

Gas Industry Company Limited

Application for an Exemption from the Gas (Downstream Reconciliation) Rules 2008

1. Please complete a separate form for each type of exemption sought.
2. Complete sections 1 to 4 of the form for all exemption types. Complete section 5 only in addition for urgent exemptions, and section 6 only in addition for transitional exemptions.
3. Please provide all relevant information. Expand the sections of the form as necessary to provide reasonably full information, but detailed supporting information should be set out in attachments to the form.
4. Gas Industry Co may request additional information after receiving and reviewing the application

1. Name and contact details for the participant(s) seeking exemption:

Company name: Nova Gas Ltd

Phone: 04 917 8851

Contact Name: Charles Teichert

Fax:

Email: cteichert@tpm.co.nz

Mailing Address:

2. Type of exemption sought (delete all but one):

Standard (under rule 19)

3. Provisions of the Rules from which the exemption is sought:

Rule 16.3.

For each of the following gates:

FLB15601 Flatbush

HST05203 Hastings

HWA20802 Hawera 2

HUN15302 Hunua 2

TWB24810 Tawa B

OKW23401 Okaiawa – Taranaki Byproducts

4. State the reasons on why you are seeking the exemption and why the exemption sought should be granted

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

Why the Exemption is sought.

Nova is seeking an exemption from inclusion of volumes associated with the above listed gates for which a related exemption regarding application of the Reconciliation Rules has also been applied for (Refer Nova Exemption 280808_1).

The listed gates the interconnection points to a direct connect customer supplied by Nova and Nova's bypass distribution networks where we believe that it is not necessary or efficient for the Reconciliation Rules to be applied. The arguments for this position are provided in the exemption application referred to above and this exemption application follows on from the same underlying principles.

If it is accepted that Nova should be exempted from the requirement to provide data in accordance with the Reconciliation rules for the listed gates, then it also follows that the gas quantities flowing through those gates should not be included in the costs allocation process prescribed in section 16.3.

As Nova does not derive any benefits (only costs) from the reconciliation process with respect to the Nova bypass network volumes, then allocating costs associated with open access networks with multiple parties requiring reconciliation services to Nova would represent a cross subsidy between competing networks and retailers.

Such a cross subsidy undermines competition in the delivered gas market and is contrary to Section 43ZN of the Act and the purpose of the Reconciliation Rules.

The same argument applies for direct connect consumers with exclusive supply arrangements such as the direct connection to Taranaki Byproducts at Okaiawa.

Nova believes that the costs of the industry allocation process should be recovered from those that use and benefit from that process. That is currently clearly the low pressure distribution networks where there are multiple retailers trading.

Why the Exemption should be granted

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

1) Section 43ZN objectives

Section 43ZN of the Gas Act 1992 provides:

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

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

Should an exemption not be approved by the GIC, then additional costs would be incurred by Nova with respect to its competitive bypass distribution network that disadvantages it compared to its Powerco/Vector open access network competitors.

Open access networks derive benefits from the allocation arrangements as increased volumes of gas can be distributed. However that benefit is traded off against the necessity to provide for the allocation of gas quantities among multiple parties trading on that network.

Allocating costs to a non open access network that competes with an open access network or direct connect consumers is a cross subsidy and results in a reduction in competitive tension and introduces a barrier to investment in new bypass distribution networks.

Granting the exemption is consistent with the objectives set down in S43ZN of the Act in relation to maintaining efficiency, competition, incentives to invest in distribution networks and sustained downwards pressure on delivered gas costs.

With respect to direct connect consumers where there consumption is metered and there is no UFG or requirement for allocation services then imposing costs associated with such activities represents a cross subsidy between direct connect consumers and customers that benefit from allocation services on open access distribution systems. Such a cross subsidy would be contrary to the requirements of S43ZN and particular the requirements for economic efficiency.

2) The purpose of the Rules

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

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

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

- it would not be fair or efficient to allocate costs on a reconciliation participant where there is no allocation of gas quantities between multiple retailers and there is no benefit achieved

from doing so. Ultimately, this leads to higher costs being passed through to consumers.

- granting an exemption will not affect the reliability of allocation processes.

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

The exemption will mean that costs are born by the appropriate parties and that the full costs of delivering gas are taken into account.

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

From 1 October 2008.

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

It may be appropriate to consider conditions such as:

- 1) the exemption is only valid until such time as it is made redundant by a future rule change:
and
- 2) the exemption is only valid while a non open network or any direct connect customer has an exclusive supply arrangement.

We note that several other participants (Contact, Vector and Genesis) have applied for similar exemptions which indicate that perhaps a future rule change may be a better means of dealing with these situations. It is also true that my a direct connect customer may have an exclusive supply arrangement currently, it is always possible that in the future the customer may elect to break up the single site into multiple connections and take supply from multiple retailers. There are several instances of this currently such as at the Edgecumbe Dairy Factory where Nova supplies the cogeneration plant at that site and Contact Energy supplies other aspects of the Fonterra dairy factory. It may also be feasible that Nova could possible provide distribution

services to multiple retailers on its bypass network.

For these reasons it may be appropriate to make all such exemptions for direct usage gates conditional.

5. Additional information for an urgent exemption:

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

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

6. Additional information for a transitional exemption

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

Please email this form to bas.walker@gasindustry.co.nz

Notes on reasons for seeking an exemption

The passages below are verbatim extracts from the Rules

Purpose of the Rules

2. Purpose

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

Standard Exemptions

19. Industry body may exempt allocation participant

19.1 Subject to rule 19.2, on the application of an **allocation participant** or the **allocation agent**, the **industry body** may, in its discretion and upon the terms and conditions (if any) that it thinks fit, exempt any **allocation participant**, class of **allocation participants**, **gas gate** or the **allocation agent** from complying with all or any of these **rules**.

19.2 The **industry body** may only grant an exemption under rule 19.1 if it is satisfied that the exemption is desirable to better achieve:

19.2.1 The objectives set out in section 43ZN of the Act; and

19.2.2 The purpose of the **rules**.

19.3 Prior to granting an exemption, the **industry body** must –

19.3.1 Publish the application for the exemption, excluding any information it considers to be confidential or commercially sensitive; and

19.3.2 Consult with those persons it considers are representative of those classes of persons likely to be substantially affected by the granting of the exemption.

19.4 The **industry body** must **publish** an exemption, and the reasons for granting the exemption, as soon as practicable after the exemption is granted.

19.5 An exemption takes effect from the date specified in the exemption which may not be earlier than the date that it is **published**.

Urgent Exemptions

20. Urgent exemptions

20.1 The **industry body** may grant an exemption under rule 19.1 without complying with rule 19.3.2 if the **industry body** considers that it is necessary or desirable that the exemption applied for be made urgently.

20.2 In that case –

20.2.1 The exemption must state that it is made in reliance on this rule; and

20.2.2 The exemption must state an expiry date, which must be a date that, in the opinion of the **industry body**, reasonably enables the **industry body** to consult with the persons specified in rule 20.2.3 about the exemption; and

20.2.3 The **industry body** must **publish** the exemption and consult with persons it considers are representative of those classes of persons likely to be substantially affected by the exemption; and

20.2.4 As soon as practicable after consulting in accordance with rule 20.2.3, the **industry body** must:

- (a) determine whether or not to revoke, replace, or amend the exemption; and
- (b) **publish** its determination and the reasons for the determination.

Transitional Exemptions

81. Transitional exemption

81.1 Despite anything in rules 19 and 20 the **industry body** may, in its discretion and upon the terms and conditions (if any) that it thinks fit, exempt any **allocation participant**, class of **allocation participants**, **gas gate** or the **allocation agent** from complying with one or more of these **rules** during the **transitional period**.

81.2 A transitional exemption applies for the period set out in the exemption and must set out alternative arrangements for complying with one or more of the **rules**.

81.3 The **industry body** may by notice require an **allocation participant** or the **allocation agent** to set out in detail any reasons why an exemption is needed, the period for which the exemption should be in effect, and what alternative arrangements should apply.

81.4 If the **industry body** is satisfied that a transitional exemption should be granted, the **industry body** may by notice grant the transitional exemption to the **allocation participant**, class of **allocation participants**, **gas gate** or the **allocation agent** which, in addition to stating the alternative arrangements that will apply, may be subject to such other conditions as the **industry body** thinks fit.

81.5 If the **industry body** grants a transitional exemption under rule 81.4. it must give notice of the transitional exemption to the **allocation participants** affected by the exemption and the **allocation agent**.