, smaller gas outages, having lesser impacts on industry participants and gas users.

[8] Confidence in the reliability of gas supply and the certainty of the arrangements would be similar and would result in similar levels of efficiency and incentives to invest in security of supply.

8 Proposed Framework for Outage and Contingency Arrangements

8.1 The key problems with the current arrangements that have been identified in section 5, combined with the broad thrust of submissions on the July 2006 discussion paper, have resulted in Gas Industry Co reconsidering its approach to outage and contingency management arrangements. This is based on an observation that industry participants are likely to be best placed to design and implement the detailed operational arrangements to apply during a gas contingency. Gas Industry Co recommends a hybrid approach that comprises:

- developing regulations to establish a framework for outage and contingency arrangements; and
- industry participants specifying the detailed operational arrangements in plans required by the regulations.

8.2 This hybrid approach has the advantage of providing regulations to enforce mandatory coverage while using industry knowledge and expertise to design and implement the detailed operational matters. It also avoids the problem that could be created by specifying detailed outage and contingency arrangements in regulations that can only be changed through relatively inflexible processes. In this respect it is worth noting that the arrangements will apply to pipeline systems where the access arrangements and operating codes remain subject to change as a result of the ongoing transmission open access work stream.

A hybrid approach

8.3 The hybrid approach has been developed to propose a framework based on OCMRs. The OCMRs will set out the roles and responsibilities of participants, and powers for a GCO to direct participants during a gas contingency. They will also provide a requirement for each TNO to develop an OCMP.

8.4 The OCMPs will be developed by the TNOs in consultation with all affected stakeholders and will need to be approved by Gas Industry Co based on recommendations from the GCO and an independent expert adviser retained by Gas Industry Co.

8.5 The proposed framework and hierarchy is outlined in the following table.

Framework Hierarchy Level	Description
Gas Act	Empowering provisions in Section 43F(2)(a)(vi) "*arrangements relating to outages and other security of supply contingencies*".
Outage and Contingency Management Regulations	Establish regulations under the powers of Section 43F(2)(a)(vi) to provide for: • a definition of a Gas Contingency and how it is triggered; • a GCO to manage security of supply under Gas Contingencies; • powers for the GCO to direct some combination of suppliers, shippers, retailers and consumers during a Gas Contingency; • a contingency price to cash-out any quantity mismatches; • a requirement for each TNO to prepare an OCMP; • criteria to be applied in the preparation of an OCMP; • required content of an OCMP; • a process for consultation on the preparation of an OCMP; • publishing of a communications plan covering GCO/TNO communications; • a process for approval of an OCMP; and • maintaining, testing and reviewing OCMPs.
Outage and Contingency Management Plan	Each OCMP will be required to include: • the process to be followed during a Gas Contingency; • a communications plan; and • a process for terminating a Gas Contingency.

8.6 This framework is designed to address the need for a mandatory arrangement with clear powers, roles and responsibilities, while preserving the attributes of an industry agreement on the detailed operational arrangements. In particular, the framework is intended to provide flexibility for the OCMPs to evolve in response to experience and changing industry dynamics, without the need to follow complex rule change processes.

8.7 Accordingly, the OCMRs focus on establishing a role for a GCO, providing powers for the GCO to direct participants during a gas contingency, and the criteria and principles to be applied by the GCO and each TNO. This leaves the development of the detailed operational arrangements to apply during a contingency to be developed by the TNOs in conjunction with the GCO, while consulting with other industry participants, and being guided by the criteria and principles set out in the OCMRs.

8.8 Parties already have obligations under a range of other legislation, most notably the Civil Defence and Emergency Management Act 2002. It is expected that the requirements under the OCMRs will be able to be discharged in a way that does not require duplication of existing obligations but may simply require augmentation in some areas.

Outage and Contingency Management Regulations

8.9 The proposed OCMRs are included in this Statement of Proposal as Appendix C. The following table provides a high-level summary of the draft content.

Section	Description
Preliminary	Parts 1, 2, 5 and 6 come into effect at commencement date Parts 3 and 4 come into effect after OCMPs are approved
Part 1 General Provisions	Definitions Appointment of GCO Performance standards and review of GCO Content of GCO service provider agreement and publication of same Requirement for a Gas Outage and Contingency Website Publication of defined transmission networks by Gas Industry Co Relationship to NGOCP, pipeline operating codes and Civil Defence Emergency Management Funding for gas contingency development and ongoing costs Compliance
Part 2 Obligations prior to a Gas Contingency	Requirement for TNOs to prepare OCMPs Content of OCMPs OCMPs to include a minimum pressure level and/or line-pack requirement Requirement for TNOs to consult on preparation of OCMPs Recommendation of OCMPs by GCO and independent expert adviser Approval of OCMPs by Gas Industry Co TNOs to publish OCMPs Maintaining OCMPs Testing OCMPs Objectives of curtailment bands Gas Industry Co to commission a study on curtailment bands within three years of commencement GCO to produce communications plan GCO to prepare and publish information guide Retailers to supply information Designation of essential service providers Designation of minimal load consumers

Section	Description
Part 3 Gas Contingency	Safety considerations GCO may declare a Gas Contingency if pressure or line-pack falls below prescribed levels Notification and publication of gas contingency Roles of GCO and TNOs during a gas contingency GCO directs TNO in accordance with communications plan TNO to act in accordance with OCMPs Direct curtailment of gas consumption and/or storage injections Roles of TNOs, retailers and consumers Termination of a Gas Contingency
Part 4 Obligations post Gas Contingency	GCO to prepare incident report GCO to prepare performance report in consultation with affected TNO(s) Gas Industry Co to appoint Independent Industry Expert Independent Industry Expert to determine Contingency Price Contract imbalances to be cashed-out based on Contingency Price
Part 5 Miscellaneous provisions	Audits
Part 6 Transitional provisions	NGOCP to apply until Parts 3 and 4 come into effect Gas Industry Co to publish interim curtailment bands by commencement date

Outage and Contingency Management Plans

8.10 The OCMPs are a key component of the proposal because they will specify the details about how the TNOs will discharge their obligations during a Gas Contingency. The GCO will direct such actions in accordance with the OCMPs and an agreed communications plan. The required content of the OCMPs is set out in the OCMRs and summarised in the following table:

Required Content	Description
Thresholds for declaration of a Gas Contingency	The plan must set out either minimum pressure levels or minimum line-pack levels. If either is triggered in practice the GCO must declare a Gas Contingency.
Actions	Actions that the TNO considers likely to remedy any breach of the thresholds
Process for curtailment	A process outlining how the curtailment bands will be implemented and restored.
Communications procedures	Procedures for communication between the TNO and other parties (apart from the GCO – this is covered in the GCO communication plan).
Contact details	Contact details for the person responsible for directing operations during a gas contingency.

Addressing the problems

8.11 The proposed framework of OCMRs and OCMPs addresses the problems identified in Section 5 as outlined in the following table:

Problem Area	How Problem is Addressed by Framework
Lack of a mandatory arrangement	The OCMRs will establish clear obligations on all participants to comply with outage and contingency management arrangements during a Gas Contingency. The regulations will override certain aspects of pipeline operating codes during the period of the contingency (for example, to void payments of imbalance charges under MPOC). This is designed to remove the uncertainty about whether shippers, retailers and consumers will comply with directions during a Gas Contingency.
NGOCP not suited to a post-Maui era	The OCMRs will establish a clear legal framework that potentially encompasses all suppliers and transmission networks. Transmission network owners will each be required to produce an OCMP to meet the requirements and criteria set out in the OCMRs. The GCO, in conjunction with the expert adviser, will only recommend approval of an OCMP if it considers that it will be able to execute the plan during a GC and meet the requirements set out in the OCMRs. This allows the expert transmission network and operating staff to design durable and robust arrangement that will suit the post-Maui era.
Lack of legal clarity	The OCMRs will establish clear powers, roles and obligations for participants. Participants complying with directions under an approved OCMP are likely to have reduced scope for consequential liability to consumers, relative to the current situation.
Inadequate arrangements to pay for gas during a contingency	The OCMRs provide for a contingency price as the basis to cash-out any quantity mismatches. This should provide good long-term incentives for participants to consider back-up arrangements and ensure payment for those wholesalers who end up losing access to contracted gas which continues to flow during a gas contingency.

8.12 The proposed framework has the advantage of clarifying the legal position of the participants and allowing for mandatory participation in the arrangements, at the same time as allowing industry participants to reach agreement, through a consultative process, on the way the detailed arrangements will be implemented. This leverages off industry expertise, while providing a clear set of criteria to be met in order to ensure outcomes are to the national benefit.

Q6:	*Do you agree that the proposal has the potential to address the key problems identified with the current arrangements?*

9 Proposed Outage and Contingency Management Arrangements

9.1 The development of this proposal has required consideration of a number of key design parameters and the proposal reflects that consideration. This section describes each of these key design issues and the rationale for the proposed approach.

Defining a gas contingency

9.2 During the consideration of the NGOCP it emerged that the circumstances which should trigger a gas contingency, and intervention to manage that, were limited to those where pressure was falling and/or line-pack was being depleted to the extent that, if there was no intervention, it was likely that at some future point gas supplies would effectively run out and customers would be curtailed in an unmanaged fashion.

9.3 It is proposed that, for the purpose of the OCMR, a Gas Contingency be defined as:

> *"Whenever there is a need to intervene in the normal commercial arrangements in order to secure the operation of the gas supply system as a whole".*

Coverage

9.4 The proposed OCMRs are being developed using the empowering provisions in section 43F(2)(a) of the Gas Act. These provide for making regulations and rules in relation to wholesale markets, and in particular:

> *"providing for the establishment and operation of wholesale markets for gas, including for–… arrangements relating to outages and other security of supply contingencies".*

9.5 Legal advice suggests that these empowering provisions allow the OCMRs to cover national and regional gas contingencies as long as they would have an affect on the "wholesale market" for gas. This means that any contingency covered by the OCMRs must have implications outside distribution network regions. By implication, any contingencies confined within a distribution network cannot be covered.

9.6 Accordingly the proposal involves the preparation of an OCMP for each of the MDL and Vector Transmission networks but does not encompass distribution networks (although it is designed to extend to encompass any new high-pressure transmission networks).

9.7 The proposal is focussed on arrangements at the wholesale level, which would be invoked at a point in time when it has been determined that the normal commercial arrangements can no longer sustain the operation of the gas supply system and selective curtailment of consumers is likely to be required.

9.8 A key objective of curtailment is to avoid depressurising distribution systems and thus avoid a situation developing that could have safety implications and/or involve a lengthy, and therefore costly, restoration process.

The Gas Contingency Operator

9.9 The GCO will play a key role in directing the TNOs who, in turn, will direct affected participants during a Gas Contingency. Vector is currently the System Operator for both the MDL and Vector transmission pipelines and is considered to be well-positioned to perform the role of GCO. Vector has informally indicated that it would be prepared to undertake the role of GCO.

9.10 The GCO will be appointed under a service provider agreement. The GCO will be required to operate with due care and attention and will have the rights, powers and obligations set out in the OCMRs and the accompanying service provider agreement. The service provider role will provide the GCO with some protection from liability for claims under tort. The service provider agreement is currently under discussion with Vector and it is expected to be published before the Regulations are gazetted.

9.11 It is anticipated that the service provider agreement will provide for the GCO to be remunerated based on normal commercial rates and estimates of time spent preparing and approving plans and conducting tests.

9.12 The GCO will be responsible for:

- producing the GCO Communications Plan;
- recommending approval of the TNO OCMPs (in conjunction with an expert adviser appointed by Gas Industry Co);
- testing the plans and procedures;
- declaring a Gas Contingency (GC);
- operating the system during a GC;
- determining the timing and level of curtailment for TNOs to action;
- managing the restoration process;
- terminating a GC; and
- producing incident and performance reports after a GC.

9.13 The GCO will direct operation of the transmission system(s) acting as a technical operator during a GC. The GCO will not be taking commercial decisions (although decisions made by the GCO in accordance with the OCMRs may well have commercial ramifications).

9.14 The GCO will operate according to the processes and plans set out in the OCMRs, GCO Communications Plan, and the OCMPs. The GCO role will be central to directing and coordinating the industry during a gas contingency and through to the process of restoration.

9.15 The GCO will generally be limited to implementing the OCMPs agreed with each TNO. However, included in the regulations is a provision for the GCO to take any other action it considers necessary to ensure the effective management of a gas contingency. This is considered necessary in order to avoid a situation where the

GCO is unable to implement a sensible and/or necessary action during a contingency simply because it is not in the relevant OCMP.

Planning and approval processes

9.16 Each TNO will be required to produce an OCMP for its transmission network. The obligation to produce the OCMP is designed as a requirement for the owner of the network rather than the operator of the network because the OCMP is seen as essential for the operation of the network asset during a GC – a period when gas supplies are reduced and/or the normal transportation services have had to be curtailed. The network owner is considered to be the more appropriate party to consider how best to manage the asset during a contingency. The network owner is likely to wish to consult with the network operator during the process to establish the OCMP.

9.17 The TNO will be required to publish its draft OCMP for consultation with all stakeholders, allowing a minimum of 20 business days for that consultation. Overall the TNO has 50 business days from the commencement date in which to prepare, consult on, and revise its OCMP before submitting it for approval.

9.18 In order to recommend an OCMP for approval by Gas Industry Co, the GCO will be required to confirm that the OCMP satisfies the required contents for an OCMP as provided for under the OCMRs, and that the OCMP will give effect to the purpose of the regulations.

9.19 In order to obviate any suggestion of conflict of interest it is proposed that Gas Industry Co will appoint an expert to work alongside the GCO during the recommendation process for all OCMPs. Both the expert and the GCO will review each OCMP and will either provide a joint recommendation to Gas Industry Co that it approve the OCMP or, if they cannot agree, will provide separate reports to Gas Industry Co which will, in turn, make a determination whether to approve the OCMP. Gas Industry Co may only approve an OCMP if it is satisfied it complies with the OCMRs and gives effect to the purpose of the OCMRs.

9.20 The GCO will publish the approved OCMPs on a website set up by the GCO for the purpose of communicating the outage and contingency arrangements.

9.21 The GCO will also be required to produce a Communications Plan, in consultation with TNOs, describing the processes that it will use to communicate with the TNOs during a GC. The GCO will publish the Communications Plan on the outage and contingency website.

Content of OCMPs

9.22 The OCMPs will be required to contain all the elements outlined in the table in section 8.10.

9.23 Each OCMP will contain the minimum pressures and/or line-pack level which, if breached, would trigger a Gas Contingency on the relevant transmission network. Each trigger will comprise a level and the point on the network at which the level will

be measured. The line-pack trigger level will be calculated for the transmission network as a whole stating the uniform pressure on which line-pack is based. The line-pack level is envisaged to provide a trigger if there were a shortage of gas across the network but, due to the pattern of flows on the day, the shortage was insufficient to trigger any of the individual minimum pressure triggers.

The role of participants in outage and contingency management

9.24 The roles of all participants before, during, and after a gas contingency are summarised in the following table.

Participants	Role in outage and contingency management
Gas Contingency Operator	Prepare and publish GCO Communication Plan Recommend OCMPs for approval, in conjunction with expert adviser Declare Gas Contingencies Maximise opportunities to obtain additional supplies from upstream producers and storage facilities Direct curtailment as necessary Direct restoration process Terminate Gas Contingencies Produce incident and performance reports after a Gas Contingency Coordinate test exercises Keep certain parties informed
Transmission Network Owners	Prepare OCMPs Direct transmission-connected consumers to curtail demand as instructed by GCO Direct retailers to curtail demand as instructed by GCO Maintain communications during a Gas Contingency
Retailers	Maintain emergency contact details for their consumers Receive applications from parties requiring classification as essential service providers and/or minimal load consumers Provide data on consumers to GCO Implement curtailment as directed and report back
Distributors	Distributors have no particular obligations under the proposal but will continue their normal operational responsibilities during any contingency
Consumers	Provide information to retailers as required Apply for designation as essential service providers and/or minimal load consumers Comply with curtailment instructions given by retailers

9.25 Although distributors will have no particular formal role during a Gas Contingency, they will be expected to continue to maintain the safe and secure operation of distribution networks. Consideration was given to the possibility that distributors could monitor whether consumers have complied with the retailer's directions to curtail

demand, with a possible enforcement role for the distributor. However, it was considered more appropriate for retailers to undertake this monitoring process.

9.26 Distributors have the role of safety first and foremost. If conditions on a distribution network were to deteriorate (e.g. loss of pressure) during a gas contingency then the distributor has the right under the existing arrangements (safety section of the legislation) to isolate consumers. The actions taken by the GCO to direct curtailment of demand on the distribution network are intended to preserve the integrity of the overall gas transportation system. If a distribution network faces a safety issue during a gas contingency, then the distribution network operator may need to communicate with the GCO to request the GCO to direct further curtailment within that distribution network.

Declaring a gas contingency and terminating a gas contingency

9.27 If there is a breach of the minimum pressure or line-pack levels contained in any of the OCMPs, or if a breach is imminent, then the GCO will declare a GC by issuing a formal notice to the relevant TNOs, notify certain parties and place a notice on the outage and contingency website stating that a GC has been declared.

9.28 The GC will continue for the period that the line-pack and pressure on the transmission system are being stabilised, and recovered, and through the period when the GCO is restoring supply. The GCO will not terminate a GC until it is satisfied that restoration can continue with little or no risk of triggering a further GC.

9.29 At the point that the gas transmission network is capable of supplying gas to all consumers at the level that gas was being supplied prior to the event that triggered the gas contingency, the GCO must issue a formal notice to declare the end of the GC. The GC should be terminated as soon as reasonably possible. The GCO may terminate the GC before the gas supply has been restored to every consumer (for example a consumer may require soundness testing, purge and relight before supply is restored) as long as it is satisfied that the network is likely to remain in a stable state following the termination.

Priority order for curtailment

9.30 It is intended that the initial curtailment bands will be published BY Gas Industry Co prior to the commencement date. The regulations will also require Gas Industry Co to undertake a more complete cost-benefit analysis in support of the curtailment bands and publish a replacement set within three years of the start of the new arrangements (or confirm the existing bands if no change is required).

9.31 The curtailment bands specify the order for curtailment of consumer demand. During a gas contingency the GCO will direct the curtailment of demand in the order determined by the bands, to the extent necessary to stabilise the gas transportation network. The curtailment bands have been designed to minimise the net public cost of a curtailment to the economy, whilst prioritising essential service providers and providing for effective management in terms of rapid reduction in the demand for gas.

9.32 The NGOCP contains a set of category definitions for load shedding based on annual consumption levels. A review of the arrangements in other jurisdictions confirms that bands which are based on annual consumption are also used in those jurisdictions.

9.33 An examination of the existing bands in the NGOCP has suggested that it might be appropriate to make a number of changes to the existing bands before publishing the initial set of curtailment bands under the OCMRs. These changes are as follows:

- for curtailment of large consumers supplied from the transmission system (Major Plant category under the NGOCP) it is suggested that a distinction be made between plant with alternative fuel capability that could continue operation during a gas contingency, and plant that is dependent on gas;
- the distinction in the NGOCP between categories B, C and D does not appear to create a clear distinction that would be useful for the purpose of minimising the net public cost to the economy. Instead it is suggested that the three bands are combined; and
- it is proposed to introduce a new category of minimal load consumer. A minimal load consumer would be an industrial load contained within the existing bands A, B, C or D whose plant would sustain serious damage, or serious environmental damage would result, if the gas supply was terminated suddenly.

9.34 By maintaining an approved minimal supply a minimal load consumer is expected to be able to mitigate the likelihood of serious damage (plant or environmental) for the period that it is winding down the plant, or switching to an alternative fuel. The supply to a minimal load consumer will be maintained, but only at the minimum required to avoid plant (or environmental) damage. The minimal load consumer will be expected to have a plan to wind down the plant completely and details of the minimal load and duration of supply are required to be agreed in advance by the retailer and consumer. Production is intended to cease during the period that minimal supply is being maintained. The supply to a minimal load consumer will be fully interrupted if it proves necessary to move to the next level of curtailment.

9.35 It needs to be considered whether the arrangements for minimal load consumers should be regarded as transitional, that is whether such arrangements be time-limited and the consumers advised to make alternative arrangements wherever practicable. The OCMRs have been drafted assuming this is the case.

9.36 In anticipation of the development of gas storage facilities, a new curtailment band, band 0, has been introduced that curtails all gas off-taken for injection into storage. This means that gas off-take for storage purposes would be curtailed before (or at the same time as) other consumers.

9.37 The existing NGOCP curtailment bands and the proposed initial curtailment bands to be published by Gas Industry Co are described in Table 1.

Table 1 – Curtailment Bands: existing NGOCP and proposed modified bands

Existing NGOCP Arrangements			**Proposed Bands**		
NGOCP Category	Description		Curtailment Band	Consumption	Description
			0		Gas off-taken for injection into gas storage.
Major Plant	>15 TJ/day, Direct Supply		1a	>15TJ/day	Consumers supplied directly from a transmission network and who have an alternative fuel capability. If minimal load consumer then manage wind-down of plant.
			1b	>15T/day	Consumers supplied directly from a transmission network who do not have an alternative fuel capability. If minimal load consumer then manage wind-down of plant.
A	>10TJ, with alternative fuel facilities		2	>10TJ/annum	Industrial and commercial consumers with alternative fuel capability. If minimal load consumer then manage wind-down of plant.
B	>10TJ, curtailment will not affect plant or product				
C	>10TJ, curtailment could cause product loss				
D	>10TJ, curtailment could cause plant damage/ environmental damage		3	>10TJ	Industrial and commercial consumers without alternative fuel capability. If minimal load consumer then manage wind-down of plant.
E	>2TJ and <10TJ, not in category F		4	2 to 10TJ	All consumers except for essential service providers. Minimal load consumers fully interrupted.
F	>2TJ classed as essential service		5	>2TJ	Essential service providers.
G	<2TJ all consumers		6	<2TJ	All remaining consumers.

Accessing additional supply

9.38 Under the NGOCP arrangements, shippers of gas whose supply is not affected are required to maintain the flow of gas during a contingency. The legal advice suggests that it is not appropriate for the regulations to direct producers to maximise supply from their assets. Similarly, it would not be appropriate to direct withdrawals from storage facilities (should they be available).

9.39 Instead the new arrangements are intended to put commercial incentives in place that appropriately reward any additional supply provided during a GC. The commercial incentives will come about in two stages:

- up to the point that a GC is declared the incentive for producers and/or owners of storage inventory to maximise supply comes through the price in the wholesale market; and
- after a GC has been declared any additional supply will be recompensed based on the contingency cash-out price through the contingency arrangements. The arrangements provide for payments for additional gas by the shipper or retailer who has received the gas from the upstream producer and/or storage facility.

9.40 If there were additional supply capacity that could be made available at short notice, which had not been allowed for under existing contracts, then the commercial supply contracts may need to be modified or new contracts put in place. The aim is to provide incentives to bring additional gas supply into the market. Ideally this would happen before a GC occurred. However, if that does not happen, then the contingency pricing arrangement should provide an incentive during a GC.

9.41 A point to note is that additional supply may not be able to be arranged sufficiently quickly in the lead-up to a contingency declaration. Those whose supply has failed may not have the appropriate credit lines in place with producers who are able to increase supply at the time. By contrast, such producers may be willing to provide additional supplies in a setting where the regulatory framework will ensure payment is made, albeit at a price to be determined following the contingency.

9.42 At present New Zealand does not have a gas storage facility. However, it is anticipated that a storage facility (or facilities) could be developed and that the OCMRs should allow for this possibility. During a GC the GCO will direct storage operators to cease all injections into storage, as storage injections are a demand for gas. The GCO will request storage operators to maximise storage withdrawals during a GC in the same way that producers will be asked to maximise supply.

Contingency pricing

9.43 After a gas contingency has been terminated, an industry expert will be appointed to make a determination of the contingency price that is to be used for the purpose of cashing out imbalances arising as a result of a gas contingency.

9.44 Gas Industry Co will appoint the industry expert from a list of nominees put forward by retailers and shippers. Gas Industry Co has the discretion to make its own nomination if, in its view, none of the nominees is sufficiently independent.

9.45 The contingency price is intended to represent the value of gas at the time of the contingency. To determine the contingency price the industry expert will follow a set of guidelines. The industry expert will have regard to a hierarchy of prices, in descending order of importance these are shown in the table below.

Ranking	Price
1	Gas wholesale market price immediately prior to the gas contingency giving a measure of the marginal value of additional supply, or demand reduction, at the time of the contingency. (It is envisaged that the wholesale market will be suspended once a gas contingency is triggered.)
2	Gas wholesale market price in the seven days leading up to the contingency. This represents the price for additional supply in advance of the gas contingency.
3	Prices in the wholesale electricity market: in the seven days leading up to the contingency; prices immediately prior to the contingency; and prices during the contingency itself. The electricity price is to be used to impute a gas price taking account of efficiency and cost of emissions (this being the implied marginal value of gas to electricity generation).
4	Economic cost of the curtailment to the end users who had their gas supplies curtailed.

9.46 If there is no suitable wholesale gas market then the industry expert will be required to rely on rankings 3 and 4.

9.47 In choosing which prices to use the industry expert is to have regard to how:

- reliable the prices are – the prices need to come from a transparent wholesale market (except for ranking 4); and
- appropriate the prices would be to represent the value for gas at the time of the contingency.

9.48 The industry expert is to give greater weight to the higher ranking prices (1, 2, 3 then 4) in determining the contingency price.

Imbalances

9.49 Gas Industry Company will appoint an agent to calculate the imbalance for each shipper and retailer during the gas contingency. It is intended that the details of the process will be devised, with input from the industry, once the regulations have been approved. It may be that the most appropriate agent is the service provider that performs the standard imbalance calculations on behalf of the industry outside a gas contingency.

9.50 After the gas contingency has been terminated the contract imbalances for each shipper and retailer during the period of the GC will be calculated. The process to

estimate a consumer's demand will use the standard industry processes modified to take account of the extent and duration of the actual curtailment that took place during the gas contingency. The imbalance calculation would need to make an adjustment where there was evidence that a consumer had failed to comply with the curtailment instruction issued during the gas contingency.

9.51 The calculation of the imbalance will include all trades entered into by a retailer or shipper that go to delivery during the period of the gas contingency. A gas trade over the high pressure gas transmission network will be considered as equivalent to an injection for gas purchased, and to an off-take for gas sold.

9.52 The imbalance calculation will result in a contract imbalance for each shipper and retailer that covers the period of the gas contingency. Each shipper and retailer will have a contract imbalance that is either a negative imbalance (supply less than demand), or a positive imbalance (supply greater than demand).

Cash-out

9.53 A contingency cash pool will be used for the purpose of administering the cash-out arrangements. Because of the infrequent nature of outage and contingency events, Gas Industry Co will administer the arrangements in order to keep the costs of administration to a minimum. The cash-out process will, effectively, be a transfer of money from the shippers/retailers in negative imbalance to the shipper/retailers in positive imbalance. Gas Industry Co will establish a trust account to administer the contingency cash pool. Costs of administering cash-out will *not* be paid from the contingency cash pool.

9.54 Invoices will be issued to all shippers and retailers who had a negative imbalance. The invoice will be for the volume of the negative imbalance multiplied by the contingency price. Invoices will be payable by the 20th of the month following the month in which the invoice was issued. The sum of all the moneys collected will form the total value of the contingency cash pool and will be held in trust by Gas Industry Co pending payment.

9.55 Shippers and retailers who had a positive imbalance will be paid from the contingency cash pool. The payments will be made by allocating the total value of the contingency cash pool among those in positive imbalance according to the individual shipper/retailer's proportion of the total positive imbalance (the sum of the positive imbalances for all shippers and retailers that were in positive imbalance). In effect, all those in positive imbalance will bear the credit risk of those in negative imbalance on a pro rata basis.

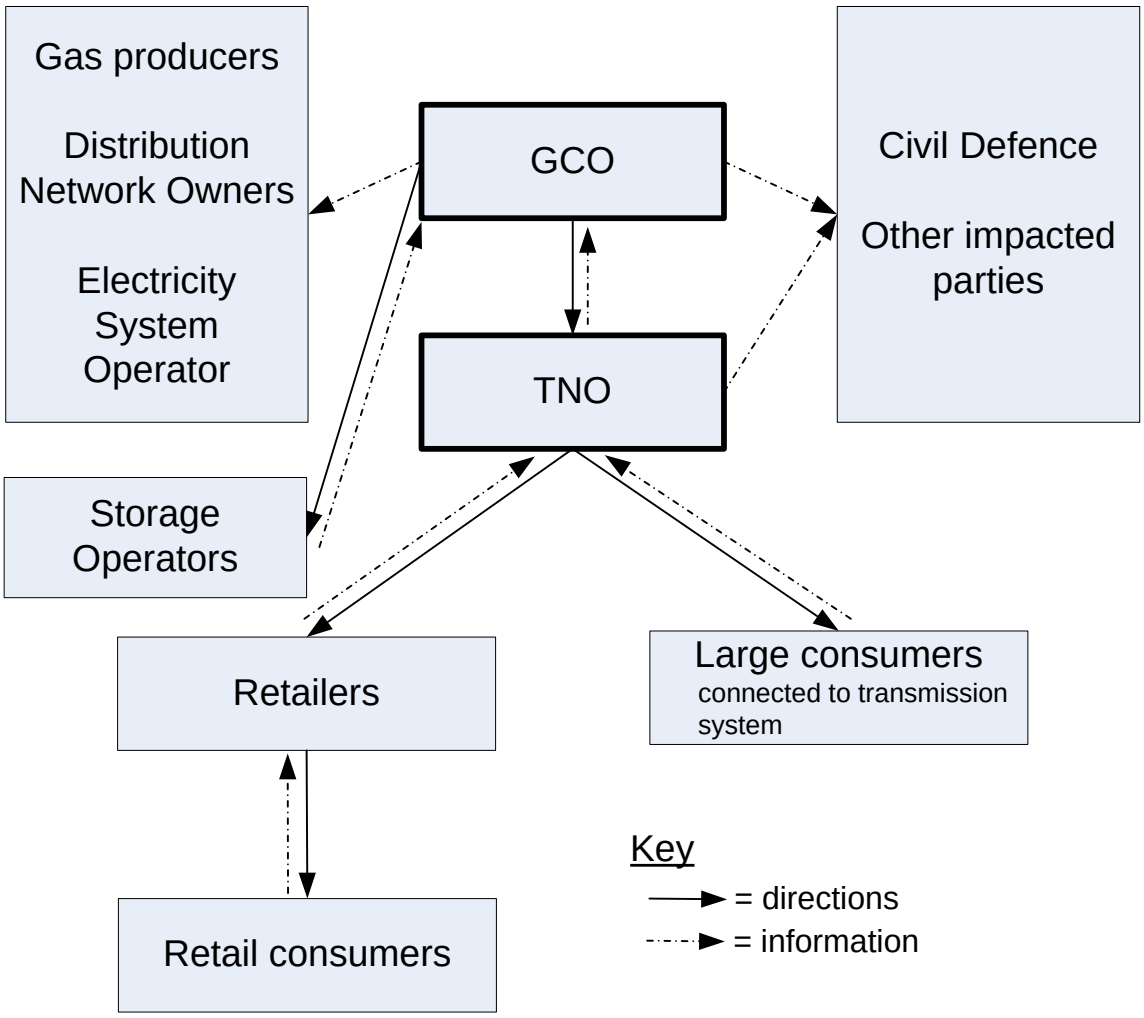
Communications during a GC

9.56 During a GC the GCO will communicate with the industry according to the methods and procedures described in the GCO Communication Plan and published on the outage and contingency website.

9.57 Figure 2 shows the flow of directions and communications during a GC. The GCO will inform upstream producers and storage operators of the GC. The GCO will direct

storage operators to cease injections and will seek to maximise opportunities for both storage operators and producers to provide additional supplies during a GC.

Figure 2 – Flow of directions and information during a GC



9.58 The GCO will communicate with the electricity system operator (SO) and with other impacted parties (including the Director of Civil Defence Emergency Management) to notify them that a GC has been triggered.

9.59 The GCO will instruct the relevant TNO(s) to curtail the demand of all consumers within a specified band(s) and supplied through specified distribution networks (as appropriate to the contingency). The TNO(s) will instruct large consumers connected to its transmission system and in the affected band as instructed by the GCO to curtail demand with immediate effect. The TNO will instruct each retailer to curtail the demand of its consumers in the affected curtailment bands and distribution networks as instructed by the GCO. Retailers will contact their retail consumers that are within the relevant curtailment bands to instruct them to curtail demand with immediate effect (subject to any agreed minimal load requirements).

9.60 The TNO will be able to monitor the curtailment of large consumers directly using OATIS. A retail consumer that has been instructed to curtail its demand will be required to report back to its retailer as soon as it has complied with the curtailment instruction. The retailer will report back to the TNO to notify it of the consumer demand that it has been instructed to curtail and of the consumer demand for which confirmation of curtailment has been received. The TNO will report back on progress to the GCO at regular intervals.

9.61 Communications between the parties will continue during the GC with the GCO issuing updates as and when appropriate.

9.62 A similar communication process will be used during the restoration process.

Limitations on liability

9.63 The GCO will be appointed by Gas Industry Co as a service provider under the proposed regulations. Section 43Z of the Gas Act provides that industry participants are not able to bring any action in tort against service providers appointed under rules or regulations that:

> *"….arises out of, or relates to, any act, matter, or thing done, or required or omitted to be done, by the service provider in its role as service provider, provided that the act or omission is not a fraudulent act or omission by the service provider."*

9.64 It is, however, proposed that the GCO will be liable under the proposed compliance regime for breaches of certain regulations, such as those relating to the determination of a GC. It is proposed that the GCO liability for such breaches will be limited by the service provider contract to the quantum of the annual fees to be paid under the service provider contract in respect of all events occurring in any one financial year. Gas Industry Co considers that the proposed limits provide an appropriate balance between the likely cost to a participant of a breach by the GCO and the level of risk that the GCO is prepared to bear without adversely impacting upon the fees charged by the GCO for providing the service.

9.65 Gas Industry Co considered whether it would be appropriate for the regulations to limit liability for industry participants, such as retailers or network owners, for complying with GCO directions. Gas Industry Co has concluded that, not only does it not have the power to limit such liability under the Gas Act, but it would not be necessary or desirable to provide such a limitation in the regulations. Gas Industry Co considers that limitations on liability resulting from an inability to comply with contractual obligations due to events outside a contracting party's reasonable control are more appropriately dealt with through the usual force majeure provisions found in supply contracts. In Gas Industry Co's view, compliance with a legal requirement to curtail supply in an outage or contingency situation should fall well within the usual definition of a force majeure event.

9.66 Further, Gas Industry Co considers that establishing the obligations to follow directions from the GCO in regulations in the manner proposed will place retailers and network owners in a far stronger position to implement curtailment of consumer demand than is the case under the current NGOCP.

Principles for cost allocation

9.67 Implementation of the outage and contingency management arrangements will incur a number of costs, including:

- remuneration to the GCO under the service provider agreement;
- payments to the expert adviser for consideration of OCMPs; and
- payments to the industry experts appointed following a contingency, in order to determine the reconciled quantities and the contingency price.

9.68 These costs are not expected to be large, but they must be provided for and consideration needs to be given as to how best to allocate the costs among industry participants.

9.69 Appendix B discusses the issues associated with funding and cost allocation. The following set of standard criteria, consistent with the principles and objectives for the gas industry, are used as the basis for assessing the best approach to allocating costs.

Criterion	Description
Economic efficiency	The fee structure should not detract from efficient market behaviour
User/causer/beneficiary pays	Where possible the costs should be allocated on a basis where the those causing the costs or benefiting from the costs will pay
Rationality	Where costs are allocated to participant classes there should be a strong connection between the participant class and the costs being recovered
Simplicity	The fee structure should be simple to apply and understand
Equity	Users in similar situations should pay similar amounts
Sufficiency	The fee structure should generate sufficient revenue to recover the costs

9.70 Appendix B applies the standard criteria to the costs of the proposed outage and contingency management arrangements. The following table summarises the application of the criteria.

Criterion	Application to fee structure
Economic efficiency	Does not discriminate between options.
User/causer/beneficiary pays	Favours allocating costs to retailers and wholesale customers.
Rationality	Favours allocating costs to retailers and wholesale customers.
Simplicity	Favours allocating costs on the basis of either volume or ICPs.
Equity	Favours allocating costs to retailers and wholesale customers.
Sufficiency	Fees based on actual contracted costs.

9.71 Application of the standard criteria for cost allocation and fee structure indicates that the costs of the outage and contingency arrangements should be allocated across wholesale customers and retailers. Because the total costs involved are expected to be low relative to other costs in the sector, logic suggests the allocation mechanism should be simple. Accordingly, it is recommended the costs of the proposed outage and contingency management arrangements be allocated to wholesale customers and retailers on the basis of annual reconciled gas volumes.

Q7: Do you agree with the proposed definition of a Gas Contingency? If not, what would you propose?

Q8: Do you agree with the list of responsibilities given to the GCO?

Q9: Do you agree that the GCO should be provided with some flexibility to take action that it considers necessary to ensure the effective management of a gas contingency?

Q10: Do you agree with the split between the planning role for the TNO and the communications plan role for the GCO? Do you agree that an industry expert should assist the GCO in the process to approve the plans?

Q11: Do you agree that the existing NGOCP curtailment bands should be updated: a) To distinguish large consumers supplied from the transmission system that have an alternative fuel capability, from those that do not have an alternative fuel capability? b) To combine the existing NGOCP bands B, C and D into a single band? c) To establish the category of minimal load consumer?

Q12: If you agree with the provision for the category of minimal load consumer, do you consider these arrangements should be designed in such a way as to encourage such consumers to make alternative arrangements wherever practicable, for example by making the classification for a consumer time-limited?

Q13: Do you agree that the proposed contingency cash-out price will provide incentives for commercial arrangements to be put in place to maximise upstream production during a GC?

Q14: Do you agree with the proposed criteria for setting the contingency price? Are there any other prices that the expert could usefully reference to determine the contingency price?

Q15: Do you agree that the proposed scheme to calculate imbalances using existing industry processes is workable? If not, what adjustment(s) would be required?

Q16: Do you agree with the proposal to have the contingency cash-out pool administered by Gas Industry Co? What period should be given to parties for payment of invoices issued by the contingency cash-out pool?

Q17: Do you agree with the proposed communications process shown in Figure 2?

Q18: Given that any exposure under a service provider agreement is likely to be reflected in the price, do you agree that GCO liability under the service provider contract should be limited in the manner proposed?

Q19: Do you agree with the proposed approach to allocating the costs associated with administering the outage and contingency management arrangements?

10 Compliance and Enforcement

General approach to compliance and enforcement

10.1 In April 2006, Gas Industry Co released a discussion paper on proposed compliance and enforcement arrangements for the New Zealand gas industry.[9] In that paper, Gas Industry Co proposed setting up a compliance and enforcement regime, based around the Rulings Panel and investigative powers contemplated in the Gas Act, which would apply to any arrangements established through rules or regulations promulgated under the Act.

10.2 Submitters on that paper were strongly of the view that any compliance and enforcement regime should be "fit for purpose" and that Gas Industry Co would need to consider, on a case by case basis, what type of regime was appropriate for each set of arrangements being proposed. Gas Industry Co has proceeded to develop arrangements for compliance and enforcement on that basis.

10.3 The first gas governance arrangements in respect of which Gas Industry Co proposed a compliance regime were those for a central gas registry and rules which would apply when switching customers between gas retailers (the "switching compliance proposal")

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

- a Market Administrator which has responsibility for receiving notices of reported breaches of the rules, attending to administrative tasks, determining the materiality of breaches, and attempting to resolve any immaterial breach with the agreement of the parties.
- an Investigator who investigates material or unresolved immaterial breaches, endeavours to settle the matter, and refers settlements and unresolved breaches to the Rulings Panel. and
- a one member Rulings Panel which approves or rejects settlements, determines unresolved breaches, and orders remedies. [10]

Legislative powers

10.5 The specific powers in the Act which allow Gas Industry Co to recommend rules in respect of outage and contingency management issues are described in section 7.

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9 See *Compliance and Enforcement Arrangements in the New Zealand Gas Industry,* 12 April 2006 at www.gasindustry.co.nz

10 See *Recommendation to the Minister of Energy on Regulation for Enforcement of Switching Rules,* May 2007 at www.gasindustry.co.nz

10.6 In addition, section 43G(2) of the Act provides that the Minister of Energy can recommend to the Governor-General the making of regulations for the purpose of:

> *"(i) providing procedures for resolving disputes between industry participants:*
>
> *(j) providing for the operation and facilitation of those dispute resolution procedures by a person, and the powers and procedures of that person:*
>
> *(k) providing for compliance with gas governance regulations and rules to be monitored and enforced by the industry body or the Commission or any other person or court, and the powers and procedures of that person or court:…"*

10.7 Subpart 1 of Part 4A of the Act sets out a broad framework for enforcing compliance with any gas governance rules and regulations made pursuant to Part 4A. The provisions within the Act:

- contemplate that a Rulings Panel might be established;
- include limits on investigation powers for monitoring and enforcing compliance with gas governance regulations and rules, obligations on industry participants to co-operate with any investigation, and privileges protection (sections 43U to 43W);
- contain a list of the orders that the Rulings Panel can make (sections 43X and 43Y);
- impose limits on tort claims against service providers (section 43Z); and
- establish rights of judicial review and appeal to the Courts (sections 43ZA to 43ZJ).

10.8 In addition, section 43S of the Act includes supplementary empowering provisions applying to any regulation or rule made under Subpart 1 of Part 4A of the Act (which includes rules or regulations for outage and contingency management arrangements). Those provisions include the ability for rules or regulations to:

> *"(a) provide for 1 or more persons or bodies or groups of persons to carry out functions in relation to those regulations or rules, and for matters concerning their establishment, constitution, functions, members (including their appointment, removal, duties, and protection from liability), procedures, employees, administration and operation, funding by participants, and reporting requirements:*
>
> *(b) provide for systems, processes and procedures (including dispute resolution procedures), and the keeping, supply and disclosure of information, in relation to any matters specified in this subpart:*
>
> *(c) prescribe the form and manner in which information is to be disclosed:*
>
> *…*
>
> *(e) prescribe when and for how long information must be disclosed:*
>
> *(f) exempt or provide for exemptions (including provide for the revocation of exemptions), on any terms and conditions, of any person or class of persons from all or any of the requirements in regulations or rules made under this subpart:*

(g) provide for the supply of information for the purpose of administration and enforcement of this Act, and regulations and rules made under this Act:

(h) provide for transitional provisions:

(i) provide for any other matters contemplated by this Act or necessary for its administration or necessary for giving it full effect."

Requirements when recommending regulations

10.9 Prior to making a recommendation for regulations relating to compliance and enforcement, the Gas Act places the same requirements on Gas Industry Co to:

- identify the reasonably practicable options for achievement of the regulatory objective;
- assess the benefits and costs of each option and the extent to which each of them achieves the regulatory objective; and
- issue a statement of proposal for consultation with industry participants.

10.10 This section of the document sets out a statement of the proposal for compliance and enforcement of the proposed outage and contingency management regulations for the purposes of consultation with industry participants.

Options for compliance and enforcement of outage and contingency management regulations

10.11 Compliance with the current outage and contingency management arrangements was one of the issues raised in the July 2006 discussion paper. Submissions on that paper agreed that compliance with the current regime was uncertain, and that ensuring compliance was necessary to realise the benefits from any new outage and contingency management arrangements.

10.12 The April 2006 discussion paper on compliance contained an extensive discussion of the various aspects required of a compliance regime and the criteria for evaluation of each aspect. Much of this discussion was drawn from previous work undertaken by Gas Industry Co in designing and consulting upon the compliance regulations.[11]

10.13 The main options for compliance and enforcement of the proposed outage and contingency management regulations are:

- a voluntary compliance and enforcement arrangement, either by maintaining the status quo or establishing a voluntary compliance regime; or

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11 See *Compliance and Enforcement Arrangements in the New Zealand Gas Industry,* 12 April 2006; *Decision Paper on Modified Arrangements for Compliance and Enforcement Arrangements for Retail Gas Market Registry and Switching,* 19 July 2006; *Switching Arrangements for the New Zealand Gas Industry-Part 2 Compliance and Enforcement Arrangements,* 31 August 2006; *Decision Paper Switching and Compliance,* 19 January 2007 at www.gasindustry.co.nz

- a regulated compliance and enforcement arrangement which could range from a minimal to a very comprehensive compliance regime.

Assessment of the options

10.14 Gas Industry Co considered whether the status quo or establishment of a voluntary compliance regime could achieve the Regulatory Objective.

10.15 Achievement of the Regulatory Objective relies heavily on compliance with the OCMRs and the OCMPs. One of the key problems identified by industry participants with the status quo is the lack of certainty that participants will comply with the arrangements in the NGOCP.

10.16 Gas Industry Co has concluded that establishment of a voluntary regime would not provide sufficient certainty about compliance with instructions from the GCO during a gas contingency and therefore would not meet the Regulatory Objective.

10.17 Any voluntary multilateral arrangement is unlikely to achieve the Regulatory Objective given the:

- difficulty in reaching consensus and execution of a pan-industry compliance agreement which is legally binding;
- nature of provisions that would need to be included;
- diverse nature of the parties that would be required to agree the provisions to be included in a pan-industry compliance agreement and the fact that they include direct competitors;
- inability to compel new participants to execute and join a pan-industry agreement on compliance; and
- possible Commerce Act risks associated with such an agreement.

10.18 A voluntary enforcement regime would involve participants monitoring compliance with the arrangements and taking enforcement action against parties not complying with the arrangements. The potential implications of non-compliance with outage and contingency management regulations include higher costs to the economy as a whole and potentially triggering a safety emergency. A high degree of certainty about compliance is appropriate to these circumstances and this is unlikely to be provided by a voluntary regime.

10.19 The incentives on participants to take enforcement action under a voluntary enforcement regime are also likely to be weak. This is because, with the exception of the cash-out arrangements, non-compliance is likely to increase risk but not necessarily to increase costs for participants.

10.20 Further, since the only reasonably practicable options for outage and contingency management arrangements both involve regulations under the Gas Act to implement the arrangements, it follows that the compliance regime to support these regulations should also be regulated under the Gas Act.

10.21 There is a wide range of potential options for a regulated compliance arrangement based on regulations under the Gas Act and these were explored in the April 2006 consultation paper.

10.22 That paper concluded the proposed compliance regime for switching and registry was the most cost-effective of the reasonably practicable options. In particular, the paper concluded that a highly-regulated, comprehensive regime (for example a comprehensive regime including surveillance, monitoring and auditing) would be too costly at this time to meet the efficiency and effectiveness elements of the Regulatory Objective.

10.23 The paper concluded that the proposed regulated compliance regime would efficiently overcome the flaws of a voluntary regime/status quo.

Assessment of cost and benefits

10.24 The costs and benefits of a compliance regime are necessarily linked to ensuring the benefits of the arrangements which they enforce are achieved. The purpose of any compliance regime is to ensure a high level of compliance with the arrangements which the regime is designed to enforce. The benefits of the compliance regime are therefore the achievement of the benefits derived from the implementation of those arrangements.

10.25 In this case, the benefits of a regime for compliance with, and enforcement of, regulations for outage and contingency management, are ensuring the achievement of the benefits identified with those arrangements.

10.26 The likely range of costs for a compliance regime was set out in the proposal for compliance with the switching and registry arrangements. These covered the initial establishment and set up costs for the regime, including appointment of investigators and the Rulings Panel.

10.27 As those costs will have already been incurred, the costs of extending that compliance regime to cover the outage and contingency management regulations will consist of the incremental cost of amending the switching compliance regulations to include outage and contingency management, and any additional workload for the compliance bodies. It is not envisaged, for example, that coverage of the outage and contingency management regulations will require appointment of additional personnel to any of those bodies. It is proposed that these costs be recovered through the cost allocation mechanism discussed in section 9.

Conclusion on compliance and enforcement

10.28 It is proposed that Gas Industry Co recommends an amendment to the switching compliance regulations to include in those regulations provision for them to cover the proposed outage and contingency management regulations. A draft of the amended regulations is attached as Appendix D.

11 Implementation

Timetable for implementation

11.1 Outage and contingency management arrangements have been identified as a strategic priority and it is important to make substantial progress and complete a recommendation to the Minister in the near future.

11.2 Nevertheless it is acknowledged that stakeholders will take a strong interest in these arrangements and will require sufficient time to properly consider and submit on the proposal. We have therefore allowed six weeks for submissions.

11.3 The following timetable is proposed for completing this work stream:

Target Date	Key Step
3 August	Issue Statement of Proposal
14 September	Receive submissions (6 weeks allowed)
14 October	Recommendation to the Board of Gas Industry Co
25 October	Board considers recommendation
November	Recommendation to Minister
	Regulations gazetted

11.4 The timescale outlined above assumes there is no further need for consultation on the proposal. If the feedback from submissions identifies areas in need of substantial revision then Gas Industry Co may be required to consult on a revised Statement of Proposal and a revised set of regulations. This would modify the timetable and delay the recommendation to the Minister.

Timeline for regulations to take effect

11.5 The timeline below shows the order in which different parts of the regulations will become effective and the timescales for the production of the various plans.

Step	Description	Timing
1	Publish regulations in Gazette	As soon as practical following Ministerial approval
2	Parts 1, 2, 5 and 6 become effective	28 days following step 1
3	Proposed OCMPs submitted to GCO and to expert adviser for review	50 business days following step 2
4	GCO and expert adviser recommend to industry body	15 business days following step 3
5	Industry body approves OCMPs and publishes statement	5 business days following step 4
5	Parts 3 and 4 become effective	5 business days following step 5
6	Communications plan published	5 business days following step 5

11.6 The key points to note are that:

- the regulations will come into effect 28 days after publication in the gazette;
- when the regulations first come into effect, only parts 1, 2, 5 and 6 (the parts dealing with definitions, planning and transitional matters) will be operative;
- parts 3 and 4, dealing with operations during and following a gas contingency, will come into effect five days after all OCMPs have been approved and Gas Industry Co has published that fact; and
- it is anticipated that parts 3 and 4 will come into effect some 18-20 weeks after the regulations are gazetted.

Appendix A: Assessment of Benefits and Costs

NZIER Report

Outage and contingency management arrangements

Cost-benefit analysis

nzier
authoritative analysis

Outage and contingency management arrangements

Cost-benefit analysis

Report to Gas Industry Company

24 July 2007

Preface

The New Zealand Institute of Economic Research (NZIER) is a specialist consulting firm that uses applied economic research and analysis to provide a wide range of strategic advice to clients in the public and private sectors, throughout New Zealand and Australia, and further afield.

NZIER is also known for its long-established Quarterly Survey of Business Opinion and Quarterly Predictions.

Our aim is to be the premier centre of applied economic research in New Zealand. We pride ourselves on our reputation for independence and delivering quality analysis in the right form, and at the right time, for our clients. We ensure quality through teamwork on individual projects, critical review at internal seminars, and by peer review at various stages through a project by a senior staff member otherwise not involved in the project.

NZIER was established in 1958.

Authorship

This report has been prepared at NZIER by Johannah Branson and Brent Layton. The assistance of Gail Dallimore is gratefully acknowledged.

8 Halswell St, Thorndon
P O Box 3479, Wellington
Tel: +64 4 472 1880
Fax: +64 4 472 1211
econ@nzier.org.nz
www.nzier.org.nz

Contents

1. Purpose

Outage and contingency management arrangements for the gas sector are currently provided by the National Gas Outage Contingency Plan (NGOCP). This is a voluntary agreement between industry participants, on whom it imposes no enforceable obligations.

At the request of the gas industry, the Gas Industry Company reviewed current arrangements for managing gas emergencies and contingency situations[1]. With growth in the number of industry participants managing a larger number of smaller fields, the voluntary NGOCP is widely regarded as no longer providing sufficient certainty and commercial arrangements for industry to have confidence that it could cope with a gas security contingency. The Gas Industry Company explored the options for improving current arrangements, concluded that it is necessary to replace the NGOCP with a mandatory plan and identified its preferred mechanism for doing so as rules or regulations under the Gas Act 1992. It is now inviting submissions on its proposal[2].

Before the Gas Industry Company makes a recommendation to the Minister of Energy to regulate or make rules, section 43N of the Gas Act requires it to:

> *(a) seek to identify all reasonably practicable options for achieving the objective of the regulation; and*
>
> *(b) assess those options by considering –*
>
> > *(i)* ***the benefits and costs of each option****; and* [emphasis added]
> >
> > *(ii) the extent to which the objective would be promoted or achieved by each option; and*
> >
> > *(iii) any other matters that the industry body or the Commission considers relevant; and*
>
> *(c) ensure that the objective of the regulation is unlikely to be satisfactorily achieved by any reasonably practicable means other than the making of the regulation…*

The Gas Industry Company commissioned NZIER to provide a cost-benefit analysis (CBA) of the identified reasonably practicable options for improving outage and contingency management arrangements. This report outlines the CBA's methods and results.

[1] Gas Industry Company (2006) *Review of Gas Emergency Arrangements – Discussion Paper*.

[2] Gas Industry Company (2007) *Outage and Contingency Management Arrangements – Statement of Proposal*.

2. Proposal

2.1 Objective

From the Government Policy Statement on Gas Governance (2004), the government's general policy objective for the gas industry is (paragraph 4):

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

The specific regulatory objective of most relevance to gas outage and contingency management arrangements is (paragraph 5(h)):

> *Risks relating to security of supply, including transport arrangements, are properly and efficiently handled by all parties*

2.2 All options

The Gas Industry Company identified four possible options for improving gas outage and contingency management arrangements:

- continuation of the status quo
- a pan-industry agreement
- regulations under the Gas Act and
- a more prescribed set of regulations under the Gas Act.

It eliminated the first two of these options as unable to secure the regulatory objective. To be effective, future arrangements must be mandatory and ensure compliance by all.

The status quo was deemed, by both the Gas Industry Company and industry participants, to be deficient in a number of respects. Current arrangements are not only considered ambiguous, but are voluntary and therefore may not ensure security of supply in the event of a gas contingency and may undermine future security of supply.

The Gas Industry Company determined a pan-industry agreement to face significant obstacles to both reaching consensus on, and executing, a legally binding agreement between all industry participants.

2.3 Reasonably practicable options

The reasonably practicable options, requiring comparison in the CBA, have therefore been reduced to the last two options:

- the Gas Industry Company's proposal for regulations under the Gas Act:

  - combining the application of regulations with the requirement for industry participants to develop the detailed planning and arrangements to apply during a gas contingency (in effect, a hybrid of full regulation and a pan-industry agreement)
  - based on Outage and Contingency Management Regulations:
    - specifying the roles and responsibilities of industry participants
    - providing powers to direct certain actions during a gas contingency
    - requiring transmission network owners to develop outage and contingency management plans, in consultation with affected stakeholders
- the alternative of a more prescribed set of regulations under the Gas Act:
  - fully prescribing outage and contingency management arrangements in regulations and rules:
    - developed by Gas Industry Company staff, requiring input from industry participants on operational details and
    - specified to the level of detail otherwise provided in Outage and Contingency Management Plans under the above option.

Section 3 of this report outlines the method used, and Section 4 the results obtained, in assessing the difference in costs and benefits between these options.

3. Method

3.1 Scenarios

In this CBA, we compare two scenarios, comprising the two reasonably practicable options defined above:

- baseline scenario – the Gas Industry Company's proposal for regulations under the Gas Act ("regulations and management plans") and
- counterfactual scenario – the alternative of a more prescribed set of regulations ("full regulation").

3.2 Time period

Subject to submissions on its proposal, the Gas Industry Company intends to make recommendations for regulations to the Minister of Energy in November 2007.

For the purpose of the CBA, we assume that each option would take effect from the 2008/09 year. We model the costs and benefits of the two options over the first 10 years of their operation, 2008/09 to 2017/18 inclusive, with the addition of development and establishment costs incurred in 2007/08.

3.3 Discounting

Discounting reduces all future costs and benefits to their present values at a single point in time to make them directly comparable. In the CBA, we adopt a discount rate of 10 per cent. In the sensitivity analysis, we also consider the effects of adopting a discount rate of six per cent, to reflect a public policy perspective (the social rate of time preference), and 12 per cent, to reflect a commercial perspective (the weighted average cost of capital).

3.4 Costs and benefits

The costs and benefits of improved outage and contingency management arrangements can be described as:

- development costs – the costs of designing the new arrangements
- establishment costs – the costs of drafting and implementing regulations to enforce the new arrangements
- future amendment costs – the costs of periodically reviewing and amending the arrangements
- compliance and enforcement costs – the costs to the regulator of monitoring and enforcing compliance with the new arrangements.
- contingency benefits – shorter, smaller gas outages, having lesser impacts on industry participants and gas users and
- efficiency benefits – greater confidence in the reliability of gas supply and certainty of the arrangements, including pricing, that would come into force in the event of a gas contingency, resulting in increased efficiency and enhanced incentives to invest in security of supply.

3.4.1 Development costs

a) Regulations and management plans proposal

Under the regulations and management plans proposal, although the Gas Industry Company would have responsibility for designing the high-level regulations, transmission network owners, in consultation with affected stakeholders, would be required to design the detailed arrangements to be specified in outage and contingency management plans.

For modelling purposes, we assume that the process and resource requirements would be as follows:

- Gas Industry Company development of regulations:
  - preparation of policy proposals:
    - six months labour
    - labour cost of $18,000 per month
  - presentation of policy proposals:

- presented by a Gas Industry Company representative and attended by 10 industry participants
- one day, including preparation and travel time
- labour cost of $1,000 per participant
- travel cost of $600 per participant for 50 per cent of participants

– submissions:
- made by 10 participants
- one week each participant to prepare each submission
- labour cost of $4,000 per participant per week

– analysis of submissions and preparation of recommendations:
- one months labour
- labour cost of $18,000 per month

– decisions on recommendations:
- four Gas Industry Company representatives
- one day, including preparation time
- labour cost of $1,000 per representative

- transmission network owners development of outage and contingency management plans – for each of the two major transmission network owners:

  – preparation of proposed plans:
  - three months labour
  - labour cost of $18,000 per month

  – consultation on proposed plans:
  - three meetings
  - attended by eight stakeholders
  - one day per meeting, including preparation and travel time
  - labour cost of $1,000 per stakeholder per day
  - travel cost of $600 per stakeholder per meeting for 50 per cent of stakeholders.

b) Full regulation alternative

Under the full regulation alternative, the Gas Industry Company would have responsibility for designing detailed regulations. This would require substantial input and assistance from industry participants on detailed operational aspects with which the Gas Industry Company is less familiar, as well as consultation on detailed arrangements and analysis of compliance requirements. For modelling purposes, we assume that the process and resource requirements in the Gas Industry Company's development of regulations would be as follows:

- preparation of proposals – arrangements and regulations:
  - fourteen months labour
  - labour cost of $18,000 per month
- industry participants input on proposed arrangements:
  - for each of two transmission network owners:
    - three months labour
    - labour cost of $18,000 per month
  - for each of eight other industry participants:
    - one weeks labour
    - labour cost of $4,000 per participant per week
- presentation of proposals:
  - presented by a Gas Industry Company representative and attended by 10 industry participants
  - one day, including preparation and travel time
  - labour cost of $1,000 per attendee
  - travel cost of $600 per participant for 50 per cent of participants
- submissions:
  - made by 10 participants
  - one week each participant to prepare each submission
  - labour cost of $4,000 per participant per week
- analysis of submissions and refinement of proposals:
  - two months labour
  - labour cost of $18,000 per month
- presentation of revised proposals:
  - presented by a Gas Industry Company representative and attended by eight industry participants
  - one day, including preparation and travel time
  - labour cost of $1,000 per attendee
  - travel cost of $600 per participant for 50 per cent of participants
- further submissions:
  - made by six participants
  - one week each participant to prepare each submission
  - labour cost of $4,000 per participant per week
- analysis of further submissions and preparation of recommendations:

  - one months labour
  - labour cost of 18,000 per month
- decisions on recommendations:
  - four Gas Industry Company representatives
  - one day, including preparation time
  - labour cost of $1,000 per representative.

3.4.2 Establishment costs

a) Regulations and management plans proposal

Following development of regulations by the Gas Industry Company, the process and resources for establishing these regulations is modelled as follows:

- drafting of regulatory proposals and set of regulations:
  - one months labour
  - labour cost of $18,000 per month
- legal drafting of regulations:
  - two months labour
  - labour cost of $400 per hour
- consultation on drafting of regulations:
  - 10 industry participants
  - one weeks labour per participant
  - labour cost of $4,000 per participant
- finalisation of regulatory proposals and regulations and submission to the Minister of Energy:
  - two weeks labour
  - labour cost of $4,000 per week
- analysis and advice to Minister:
  - two government officials
  - four weeks labour per official
  - labour cost of $2,300 per official per week.

b) Full regulation alternative

The full regulation alternative would require the Gas Industry Company to develop longer, more detailed regulations. The regulatory proposals and rules to establish these regulations would therefore take longer to draft, consult on and

have approved. For modelling purposes, we assume that each step in establishing regulations, as outlined above, would take three times as long under the full regulation alternative than under the regulations and management plans proposal.

3.4.3 Future amendment costs

Outage and contingency management arrangements would require periodic review and amendment, according to the findings of contingency investigations and for technological change, to remain effective and appropriate. Arrangements could be more easily and frequently amended under the regulations and management plans proposal, through a series of small informal modifications to management plans, than under the full regulation alternative.

For modelling purposes, we assume that arrangements would require amendment on average every five years and that the costs of developing and establishing these amendments on each occasion would average one quarter of the initial development and establishment costs outlined above.

3.4.4 Compliance and enforcement costs

Gas Industry Company (2007) indicates that the costs of establishing a compliance and enforcement regime for regulations pertaining to the gas industry will have already been incurred in implementing switching and registry arrangements. New outage and contingency management arrangements would therefore incur compliance and enforcement costs only to the extent that they necessitate amending the switching compliance regulations to include outage and contingency management and add to the workload of compliance bodies.

We assume that the additional costs of monitoring and enforcing compliance with outage and contingency management arrangements, whether specified in regulations or management plans, would not differ significantly between the two options.

3.4.5 Contingency benefits

Under mandatory outage and contingency management arrangements, industry participants would have to respond to a contingency in accordance with the management plans or regulations. The benefits of improved outage and contingency management arrangements would be quicker response to, and better management of, contingency events, resulting in shorter, smaller outages, which have lower impacts on industry participants and gas users.

There are two possible approaches to including contingency benefits in comparing the two options of the regulations and management plans proposal and the full regulation alternative.

a) Approach A

The first approach is to assume that the two options are equivalent, with full regulations specifying the same arrangements, including curtailment schedule and criteria and contingency pricing, as otherwise specified in regulations and management plans, and therefore achieve the same outcomes and generate the same contingency benefits.

b) Approach B

There are, however, a number of reasons to consider an alternative approach under which contingency benefits would differ between the two options:

- full regulation would involve the Gas Industry Company developing the new arrangements, after obtaining and interpreting input from industry participants on detailed operational aspects with which the Gas Industry Company is less familiar; it is possible that this could result in less appropriate arrangements than if developed by industry in the form of outage and contingency management plans
- full regulation would require full and detailed specification of the new arrangements across the range of possible contingencies, which may allow less flexibility than management plans in adopting the appropriate response to a given contingency
- regulations are more difficult and take longer to amend than management plans, such that the arrangements they specify may remain less appropriate for longer (whether due to less appropriate specification initially, as above, or the need to update arrangements for the findings of contingency investigations or technological change) and
- regulators may be more risk averse in specifying arrangements that require earlier or more frequent curtailment than would be economically efficient on the basis of the costs and benefits involved.

The impacts of curtailing gas supply, in the event of a contingency, can include:

- industrial users:
  - production losses
  - damage to perishable stock
  - damage to plant
  - purchase of gas or alternative fuel from back-up sources
  - demand and supply interruptions to upstream and downstream sectors
  - longer-term with repeated outages, damage to reputation for reliability of supply, resulting in demand shifting elsewhere
- commercial users:
  - production losses
  - damage to perishable stock

  - purchase of gas or alternative fuel from back-up sources
  - demand and supply interruptions to upstream and downstream sectors
  - longer-term with repeated outages, damage to reputation for reliability of supply, resulting in demand shifting elsewhere
- residential users:
  - disruption of services
  - purchase of gas or alternative fuel from back-up sources
- industry participants:
  - revenue losses
  - reconnection costs
  - longer-term with repeated outages, damage to reputation for reliability of supply, resulting in users shifting to alternative inputs or fuels.

Previous experience here and overseas shows that the impacts can be considerable, depending on the size and duration of outage. Two prominent examples are:

- the 1998 accident at the Longford Gas Plant in Victoria, Australia disrupted gas supplies to around 1.3 million households and 89,000 businesses for up to 19 days, at an estimated cost to the state's industrial and commercial sectors of AUD$1.3 billion, as well as loss of supply to residential users of gas for hot water and heating[3] and
- the 2006 gas outage in Wellington, New Zealand, due to water entering the gas network, disrupted supply to around 1,000 central city users for up to 4.5 weeks, at an estimated cost to the hospitality industry of $5 million in lost business, in addition to flow on effects on suppliers and staff[4].

Most outages, however, are much smaller than these. Furthermore, it is not clear whether the costs reported in these examples are gross or net of cost savings (e.g. reduced output also reduces expenditure on inputs), the mitigating actions of affected users (e.g. temporary substitution of an alternative input or fuel source, which costs more but reduces production or revenue losses) and production or revenue deferred until gas supply resumes rather than lost altogether.

The benefits of improved outage and contingency management arrangements would be smaller, shorter outages, reducing the impacts on industry participants and industrial, commercial and residential gas users. It is extremely difficult to estimate with accuracy the quantum of these benefits and any assessment involves a series of assumptions. It is, however, worthwhile to consider the extent to which the magnitude and duration of contingencies would need to be reduced for the benefits to be considered substantial.

[3] Emergency Management Australia (2006) *Longford Gas Plant Accident and Victorian Gas Supply Crisis*.

[4] *Dominion Post*, 9 September 2006 and 28 November 2006.

For modelling purposes, we therefore consider the scenario of one large outage every five years and a number of smaller outages occurring more frequently. Let's say that the large outage is equivalent in size to the 2006 Wellington city outage mentioned above and that inclusion of flow on effects on hospitality industry suppliers and staff, together with impacts on other industries and residential users, doubles the total impacts of an outage of this size to around $10 million. Over five years, this implies an average annual impact of $2 million. Let's say that the smaller, more frequent outages add up to $1 million in average annual impacts. Together, these large and smaller outages imply total impacts averaging $3 million per year.

Improved outage and contingency management arrangements can be modelled as reducing these average annual impacts, whether through reducing the size and duration of outages or the probability and therefore frequency of large outages. If, under Approach B, improved arrangements reduced average annual impacts by one third under the full regulation alternative and two thirds under the regulations and management plans proposal, the more appropriate and flexible arrangements under the latter would provide contingency benefits of $1 million more per year in avoided impacts.

$1 million more per year in avoided impacts is very significant relative to the costs of the two options. It is reasonable to assume this benefit only if it is considered that improved outage and contingency management arrangements could yield a difference of one third between the full regulation alternative and the regulations and management plans proposal. It is very difficult to establish whether this is indeed likely to be the case. For this reason, we consider both Approach A and Approach B in assessing the net benefits of the proposal, as well as subjecting the results to sensitivity analysis (see Section 4.3, below).

3.4.6 Efficiency benefits

Improved outage and contingency management arrangements would increase confidence in the reliability of gas supply and certainty of the arrangements, including pricing, that would come into force in the event of a gas contingency (e.g. through allowing contracting for interruptibility and contingency gas supply). These may increase both the demand for and supply of gas, as gas users and suppliers have greater certainty that they will, in the first case, receive the gas they contract for, without incurring emergency prices, and, in the second case, receive adequate payment for the gas they supply.

Improved outage and contingency management arrangements may therefore increase economic efficiency through lowering the cost of supplying gas (productive efficiency), increasing the quantity of gas traded and lowering its price (allocative efficiency) and encouraging investment in developing the industry further, which may reduce gas supply costs over time (dynamic efficiency).

We assume that the two options would achieve equivalent improvements in confidence and certainty and therefore deliver similar efficiency benefits.

4. Results

4.1 Annual costs and benefits

With adoption of the modelling assumptions outlined above, the differences in estimated annual costs and benefits between the two options are:

- development costs:
  - $0.353 million under the regulations and management plans proposal
  - $0.537 million under the full regulation alternative
  - a difference of $0.184 million less under the proposal
- establishment costs:
  - $0.212 million under the regulations and management plans proposal
  - $0.637 million in 2007/08 under the full regulation alternative
  - a difference of $0.425 million less under the proposal
- future amendment costs
  - $0.141 million every five years under the regulations and management plans proposal
  - $0.294 million every five years under the full regulation alternative
  - a difference of $0.152 million less every five years under the proposal
- compliance and enforcement costs – the same under each option; no difference
- contingency benefits:
  - Approach A – the same under each option; no difference
  - Approach B – a difference of $1 million more per year from 2008/09 under the proposal and
- efficiency benefits – the same under each option; no difference.

New outage and contingency management arrangements are therefore indicated to cost less to develop, establish and amend under the regulations and management plans proposal, whilst delivering at least as much, if not more, in contingency benefits, than under the full regulation alternative.

In total, if there is no difference in contingency benefits (Approach A), the proposal provides net benefits over the alternative in the year of development and establishment ($0.609 million in 2007/08) and in future amendment years ($0.152 million every five years), with no difference between the two options in all other years. If the proposal achieves greater contingency benefits (Approach B), it

provides net benefits over the alternative in all years ($0.609 million in 2007/08 and ranging between $1 million and $1.152 million per year from 2008/09).

4.2 Total costs and benefits

With discounting to reflect the relative timing of the above annual costs and benefits over the period 2007/08 to 2017/18, the regulations and management plans proposal provides modest present value net benefits over the full regulation alternative totalling $0.762 million, if there is no difference in contingency benefits between the two options (Approach A). If the proposal achieves greater contingency benefits (Approach B), its present value net benefits over the alternative total $6.907 million.

The greatest difference between the two options is in establishment costs under Approach A (56 per cent of the difference in costs between the proposal and the alternative) and contingency benefits under Approach B (89 per cent of the net benefits of the proposal over the alternative).

4.3 Sensitivity analysis

The sensitivity of these results to the modelling assumptions adopted is shown in the table below. This sensitivity analysis shows how adopting lower or higher cost and benefit coefficients alters the total present value net benefits of the regulations and management plans proposal over the full regulation alternative. The results are most sensitive to the magnitude of contingency benefits modelled under Approach B and the development and establishment costs of the full regulation alternative under Approach A. In all cases, the proposal remains of positive net benefit over the alternative.

Table 1 Sensitivity analysis

	Change to coefficient	Net benefit of proposal over alternative ($ million and % change)	
		Approach A	Approach B
Estimate		0.762	6.907
Development costs			
Under proposal	-25%	0.873 15%	7.02 1.6%
	-10%	0.806 5.8%	6.951 0.6%
	+10%	0.718 -5.8%	6.862 -0.6%
	+25%	0.651 -15%	6.796 -1.6%
Under alternative	-25%	0.594 -22%	6.738 -2.4%
	-10%	0.695 -8.8%	6.839 -1.0%
	+10%	0.829	6.974

		8.8%	1.0%
	+25%	0.930 22%	7.075 2.4%
Under both	-25%	0.704 -7.6%	6.849 -0.8%
	-10%	0.739 -3.0%	6.884 -0.3%
	+10%	0.785 3.0%	6.930 0.3%
	+25%	0.820 7.6%	6.964 0.8%
Establishment costs			
Under proposal	-25%	0.828 8.7%	6.973 1.0%
	-10%	0.789 3.5%	6.933 0.4%
	+10%	0.735 -3.5%	6.880 -0.4%
	+25%	0.696 -8.7%	6.840 -1.0%

	Change to coefficient	Net benefit of proposal over alternative ($ million and % change)	
		Approach A	Approach B
Under alternative	-25%	0.563 -26%	6.707 -2.9%
	-10%	0.682 -10%	6.827 -1.2%
	+10%	0.842 10%	6.986 1.2%
	+25%	0.961 26%	7.106 2.9%
Under both	-25%	0.629 -17%	6.774 -1.9%
	-10%	0.709 -7.0%	6.853 -0.8%
	+10%	0.815 7.0%	6.960 0.8%
	+25%	0.895 17%	7.039 1.9%
Amendment costs			
	-25%	0.724 -5.0%	6.868 -0.6%
	-10%	0.747 -2.0%	6.891 -0.2%
	+10%	0.777 2.0%	6.922 0.2%
	+25%	0.800 5.0%	6.945 0.6%
Contingency benefits			
	-50%	0.762 0%	3.834 -44%
	-25%	0.762 0%	5.370 -22%
	+25%	0.762 0%	8.443 22%
	+50%	0.762 0%	9.979 44%
	+100%	0.762 0%	13.051 89%
Discount rate			
	=6%	0.808 6%	8.168 18%
	=12%	0.744 -2.3%	6.394 -7.4%

Source: NZIER

Appendix B: Funding and Cost Allocation

1 Introduction

1.1 Costs of Outage and Contingency Management

Implementation of the outage and contingency management arrangements will incur a number of costs, including:

- remuneration to the GCO under the service provider contract;
- payments to the expert adviser for consideration of OCMPs; and
- payments to the industry experts appointed following a contingency, in order to determine the reconciled quantities and the contingency price.

These costs are not expected to be large, but they do need to be recovered from industry participants. This appendix considers how best to allocate the costs amongst participants.

1.2 Curtailment Schedule and Contingency Pricing

The proposed Regulations include a schedule of curtailment bands and a contingency pricing arrangement. The curtailment schedule is intended to produce outcomes whereby the overall cost to the economy is minimised by maintaining supply to the highest value uses and avoiding costly restoration activity. The use of a contingency price for gas supplied during a gas outage or contingency is intended to put commercial incentives in place that appropriately reward participants for increases in the supply of, or reductions in demand for, gas during the period of outage. To a large extent these arrangements should put in place appropriate incentives during and prior to a contingency. The allocation of the costs identified in 1.1 needs to be considered against this background.

1.3 Magnitude of Cost

The total cost of the ongoing administration of the outage and contingency management arrangements is difficult to predict, being a combination of costs associated with ensuring the arrangements are in place and costs that might arise as a result of contingencies. The costs associated with the service provider agreement for the Gas Contingency Operator should be relatively predictable, but intermittent costs associated with engaging expert advisers to assess the Outage and Contingency Management Plans (OCMPs), to undertake reconciliation, and to determine contingency prices, are more difficult to estimate. However, Gas Industry Co has estimated that the average annual costs could be in the range of $100,000 to $200,000 per annum.

In the first year, costs are likely to be higher as the various agreements and plans are developed. The relatively low cost of the ongoing arrangements has implications for the weighting of the various criteria set out below that are used to assess the funding arrangements.

2 Approach to Cost Allocation

Developing a fee structure to recover the costs of establishing and operating the office of the Gas Contingency Operator indicates, in line with other Gas Industry Co activities, the

application of a number of standard criteria that are consistent with the various principles and objectives for the gas sector in general :

- **Economic efficiency** – the fee structure should not detract from efficient market behaviour;
- **User/causer/beneficiary pays** – where possible the costs should be allocated on a basis where the those causing the costs or benefiting from the costs will pay;
- **Rationality** – where costs are allocated to participant classes there should be a strong connection between the participant class and the costs being recovered;
- **Simplicity** – the fee structure should be simple to apply and understand;
- **Equity** – users in similar situations should pay similar amounts;
- **Sufficiency** – the fee structure should generate sufficient revenue to recover the costs.

The application of standard criteria for cost allocation does not typically yield one unique solution and in some cases the application of different criteria leads to conflicting outcomes. Settling on a cost allocation usually requires some judgement about the weighting to apply to different criteria. Different parties often apply different weightings depending upon their own perspective on what the most important criteria should be. Thus it is possible to come up with two or more different approaches to cost allocation by applying the same standard criteria.

3 Applying the Standard Criteria

3.1 The Economic Efficiency Criterion

The economic efficiency criterion suggests that the cost allocation should support the efficient allocation of resources by the promotion of efficient market behaviour by industry participants (or at least should not materially detract from it). The cost allocation should also support a focus on cost-containment by the Gas Industry Co.

This approach tends to support fee structures that allocate costs to those parties that are able to, and have an incentive to, influence volumes, quality or costs.

The majority of costs of the Gas Contingency Operator role will be fixed as they relate to the maintenance of structures and plans to deal with outages if they occur. Variable costs would be driven by the number of outages, their length and their severity, and the resulting amount of post-outage work that is undertaken by the experts appointed by Gas Industry Co to undertake various roles.

As the source of potential outages, it could be argued that producers and transmission network companies might have incentives to reduce the number of outages if they faced the costs of the contingency management arrangements. In reality, the costs associated with the contingency management arrangements are expected to be relatively small in relation to the real costs of outages, and are therefore unlikely to influence the behaviour of producers and transmission network companies.

The economic efficiency criterion therefore provides little guidance for cost allocation.

3.2 The User/Causer/Beneficiaries Pays Criterion

The user/causer/beneficiaries pays criterion suggests that where the costs of providing certain services are identifiable with certain participants, or where the benefits arising from the service are attributable to particular participants, those participants should be allocated costs. In some cases this criterion suggests an allocation to a party that has no ability to influence the costs and can conflict with the economic efficiency criterion. However, given the weakness of the economic efficiency criterion noted in 3.1, this criterion may be of greater importance.

The main users of the Gas Contingency Operator services will be the TNOs. This is reflected in the proposal that the TNOs will be required to prepare the OCMPs that the GCO will be required to approve and implement them. The TNOs will also be beneficiaries from the reduced transaction costs arising from a well-designed and well-managed contingency plan.

The causers of the costs are the producers and transmission network companies who are unable to guarantee security of supply and could face contingencies arising from within their operations. Outages are most likely to arise through an interruption to gas production or an incident on a transmission network.

The effects of a gas outage or contingency are felt by end-users, both retail and wholesale customers. The degree to which effects fall on the different parties will be determined by the curtailment schedule in the proposed Regulations. The objective of the curtailment schedule is to minimise the total cost to the economy of the interrupted gas supply. It is recognised that the costs associated with turning off mass-market consumers and essential service providers represents a potentially high cost to society, partly as a result of the lengthy gas restoration process required. The direct restoration costs would initially be borne by the retailers, although it is expected that they would be passed on to end-consumers through higher tariff structures.

The benefits/losses accruing to each group of users will be determined by the curtailment schedule and the associated contingency pricing arrangements. These may change when the Curtailment Schedule is reviewed; however it seems reasonable to assume that some combination of wholesale customers, and retailers and their customers, will be the major beneficiaries of the contingency management arrangements.

The proposal that contingency gas prices be used to calculate payments and receipts associated with imbalances in gas supply and demand arising from an outage is intended to provide commercial incentives to encourage outcomes that maximise total value to the economy.

Under a perfect economic solution, the beneficiaries during a contingency (predominantly retailers and mass-market consumers under the curtailment schedule) or the causers (suppliers or network owners) would pay the losers during a contingency (predominantly wholesale and large customers under the curtailment schedule) sufficient to make them choose to reduce their demand on the limited gas supply. The contingency pricing arrangements should result in something close to this outcome. Retailers will benefit through the economic rent derived from the difference between what they pay to compensate wholesale and large customers and what they would have been prepared to pay to avoid cutting off gas to the mass markets they serve. Wholesale and large customers will benefit by being compensated for losing access to gas during a contingency.

In the absence of the proposed arrangements, contingencies would need to be managed on some sort of distributed basis and some form of chaos is likely to ensue. In these circumstances, it is likely that all consumers, both wholesale and retail would, be affected. If the curtailment schedule achieves the desired outcome of minimising the overall cost to the economy, and if the costs are efficiently shared through the contingency pricing arrangement, then all customers should receive a benefit from the application of the new arrangements.

It is reasonable to conclude that the beneficiaries of the gas contingency arrangements are some combination of wholesale customers, retailers and other end-use customers.

The main issue to be determined under this criterion is the relative weighting of users, causers and beneficiaries. The following table summarises the position:

Participants	Sector Group	Weighting
Users	Transmission Network Owners	Low – because financial implications are small.
Causers	Producers and Transmission Network owners	Medium – because costs are unlikely to influence behaviour.
Beneficiaries	Wholesale customers, retailers and consumers	High – because the arrangements are designed to minimise the cost of outages and contingencies.

3.3 Rationality Criterion

The rationality criterion suggests that there should be a relatively strong nexus between the participants or participant classes to whom a cost is allocated and the cost being recovered.

TNOs, wholesale customers and retailers have a strong connection with the contingency management arrangements. TNOs have a connection because they undertake the planning and management role and may be the source of some contingencies. Wholesale customers have a connection because they are likely to be the parties first curtailed during a contingency. Retailers have a connection because they will implement curtailment amongst their customers.

In the absence of outage and contingency arrangements, wholesale customers and retailers appear to be the most likely to seek to establish them.

3.4 Simplicity Criterion

The cost allocation and fee structure should not create undue transactions costs for the Gas Industry Co or participants. This determines that the fee structure should be based on readily measurable quantities and allocated only to those participants that have a strong connection with the process and the cost savings.

Simplicity would also encourage reducing the number of participant classes to be allocated costs, particularly where the connection to some participant classes is weak and/or where the benefits are low.

The simplicity criterion appears to be best met by an allocation to both wholesale customers and retailers based on volume, or alternatively to retailers based on ICPs.

3.5 Equity Criterion

This criterion suggests that participants in similar situations should pay similar amounts and that, within a class of participants the allocation of costs should not competitively advantage one participant over another.

An allocation to wholesale customers and retailers based on volume, or retailers based on ICP numbers, appear to meet this criterion.

3.6 Sufficiency Criterion

The sufficiency criterion suggests that the fees charged to participants need to be sufficient to fully recover the costs of the registry.

This criterion would be met by the levy being set at the level of cost set in the service provider contract for the Gas Contingency Operator plus some estimate of expected average annual costs associated with maintaining the arrangements, the costs of managing events, and the costs of the various expert advisers.

4 Summary and Conclusion

The following table summarises the implications for the cost allocation and fee structure that arises from application of the standard criteria for cost allocation.

Criterion	Application to Gas Outage and Contingency Management Fee Structure
Economic efficiency	Does not discriminate between options.
User/causer/beneficiary pays	Favours allocating costs to retailers and wholesale customers.
Rationality	Favours allocating costs to retailers and wholesale customers.
Simplicity	Favours allocating costs on the basis of either volume or ICPs.
Equity	Favours allocating costs to retailers and wholesale customers.
Sufficiency	Fees based on actual contracted costs plus estimates of variable costs.

Application of the standard criteria for cost allocation and fee structure suggests that the costs of the arrangements should be allocated 100% to wholesale customers and retailers. The expected low total cost, relative to other costs in the sector and the likely benefits of an effective emergency management arrangement, favour choosing a simple allocation mechanism.

It is recommended that the costs of the proposed outage and contingency management arrangements be allocated to wholesale customers and retailers on the basis of annual reconciled gas volumes.

Appendix C: Proposed Outage and Contingency Management Regulations

DRAFT GAS (OUTAGE AND CONTINGENCY MANAGEMENT) REGULATIONS 2008

1 Purpose

The purpose of these regulations is to achieve the effective handling of gas outages and contingencies without compromising long-term security of supply.

2 Outline

These regulations provide for –

(1) The appointment of a gas contingency operator; and

(2) A process for managing a gas contingency; and

(3) A process for setting a price to apply to gas imbalances resulting from a gas contingency.

3 Commencement

(1) Except as provided in regulation 3(2) the regulations come into force 28 days after the date these regulations are notified in the *Gazette*.

(2) Parts 3 and 4 of the regulations come into force on the go-live date*.*

Part 1

General provisions

4 Interpretation

(1) In these regulations, unless the context otherwise requires, a word or expression defined in the Act has the same meaning as it has in the Act.

(2) In these regulations, unless the context otherwise requires,-

Act means the Gas Act 1992;

business day means any day of the week except –

(a) Saturday and Sunday; and

(b) Any day that Good Friday, Easter Monday, ANZAC Day, the Sovereign's Birthday, Labour Day, Christmas Day, Boxing Day, New Year's Day, the day after New Year's Day, and Waitangi Day are observed for statutory holiday purposes; and

(c) Any other day which the industry body has determined not to be a business day as published by the industry body;

civil defence emergency means an emergency that results in a declaration of a state of national emergency or a declaration of a state of local emergency under the Civil Defence Emergency Management Act 2002 or any equivalent declaration under any subsequent replacement legislation;

commencement date means the date referred to in regulation 3(1);

Commission means the Energy Commission established under S43ZZH of the Act;

communications plan means the plan published by the gas contingency operator under regulation 34;

consumer –

(a) Means any person who is supplied, or applies to be supplied, with gas: but

(b) Does not include a transmission network owner or any gas distributor or gas retailer, except where the transmission network owner or, as the case may be, the gas distributor or gas retailer is supplied, or applies to be supplied, with gas for its own consumption and not for the purposes of re-supply to any other person;

consumer installation means one or more gas installations that have a single point of connection to a distribution system or a transmission network and for which there is a single consumer;

contingency cash pool means the payments held by the industry body in accordance with regulation 68;

curtailment bands means a defined group of consumers that will be given equal priority in terms of any curtailment required during a gas contingency and more specifically means the curtailment bands published by the industry body, as added or amended from time to time in accordance with regulation 33;

director of civil defence emergency management means the director appointed under the Civil Defence Emergency Management Act 2002 or any person appointed to an equivalent or replacement role under any subsequent replacement legislation;

electricity system operator means a system operator as defined in Part A of the Electricity Governance Rules, or any person appointed to an equivalent or replacement role under any subsequent replacement legislation;

essential service provider means a person that has been approved as an essential service provider under regulation 41;

expert adviser means a person appointed by the industry body in accordance with regulation 26 to be the expert adviser in respect of the relevant outage and contingency management plan;

financial year means the twelve-month period beginning on the date determined by the industry body;

formal notice means a formal notice given in accordance with regulation 22;

gas contingency means a gas contingency as determined by the gas contingency operator in accordance with regulation 44;

gas contingency operator means the person appointed in accordance with regulation 5(1) to be the gas contingency operator;

gas contingency operator service provider agreement means the agreement between the industry body and a person, where that person is appointed as the gas contingency operator;

gas contingency price means a price determined by the industry expert under regulation 65;

gas gate means the point of connection between –

(a) A transmission network and a distribution system; or

(b) A transmission network and a consumer installation; or

(b) Two gas distribution systems;

go-live date means five business days after the day on which the industry body publishes a statement in accordance with regulation 28(7);

industry body means the industry body approved by the Governor General by Order in Council under section 43ZL of the Act. In the event that the industry body is revoked under section 43ZM of the Act, all references to the industry body shall be replaced with references to the Commission;

industry expert means a person appointed by the industry body in accordance with regulation 63;

information guide means the guide published by the gas contingency operator under regulation 35;

large end user means any consumer installation connected directly to the transmission network that has the potential to consume gas at rates that in aggregate exceed 15 terajoules a day;

Maui Pipeline Operating Code or MPOC means the code issued by the owners of that part of the transmission network identified as the Maui pipeline on the map published in accordance with regulation 9 covering operation of the Maui pipeline, as amended from time to time;

minimal load consumer means a person approved by a retailer to be a minimal load consumer in accordance with regulation 42;

month means a calendar month;

National Gas Outage Contingency Plan or NGOCP means the document entitled "Gas Contingency: A Plan for the New Zealand Natural Gas Industry to Manage the Interruption of Gas Supplies" version 2.3 dated 1 December 2005;

notice means a notice given in accordance with regulations 20 and 21;

OATIS means the online interactive open access transmission information system that is used to facilitate the open access regime under MPOC;

outage and contingency management plan means a plan approved by the industry body under regulation 28;

pipeline operating code means any code which sets out detailed rules covering operation of part or all of a transmission network, as amended from time to time;

publish means –

(a) After the commencement date and before the go-live date, in respect of information to be published by the industry body, to make such information available to the intended recipient on the industry body's website; and

(b) On and after the go-live date, in respect of information to be published by the industry body or the gas contingency operator, to make such information available to the intended recipient on the gas contingency website established in accordance with regulation 8; and

(c) In respect of all other information, means to make available to the intended recipient in such manner as may be determined by the industry body from time to time;

retailer means any person who supplies gas to another person or other persons through a transmission network or through a distribution network which is connected to a transmission network for any purpose other than for re-supply by the other person or persons;

rulings panel means a rulings panel as defined in the Gas (Compliance Regulations) 2007;

shipper means a person with a valid and subsisting agreement to have gas transported through a transmission network;

switch means a switch as defined in the Gas (Switching Arrangements) Rules 2007;

system operator means a person who operates a transmission network;

transmission network means the network comprising those high pressure transmission pipelines which are used to transport gas that meets specification NZS 5442:1999 as amended or replaced from time to time and depicted in the map published by the industry body in accordance with regulation 9;

transmission network owner means any person who owns part of the transmission network;

wholesale market means a market for the sale of gas that is traded on the transmission network.

(3) A reference to a regulation is a reference to a regulation in these regulations unless the reference specifically states otherwise.

(4) References to the singular include the plural and vice versa.

Appointment

5 Appointment of gas contingency operator

(1) The industry body may, from time to time, by agreement with a person appoint that person to act as the gas contingency operator.

(2) The gas contingency operator has the functions, rights, powers, and obligations set out in these regulations.

(3) The industry body may at any time terminate, re-appoint, or change the appointment of any person as the gas contingency operator, subject to the terms of the gas contingency operator service provider agreement.

(4) The remuneration of the gas contingency operator will be agreed as between the industry body and the gas contingency operator in the gas contingency operator service provider agreement.

(5) The industry body and the gas contingency operator may agree on any other terms and conditions, not inconsistent with the functions, rights, powers and obligations of the gas contingency operator under these regulations.

(6) If a person is the system operator of all of the transmission networks –

(a) The industry body will appoint that person as the gas contingency operator for an initial term of five years beginning on the commencement date and on the terms of the gas contingency operator service provider agreement; and

(b) The industry body may terminate the gas contingency operator service provider agreement between the industry body and such a person if at any time that person ceases to be the system operator for any or all of the transmission networks; and

(c) Any appointment beyond the initial term will be at the industry body's sole discretion.

6 Other terms of gas contingency operator service provider agreement

In addition to any other terms and conditions required by these regulations, the gas contingency operator service provider agreement must provide for–

(1) Remuneration of the gas contingency operator; and

(2) Appropriate provision for liability cover; and

(3) Preparation and approval of outage and contingency management plans; and

(4) Testing of plans and procedures; and

(5) Publishing a communications plan and information guide.

7 Publication of gas contingency operator service provider agreement

The industry body must publish the gas contingency operator service provider agreement.

8 Gas contingency website

(1) Prior to the go-live date, the gas contingency operator in consultation with the industry body must design a gas contingency website for the purpose of providing a central repository for publicly available information relevant to a gas contingency.

(2) The gas contingency website must be functional and available to the public on the go-live date.

(3) The gas contingency operator must ensure the information on the gas contingency website is accurate and up to date.

(4) The gas contingency operator must publish on the gas contingency website all information provided to it by the industry body for the purposes of publication by the industry body. For the purposes of these regulations, such information will be deemed to have been published by the industry body.

9 Publication of transmission networks

(1) The industry body must, on or before the commencement date, publish a map depicting the transmission network on the commencement date.

(2) On the go-live date, or as soon as practicable thereafter, the industry body must publish a map depicting the transmission network on the gas contingency website.

(3) Transmission network owners must notify the industry body of any change in the boundaries of, and pipelines comprising, the transmission network as soon as practicable after the change has occurred.

(4) The industry body may revise the boundaries of, and pipelines comprising, the transmission network from time to time, and if it does so will publish an updated map depicting the transmission network.

10 Performance standards to be agreed

The industry body and the gas contingency operator must, at the beginning of the term of the appointment and at the beginning of each financial year, seek to agree on a set of performance standards against which the gas contingency operator's performance must be reported and measured at the end of the financial year.

11 Review of gas contingency operator performance by the industry body

(1) At the end of each financial year, the industry body may review the manner in which the gas contingency operator has performed its duties and obligations under these regulations.

(2) The review must concentrate on the gas contingency operator's compliance with –

(a) Its obligations under these regulations; and

(b) The operation of these regulations; and

(c) Any performance standards agreed between the gas contingency operator and the industry body; and

(d) The provisions of the gas contingency operator service provider agreement.

Scope

12 Relationship with NGOCP and pipeline operating codes

(1) With effect from the go-live date –

(a) These regulations will replace the National Gas Outage Contingency Plan; and

(b) The National Gas Outage Contingency Plan will cease to have effect except in so far as it relates to events and obligations and liabilities occurring or arising prior to the go-live date.

(2) Parties to the MPOC and any other pipeline operating code are relieved from any obligations imposed on them by those codes to the extent that those obligations are inconsistent with these regulations.

13 Civil Defence Emergency Management Act

Compliance with the Civil Defence Emergency Management Act 2002 shall take priority over compliance with these regulations to the extent that a person shall not be required to comply with these regulations where such compliance prevents that person from complying with the requirements of the Civil Defence Emergency Management Act 2002.

Funding

14 Development fee

(1) The development fee is a fee to meet the gas contingency development costs.

(2) As soon as practicable after the commencement date, the industry body must determine the estimated gas contingency development costs. The gas contingency development costs will include –

(a) The costs associated with:

(i) The appointment of the gas contingency operator; and

(ii) The review and recommendation for approval of proposed gas outage and contingency management plans under regulations 25 to 28; and

(iii) The preparation and publication of a communications plan under regulation 34; and

(iv) The preparation and publication of guidelines under regulations 35 and 36; and

(b) The administrative costs of the industry body in connection with the development and establishment of the gas contingency and outage management arrangements; and

(c) Any other costs that are determined by the industry body to form part of the gas contingency development costs, whether or not such costs have been incurred at the time that the gas contingency development costs are estimated.

(3) Once it has estimated the gas contingency development costs, the industry body will publish those costs, including a breakdown of the costs, on the industry body's website.

(4) Every person who purchases gas directly from gas producers during the month prior to the commencement date is liable to pay a development fee in accordance with these regulations.

(5) The development fee payable by each person who is liable to pay a development fee is calculated as follows:

$$A = B \times (C/D)$$

Where:

A = the development fee payable by person A; and

B = the estimated gas contingency development costs; and

C = the total quantity of gas purchased by person A directly from gas producers during the 12 months prior to the commencement date; and

D = the total quantity of gas purchased directly from all gas producers during the 12 months prior to the commencement date.

15 How and when development fee must be paid

(1) The development fee is payable to the industry body.

(2) Every person who is liable to pay a development fee must supply to the industry body a return no later than 10 days after the commencement date.

(3) The return must state-

(a) The total number of gigajoules of gas that the person purchased directly from gas producers during the 12 months prior to the commencement date; and

(b) How many gigajoules of gas were purchased from each gas producer during that 12 month period.

(4) As soon as practicable after receipt of the return required under regulation 14(2), the industry body must invoice the person who supplied the return for the development fee calculated in accordance with rule 1414(5).

(5) As soon as practicable after the go-live date, the industry body must determine the actual gas contingency development costs in accordance with rule 1414(2).

(6) The industry body must invoice or credit each person liable to pay the development fee with the difference between the actual gas contingency development costs and the amount of the estimated gas contingency development costs paid by that person.

(7) The due date for the payment of the development fee is the tenth business day after the person receives an invoice for the development fee.

16 Ongoing fees

(1) The ongoing fees are monthly fees to meet the gas contingency ongoing costs.

(2) As soon as practicable after the go-live date, the industry body must determine the estimated gas contingency ongoing costs for the first year or part year of operation of the gas contingency management plans.

(3) The gas contingency ongoing costs will include –

(a) The costs payable to the gas contingency operator in respect of that year; and

(b) The costs payable to any person appointed by the industry body to carry out any role under these regulations; and

(c) The administrative costs of the industry body associated with gas contingency and outage management and its role under these regulations during that year; and

(d) The costs of enforcing compliance with these regulations under the Gas (Compliance) Regulations 2007; and

(e) Any other costs that are determined by the industry body to form part of the gas contingency ongoing costs.

(4) Once it has determined the estimated gas contingency ongoing costs for the first year or part year of operation, the industry body will publish those

costs (including a breakdown of the costs) on the industry body's website.

(5) Every person who purchases gas directly from a gas producer during a month is liable to pay ongoing fees for that month in accordance with these regulations.

(6) The ongoing fees payable by each person who purchases gas directly from a gas producer are calculated as follows:

$$A = B \times (C/D)$$

Where:

A = the ongoing fees payable by person A; and

B = the estimated gas contingency ongoing costs for that month; and

C = the total quantity of gas purchased by person A directly from gas producers during the month prior to month B; and

D = the total quantity of gas purchased directly from gas producers during the month prior to month B.

17 How and when ongoing fees payable

(1) The ongoing fees are payable to the industry body.

(2) As soon as practicable after publication of the estimated gas contingency ongoing costs for the first year or part year of operation, the industry body must notify all persons liable to pay ongoing fees of the ongoing fees payable in that year or part year.

(3) For each year following the first year or part year of operation, the industry body must estimate the gas contingency ongoing costs and notify all persons liable to pay the ongoing fees at least two months prior to the beginning of that year of the ongoing fees payable in that year.

(4) Every person who is liable to pay ongoing fees for a month must supply to the industry body a return no later than the 10th day of that month, unless otherwise agreed by the industry body.

(5) The return must state-

(a) The total number of gigajoules of gas that the person purchased directly from gas producers during the previous month; and

(b) How many gigajoules of gas were purchased from each gas producer during that month.

(6) As soon as practicable after receipt of the return required under regulation 17(4), the industry body must invoice the person who supplied the return for the ongoing fees calculated in accordance with regulation 16(6).

(7) The ongoing fees for a month are due and payable on the 20th day of the month.

(8) As soon as practicable after the end of each year, the industry body must determine the actual gas contingency ongoing costs for that year. The industry body must invoice or credit each person liable to pay ongoing fees during that year with the difference between the actual gas contingency ongoing costs and the amount of the estimated gas contingency ongoing costs paid by that person.

(9) The industry body must ensure that all information and returns that are supplied under regulations 14 to 17 are used only for the purposes of collecting the development fee and the ongoing fees.

(10) Subject to the consent of the persons which supplied them, the returns supplied to the industry body under regulation 7 of the Gas (Levy of Industry Participants) Regulations 2007 or its replacement will be sufficient to fulfil the requirements of regulation 17(4).

18 General provisions regarding fees

(1) Any person who is liable to pay any fee under rules 14 to 17 inclusive, and who fails to make payment of such fee on or before the date on which it falls due, is liable to pay an additional fee of 10% of the amount of the fee that is unpaid.

(2) The additional fee becomes payable and due on the tenth business day after the date that the industry body notifies the person that an additional fee is payable.

(3) The fees payable under rules 14 to 17 inclusive are exclusive of any goods and services tax payable under the Goods and Services Tax Act 1985.

Compliance

19 Compliance

(1) The Gas (Compliance) Regulations 2007 apply to these regulations.

(2) The gas contingency operator is liable under the Gas (Compliance) Regulations 2007 for any breach of regulations 8, 20 to 22, 27, 29, 30(4), 30(6), 31, 34 to 36, 38, 39(2), 44 to 49 and 54 to 59.

Notices and receipt of information

20 Giving of notices

If these regulations require any notice to be given the notice must be in writing and be –

(1) Delivered by hand to the nominated office of the addressee; or

(2) Sent by post to the nominated postal address of the addressee; or

(3) Sent by facsimile to the nominated facsimile number of the addressee; or

(4) Sent by electronic transmission or any other similar method of electronic communication to the appropriate nominated electronic address of the addressee.

21 When notices taken to be given

In the absence of proof to the contrary notices are taken to be given,-

(1) In the case of notices delivered by hand to a person, when actually received at that person's address;

(2) In the case of notices sent by post, at the time when the letter would in the ordinary course of post be delivered; and in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted;

(3) In the case of notices sent by fax, at the time indicated on a record of its transmission;

(4) In the case of notices sent by electronic transmission or any other similar method of electronic communication -

(a) At the time the computer system used to transmit the notice –

(i) Has received an acknowledgment or receipt to the electronic mail address of the person transmitting the notice; or

(ii) Has not generated a record that the notice has failed to be transmitted; or

(b) The person who gave the notice proves the notice was transmitted by computer system to the electronic address provided by the addressee.

22 Formal notices

(1) For the avoidance of doubt regulations 20 and 21 do not apply to formal notices.

(2) Formal notices should generally be issued in writing, but may be issued orally if the giver of the formal notice considers that the urgency of the situation so warrants.

(3) If a formal notice is issued orally, the giver of that formal notice must provide a written notice of confirmation as to the content of the formal notice as soon as is practicable after the formal notice was issued orally.

Part 2

Obligations prior to a gas contingency

Outage and contingency management plans

23 Outage and contingency management plan

Each transmission network owner must prepare a proposed outage and contingency management plan for its part of the transmission network and submit it to the gas contingency operator for a review under regulation 27 no later than 50 business days after the commencement date.

24 Content of outage and contingency management plan

A proposed outage and contingency management plan must be consistent with the regulations and must include –

(1) Either:

(a) The minimum pressure threshold required to maintain the continued supply of gas across the relevant part or parts of the transmission network as measured at various points on the transmission network (such points to be determined by the transmission network owner); or

(b) The minimum linepack threshold required to maintain the continued supply of gas across the relevant part or parts of the transmission network stating the uniform pressure on which linepack is based; and

(2) A description of the events that the transmission network owner considers may feasibly result in a breach of the relevant thresholds as advised under regulation 24(1); and

(3) Actions that the transmission network owner considers it may feasibly take to remedy any breach in the thresholds resulting from the events described at regulation 24(2); and

(4) A copy of the curtailment bands, a statement that curtailment will occur in the curtailment bands' priority order, and a statement that in most circumstances restoration will occur in reverse curtailment order (last curtailed and first restored); and

(5) A process outlining how the curtailment bands will be implemented and how restoration will be implemented, and an explanation as to how these processes meet the objectives set out at regulation 32; and

(6) Communications that the transmission network owner must initiate by notice to other transmission network owners, operators of gas distribution systems, retailers, large end users and any other person it considers necessary prior to and during a gas contingency, the reciprocal communications and timeframes within which such communications are to take place; and

(7) The contact details of a suitably qualified person employed by the transmission network owner who the transmission network owner proposes will be responsible for –

(a) Giving communications to the gas contingency operator and receiving communications from the gas contingency operator under the communications plan; and

(b) Directing compliance with the outage and contingency management plan; and

(8) Guidelines stating the circumstances, if any, in which the transmission network owner is likely to restore gas supply in an order that is different from the reverse order of the curtailment bands (last curtailed and first restored); and

(9) A list of the contact details for the –

(a) Operators of gas storage facilities that are connected to the relevant part of the transmission network; and

(b) Operators of upstream gas production facilities that are connected to the relevant part of the transmission network; and

(c) Large end users connected directly to the relevant part of the transmission network; and

(d) Retailers and shippers who are trading across or utilising the relevant part of the transmission network; and

(e) Operators of gas distribution systems connected to the relevant part of the transmission network; and

(10) Such other things as the transmission network owner considers appropriate to give effect to the purpose of the regulations.

25 Process for preparing outage and contingency management plan

Prior to submitting the proposed outage and contingency management plan to the gas contingency operator for approval, a transmission network owner must –

(1) Consult with persons that the transmission network owner considers are representative of the interests of persons likely to be substantially affected by the proposed outage and contingency management plan; and

(2) Give persons consulted with under regulation 25(1) at least 20 business days to make submissions to the transmission network owner on the proposed outage and contingency management plan; and

(3) Consider the submissions made on the proposed outage and contingency management plan.

26 Appoint expert adviser

(1) Within:

(a) 30 business days of the commencement date; or

(b) 5 business days of receiving notification from the gas contingency operator under regulations 30(6) or 59(7) that an amendment is proposed to an outage and contingency management plan;

whichever is applicable, the industry body must appoint an expert adviser to work in a co-operative manner with the gas contingency operator to review a proposed outage and contingency management plan or a proposed amendment to an outage and contingency management plan under regulation 27.

27 Review of an outage and contingency management plan

(1) The gas contingency operator and the expert adviser appointed under regulation 26 will, working co-operatively together, review:

(a) A proposed outage and contingency management plan provided by a transmission network owner under regulations 23 or 28(6); or

(b) A proposed amendment to an outage and contingency management plan under regulations 30(5), 31(6) or 59(4);

to determine whether or not they will recommend approval of the proposed outage and contingency management plan or proposed amendment to the industry body.

(2) Within 10 business days of receiving the proposed outage and contingency management plan or proposed amendment, the expert adviser and the gas contingency operator will, following their review, recommend to the industry body, including the reasons for so recommending, whether or not the industry body should approve the proposed outage and contingency management plan or proposed amendment.

(3) The gas contingency operator and the expert adviser must make a joint recommendation to approve the proposed outage and contingency management plan or proposed amendment if they both agree that the proposed outage and contingency management plan or proposed amendment complies with regulation 24 and gives effect to the purpose of the regulations.

(4) If the gas contingency operator and the expert adviser cannot agree on whether to recommend approval of the proposed outage and contingency management plan or proposed amendment, they must make separate recommendations to the industry body.

(5) If the gas contingency operator and the expert adviser agree that the proposed outage and contingency management plan or proposed amendment should not be approved by the industry body –

(a) The gas contingency operator must provide notice to the relevant transmission network owner and the industry body of the written reasons for not recommending approval within 10 business days of receiving the proposed outage and contingency management plan or proposed amendment; and

(b) The relevant transmission network owner must submit a revised proposal to the gas contingency operator for review under this regulation 27 no later than 20 business days after notice was received under regulation 27(5)(a).

28 Approval of outage and contingency management plan

(1) The industry body must review the report and recommendations provided under regulation 27 and make a determination as to whether or not it will approve a proposed outage and contingency management plan or a proposed amendment.

(2) The industry body must approve the proposed outage and contingency management plan or proposed amendment if –

(a) It receives a joint recommendation for approval from both the gas contingency operator and the expert adviser under regulation 27(3); and

(b) The industry body considers that the proposed outage and contingency management plan or proposed amendment complies with regulation 24 and gives effect to the purpose of the regulations.

(3) The industry body may approve the proposed outage and contingency management plan or proposed amendment if –

(a) It receives a recommendation for approval from either the gas contingency operator or the expert advisor under regulation 27(4); and

(b) The industry body considers that the proposed outage and contingency management plan or proposed amendment complies with regulation 24 and gives effect to the purpose of the regulations.

(4) Except as provided in regulations 28(2) and 28(3), the industry body has the discretion to determine whether to approve or decline the proposed outage and contingency management plan or proposed amendment.

(5) The industry body must:

(a) complete the review under regulation 28(1); and

(b) provide notice to the gas contingency operator and the relevant transmission network owner as to whether or not it approves the proposed outage and contingency management plan or proposed amendment;

within 5 business days of receiving a recommendation under regulation 27(2).

(6) If the industry body gives notice that it has declined to approve the proposed outage and contingency management plan or proposed amendment, the relevant transmission network owner must, no later than 20 business days after notice was received under regulation 28(5),

submit a revised proposal plan to the gas contingency operator for review under regulation 27.

(7) The industry body must publish a statement that outage and contingency management plans have been approved on the day that the industry body gives final approval to sufficient outage and contingency management plan to cover all transmission networks.

29 Publish outage and contingency management plan

(1) Five business days after the industry body publishes a statement under regulation 28(7), the gas contingency operator must publish all outage and contingency management plans on the gas contingency website, provided that the gas contingency operator may remove from such plans any information it considers sufficiently confidential or sensitive as to warrant not being published.

(2) If any dispute or issue is raised regarding the omission of information, the industry body may make a determination as to what is and what is not appropriate for publication.

30 Maintaining outage and contingency management plan

(1) A transmission network owner must ensure the contact details included in its outage and contingency management plan in accordance with regulation 24 are current.

(2) A transmission network owner must review its outage and contingency management plan to determine whether it complies with regulation 24 and whether it is able to give effect to the purpose of the regulations -

(a) Once every two years; or

(b) At any time it is directed to do so by the gas contingency operator; or

(c) At any time that the relevant transmission network owner is of the opinion that its outage and contingency management plan may not give effect to the purpose of the regulations.

(3) If, as a result of a review under regulation 30(2), a transmission network owner determines that the outage and contingency management plan may not:

(a) comply with regulation 24; or

(b) give effect to the purpose of the regulations;

the transmission network owner must notify the gas contingency operator within 10 business days of making such a determination.

(4) If notice is given under regulation 30(3) the gas contingency operator and the relevant transmission network owner will discuss the outage and contingency management plan in good faith to agree –

(a) Any amendments to the outage and contingency management plan which they consider may be necessary to comply with regulation 24 and achieve the purpose of the regulations; and

(b) When such amendments are to be made by the transmission network owner.

(5) A transmission network owner must make any amendments to the outage and contingency management plan determined necessary under regulation 30(4) within the agreed time frame and -

(a) The consultation process in regulation 25 will apply unless the transmission network owner and the gas contingency operator agree that the amendment is immaterial; and

(b) The approval process set out in regulations 27 and 28 will apply.

(6) The gas contingency operator must notify the industry body of any amendment to the outage and contingency management plan determined necessary under regulation 30(4) within 2 business days of agreement being reached.

31 Testing outage and contingency management plans

(1) The gas contingency operator must, after consultation with transmission network owners, instigate exercises to test that –

(a) The outage and contingency management plans complies with regulation 23 and gives effect to the purpose of the regulations; and

(b) The contact details included in outage and contingency management plans in accordance with regulation 24 are current; and

(c) The list of emergency contact details maintained by retailers in accordance with regulation 40 is current.

(2) Transmission network owners must participate in tests instigated under regulation 31(1).

(3) An exercise must be instigated by the gas contingency operator at least once every twelve months, except where there has been a gas contingency within that twelve month period and the report produced in accordance with regulation 59 confirms that the outage and contingency management plans meets the test criteria in regulation 31(1).

(4) Within 10 business days of completing an exercise under regulation 31(1), a transmission network owner must provide a report to the gas contingency operator which –

(a) Explains why or why not its outage and contingency management plan meets the test criteria in regulation 31(1); and

(b) Identifies areas in which its outage and contingency management plan can be improved; and

(c) Recommends to the gas contingency operator any amendments that the transmission network owner considers should be made to its outage and contingency management plan; and

(d) Contains such other information the transmission network owner considers is appropriate.

(5) The gas contingency operator and the relevant transmission network owner will discuss the report provided under regulation 31(4) in good faith to agree –

(a) Any amendments to the outage and contingency management plan which they consider are necessary to better meet the purpose of the regulations; and

(b) When such amendments are to be made by the transmission network owner.

(6) The transmission network owner must make any amendments to the outage and contingency management plan determined necessary under regulation 31(5) within the agreed time frame and -

(a) The consultation process in regulation 25 will apply unless the transmission network owner and the gas contingency operator agree that the amendment is immaterial; and

(b) The approval process set out in regulations 27 and 28 will apply.

(7) The gas contingency operator must notify the industry body of any amendment to the outage and contingency management plan determined necessary under regulation 31(5) within 2 business days of agreement being reached.

Curtailment bands and restoration

32 Objectives of curtailment bands and restoration

The curtailment bands, implementation of the curtailment bands and implementation of the restoration procedures must meet the following objectives –

(1) Ensuring that gas is supplied in a safe, efficient and reliable manner; and

(2) Minimisation of net public cost; and

(3) Prioritisation of essential service providers; and

(4) Allowance for minimal load consumer supply; and

(5) Efficient utilisation of gas in storage facilities; and

(6) Effective operational management of a gas contingency.

33 Determination of curtailment bands

(1) The industry body must commission a study to determine curtailment bands to be completed within **[3]** years of the commencement date. The study will also consider whether restoration of supply in the inverse order of curtailment (last curtailed first restored) is appropriate.

(2) The industry body may thereafter commission studies to determine appropriate curtailment bands from time to time at its sole discretion.

(3) The purpose of any study commissioned under this regulation is to determine curtailment bands that meet the objectives set out in regulation 32 and any other objectives that the industry body determines are appropriate.

(4) The industry body will consult with the persons it considers are representative of the interests of persons likely to be substantially affected by a change in curtailment bands and consider submissions made by such persons.

(5) The industry body may require the disclosure by a person of any information that the industry body considers is required for the purposes of the study under regulation 33(1) and that person must provide the industry body with the information within the time period prescribed by the industry body.

(6) The industry body must keep confidential any information provided to it in accordance with regulation 33(5) except to the extent that disclosure is required for the purposes of the study under regulation 33(1).

(7) The industry body will publish the new curtailment bands resulting from the study under regulation 33(1).

Communications plan

34 Publish communications plan

(1) The gas contingency operator must, in consultation with transmission network owners, prepare a communications plan and publish it on the go-live date.

(2) The communications plan will govern the communications between the gas contingency operator and the transmission network owners during a gas contingency.

(3) The communications plan must apply to communications from the gas contingency operator to the transmission network owners and from the transmission network owners to the gas contingency operator relating to –

(a) Implementing curtailment of demand; and

(b) Revising curtailment of demand; and

(c) Restoring gas supply; and

(d) Terminating a gas contingency; and

(e) Identifying persons who did not comply with curtailment or restoration directions.

Information guide

35 Information guide for certain parties

On the go-live date the gas contingency operator must publish an information guide which explains the communication flows between the gas contingency operator and the following parties during a gas contingency –

(1) The electricity system operator; and

(2) The director of civil defence emergency management; and

(3) Operators of gas storage facilities; and

(4) Operators of upstream gas production facilities; and

(5) The industry body; and

(6) The Minister of Energy; and

(7) Any other person that the gas contingency operator considers necessary.

36 Process for preparing information guide

(1) Prior to publishing the information guide the gas contingency operator must -

(a) Consult with persons that the gas contingency operator considers are representative of the interests of persons likely to be substantially affected by the information guide; and

(b) Give persons consulted with under regulation 36(1)(a) at least 20 business days to make submissions to the gas contingency operator on the information guide; and

(c) Consider the submissions made on the information guide.

(2) The consultation process, including consideration of submissions, must be completed within 50 business days of the commencement date.

(3) If submissions made on the information guide are also relevant to the outage and contingency management plans or communications plan, the gas contingency operator may consider those submissions when reviewing the outage and contingency management plans or preparing the communications plan as applicable.

Consumer information

37 Retailers to provide consumer information

(1) Retailers must provide a notice to the gas contingency operator no later than 20 business days after the commencement date containing the number and aggregate total annual consumption of the retailer's consumers which are supplied gas through each gas gate that are –

(a) In each of the curtailment bands; and

(b) Designated as essential service providers; and

(c) Designated as minimal load consumers.

(2) Retailers must give notice to the gas contingency operator as soon as practicable whenever there is a change of 20% or greater in the aggregate total annual consumption figures for the information provided in accordance with regulation 37(1).

38 Gas contingency operator to hold record of retailers' information

(1) The gas contingency operator must keep a record of information provided to it by retailers in accordance with regulation 37.

(2) If the gas contingency operator considers that information provided by any retailer is materially incorrect the gas contingency operator must, as soon as reasonably practicable, give notice to the industry body that a specific retailer's information may be materially incorrect and provide all of that retailer's information to the industry body.

39 Audit of retailers' information

(1) If the industry body is notified by the gas contingency operator pursuant to regulation 38 that a retailer's information may be materially incorrect the industry body must give the relevant retailer 10 business days to correct their information and provide it to the gas contingency operator.

(2) If the gas contingency operator considers that the updated information provided under regulation 39(1) is materially incorrect, or the retailer does not provide the updated information, the gas contingency operator must, as soon as reasonably practicable, give notice to the industry body.

(3) Within 5 business days of receiving notification under regulation 39(2), the industry body must give notice to the retailer that the industry body intends to conduct an audit of that retailer.

(4) The purpose of an audit under this regulation is to determine whether information provided to the gas contingency operator by the retailer is materially incorrect.

(5) The audit is to be conducted in accordance with regulation 72.

40 Emergency contact details

(1) Retailers must maintain a list of the emergency contact details of all of their consumers with gas consumption in excess of 2 terajoules per annum.

(2) Retailers must include or remove (as appropriate) the emergency contact details of a consumer on the list maintained in accordance with regulation 40(1) within 5 business days of that consumer concluding a switch of retailers.

41 Designation of customers as essential service providers

(1) The purpose of this regulation 41 is to identify consumers which are essential service providers.

(2) Retailers must, as soon as reasonably practicable after the commencement date, notify their non-residential consumers that if they wish to be classified as essential service providers they must apply to the retailer in writing and that such an application can be made at any time.

(3) Retailers must approve a consumer's application to be an essential service provider if all of the following criteria are met -

(a) The consumer is classed as an essential service provider by the Ministry of Civil Defence and Emergency Management; and

(b) The consumer can demonstrate that its annual gas consumption was greater than two terajoules in any twelve month period within 2 years before the consumer's application; and

(c) The consumer meets the criteria in any essential service provider guidelines that may be published by the industry body from time to time.

(4) Retailers must, within 10 business days of receiving a consumer's application to be an essential service provider, provide notice to the consumer that it approves or declines that consumer's application.

42 Designation of customers as minimal load consumers

(1) The purpose of this regulation 42 is to identify consumers which:

(a) require a minimal amount of gas during a gas contingency in order to avoid serious damage to plant and/or mitigate serious environmental damage while undertaking an orderly shut down of plant in the shortest time possible; and

(b) require a period of time to make alternative arrangements to eliminate their need to be a minimal load consumer.

(2) Retailers must, as soon as reasonably practicable after the commencement date, notify their non-residential consumers that if they wish to be classified as minimal load consumers they must apply to the retailer in writing and that such an application can be made at any time.

(3) Consumers must include the following information in an application to be a minimal load consumer –

(a) The absolute minimum level of gas supply level required to avoid serious damage to plant or mitigate serious environmental damage; and

(b) The period of time required for an orderly and complete shut down of plant; and

(c) The period of time required for assessment and implementation of alternative arrangements.

(4) Retailers must, within 10 business days of receiving an application to be a minimal load consumer, provide notice to the consumer that it approves or declines that consumer's application.

(5) Retailers must approve a consumer's application to be a minimal load consumer if all of the following criteria are met -

(a) The consumer is operating a major item of capital plant and that plant would sustain serious damage or significant environmental damage would be caused if gas supply was curtailed; and

(b) The consumer installation has annual gas consumption of greater than ten terajoules in any twelve month period; and

(c) The retailer is satisfied that the consumer has adequate plans for assessment and implementation of alternative arrangements.

(6) Within 10 business days of notifying a consumer that its application to be a minimal load consumer has been approved, the retailer and the consumer must agree on:

(a) the absolute minimum gas supply level required to mitigate serious damage to the plant or the environment; and

(b) the period of time within which the consumer will implement alternative arrangements.

Part 3

Gas contingency

General

43 Life and limb

No person is required to comply with a provision of this Part 3 to the extent that compliance would unreasonably endanger the life or safety of that person or any other person.

Declaring a gas contingency

44 Gas contingency operator must determine a gas contingency

The gas contingency operator must make a determination that there is a gas contingency if either –

(1) One or more of the thresholds included in an outage and contingency management plan pursuant to regulation 24(1) is breached; or

(2) The gas contingency operator has a reasonable expectation that a breach of one or more of the thresholds included in an outage and contingency management plan pursuant to regulation 24(1) is imminent.

45 Process for declaration

(1) If the gas contingency operator determines that there is a gas contingency under regulation 44, the gas contingency operator must declare a gas contingency.

(2) Without limiting the powers of the gas contingency operator under these regulations and under the outage and contingency management plan, to declare a gas contingency the gas contingency operator must, as soon as reasonably possible after determining a gas contingency, give formal notice to all affected transmission network owners:

(a) Advising them that a gas contingency has been declared; and

(b) Detailing the pipeline areas affected; and

(c) Advising them that they are required to comply with any directions of the gas contingency operator; and

(d) Advising them that communications under the communications plan are to commence immediately.

46 Authority of gas contingency operator

If the gas contingency operator declares a gas contingency, the gas contingency operator must –

(1) Issue directions to the transmission network owners in accordance with the relevant outage and contingency management plans and the communications plan as closely as practicable having regard to the nature of the gas contingency; and

(2) Take any other mitigating action it considers necessary to meet the purpose of the regulations if the actions required to mitigate the severity of the gas contingency lie outside the scope of the outage and contingency management plans.

47 Notification of a gas contingency to certain parties

As soon as reasonably practicable after declaring a gas contingency the gas contingency operator must give formal notice to the following persons that a gas contingency has been declared -

(1) The electricity system operator; and

(2) The director of civil defence emergency management; and

(3) Operators of gas storage facilities; and

(4) Operators of upstream gas production facilities; and

(5) The industry body; and

(6) The Minister of Energy.

48 Publish declaration of gas contingency

The gas contingency operator must as soon as reasonable practicable after declaring a gas contingency –

(1) Publish a statement that a gas contingency has been declared and detail the pipeline areas affected; and

(2) Ensure an appropriate critical notice is posted on OATIS or its replacement interactive software system, if any.

During a gas contingency

49 Role of gas contingency operator during a gas contingency

(1) For the duration of a gas contingency the gas contingency operator must –

(a) Monitor the linepack levels and pressure in the section or sections of the transmission network affected; and

(b) Receive and consider communications from the transmission network owners and any other persons identified in the information guide; and

(c) Maximise all available opportunities to increase upstream gas production and draw on gas storage, excluding any gas stored in a transmission network or distribution system; and

(d) Without limiting the gas contingency operator's power under regulation 46(2), issue formal notices to transmission network owners in accordance with the communications plan directing the transmission network owners to -

(i) Implement curtailment of demand in accordance with the outage and contingency management plan; and

(ii) Revise curtailment of demand in accordance with the outage and contingency management plan;

for the purpose of stabilising the linepack and pressure in the section or sections of the transmission network affected; and

(e) Once linepack and pressure in the section or sections of the transmission network affected has stabilised to a level where the gas contingency operator is satisfied that it is appropriate to restore gas supply, issue formal notice to transmission network owners in accordance with the communications plan directing the transmission network owners to either –

(i) Restore gas supply to consumers in the reverse curtailment order (last to curtail and first to restore) in accordance with the outage and contingency management plan unless agreed otherwise with the transmission network owner; or

(ii) If there is a civil defence emergency, restore gas supply to consumers in line with the guide issued by the director of civil defence emergency management under the Civil Defence Emergency Management Act 2002, or any equivalent or replacement document under any subsequent replacement legislation; and

(f) Ensure the persons listed in regulation 47 are kept informed of the status of the gas contingency; and

(g) Publish –

(i) updated information on the status of the gas contingency; and

(ii) all formal notices issued by the gas contingency operator.

(2) For the avoidance of doubt, the gas contingency operator has the power to direct curtailment of only a subset of load within a curtailment band

50 Role of transmission network owner during a gas contingency

If the gas contingency operator determines that there is a gas contingency under regulation 44, transmission network owners must –

(1) Comply with any and all directions of the gas contingency operator given under these regulations; and

(2) Subject to regulation 50(1), follow the outage and contingency management plan as closely as practicable having regard to the nature of the gas contingency; and

(3) Follow the communications plan.

51 Retailers must follow directions

(1) Retailers must, as soon as practicable, comply with any and all directions of a transmission network owner issued under an outage and contingency management plan during a gas contingency.

(2) Retailers must provide a transmission network owner with regular updates of –

(a) The retailer's compliance with the directions of the transmission network owner; and

(b) Consumers' compliance with the retailer's directions issued in accordance with the directions of the transmission network owner.

52 Retailers to instruct consumers

(1) As soon as reasonably practicable after receiving a direction from a transmission network owner under regulation 51(1), retailers must give formal notice to their consumers affected by that direction that the consumer is to curtail demand in accordance with the direction.

(2) The formal notice given under regulation 52(1) must include statements that:

(a) A gas contingency has been declared by the gas contingency operator; and

(b) The gas contingency operator has issued a direction for the curtailment band that the notified customers falls within; and

either -

(c) The consumer must curtail all its demand; or

(d) If the consumer is a minimal load consumer, gas demand must be curtailed in accordance with the agreement with the retailer under regulation 42(6).

53 Consumers to comply with directions

Consumers must comply with any and all directions issued by their retailer under regulation 52 as soon as reasonably practicable.

54 Termination of gas contingency

(1) The gas contingency operator must make a determination to terminate a gas contingency when the transmission network is capable of supplying gas to all consumers at the level at which gas was supplied immediately prior to the event that triggered the gas contingency.

(2) For the avoidance of doubt, the gas contingency operator may make a determination to terminate a gas contingency under regulation 54(1) before gas supply has been restored to all consumers.

55 Process for termination

As soon as reasonably practicable after making a determination to terminate a gas contingency under regulation 54, the gas contingency operator must issue a formal notice to all affected transmission network owners advising them –

(1) Of the date and time on which the gas contingency terminates or has been terminated; and

(2) That they must give formal notice to all affected retailers that the gas contingency has terminated and direct retailers to advise their consumers that the gas contingency has terminated; and

(3) That they must give formal notice to all consumers connected directly to their transmission network that the gas contingency has terminated.

56 Notification of termination to certain parties

As soon as reasonably practicable after terminating a gas contingency the gas contingency operator must give formal notice to the following persons that the gas contingency has been terminated -

(1) The electricity system operator; and

(2) The director of civil defence emergency management; and

(3) Operators of gas storage facilities; and

(4) Operators of upstream gas production facilities; and

(5) The industry body.

57 Publish termination of gas contingency

The gas contingency operator must, as soon as reasonably practicable after terminating a gas contingency, publish a statement that the gas contingency has been terminated.

Part 4

Obligations post gas contingency

Reporting requirements

58 Incident report

As soon as reasonably practicable, but not later than 5 business days after terminating a gas contingency under regulation 54, the gas contingency operator must, in consultation with the affected transmission network owners, prepare and publish an incident report which states the –

(1) Cause of the gas contingency; and

(2) Duration of the gas contingency; and

(3) Actions taken by the gas contingency operator and transmission network owner during the gas contingency; and

(4) The level of retailers and consumers general compliance with the instructions of the transmission network owners during the gas contingency; and

(5) Any other matters that the gas contingency operator considers are appropriate.

59 Performance report

(1) Within 15 business days of terminating a gas contingency under regulation 54, or as otherwise agreed between the gas contingency operator and the industry body, the gas contingency operator, in consultation with the affected transmission network owners, must prepare and publish a performance report which assesses the –

(a) The gas contingency operator's and transmission network owners' compliance with the regulations, outage and contingency management plan and communications plan; and

(b) Extent to which the regulations, outage and contingency management plan and communications plan meet the purpose of the regulations.

(2) The gas contingency operator may consult with any person it considers necessary when preparing the performance report.

(3) The gas contingency operator and the transmission network owner will discuss the performance report in good faith to agree –

(a) Any amendments to the outage and contingency management plan and communications plan which they consider may be necessary to better meet the purpose the regulations; and

(b) When any such amendments are to be made by the transmission network owner.

(4) The transmission network owner must make any amendments to the outage and contingency management plan determined necessary under regulation 59(3) within the agreed time frame and -

(a) The consultation process in regulation 25 will apply unless the transmission network owner and the gas contingency operator agree that the amendment is immaterial; and

(b) The approval process set out in regulations 27 and 28 will apply.

(5) Within 2 business days of reaching agreement under regulation 59(3), the gas contingency operator must notify the industry body of any amendment to the outage and contingency management plan determined necessary under regulation 59(3).

(6) Prior to publishing the performance report, the gas contingency operator must notify the industry body of any recommended amendment to the regulations identified in the performance report as being necessary to better meet the purpose of the regulations.

(7) If an amendment to the communications plan is determined necessary under regulation 59(3) the gas contingency operator will amend and publish the revised communications plan.

60 Assist with report

Transmission network owners must provide any information and assistance requested by the gas contingency operator for the purpose of preparing the reports under regulations 58 and 59.

Gas contingency price and contract imbalances

61 Purpose of applying gas contingency price to contract imbalances

The purpose of regulations 62 to 71 is to determine a gas contingency price to be applied to retailers' and shippers' contract imbalances sustained during a gas contingency is to –

(1) Avoid shippers instructing their suppliers to reduce supply during a gas contingency when those shippers' consumers have been curtailed; and

(2) Signal to suppliers and consumers of gas that it is a scarce and valuable product during a gas contingency; and

(3) Provide incentives prior to a gas contingency, particularly for retailers who supply gas to consumers who are unlikely to be curtailed, to make alternative arrangements to minimise the financial repercussions of a gas contingency.

62 Nominate industry expert

(1) Each retailer and shipper who will be affected by the determination of a gas contingency price may nominate one person to be considered by the industry body when appointing an independent industry expert to determine the gas contingency price.

(2) Retailers and shippers must provide the name, qualifications, and industry associations of their nominee to the industry body in writing within 5 business days of the termination of a gas contingency.

63 Appoint industry expert

(1) Subject to regulation 63(2), the industry body must appoint an industry expert to determine the gas contingency price from the persons nominated under regulation 62 within 10 business days of the termination of a gas contingency.

(2) Notwithstanding regulation 63(1), the industry body must only appoint a person nominated under regulation 62 if the industry body considers that such a nominee would be an independent industry expert.

(3) If the industry body considers that none of the nominees would be an independent industry expert, the industry body has absolute discretion to appoint an independent industry expert that has not been nominated under regulation 62.

(4) The industry body must publish the appointment of the industry expert within 2 business days of making such an appointment.

(5) The decision of the industry body to appoint a person as the industry expert is final and the gas contingency price determined by that industry expert is binding on all retailers and shippers with a contract imbalance.

64 Terms of appointment of industry expert

(1) The industry expert will be appointed as a service provider on the terms set out in a service provider agreement.

(2) The industry expert must determine the gas contingency price and notify retailers, shippers and the industry body of such a determination within 20 business days of being appointed.

(3) The remuneration of the industry expert will be as agreed between the industry body and the industry expert in the service provider agreement.

65 Determining the gas contingency price

(1) The industry expert must determine the gas contingency price in dollars per gigajoule taking into account the following factors, which are listed in descending order of importance with the most weight being placed on the factor at regulation 63(1)(a) and the least weight being placed on the factor at regulation 63(1)(d) -

(a) Prices in the wholesale market for gas immediately prior to the gas contingency; and

(b) Prices in the wholesale market for gas during the period 7 days prior to the gas contingency; and

(c) Prices in the wholesale electricity market during the period 7 days prior to, immediately prior to, and during a gas contingency used to impute a gas price; and

(d) The economic cost of the loss of gas supply to those consumers who had their gas supply curtailed.

(2) Notwithstanding regulation 65(1), if the industry expert considers that a price listed in regulation 65(1)(a), 65(1)(b) or 65(1)(c) –

(a) Is determined in a market that is not transparent; or

(b) Is not representative of the true value of gas during a gas contingency;

that price must not be taken into account by the industry expert when determining the gas contingency price.

(3) In the event that regulation 65(2) applies to prohibit the industry expert from taking into account any price listed in regulation 65(1)(a), 65(1)(b) or 65(1)(c) when determining the gas contingency price, the industry expert must determine the gas contingency price with reference to the remaining factors to which regulation 65(2) does not apply, with the most weight being placed on the remaining factor appearing first on the list at regulation 65(1) and the least weight being placed on the remaining factor appearing last on the list in regulation 65(1).

Determining and resolving contract imbalances

66 Determining contract imbalances

(1) Within 5 business days of the termination of a gas contingency, the industry body must instruct [***an appointee***] to determine the contract imbalances for each retailer and shipper affected by the gas contingency over the period of the gas contingency.

(2) The [***appointee***] must determine the contract imbalances in accordance with this regulation and notify each retailer and shipper and the industry body of the determination within 20 business days of the end of the month in which the gas contingency was terminated.

(3) A contract imbalance may be a positive contract imbalance or a negative contract imbalance and for the purposes of these regulations –

(a) a negative contract imbalance means the imbalance for a retailer or shipper created where its consumers in aggregate have, or are deemed under any industry allocation rules to have, consumed more gas during a gas contingency than the total of that retailer's or shipper's injections into the transmission network determined in accordance with regulation 66(4); and

(b) a positive contract imbalance means the imbalance for a retailer or shipper created where its consumers in aggregate have, or are deemed under any industry allocation rules, to have

consumed less gas during a gas contingency than the total of that retailer's or shipper's injections into the transmission network determined in accordance with regulation 66(4).

(4) When determining a contract imbalance for each retailer and shipper affected by the gas contingency the [***appointee***] must -

(a) Use the best information available to them in the 20 business days of the end of the month in which the gas contingency was terminated; and

(b) Consult with any person and request any information it considers necessary to gather the best information available for making the determination; and

(c) Assume that retailers and shippers and their consumers have complied with any curtailment directions issued by the gas contingency operator during the gas contingency when determining quantities consumed unless there is evidence to the contrary; and

(d) Adjust quantities consumed having regard to any evidence that retailers and shippers or their consumers did not comply with curtailment instructions; and

(e) Treat trades –

(i) Purchasing gas over the transmission network as injections into the transmission network; and

(ii) Selling gas over the transmission network as withdrawals from the transmission network.

(5) The contract imbalances determined by the [***appointee***] are final and binding on all retailers and shippers for the purposes of these regulations.

(6) For the avoidance of doubt, the [***appointee***]'s determination of the contract imbalances is to be used only for the purposes of these regulations.

67 Negative contract imbalances

(1) Retailers and shippers with a negative contract imbalance determined under regulation 66 must pay into a contingency cash pool an amount calculated in accordance with the following formula:

$$P_A = E_p \times I_A$$

Where:

P_A is the amount of the payment required from retailer or shipper A

E_p is the gas contingency price in dollars per gigajoule

I_A is the absolute value of the negative contract imbalance of retailer or shipper A in gigajoules

(2) Within 10 business days of being notified of the gas contingency price and the contract imbalances, the industry body must issue invoices to retailers and shippers with negative contract imbalances for the amounts calculated in accordance with regulation 67(1).

(3) Invoices issued to a retailer or shipper under regulation 67(2) must include –

(a) The calculation of the payment required; and

(b) The bank account the payment is to be made into; and

(c) A statement that the payment must be received by the 20th of the month following the month in which the invoice was issued; and

(d) A statement that failure to make payment may result in a determination being made by the Rulings Panel and the application of penalty interest.

(4) Retailers must make the payment required by the invoice issued under regulation 67(3) into the contingency cash pool by the 20th of the month following the month in which the invoice was issued.

68 Industry body to hold contingency cash pool

The industry body must receive and hold the payments made in accordance with regulation 67 in a secure and separate bank account in trust for the benefit of retailers and shippers with positive contract imbalances.

69 Positive contract imbalances

(1) Retailers and shippers with a positive contract imbalance determined under regulation 66 will be entitled to be paid an amount from the contingency cash pool calculated in accordance with the following formula:

$$R_B = C_p \times (M_B/M_t)$$

Where:

R_B is the amount to be received by retailer or shipper B

C_p is the total amount of money held in the contingency cash pool at a specified time in relation to the relevant gas contingency

M_B is the positive imbalance of retailer or shipper B in gigajoules

M_t is the total of all retailers and shippers positive imbalances in gigajoules

(2) The first payment to retailers and shippers will be an amount calculated in accordance with regulation 69(1) and will be paid to the retailer or shipper on the last business day of any month where the industry body

determines that a reasonable proportion of the payments required under regulation 66 have been received.

(3) The industry body may make subsequent payments to retailers and shippers calculated in accordance with regulation 69(1) as it determines necessary to pay out all of the funds in the contingency cash pool.

(4) The industry body must not pay out an amount greater than the total amount of funds received into the contingency cash pool.

70 No other imbalance obligations

(1) A retailer or shipper shall not be required by MPOC or any other pipeline operating code to make any payment in relation to a negative contract imbalance to the extent that a payment for that negative contract imbalance is required and has been paid in accordance with these regulations.

(2) A retailer or shipper shall not be entitled under MPOC or any other pipeline operating code to receive a payment in relation to a positive contract imbalance to the extent that the retailer or shipper is entitled to a payment for that positive contract imbalance under these regulations.

71 Provision of information

(1) The industry body or industry expert or [***appointee***] may require the disclosure by a person of any information that they require for the purposes of carrying out their obligations under regulations 65 to 69 and that person must provide them with that information within the prescribed time period.

(2) The industry body or industry expert or [***appointee***] must keep confidential any information provided to it under regulation 71(1) except to the extent that disclosure is required for the purposes of them carrying out their obligations under regulations 65 to 69.

Part 5

Miscellaneous provisions

72 Audits

(1) In appointing an auditor to conduct an audit under regulation 39, the industry body must appoint a person who is independent of, and not in a position of conflict of interest with, the retailer that is to be audited.

(2) No officer or employee of the industry body may be appointed as an auditor.

(3) The retailer that is to be the subject of the audit may recommend one or more auditors for the industry body's consideration.

(4) In conducting an audit, the auditor may request any information from the retailer or the industry body. Such a request must be reasonable and strictly for the purposes of the audit.

(5) In providing information to the auditor, the retailer or the industry body may indicate to the auditor that such information is considered to be confidential.

(6) The auditor must prepare a written audit report and give it to the industry body and the retailer audited within the timeframe agreed with the industry body.

(7) The audit report may be used -

(a) For the purposes of the Gas (Compliance) Regulations 2007; and

(b) By the industry body to require the retailer to provide correct information to the gas contingency operator for the purposes of regulation 37.

(8) The retailer being audited must pay the costs of the audit.

(9) For the purposes of this regulation, the costs of the auditor are those costs that have been agreed between the industry body and the auditor.

Part 6

Transitional provisions

73 Treatment of gas contingency occurring before plans receive approval

If a national gas contingency or a regional gas contingency (as defined in the National Gas Outage Contingency Plan) occurs before the go-live date the National Gas Outage Contingency Plan will apply to those persons participating in the National Gas Outage Contingency Plan. For the avoidance of doubt no provision of these regulations will apply to such a national gas contingency or a regional gas contingency.

74 Interim curtailment bands

(1) The industry body must publish interim curtailment bands which will apply from the commencement date.

(2) The interim curtailment bands will be replaced with curtailment bands determined in accordance with regulation 33(7) from the date of publication.

(3) The industry body is not required to ensure that the interim curtailment bands meet the objectives set out in regulation 32.

Interim curtailment bands

Curtailment Band	Consumption (TJ/annum unless specified)	Description
0		Gas offtaken for injection into gas storage.
1a	>15TJ/day	Consumers supplied directly from a transmission network and who have an alternative fuel capability. If minimal load consumer then manage wind-down of plant.
1b	>15TJ/day	Consumers supplied directly from a transmission network who do not have an alternative fuel capability. If minimal load consumer then manage wind-down of plant.
2	>10TJ/annum	Industrial and commercial consumers with alternative fuel capability. If minimal load consumer then manage wind-down of plant.
3	>10TJ	Industrial and commercial consumers without alternative fuel capability. If minimal load consumer then manage wind-down of plant.
4	2 to 10TJ	All consumers except for essential service providers. Minimal load consumers fully interrupted.
5	>2TJ	Essential service providers.
6	<2TJ	All remaining consumers.

Appendix D: Proposed Amendments to the Compliance Regulations

DRAFT GAS (COMPLIANCE) REGULATIONS 2007

1 Title

These regulations are the Gas (Compliance) Regulations 2007.

2 Commencement

These regulations come into force 28 days after the date these regulations are notified in the Gazette.

3 Purpose

These regulations provide for the monitoring and enforcement of the -

(a) Gas (Switching Arrangements) Rules 2007; and

(c) Gas (Outage and Contingency Management) Regulations 2008;

made by the Minister of Energy under the Gas Act 1992, as may be amended from time to time.

4 Interpretation

(1) In these regulations, unless the context otherwise requires —

Act means the Gas Act 1992

breach notice means any notice given under regulation 9 , 10 or 11

Commission means the Energy Commission established under section 43ZZH of the Act

gas contingency operator means the service provider appointed by the industry body under rule 5 of the Gas (Outage and Contingency Management) Regulations 2008

industry body means the industry body approved by the Governor General by Order in Council under section 43ZL of the Act. In the event that the industry body is revoked under section 43ZM of the Act, all references to the industry body shall be replaced with references to the Commission

investigator means any investigator appointed under regulation 25

notifying participant means a participant that gives a breach notice under regulation 9

market administrator means the industry body or the service provider appointed by the industry body under regulation 5 to undertake the role of market administrator

participant means –

(a) a registry participant as defined in the Gas (Switching Arrangements) Rules 2007; or

(b) a consumer, retailer or transmission network owner as defined in the Gas (Outage and Contingency Management) Regulations 2008;

and includes the registry operator and the gas contingency operator

publish means, in relation to a document, to make that document available at no cost —

(b) on the industry body's website at all reasonable times; and

(c) in any other manner that the industry body may decide

registry operator means the service provider appointed by the industry body under rule 11 of the Gas (Switching Arrangements) Rules 2007

rules means the –

(a) Gas (Switching Arrangements) Rules 2007; and

(c) Gas (Outage and Contingency Management) Regulations 2008;

as amended from time to time and includes every schedule to the rules, any code of practice and any technical code and every amendment to, deletion of, or addition to, any of the rules

Rulings Panel or **Panel** means the Panel established by regulation 60

service provider means any service provider appointed by the industry body under the rules.

(2) Any term that is defined in the rules and used, but not defined, in these regulations has the same meaning as in the rules.

(3) Any term that is defined in the Act and used in these regulations, but not defined in these regulations or the rules, has the same meaning as in the Act.

5 Role of market administrator

(1) The role of the market administrator is to —

(a) receive breach notices; and

(b) provide a filter so that breach allegations that do not raise material issues are not automatically referred to the investigation process and the Rulings Panel; and

(c) provide a pragmatic, fast and efficient resolution service for complaints that do not raise a material issue; and

(d) refer complaints that do raise material issues to investigators for investigation.

(2) The industry body may, from time to time, by agreement with a person, appoint that person to undertake the role of market administrator.

(3) To avoid any doubt, the industry body does not have a conflict of interest by reason of the fact that it may be carrying out the role of market administrator.

6 Breaches

(1) In these regulations, unless the context otherwise requires, a reference to a participant that has breached a provision of the rules is a reference to a participant that —

(a) has contravened the provision; or

(b) has attempted to contravene the provision; or

(c) has aided, abetted, counselled, or procured any other participant to contravene the provision; or

(d) has induced, or attempted to induce, any other participant, whether by threats or promises or otherwise, to contravene the provision; or

(e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other participant of the provision; or

(f) has conspired with any other participant to contravene the provision.

(2) In these regulations, unless the context otherwise requires, a reference to a breach (including an alleged breach) of the rules refers only to a breach —

(a) that was discovered, or ought reasonably to have been discovered, within 3 years of the date of the breach; and

(b) that occurred within 10 years of the date of any investigation or other proceedings under these regulations.

(3) The rules specify which rule breaches are enforceable against the registry operator and the gas contingency operator under these regulations.

7 Relationship between remedies under these regulations or the rules and other remedies

(1) There is no remedy, other than the remedies provided in these regulations, in respect of a breach of these regulations or the rules.

(2) In particular, no one can bring an action for breach of statutory duty that is based on a breach of these regulations or the rules by a participant or a service provider.

(3) However, this regulation does not affect –

(a) Any right to recover a debt owing under these regulations or the rules by a participant; or

(b) Any right to bring any action for any tort other than a breach of statutory duty, for breach of contract, or for any other wrong that arises from any act or omission that is also just happens to be a breach of these regulations or the rules.

Part 1

Reporting and investigation of breaches

Participants must investigate complaints made to them

8 Participants must investigate complaints made to them

(1) Any person may complain, in writing, to a participant about any business activity of the participant that the person believes might constitute a breach of the rules.

(2) The participant must ensure that the complaint is promptly, thoroughly, and fairly investigated by the participant, and that appropriate remedial action is taken.

(3) The participant must promptly notify the person who made the complaint in writing of the result of the investigation and the remedial action (if any) taken by the participant.

Voluntary reporting to market administrator of alleged breaches

9 Participant may notify market administrator of alleged breach

(1) If any participant believes, on reasonable grounds, that it or another participant has breached the rules, that participant may notify the market administrator as soon as possible of that alleged breach.

(2) The notice must be in writing and must specify —

(a) the participant that is alleged to have breached the rules; and

(b) the rule allegedly breached; and

(c) the circumstances relating to the alleged breach; and

(d) the date and time on which the alleged breach occurred.

10 Voluntary reporting of alleged breaches

(1) Any consumer or other person (other than a participant) may notify the market administrator if the consumer or other person believes, on reasonable grounds, that —

(a) a participant has breached the rules; and

(b) that the consumer or other person is affected by that alleged breach.

(2) The industry body may notify the market administrator of an alleged breach of the rules by a participant of which the industry body becomes aware of by other means.

Mandatory reporting to market administrator of alleged breaches

11 Registry operator or gas contingency operator must notify market administrator of alleged breach

(1) If the registry operator or gas contingency operator believes, on reasonable grounds, that any other participant has breached the rules, then the registry operator or gas contingency operator must notify the market administrator of the alleged breach as soon as possible.

(2) The notice must be in writing and must specify —

(a) the participant that is alleged to have breached the rules; and

(b) the rule allegedly breached; and

(c) the circumstances relating to the alleged breach; and

(d) the date and time on which the alleged breach occurred.

(3) The registry operator or gas contingency operator may include notices under subclause (2) in regular reports to the market administrator as agreed between them.

(4) If during the course of an audit carried out under regulations 39 and 72 of the Gas (Outage and Contingency Management) Regulations 2008, the auditor determines that there may have been an alleged breach of those regulations, then the auditor must notify the market administrator of that alleged breach at the same time as it provides the final audit report to the industry body.

12 Market administrator must notify participant allegedly in breach

(1) If the market administrator receives a breach notice, the market administrator must —

(a) acknowledge receipt of the breach notice by any manner considered appropriate by the market administrator; and

(b) notify the participant allegedly in breach of the following:

(i) the name of the notifying participant; and

(ii) the rule allegedly breached and the circumstances relating to the alleged breach; and

(iii) the date and time the alleged breach occurred.

(2) The market administrator must use reasonable endeavours to give the acknowledgement and notice within 5 working days of receiving the breach notice.

13 Alleged breach must be notified and affected participants may join as parties

(1) At the same time as the market administrator gives notice under regulation 12(1)(b), the market administrator must notify all other participants of the contents of that notice.

(2) Within 5 working days after the market administrator notifies the participants of the content of the notice under subclause (1), any participant may notify the market administrator that it considers that it is affected by the alleged breach and wishes to become a party to the breach notice.

(3) The participant is then joined as a party to the breach notice.

14 Market administrator may request further information

The market administrator may request information about the circumstances of the alleged breach from any of the following:

(a) the notifying participant or other person that gave the breach notice:

(b) the participant who is allegedly in breach:

(c) the registry operator or gas contingency operator, as applicable:

(d) any other participant that has joined as a party to the breach notice.

15 Market administrator must keep information confidential

(1) The market administrator must keep confidential all information provided or disclosed to it except to the extent that disclosure —

(a) is required to enable the market administrator to carry out its obligations and duties under these regulations or the rules; or

(b) is otherwise compelled by law.

(2) Participants that provide or disclose information to the market administrator must identify to the market administrator any information that the participant considers —

(a) to be confidential; and

(b) should not be published under regulation 20 .

Notices and receipt of information

16 Giving of notices

(1) If these regulations require any notice to be given, the notice must be in writing and be –

(a) delivered by hand to the nominated office of the addressee; or

(b) sent by post to the nominated postal address of the addressee; or

(c) sent by facsimile to the nominated facsimile number of the addressee; or

(d) sent by electronic transmission or any other similar method of electronic communication to the appropriate nominated electronic address of the addressee.

(2) In the case of an emergency, a person may give notice other than in accordance with subclause (1), but the person must as soon as practicable confirm the notice in writing and by a method set out in subclause (1).

17 When notices taken to be given

(1) In the absence of proof to the contrary, notices are taken to be given,-

(a) In the case of notices delivered by hand to a person, when actually received at that person's address;

(b) In the case of notices sent by post, at the time when the letter would in the ordinary course of post be delivered; and in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted;

(c) In the case of notices sent by fax, at the time indicated on a record of its transmission;

(2) In the case of notices sent by electronic transmission or any other similar method of electronic communication -

(a) At the time the computer system used to transmit the notice –

(i) Has received an acknowledgment or receipt to the electronic mail address of the person transmitting the notice; or

(ii) Has not generated a record that the notice has failed to be transmitted; or

(b) The person who gave the notice proves the notice was transmitted by computer system to the electronic address provided by the addressee.

Market administrator to determine materiality

18 Market administrator to determine materiality

(1) The market administrator must determine whether an alleged breach raises a material issue on the information provided in the breach notice and any other information obtained in accordance with regulation 14.

(2) If, in the opinion of the market administrator, the alleged breach does not raise a material issue, the market administrator may, in its discretion,–

(a) determine to take no action on the alleged breach; or

(b) attempt to resolve the alleged breach with the agreement of the parties in accordance with regulation 21.

(3) If, in the opinion of the market administrator, the alleged breach raises a material issue, the market administrator must refer the alleged breach to an investigator for investigation.

(4) If the market administrator is unable to determine whether an alleged breach raises a material issue because the market administrator cannot obtain

sufficient information, the market administrator must refer the alleged breach to an investigator for investigation.

(5) The market administrator may decline to make a determination in respect of an alleged breach that –

(a) relates to a matter that has already been referred to; or

(b) the market administrator considers is more properly dealt with by;

the Electricity and Gas Complaints Commission or any other approved complaints resolution system.

19 Factors to be taken into account when determining materiality

(1) The market administrator must, in determining whether or not an alleged breach raises a material issue, take into account the following factors:

(a) the severity of the alleged breach:

(b) whether the alleged breach had a material impact on the operation of the market:

(c) whether the alleged breach appears to have been intentional or malicious:

(d) whether the participant allegedly in breach took remedial action immediately upon, or soon after, discovery of the breach:

(e) whether the alleged breach has a potential anti-competitive effect:

(f) whether the alleged breach has resulted in costs being borne by other participants or persons:

(g) whether the alleged breach is admitted:

(h) whether the alleged breach was an isolated event, or indicates a systemic problem with compliance with the rules:

(i) whether the breach allegation is frivolous or vexatious or is not made in good faith:

(j) whether, considering the length of time that has elapsed between the date when the alleged breach became known to the participant allegedly in breach and the date when the alleged breach was reported to the market administrator, an investigation of the alleged breach is no longer practicable or desirable:

(k) whether the participant allegedly in breach is, or has been, subject to any other orders under these regulations:

(l) the likelihood that the same breach or a similar breach may occur in the future:

(m) whether the participant allegedly in breach has benefited from the breach:

(n) whether the complexity of facts warrant investigation:

(o) any other factors that the market administrator considers relevant.

(2) The market administrator may publish guidelines from time to time to illustrate how it is weighting and applying these criteria.

20 Decision to be made expeditiously and in a fair and reasonable manner

(1) The market administrator must make its determination under regulation 18 expeditiously and in a fair and reasonable manner.

(2) If regulation 18(2)(a) applies, the market administrator must notify the following parties of its determination as soon as practicable:

(a) the notifying participant or other person that gave the breach notice; and

(b) the participant allegedly in breach; and

(c) any other participant that has joined as a party to the breach notice under regulation 13.

21 Market administrator to use informal resolution process

(1) If regulation 18(2)(b) applies, the market administrator must endeavour to resolve the alleged breach with the agreement of the following parties:

(a) the notifying participant or other person that gave the breach notice; and

(b) the participant allegedly in breach; and

(c) any other participant that has joined as a party to the breach notice under regulation 13.

(2) In effecting an agreement, the market administrator may use any process that the market administrator thinks fit.

(3) Every resolution under regulation 18(2)(b) must —

(a) be in writing; and

(b) specify the details of any breach of the rules that is admitted by a participant; and

(c) record the terms of the resolution.

(4) The persons referred to in subclause (1) must notify their acceptance of the terms of the resolution in writing to the market administrator.

22 Market administrator must publish decisions

The market administrator must —

(a) notify the industry body in a monthly report to the industry body; and

(b) subject to regulation 15, publish;

all of its determinations under regulation 18, including the outcome of any resolutions achieved under regulation 21.

Provisions relating to referral of alleged breaches to investigator

23 Market administrator to refer alleged breaches to investigator

(1) This regulation applies if —

(a) the market administrator determines under regulation 18(3) that an alleged breach raises a material issue in relation to compliance with the rules and must be referred to an investigator for investigation; or

(b) the market administrator determines under regulation 18(4) that the alleged breach will be referred to an investigator for investigation.

(2) The market administrator must —

(a) refer the alleged breach to an investigator appointed under regulation 25 selected by the market administrator for the investigation; and

(b) notify the following parties that the alleged breach has been referred to an investigator, including the identity of that investigator and contact details:

(i) the notifying participant or other person that gave the breach notice; and

(ii) the participant allegedly in breach; and

(iii) any other participant that has joined as a party to the breach notice under regulation 13; and

(c) provide the investigator with all relevant materials provided to, or created by, the market administrator concerning the alleged breach.

24 Right to refer alleged breach to investigator directly

(1) This regulation applies if —

(a) the market administrator has determined not to take any action on the alleged breach; or

(b) the attempt of the market administrator to resolve the alleged breach with the agreement of the parties in accordance with regulation 21 has been unsuccessful within 35 days after the alleged breach was notified under regulation 13.

(2) The following parties may require the market administrator to refer the alleged breach to the investigator:

(a) the notifying participant or other person that gave the breach notice; or

(b) the participant allegedly in breach; or

(c) any other participant that has joined as a party to the breach notice under regulation 13.

(3) If subclause (2) applies, regulation 23(2) applies to the market administrator.

Investigation of alleged breaches

25 Appointment and selection of investigators

(1) The industry body must appoint one or more persons as investigators who have the requisite skills and experience to carry out independent investigations of alleged breaches.

(2) In selecting an investigator under regulation 23, the market administrator must take reasonable steps to ensure that the investigator selected is free from conflicts of interest in carrying out the investigation.

26 Investigator may appoint other persons to give advice

In carrying out an investigation, the investigator may, subject to the agreement of the market administrator, appoint any external auditor, technical expert, or other persons that the investigator thinks fit to give advice or assistance to the investigator.

27 Investigator must keep information confidential

(1) The investigator must keep, and must ensure that every person appointed by an investigator under regulation 26 keeps, confidential all information provided or disclosed to them, except to the extent that disclosure —

(a) is required to enable the investigator or other person to carry out its obligations and duties under these regulations; or

(b) is otherwise compelled by law.

(2) The investigator must require participants that provide or disclose information to the investigator must identify any information that the participant considers —

(a) to be confidential; and

(b) should not be included in the investigator's report under regulation 39(3).

28 Funding of market administrator and Investigator

(1) The industry body must fund the market administrator and any investigators selected by the market administrator.

(2) The industry body may recover the costs of that funding from industry participants through the ongoing fees in the rules.

(3) Nothing in this regulation limits the ability of the Rulings Panel to make orders under section 43X of the Act relating to the reasonable costs of an investigation.

29 Investigator must investigate

The investigator must conduct an investigation of the facts surrounding all alleged breaches notified to it under regulations 21 and 22.

30 Participants must co-operate with investigation

Every participant must co-operate fully with any investigation carried out by the investigator in accordance with section 43U of the Act.

31 Privileges protected

Privileges are protected in accordance with section 43V of the Act.

32 Limits on investigation powers

The investigation powers of the investigator are limited by section 43W of the Act.

Procedures if alleged breach resolved by settlement

33 Settlement process

(1) The investigator must endeavour to effect a settlement of every alleged breach under investigation by agreement between —

(a) the notifying participant or other person that gave the breach notice; and

(b) the participant allegedly in breach; and

(c) any other participant that has joined as a party to the breach notice under regulation 13.

(2) In effecting a settlement, the investigator may use any process that the investigator thinks fit, after consultation with the persons referred to in subclause (1).

34 Settlements must be written, etc

(1) Every settlement must —

(a) be in writing; and

(b) specify the details of any breach of the rules that is admitted by a participant; and

(c) record the terms of the settlement.

(2) The persons referred to in regulation 33(1) must notify their acceptance of the terms of the settlement in writing to the investigator.

35 Rulings Panel decides whether to approve settlements

(1) The investigator must provide to the Rulings Panel —

(a) a copy of the settlement; and

(b) a report containing as much of the information specified in regulation 39(3) as the investigator reasonably considers relevant in the circumstances of the matter.

(2) The investigator may make a recommendation to the Rulings Panel that the Rulings Panel should not approve the settlement on the ground that the settlement is not in the best interests of the gas industry or the public.

(3) The Rulings Panel must either —

(a) approve the settlement, in which case the settlement is final and binding on all participants; or

(b) reject the settlement.

36 Settlements must be published

(1) The industry body must publish the terms of every settlement approved by the Rulings Panel under regulation 35.

(2) However, the Rulings Panel may direct the industry body not to publish any part, or all, of any particular settlement if the Rulings Panel considers that there are special circumstances that justify the non-publication.

37 What happens if Rulings Panel rejects settlement

If the Rulings Panel rejects a settlement under regulation 35(3), it must —

(a) direct the investigator to further endeavour to effect a settlement under regulation 33; or

(b) direct the investigator to abandon the investigation; or

(c) determine the alleged breach itself under regulations 39 to 50.

38 What happens if investigator unable to effect settlement

(1) If, within the timeframe specified in subclause (2), an investigator is unable to effect a settlement of an alleged breach in accordance with regulation 31, the investigator must refer the alleged breach to the Rulings Panel for determination under regulations 47 to 48.

(2) The timeframe is —

(a) within 30 working days (or any longer period that the investigator agrees in writing) of the alleged breach being referred to the investigator under regulation 23; or

(b) if applicable, within 10 working days of the investigator further endeavouring to effect a settlement in accordance with a direction given under regulation 37(a).

Process if alleged breach is determined by Rulings Panel

39 Process if Rulings Panel to determine alleged breach

(1) This regulation applies if the Rulings Panel —

(a) decides under regulation 37(c) that it will determine an alleged breach itself; or

(b) must determine an alleged breach under regulation 38 because an investigator has been unable to effect a settlement between the parties.

(2) The investigator must provide to the Rulings Panel a report and recommendation sufficient to enable the Rulings Panel to determine the alleged breach.

(3) The report must, to the extent reasonably practicable, specify or contain the following information:

(a) the rule allegedly breached; and

(b) the participant allegedly in breach; and

(c) the estimated date and time the breach allegedly occurred; and

(d) the relevant issues raised by the participant allegedly in breach in response to the allegations of breach; and

(e) the comments made to the investigator by any other person in response to the relevant issues raised by the participant allegedly in breach; and

(f) any additional information that the investigator considers relevant to the decision of the Rulings Panel as to how the matter may be dealt with by the Rulings Panel; and

(g) the investigator's assessment of the impact on the other participants of the conduct alleged to constitute the breach; and

(h) the investigator's assessment of the likelihood of the alleged breach recurring; and

(i) details of any similar situations previously dealt with by the Rulings Panel, including any settlement approved by the Rulings Panel under regulation 35(3) in response to those situations (if known by the investigator); and

(j) a copy of all correspondence with the investigator or market administrator relating to the alleged breach.

(4) The investigator must use reasonable endeavours to give the report to the Rulings Panel within 5 working days of —

(a) the Rulings Panel deciding that it will determine the alleged breach; or

(b) the investigator referring the alleged breach to the Rulings Panel for determination under regulation 38.

(5) The investigator must forward a copy of the report to the following parties as soon as practicable:

(a) the notifying participant or other person that gave the breach notice; and

(b) the participant allegedly in breach; and

(c) any other participant that has joined as a party to the breach notice under regulation 13.

40 Rulings Panel to set date for considering alleged breach

(1) If regulation 39(1) applies, the Rulings Panel must set a date for considering the alleged breach, and must give to the persons referred to in subclause (2) at least 20 working days notice of the place, date, and time at which the Rulings Panel will consider the alleged breach.

(2) The following persons are entitled to be heard at any hearing or, if there is to be no hearing, to provide written submissions and evidence:

(a) the notifying participant or other person that gave the breach notice:

(b) the participant allegedly in breach:

(c) any participant that has joined as a party to the breach notice under regulation 13:

(d) the investigator who investigated the alleged breach.

Part 2

Proceedings of Rulings Panel

41 Rulings Panel may regulate own procedures

(1) The Rulings Panel may regulate its own procedures, except as otherwise provided in these regulations, and subject to the requirements of natural justice.

(2) The Rulings Panel must provide a summary of its procedures to the industry body and the industry body must publish those procedures.

42 Rulings Panel must conduct hearings

(1) The Rulings Panel must conduct a hearing in respect of a matter that is being considered by the Rulings Panel —

(a) if the Rulings Panel considers that it is appropriate for any participant to be given an opportunity to be heard; or

(b) if any participant requests a hearing in respect of the matter.

(2) Hearings must be in public, unless the Rulings Panel directs otherwise.

(3) If there is no hearing the Rulings Panel must consider and decide the matter on the basis of the written submissions and evidence provided in accordance with regulation 40(2).

43 Pre-hearing statements and materials

(1) If there is to be a hearing, the Rulings Panel must ensure that the persons referred to in regulation 40(2) have been provided with —

(a) a copy of any report provided by the investigator under regulation 39; and

(b) a copy of all relevant material collected or prepared during the course of the investigation of the matter up to the time the statement is provided.

(2) The Rulings Panel must comply with subclause (1) —

(a) not less than 10 working days before the hearing; or

(b) if the Rulings Panel, in its discretion, decides that an urgent hearing is desirable, as soon as practicable.

44 Private hearings may be opposed

(1) If the Rulings Panel decides that a hearing should be held in private, it must advise the industry body, and the industry body must publish the decision of the Rulings Panel and the grounds for that decision.

(2) Any participant that disagrees with the decision may, within 5 working days of the decision being published, make a written submission to the Rulings Panel setting out the reasons for its disagreement.

(3) The Rulings Panel must consider the submission and then advise the industry body of its decision in respect of that submission.

(4) The industry body must publish any further decision of the Rulings Panel and the grounds for that further decision.

45 Urgent hearings

If the Rulings Panel considers that the subject matter of a hearing involves a significant area of dispute, or is a matter of urgency, it must arrange for a hearing to take place as soon as practicable.

46 Evidence not otherwise admissible

(1) The Rulings Panel may receive in evidence any statement, document, or information that would not otherwise be admissible as evidence that may, in its opinion, assist it to deal effectively with its consideration of a matter.

(2) This regulation is subject to regulation 31.

47 Rights of persons entitled to be heard at hearing

(1) Subject to regulations 42 to 44, any person that is entitled to be heard under regulation 40(2) at any hearing of the Rulings Panel, —

(a) is entitled to be represented:

(b) must be given a reasonable opportunity to make written and oral representations:

(c) is entitled to call witnesses and to cross-examine any witness called against it:

(d) is entitled to make a plea to the Rulings Panel in mitigation of penalties:

(e) is entitled to have any other person present to give evidence.

(2) At any hearing of the Rulings Panel, the investigator who has investigated the alleged breach must, if requested to do so by the Rulings Panel, speak to his or her report and recommendation provided under regulation 39(2).

48 Rulings Panel may request further information

(1) The Rulings Panel may request the investigator to obtain any further information if the Rulings Panel considers that, in relation to any matter before it, the Rulings Panel does not have sufficient information for it to determine what action to take under regulation 51.

(2) The Rulings Panel may make the request of its own initiative or following an application by any person referred to in regulation 40(2).

(3) Participants must provide any information reasonably requested by the Rulings Panel or the investigator under this regulation.

(4) Subclause (3) is subject to regulation 31.

49 Rulings Panel may seek advice

(1) The industry body may approve as industry experts any external auditor, technical expert, or other person to give advice or assistance to the Rulings Panel as and when required.

(2) In determining an alleged breach of the rules, the Rulings Panel may, subject to the agreement of the industry body, employ or otherwise seek advice or assistance from not more than 2 industry experts approved by the industry body.

50 Participant may make written submissions

(1) Any person referred to in regulation 40(2) may make written submissions to the Rulings Panel on the subject of any order that the Rulings Panel may make, including any penalty.

(2) Any submission under this regulation must be made by the date set by the Rulings Panel as the closing date for submissions.

Part 3

Decisions of Rulings Panel

51 Rulings Panel may make certain orders

The Rulings Panel may, after considering any allegation that a participant has breached the rules, make any order specified in section 43X(1) of the Act.

52 Offence to breach compliance orders

Every participant commits an offence, and is liable on summary conviction to a fine not exceeding $20,000, who breaches an order made under section 43X(1) of the Act.

53 Rulings Panel may order payment of civil pecuniary penalty up to $20,000

(1) The Rulings Panel may require a participant to pay to the industry body a civil pecuniary penalty of an amount not exceeding $20,000 in any case where that participant has breached any provision of the rules.

(2) When ordering payment of a civil pecuniary penalty, the Rulings Panel must —

(a) take account of the level of civil pecuniary penalties it has ordered in any similar situations; and

(b) seek to order payment of a civil pecuniary penalty that is commensurate with the seriousness of the case.

(3) In making that assessment, the Rulings Panel must have regard to the following matters:

(a) the severity of the breach:

(b) the impact of the breach on other participants:

(c) the extent to which the breach was inadvertent, negligent, deliberate, or otherwise:

(d) the circumstances in which the breach occurred:

(e) any previous breach of the rules by the participant:

(f) whether the participant disclosed the matter to the market administrator:

(g) the length of time the breach remained unresolved:

(h) the participant's actions on learning of the breach:

(i) any benefit that the participant obtained, or expected to obtain, as a result of the breach:

(j) any other matters that the Rulings Panel thinks fit.

54 Rulings Panel decisions

(1) The Rulings Panel must use reasonable endeavours to make its final decision on each matter under its consideration within 40 working days of the date by which it has received all written and oral submissions on the matter.

(2) The Rulings Panel must give the decision, in writing together with the reasons for the decision, to the persons that were entitled to be heard under regulation 40(2).

(3) The Rulings Panel must give the decision to the industry body as soon as practicable after the decision is made.

55 Decisions must be published

(1) The industry body must publish every decision made by the Rulings Panel under this Part, together with the reasons for the Panel's decision, within 10 working days of receiving the decision from the Rulings Panel.

(2) However, the industry body must not publish any part, or all, of any particular decision if the Rulings Panel advises the industry body that there are special circumstances that justify the non-publication.

56 Participants must comply with orders and directions

(1) Every participant must comply with every order relating to it, including any direction or arrangement made by the Rulings Panel for the purpose of giving effect to the order.

(2) Every participant must perform any action, or make any payment, directed by the Rulings Panel within 10 working days of receiving notice of the direction, or any longer period that the Rulings Panel allows.

57 Sums to be paid by party are debt due

(1) Any sum due to be paid by a participant under these regulations is a debt due by the participant and is recoverable as such in any court of competent jurisdiction.

(2) A failure by a participant to pay a sum due to be paid under these regulations is a breach of these regulations.

(3) A sum that is not paid when due bears interest at the prescribed rate (within the meaning of section 87 of the Judicature Act 1908).

58 Liability of registry operator

The registry operator is not liable under these regulations for a sum in excess of –

(a) $20,000 in respect of any one event or series of closely related events arising from the same cause or circumstance; or

(b) $100,000 in respect of all events occurring in any financial year.

59 Liability of gas contingency operator

The gas contingency operator is not liable under these regulations for a sum in excess of the annual fee stipulated in the gas contingency operator service provider agreement in respect of all events occurring in any financial year.

Part 4

Rulings Panel

60 Establishment of Rulings Panel

(1) A Rulings Panel is established.

(2) The Rulings Panel is a body corporate with perpetual succession.

Functions of Rulings Panel

61 Functions of Rulings Panel

The functions of the Rulings Panel are to —

(a) determine, in accordance with these regulations, whether a participant has committed a breach of the rules:

(b) propose to the industry body that it recommend to the Minister a change to any regulation or rule that the Rulings Panel considers, in the course of considering any matter, to be necessary or desirable:

(c) exercise any other functions or powers conferred on the Rulings Panel by these regulations.

Membership of Rulings Panel

62 Membership of Rulings Panel

(1) The industry body must, by written notice, appoint one person with the characteristics described in regulation 70 to be the member of the Rulings Panel.

(2) A member of the board of the industry body may not be appointed as a member of the Rulings Panel.

(3) The appointment is effective from the latest of —

(a) the date specified in the notice of appointment; or

(b) the day that the appointee provides the industry body with written consent to the appointment and a written undertaking to be bound by these regulations.

63 Alternate member

(1) The industry body may appoint a person with the characteristics described in regulation 70 to act as the alternate of the member of the Rulings Panel in accordance with this regulation.

(2) The alternate member may act in place of a member of the Rulings Panel, but only if that member of the Rulings Panel is unable by illness, absence, or other reason to so act.

(3) The alternate member is to be treated as a member of the Rulings Panel for the purposes of the performance or exercise of any function, duty, or power under these regulations.

(4) Unless the context otherwise requires, a reference to a member of the Rulings Panel in these regulations also includes a reference to the alternate member.

(5) No appointment of a person under this regulation as the alternate member and no acts done by that person or the Rulings Panel while that person is the alternate member, may in any proceedings be questioned on the ground that the occasion of the person's appointment had not arisen or had ceased.

64 Restrictions on membership of Rulings Panel

The following persons are disqualified from being members of the Rulings Panel:

(a) a person who is an undischarged bankrupt:

(b) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under section 382, 383, or 385 of the Companies Act 1993:

(c) a person who is subject to a property order made under section 10, 11, 12, 30, or 31 of the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under section 32 of that Act:

(d) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon or served the sentence or otherwise suffered the penalty imposed on the person:

(e) a person who has failed to disclose all interests under regulation 70:

(f) a person who is not a natural person.

65 Term of appointment

(1) A member of the Rulings Panel —

(a) holds office for the term specified in his or her notice of appointment, which may be up to 5 years; and

(b) may be reappointed; and

(c) continues in office despite the expiry of his or her term of office until—

(i) that member is reappointed; or

(ii) that member's successor is appointed; or

(iii) the industry body informs that member by written notice that he or she is not to be reappointed and no successor is to be appointed.

(2) This clause is subject to regulation 68.

66 Removal and resignation of member of Rulings Panel

(1) The industry body must remove a member of the Rulings Panel in the event of his or her serious misconduct, inability to perform the functions of the office, or if he or she becomes a person to whom any of the paragraphs in regulation 64 apply.

(2) The industry body must state its reasons in any notice of removal.

(3) The industry body must fill the vacancy created by a removal as soon as possible.

(4) A member of the Rulings Panel may resign from office by written notice to the industry body signed by him or her.

(5) The resignation is effective on receipt by the industry body of the notice, or at any later time specified in the notice.

67 No compensation

No member of the Rulings Panel is entitled to any compensation or other payment or benefit relating to his or her removal from office.

68 Member ceasing to hold office

A member of the Rulings Panel ceases to hold office if he or she —

(a) resigns in accordance with regulation 66; or

(b) is removed from office in accordance with regulation 66 or any other enactment; or

(c) becomes disqualified from being a member under regulation 64; or

(d) otherwise ceases to hold office in accordance with any enactment.

69 Validity of acts

The acts of a person as a member of the Rulings Panel are valid even if —

(a) the person's appointment was defective; or

(b) the person is not qualified for appointment.

70 Characteristics of Rulings Panel

A member of the Rulings Panel —

(a) must have the requisite knowledge, skills, and experience to carry out the functions to be performed by the Rulings Panel; and

(b) must act impartially in carrying out those functions.

71 Member of Rulings Panel must not be interested

(1) No person may be appointed as a member of the Rulings Panel if that person —

(a) has a material financial interest in a participant; or

(b) is a director, officer, member, employee, or trustee of a participant; or

(c) is otherwise directly or indirectly materially interested in a participant.

(2) A member is "interested" in a matter relating to the Rulings Panel if, and only if, the member —

(a) is a party to, or will or may derive a material financial benefit from the matter; or

(b) has a material financial interest in another party to the matter or in a person to whom the matter relates; or

(c) is a director, officer, member, or trustee of another party to, or a person who will or may derive a material financial benefit from the matter; or

(d) is the parent, child, or spouse of another party to, or a person who will or may derive a material financial benefit from the matter; or

(e) is otherwise directly or indirectly materially interested in the matter.

72 Obligation to disclose interest

(1) Any member of the Rulings Panel who is interested in a matter relating to the Rulings Panel must —

(a) disclose the nature of the interest in accordance with regulation 73 as soon as practicable after he or she becomes aware that he or she is interested; and

(b) immediately step aside from any deliberations or decision of the Rulings Panel in relation to the matter.

(2) If subclause (1) applies, the alternate member must act in place of the interested member.

73 Method of disclosure of interest

(1) If regulation 72 applies, the member must disclose the details listed in subclause (2) in an interests register and to the industry body.

(2) The details are —

(a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or

(b) the nature and extent of the interest (if the monetary value cannot be quantified).

74 Remuneration and expenses of Rulings Panel

A member of the Rulings Panel is entitled to receive, from the funds of the Rulings Panel, —

(a) remuneration and other benefits for services as a member at a rate and of a kind determined by the industry body; and

(b) reasonable and actual travelling and other expenses relating to the performance of his or her duties and responsibilities as a member.

Other matters relating to Rulings Panel

75 Funding of Rulings Panel

(1) The industry body must fund the Rulings Panel.

(2) The industry body may recover the costs of that funding from industry participants through the charging of ongoing fees under the rules.

(3) Nothing in this regulation limits the ability of the Rulings Panel to make orders under section 43X of the Act relating to the reasonable costs of an investigation.

76 Powers

The Rulings Panel has all the powers necessary to enable it to perform its functions.

Miscellaneous provisions

77 Rulings Panel to keep information confidential

The Rulings Panel must keep confidential all information provided or disclosed to it under these regulations except to the extent that disclosure —

(a) is required to enable the Rulings Panel to carry out its obligations and duties under these regulations; or

(b) is necessary for complying with regulations 72 and 73; or

(c) is otherwise compelled by a law other than these regulations.

78 Rulings Panel may prohibit publication of information

(1) The Rulings Panel may prohibit the publication or communication of any information or document —

(a) that is, or is intended to be, supplied or given or tendered to, or obtained by, the Rulings Panel under these regulations; or

(b) in connection with any notification, investigation, report, or procedure under Part 1 or 2 or 3.

(2) The Rulings Panel may make the prohibition only after it has had regard to the following factors:

(a) whether the information or document is confidential, commercially sensitive, or otherwise unsuited to publication or communication; and

(b) whether the publication or communication is required to enable the Rulings Panel to carry out its obligations under these regulations; and

(c) whether the publication or communication is compelled by a law other than these regulations; and

(d) the rules of natural justice.

(3) The Rulings Panel may make the prohibition —

(a) on the application of any participant or on its own application; but

(b) only after notifying each participant that the Rulings Panel considers would be affected by the publication, communication, or prohibition; and

(c) only after having regard to any views that the participant may make known to the Rulings Panel within the time specified by the Panel.

79 Liability of Rulings Panel

No member or employee of the Rulings Panel is personally liable for —

(a) any liability of the Rulings Panel; or

(b) any act done or omitted to be done by the Rulings Panel, any member, or any employee of the Rulings Panel, in good faith in pursuance or intended pursuance of the functions, duties, or powers of the Rulings Panel.

80 Rulings Panel costs and performance objectives

(1) As early as practicable before the beginning of each financial year, the industry body and the Rulings Panel must agree on a budget for the expenses anticipated by the Rulings Panel, and on any performance objectives for the next 12 months.

(2) Each month, the Rulings Panel must provide the industry body with a written report on actual costs incurred during the month compared with budgeted costs.

(3) If the Rulings Panel anticipates incurring expenditure in excess of any budgeted amount, it must notify the industry body and apply for a variation to the agreed budget.

81 Rulings Panel reports quarterly on other matters

At the end of each quarter of the financial year, the Rulings Panel must provide the industry body with —

(a) a summary of the decisions made by the Rulings Panel during that quarter, including details of all awards of costs and compensation; and

(b) a summary of the current workload of the Rulings Panel, ability to meet performance objectives, and resources; and

(c) any other matters of concern.

82 Rulings Panel reports annually

At the end of each financial year, the Rulings Panel must provide the industry body with an annual report —

(a) summarising the performance of the Rulings Panel against budget for the financial year; and

(b) summarising the decisions of the Rulings Panel during the financial year; and

(c) summarising the performance of the Rulings Panel during the financial year against agreed performance objectives; and

(d) commenting on any area of these regulations or the rules where the Rulings Panel considers that a change is required.

Appendix E: Recommended Format for Submissions

To assist the Gas Industry Co in the orderly and efficient consideration of stakeholders' responses on switching and registry cost allocation, a suggested format for submissions has been prepared. This is drawn from the questions posed in the body of this Statement of Proposal. Respondents are also free to include other material on switching and registry cost allocation in their responses.

Submission prepared by: (company name and contact)

QUESTION	COMMENT
Q1: Do you agree the four problems described in this section are key issues needing to be addressed in any new arrangements for outage and contingency management?	
Q2: Are there other key problems with the current arrangements which also need to be addressed?	
Q3: Given the difficulties in assigning penalties for non-compliance under a pan-industry agreement and, therefore, the inability to ensure a high-level of compliance, do you agree that the only reasonably practicable alternative to the proposal is a more fully prescribed regime incorporating the detailed arrangements for contingencies in regulations and/or rules?	
Q4: Do you agree with the proposed regulatory objective?	
Q5: Do you agree that the net benefits of the proposal are materially higher than the net benefits of the counterfactual?	
Q6: Do you agree that the proposal has the potential to address the key problems identified with the current arrangements?	

Q7: Do you agree with the proposed definition of a Gas Contingency? If not, what would you propose?	
Q8: Do you agree with the list of responsibilities given to the GCO?	
Q9: Do you agree that the GCO should be provided with some flexibility to take action that it considers necessary to ensure the effective management of a gas contingency?	
Q10: Do you agree with the split between the planning role for the TNO and the communications plan role for the GCO? Do you agree that an industry expert should assist the GCO in the process to approve the plans?	
Q11: Do you agree that the existing NGOCP curtailment bands should be updated: a) To distinguish large consumers supplied from the transmission system that have an alternative fuel capability, from those that do not have an alternative fuel capability? b) To combine the existing NGOCP bands B, C and D into a single band? c) To establish the category of minimal load consumer?	
Q12: If you agree with the provision for the category of minimal load consumer, do you consider these arrangements should be designed in such a way as to encourage such consumers to make alternative arrangements wherever practicable, for example by making the classification for a consumer time-limited?	
Q13: Do you agree that the proposed contingency cash-out price will provide incentives for commercial arrangements to be put in place to maximise upstream production during a GC?	

Q14: Do you agree with the proposed criteria for setting the contingency price? Are there any other prices that the expert could usefully reference to determine the contingency price?	
Q15: Do you agree that the proposed scheme to calculate imbalances using existing industry processes is workable? If not, what adjustment would be required?	
Q16: Do you agree with the proposal to have the contingency cash-out pool administered by the GIC? What period should be given to parties for payment of invoices issued by the contingency cash-out pool?	
Q17: Do you agree with the proposed communications process shown in Figure 2?	
Q18: Given that any exposure under a service provider agreement is likely to be reflected in the price, do you agree that GCO liability under the service provider contract should be limited in the manner proposed?	
Q19: Do you agree with the proposed approach to allocating the costs associated with administering the outage and contingency management arrangements?	