

<b>Subject</b>	<b>Gas (Downstream Reconciliation) Rules 2008</b> <b>Guideline note rule 64 – referral to industry body of disputed profile determinations</b>
<b>Version</b>	<b>1.1</b>
<b>Date</b>	<b>1 June 2013</b>

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## **1. Introduction**

- 1.1 Rule 64 of the Gas (Downstream Reconciliation) Rules 2008 ('the Rules') allows a retailer to dispute a determination by the allocation agent in respect of an applied for or registered deemed profile by referring it to Gas Industry Co as the industry body for review.
- 1.2 There is no requirement in the rules for Gas Industry Co to determine or publish the processes and criteria it intends to use for reviewing a disputed determination. However, this guideline note has been issued to assist the allocation participants and the allocation agent in understanding the processes that will be adopted by Gas Industry Co in considering a disputed determination. This guideline note addresses the following matters:
- (a) The form in which a notice of a disputed determination should be given to Gas Industry Co for it to review; and
  - (b) The processes and criteria that will be used by Gas Industry Co in carrying out and notifying the review decision.
- 1.3 This note is explanatory in nature and is not legally binding. It needs to be read in conjunction with the Rules and the general approach set out for allocation participants in no way reduces the requirement upon participants to know and comply with their obligations under the Rules. This note may be amended from time to time.

## **2. Background**

- 2.1 Part 3 of the Rules provides for the allocation agent to make the following determinations:
- (a) Whether to accept or reject the registration of a static deemed profile or a dynamic deemed profile requested by a retailer (rules 55 and 56);
  - (b) Following a review of a registered deemed profile by the allocation agent, whether to continue or remove the registration of that deemed profile (rule 58);
  - (c) Following a request from a retailer to amend its registered deemed profile, whether to accept or reject the amendment to that registered deemed profile (rule 59); and
  - (d) Following a challenge by an allocation participant regarding the use of a registered deemed profile, whether to continue or remove the registration of that deemed profile (rule 60).
- 2.2 Under rule 64, a retailer who disputes a determination made by the allocation agent may refer the matter to Gas Industry Co for review. Gas Industry Co must review the determination having regard to the requirements of rules 55 to 62 and either:
- (a) Confirm the determination by the allocation agent; or
  - (b) Refer the matter back to the allocation agent for reconsideration.
- 2.3 Gas Industry Co's decision on its review must be made as soon as practicable and no longer than 20 business days after the referral of the matter to it.
- 2.4 The review power exercised by Gas Industry Co is one of referral only. If Gas Industry Co disagrees with the determination made by the allocation agent, it is not able to replace the allocation agent's determination with one of its own but rather may only refer the determination back for reconsideration by allocation agent. While Gas Industry Co may provide reasons and directions in its decision, it is still up to the allocation agent to make the determinations.
- 2.5 The decision on the review by Gas Industry Co is final. Under rule 64.3, a retailer may only refer a dispute in regard to an allocation agent's determination once. This is to prevent profile disputes being continually re-litigated and to limit the costs and time spent by the allocation agent on profile disputes.

### 3. Providing notice of a disputed determination

- 3.1 Rule 64.1 requires that, where a determination in respect of a profile by the allocation agent is disputed, the retailer may by notice in writing refer the matter to Gas Industry Co for review. It is acceptable for a notice to be in the form of an email<sup>1</sup>. Emails should be directed to [info@gasindustry.co.nz](mailto:info@gasindustry.co.nz).
- 3.2 The notice of referral must contain the following information;
- (a) Details of the profile being disputed;
  - (b) The retailer who 'owns' the profile;
  - (c) If applicable, the date of registration of the profile under rule 54 or 55;
  - (d) A copy of the determination issued by the allocation agent that is to be reviewed;
  - (e) Detailed reasons for disputing the determination of the allocation agent, having particular regard to the provisions of rules 55 to 62 as applicable; and
  - (f) Any information or documentation previously provided to the allocation agent in respect of the determination being disputed.
- 3.3 The allocation agent is also to provide any information or documentation it holds in relation to the disputed determination to Gas Industry Co for the purposes of Gas Industry Co's review.

### 4. Review process and criteria

- 4.1 Gas Industry Co intends to apply the following process in respect of a disputed profile determination referred to it for review:
- (a) **Step 1:** The receipt of the notice by Gas Industry Co will be acknowledged by return email to the disputing retailer, normally within one business day of receipt;
  - (b) **Step 2:** The notice will be provided to the allocation agent for comment. Where appropriate, Gas Industry Co may also provide the notice to other affected allocation participants for their comment, All comments will be sought within five business days;
  - (c) **Step 3:** The review will be carried out and a decision made and notified to the disputing retailer and the allocation agent within 20 business days as required by rule 64.2; and
  - (d) **Step 4:** As soon as practicable, a brief report on the review decision, with reasons, will be produced (see below) and will be emailed to the disputing retailer, the allocation agent and any affected allocation participants.

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<sup>1</sup> See also rules 23 and 24 which set out the general provisions in respect of notices under the Rules.

- 4.2 Gas Industry Co intends to apply the following criteria in respect of a disputed profile determination referred to it for review:
- (a) In reviewing the disputed determination, Gas Industry Co is required to have regard to the requirements of rules 55 to 62 as applicable. Gas Industry Co will have particular regard to the extent to which the information provided to it for the purpose of the review indicates that the deemed profile will be a reasonable representation of the actual consumption profile of the consumer installation or class of consumer installations to which that profile will apply; and
  - (b) Gas Industry Co will also have regard to the extent to which the allocation agent has followed the guidelines issued by Gas Industry Co under rule 61, and where the guidelines have not been followed the validity of the justification for doing so.
- 4.3 The report provided by Gas Industry Co on its review will:
- (a) Either confirm the allocation agent's determination or refer the matter back to the allocation agent for reconsideration; and
  - (b) Provide reasons for the decision, with reference to the criteria set out above.