

Switching: Operations and Compliance

February 2010





About Gas Industry Co.

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 infrastructure; and
 - consumer outcomes;
- administer, oversee compliance with, and review such arrangements; and
- report regularly to the Minister of Energy and Resources on the performance and present state of the New Zealand gas industry, and the achievement of Government's policy objectives for the gas sector.

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Introduction

1.1 Purpose

The purpose of this paper is to summarise the proposals for amendments to the operation of the registry and associated compliance processes put forward at the Switching: Operations and Compliance workshop in June.

The proposals are designed to address a number of ambiguities and potential inconsistencies gleaned from experiences with the first months of operation of the gas registry, the Gas (Switching Arrangements) Rules 2008 ('the Switching Rules' or 'the Rules') and the surrounding compliance processes governed by the Gas Governance (Compliance) Regulations 2008 ('the Compliance Regulations'). The changes will serve to clarify or correct at an operational level—it is not proposed to submit rule changes at this time or make major policy changes to the switching and registry arrangements so soon after go-live.

The proposals can be categorised as those affecting the compliance process (ie production of breach reports, alleging of breaches against participants) and those affecting the switching process (ie procedure for handling multiple withdrawal requests, harmonising switch breach timers).

This paper sets out, for each case, the current approach, the regulatory and system requirements, and the proposed approach going forwards, for both the short and long term where appropriate. Where the proposal would require a substantive change to the registry, the estimated cost of such a change is indicated.

We invite feedback from industry participants on the changes proposed in this paper, and we will take that feedback into account and publish a decision paper.

1.2 Background

Development of the registry began around 12 months before go-live with the approval by the Minister of Energy and Resources ('the Minister') of the Switching Rules, a tender for supply and operation of a gas registry, and the appointment in September 2008 of Jade Software as the registry operator. Jade and Gas Industry Co worked closely with industry participants in the design and implementation stages and, prior to go-live, there were several months of user acceptance testing and training.

The Switching Rules and gas registry went live on 1 March 2009, hence industry participants have now had eleven months experience of operating under the new arrangements. This initial period has been characterised by a large number of successful customer switches (over 35,000 at the time of writing), but also by a significant number of alleged breaches of the Rules (varying between 100 to 1500 per month). Some of these breaches relate to teething problems, as participants adjust their systems to align with the new arrangements, whilst others suggest differing interpretations of the Switching Rules by the industry. It has also become apparent that there are alleged breaches reported by the registry which we now consider do not have a reasonable basis for inclusion in the monthly breach reports.

Addressing the previously high number of compliance breaches is one of the main aims of the proposals outlined below. The Compliance Regulations require that all alleged breaches are processed by the Market Administrator which means that Gas Industry Co has no discretion when it comes to notifying participants of alleged breaches. However, recognising that dealing with high numbers of technical, and often immaterial, breaches can create a substantial workload for all parties involved, some of the changes proposed will streamline the compliance process by reducing the amount of information requested from participants and to prevent automatic reporting of breaches which are being alleged incorrectly.

The experiences of registry participants, Gas Industry Co, and its compliance team have also brought to light areas where the operation of the registry requires amendment in order to better reflect the Rules. These are cases where the Switching Rules, registry business requirements and the functional specification have diverged slightly.

Extensive testing was carried out before go-live and the gas registry is performing well. The issues which are the subject of this paper are relatively minor in nature and have been identified from the following sources:

- Issues raised directly by participants to Gas Industry Co.
- Feedback from retail gas governance forum.
- Discussions in switching workshops.
- Responses to alleged breach notices.
- Gas Industry Co's own investigations into registry operations.
- Findings of the compliance team (market administrator, market investigator).

2 Compliance

The first set of proposed changes relate to the compliance procedure, as it applies to the switching and registry arrangements, and encompasses the notification of breaches, how the registry operator, market administrator and Gas Industry Co will perform with regard to alleged breaches and the information that is requested by the market administrator prior to making determinations. These changes will aim to reduce the instances of breaches being alleged incorrectly, and to reduce the amount of time spent on the compliance process, without removing participants' incentive or obligation to comply with the Rules.

2.1 Regulatory requirements

Under the Compliance Regulations, the registry operator is required to notify the market administrator of all breaches it believes, on reasonable grounds, have occurred. Other parties are also able to notify the market administrator of an alleged breach, if they believe a registry participant has breached the Rules. As well as participants, who may allege breaches against themselves or other participants, it is open to the industry body and any consumer or other person who is affected to allege a breach.

Upon receiving a breach notice, the market administrator has a requirement to notify the participant allegedly in breach and also notify all other participants so that they may join as an affected party to the breach.

The obligations of the registry operator to allege, and market administrator to notify, breaches do not have an equivalent under the electricity governance regulations. Hence many participants who are accustomed to the electricity switching and registry arrangements will find that the compliance aspect of the gas switching arrangements differs and may require additional input.

2.2 Current approach

Jade, as the registry operator, satisfies its requirements under the Compliance Regulations to notify alleged breaches, by providing two automated, registry-produced reports to Gas Industry Co on a monthly basis¹ (the PR-040 switch compliance report and the PR-110 maintenance compliance report).

¹ Collecting together notices in regular reports to the market administrator is expressly provided for in regulation 11(3)

The Gas Registry Detailed Requirements Specification ('Specification') describes the business processes which the registry system uses to detect breaches in order to comply with its obligations under the Compliance Regulations. As it states in the Specification,

Certain functions within the registry must be performed within allocated time periods as defined in the rules. This interface requests a report of those functions that have exceeded their allowed timeframes.

This largely entails using breach timers which compare dates or measure elapsed time, such as the number of days between the receipt of a switch message by the registry and the response to that message.

The reports are received by Gas Industry Co in CSV format and are then formatted by the market administrator to include a rule reference, breach number and sub-breach identifier, and to separate the alleged breaches by participant. The market administrator also manually produces the notification of breach forms which are circulated to industry participants.

The current approach is for the individual alleged breaches to be collated so that only one notice of breach is produced per participant for each month. This process was developed to manage the high numbers of alleged breaches being reported by the registry and simplify the communications required between the market administrator and registry participants. The sub-breach identifiers also enable specific alleged breaches to be referred to in participants' responses and in determinations. The table below shows the number of individual alleged breaches, and breach notices since go-live².

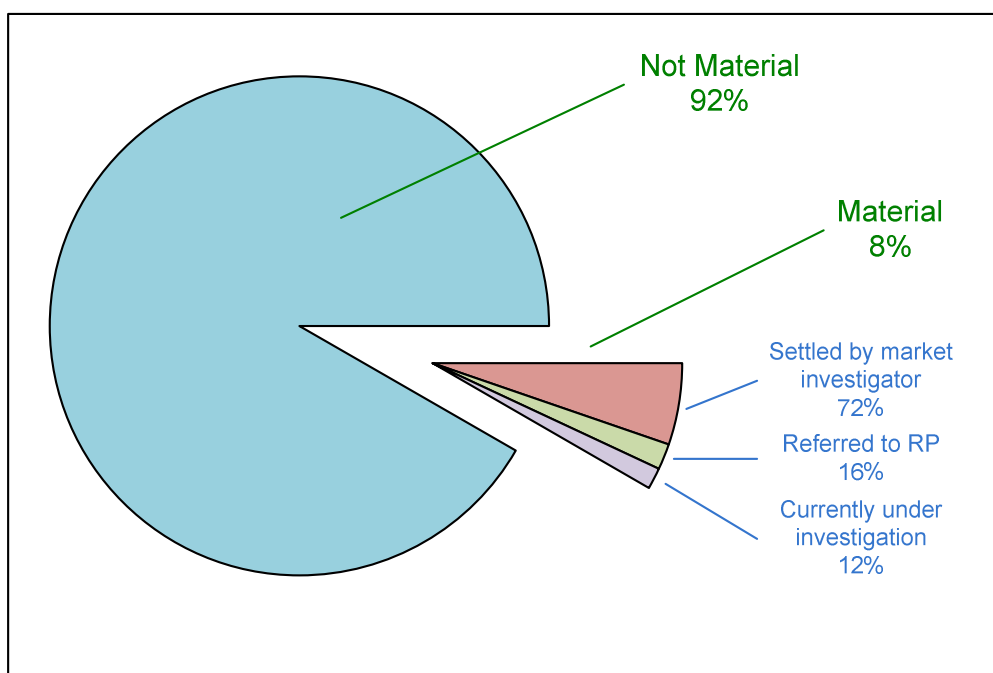
Month	Switching breaches	Maintenance breaches	Total breaches	Notices of alleged breaches
March	424	133	557	10
April	893	703	1596	11
May	412	552	964	11
June	694	(338)	694	8
July	196	(445)	196	8
August	287	(376)	287	8
September	218	(345)	218	8
October	375	(286)	375	8
November	100	(424)	100	7

² Note this table does not include breaches alleged by persons other than the registry operator.

As the table illustrates, there has been a general downward trend in total alleged breaches since go-live. However the levels are still high when compared with participants' compliance with the Gas (Downstream Reconciliation) Rules 2008, which have been in operation for over a year.³

The market administrator sends out each notice of breach to the participant who is allegedly in breach, and to all other participants, who are invited to join as a party to the breach. The market administrator then gathers and considers information on the alleged breach before making a determination on whether it raises a material issue. If the alleged breach is determined to raise a material issue, or if the market administrator is unable to make a determination due to insufficient information, it must be referred to the investigator. Otherwise the market administrator may determine to take no action or attempt to resolve the alleged breach by informal agreement. The decision on materiality is advised to all participants and published on the Gas Industry Co website.

The chart below illustrates the proportion of breaches which were found to be material or not material and, of the material breaches, the proportion that have been settled (by the investigator) or have been referred to the Rulings Panel. Out of 4,885 breaches reported so far by the registry, 371 were deemed to be material by the market administrator and, of those, 266 have been settled and 59 referred to the rulings panel.



³ Monthly breaches reported by the allocation agent (M-Co) are generally single figures, with the worst monthly total being 13 alleged breaches

In the initial few months after go-live, the market administrator applied a degree of leniency in determining the materiality of switching breaches, for instance where the length of breach (number of days overdue) is short. This was in recognition of the time taken for participants to adjust to the new arrangements and timeframes, particularly those who have not had experience of the electricity switching and registry system. There is necessarily a transition period, where teething problems occur, historical data requires cleansing or correcting and some up-skilling is required. However, now that the Switching Rules have been fully operational for over 11 months, such leeway is no longer appropriate as participants should now be familiar with the Rules and switching process.

The market administrator has also accepted a fairly low threshold for information requirements in responses to breach notices and has accepted generic responses where a single issue can or has caused many breaches. Whilst this may continue, a greater concern is that some participants have, up to now, failed to comply with the market administrator's information deadlines. This could become an issue if it continues, and again the market administrator will not continue to show leniency to repeat offenders and may simply refer such breaches to investigation on the basis that the market administrator is unable to make a determination due to insufficient information.

2.3 Issues with current approach

In addition to the issues raised by the market administrator, participants have expressed their own concerns about the compliance process. The most common complaint being the amount of time it takes to deal with breaches. Gas Industry Co acknowledges that investigating and providing a response to individual breaches can be a time consuming process for all parties involved, but this effort is unavoidable for the materiality of breaches to be properly assessed.

There have also been questions raised over the relevance and materiality of the breaches alleged by the maintenance report, by participants responding to notices of breaches and also in an industry workshop on switching. The purpose of the maintenance report is to pick up any breaches of rules 45.1, 48, 51.3, 53.1 and 54.1 which are reported under breach codes GGT, LFC, NEW, DST and RET respectively. These rules relate to the population and maintenance of ICP information in the registry, by distributors (rules 45, 48, 51 & 53) and retailers (rule 54).

The area of concern is that whilst such breach codes appear on the report, there is an apparent inability of the registry to effectively recognise whether NEW, DST and RET breaches have actually occurred, as the timeframes which these rules govern are not measurable by the registry, because they refer to events which occur externally to the system. The circumstances of each breach type are set out below.

Rule reference	Breach code	Rule requirement	Registry breach criteria
51.3	NEW	Rule 51.3 requires that when a distributor receives confirmation that a new consumer installation is first connected to its distribution system, it must update the registry within two business days of receiving the confirmation with the ICP identifier, creation date, responsible distributor and physical address of the new installation	The registry creates a NEW breach when the event entry date is more than two business days after the effective event date i.e. the ICP creation date. However the registry does not know the date that confirmation was received and hence should not be automatically indicating a breach
53.1	DST	Rule 53.1 requires that distributors enter the remaining Part A ⁴ ICP parameters within two business days of having identified those new parameters	The registry creates a DST breach when the event entry date is more than two business days after the effective date of the READY event. However the registry does not know the date when the necessary parameters were identified by the distributor
54.1	RET	Rule 54.1 requires that retailers enter ICP parameters listed in Part B ⁵ within two business days of entering into a contract to supply gas to a consumer at the consumer installation, provided that the ICP is at READY status.	The registry creates a RET breach when the event entry date is more than two business days after the effective date of the event. However the registry does not know the date when the contract was entered into.

Following investigation of the above, it became clear that the registry operator did not have all of the relevant information to have reasonable grounds to allege breaches of rules 51, 53 and 54 in the maintenance breach report. The consequences of this are discussed in the next section. The other breach types which are flagged on the maintenance breach report remain unaffected.

Finally, requests for additional information on alleged breaches have proved to be an avenue for raising other issues with the registry and switching arrangements. A number of bugs have been discovered which have caused ICPs to be flagged on the breach report when no breach of the rules has occurred, for instance where breach timers have been triggered when they shouldn't have been. Gas Industry Co welcomes this feedback and notes that fixing these bugs will be an ongoing process.

⁴ Part A of the schedule appended to the Switching Rules

⁵ Part B of the schedule appended to the Switching Rules

2.4 Proposed approach

Short term

With respect to the issue discussed above regarding the maintenance breach report, Gas Industry Co has adopted the following changes:⁶

- breaches of rules 51.3, 53.1 or 54.1 as set out in the monthly maintenance breach report are no longer alleged breaches notified by the registry operator for the purpose of regulation 11 of the Compliance Regulations;
- so far no GGT or LFC breaches have been reported, but if any occurrences of these breach codes appear on the maintenance report, they will be processed by the market administrator as alleged breaches in the usual manner;
- participants are able to allege a breach if they believe the associated rules regarding ICP parameter maintenance are being broken;
- the monthly maintenance report will still be produced for information purposes (and could be used to assist with alleged breaches by participants as mentioned above); and
- there is no additional cost for the service provider involved with these changes.

In addition to the above, the market administrator will continue to act on the switch breach report as it stands, by formatting the CSV file, allocating rule and breach references, and filling out the notice of breach forms.

Medium to long term

In the longer term, and to reduce resources involved in processing alleged breaches, Gas Industry Co proposes the following:

- to consider changes to the compliance reports generated by the registry so that they provide all of the information required to allege a breach (in a similar fashion to M-Co for breaches of the Gas (Downstream Reconciliation) Rules 2008);
- if Jade provides breach reports in this way, they will not require manual intervention and formatting by Gas Industry Co/the market administrator before they are sent out to participants;

⁶ These changes were given effect to from 1 July 2009 by agreement with Jade.

- this could either be by amending the existing breach reports or producing a new report in line with the required format;
- Jade's estimate of the cost involved with such a change is of the order of \$17-25,000. That expenditure will need to be weighed up against the cost of Gas Industry Co/the market administrator time spent manually formatting reports; and
- Jade's proposed changes would include additional fields in the switch report for 'requested switch date', 'expected switch date' or other relevant information which is currently excluded and this would make it easier for the market administrator and participants to understand the reasons for the alleged breach(es).

If participants consider it necessary, Gas Industry Co is open to receiving ideas on how rules 51.3, 53.1 and 54.1 could be enforced by the registry, for example have fields specific to the information required such as contract signed date, parameter confirmation dates. However, and as discussed at the recent workshop, it may be more efficient to rely on participants to allege breaches where they believe non-compliance has occurred and there has been some adverse effect.

2.5 Possible further enhancements

Participants have been concerned that the treatment of breaches of the Switching Rules differs markedly from the equivalent situation for switching in the electricity market. The key difference is that relatively minor breaches are not reported to participants in the electricity market. As noted above, this reflects the fact that the compliance arrangements for the electricity market provide for a degree of discretion in reporting breaches. By contrast, the market administrator has no such discretion under the Compliance Regulations.

One of the difficulties in setting a threshold for reporting breaches is that it risks becoming a *de facto* rule change. However, it is open to the market administrator, based on experience to date, to not require a participant who is alleged to be in breach to provide any information. Where appropriate in light of the circumstances relating to the alleged breach, this approach can reduce the level of work associated with compliance activities and has already been applied on occasion by the market administrator. Even in such situations, it will still be open for the market administrator to determine that an otherwise minor time breach raised a material issue. Examples where this might be the case include:

- where there are excessive numbers of minor breaches indicating either a systemic problem or a unilateral decision to extend the timeframes prescribed by the Rules;

- where another participant elects to become a party to the alleged breach and indicates some adverse market effect; or
- where the participant allegedly in breach expresses no intention to comply with the requirements in the future or raises a legal interpretation issue.

The above approach assists achieving the objective of minimising time spent on inadvertent, minor breaches which have no affect on the market, whilst preserving the integrity of the Switching Rules and the Compliance Regulations.

Currently the registry only reports any individual breach (typically the failure to respond to a notice) once – on the monthly report corresponding to the relevant due date. If a participant still fails to provide a response by the end of the next month they will not be breached again as the due date isn't captured by that month's report. This has a problematic effect if there is a decision to only escalate breaches which are overdue by a certain number of days or more. It also means that the market administrator and the investigator need to spend time manually checking in the registry in order to identify the full extent of breaches.

Gas Industry Co monitors outstanding breaches on an ad hoc basis and there do not appear to be any serious issues. If situations do arise where switches are frustrated, and this isn't captured by the registry's monthly breach reporting, it is open to the participant affected to allege a breach.

Other ways in which participants are reducing the compliance burden include:

- when providing information on alleged breach notices participants may refer to previous responses if the reason for the breach is the same and the breach can be deemed not material based on this reason; and
- participants can provide generic responses if a number of breaches are caused by the same issue.

Q1: Do participants agree with the proposed approach (currently adopted by Jade and Gas Industry Co) to disregard NEW, DST and RET breaches on the maintenance breach report)? Should alternative arrangements be put in place for assessing compliance with these rules or is it sufficient for breaches to be alleged on an ad hoc basis as they arise?

Q2: Do participants believe that further automating the production of breach reports and notices, and the inclusion of extra information, would be beneficial in the longer term?

Q3: Do participants have any further suggestions for the enhancement of the compliance process or to reduce the compliance burden (assuming that changes to the Compliance Regulations will not be progressed in the near future)?

3

Switch withdrawals

The main change proposed for the switching process is to rectify a situation where the registry provides that switch withdrawal requests can be continually requested and rejected without restriction. As well as being contrary to the Rules, this allows switches to be delayed indefinitely and is further complicated due to the lack of a breach mechanism to measure and record when this is occurring.

3.1 Regulatory requirements

The Switching Rules allow that when a switch has been initiated via a gas switching notice (GNT), the responsible retailer can respond with a request to withdraw the switch. A switch withdrawal (GNW) can occur at any point from the receipt of the GNT in the registry to the receipt of a subsequent GNT after the new retailer has become the responsible retailer. However there are only certain circumstances where a switch withdrawal can be requested – if there has been an error in the switch process (ie the switch is not giving effect to, or has not given effect to the agreement with the customer) or if the consumer has requested the switch to be withdrawn (exercising a statutory or contractual right).

Excerpts from the rules governing switch withdrawal requests are set out in Appendix A. In particular, rule 69 notes that a gas switching withdrawal notice is one of the valid responses to a gas switching notice (as long as it is sent within two business days), rule 75 sets out the circumstances when a switch can be withdrawn, in what timeframe and by whom, and rule 78 deals with how a switch withdrawal must be responded to. Rule 78.5 is of particular importance as it is the root of the issue identified with the switch withdrawal process and the divergence with the operation of the registry; it states that if a switch withdrawal request is rejected the responsible retailer must comply with rule 69 except that they may not give another withdrawal request for the same gas switching notice.

It is important to highlight the difference in this approach to the process for switch withdrawals in electricity (with which many participants are familiar). Under the Electricity Governance Rules 2003 (Part E, Schedule E2, rule 4), if a switch withdrawal is rejected the retailer can keep re-submitting withdrawal requests as long as all requests are resolved within a maximum of 23 business days after the date of the initial switch withdrawal request.

3.2 Current approach

The gas registry was built on the same framework as the electricity registry and much of the functionality incorporated for switching is copied directly from the electricity switching process (this being symptomatic of the fact that the gas switching rules used the electricity switching rules as a template).

Soon after go-live it became apparent that the switch withdrawal functionality in the gas registry is not consistent with rule 78.5 in that multiple switch withdrawals can be requested at any time after the gas switching notice has been sent. This appears to be at odds with rule 78.5 which suggests that if the first withdrawal request is rejected then the responsible retailer must comply with rule 69, but cannot send another withdrawal request, so the only options are to send a gas acceptance notice (GAN) and/or a gas transfer notice (GTN).

The current approach, which allows multiple withdrawal requests without limitation, has the consequential problem that a responsible retailer can indefinitely prevent a switch from occurring – without being flagged as being in breach by the registry – by repeatedly issuing GNWs without entering a GAN. Although rule 69.2 requires that a switch is completed within 23 business days, this only holds after an acceptance notice has been sent. Similarly in the registry the GTA timer, which measures compliance with the 23 business day timeframe, is only triggered when a GAN is sent by the responsible retailer.

The unfortunate consequence is that the following situation can occur, where GNWs are continually issued and rejected, each within their required time frames, but the switch is frustrated:

Event Histories			Event Data		Audits / Reversals
Event Type	Event Date	Event State	Entrv Date	Rev/Rep Date	Raw Event Data
GAW	04/03/2009	Active	23/07/2009		
GNW	04/03/2009	Active	21/07/2009		
GAW	04/03/2009	Active	15/07/2009		
GNW	04/03/2009	Active	09/07/2009		
GAW	04/03/2009	Active	08/07/2009		
GNW	04/03/2009	Active	06/07/2009		
GAW	04/03/2009	Active	03/07/2009		
GNW	04/03/2009	Active	02/07/2009		
GAW	04/03/2009	Active	01/07/2009		
GNW	04/03/2009	Active	24/06/2009		
GAW	04/03/2009	Active	23/06/2009		
GNW	04/03/2009	Active	17/06/2009		
GAW	04/03/2009	Active	17/06/2009		
GNW	04/03/2009	Active	09/06/2009		
GAW	04/03/2009	Active	08/06/2009		
GNW	04/03/2009	Active	08/06/2009		
GAW	04/03/2009	Active	04/06/2009		
GNW	04/03/2009	Active	29/05/2009		
GAW	04/03/2009	Active	28/05/2009		
GNW	04/03/2009	Active	19/05/2009		
GAW	04/03/2009	Active	30/04/2009		
GNW	04/03/2009	Active	21/04/2009		
GAW	04/03/2009	Active	11/03/2009		
GNW	04/03/2009	Active	06/03/2009		
GNT	04/03/2009	Active	04/03/2009		

Such a situation will not come to light for the market administrator unless one of the parties reports a breach manually or one of the responses is provided after the two day or five day deadline and a subsequent investigation by the market administrator uncovers the 'ping-ponging' of notices.⁷

3.3 Proposed approach

Short term

It is important that the operation of the registry be compatible with the requirements and purpose of the Rules (*a set of ... arrangements [enabling] consumers to choose, and alternate efficiently and satisfactorily between competing retailers*). It is also important that the automatic breach reports sent out by the registry are able to be relied upon by the market administrator. It is not acceptable that the current arrangements not only allow multiple GNWs to be generated but that careful sequencing of these will not result in the registry reporting a time breach to the market administrator.

Gas Industry Co's interpretation of rule 78.5, is that following the rejection of a switch withdrawal request, the responsible retailer must comply with rule 69 *in its entirety* without submitting a further withdrawal request i.e. a responsible retailer only gets 'one shot' at a withdrawal request prior to the completion of the switch. However, it may be that a more reasonable interpretation of rule 78.5 would be to limit its scope to obliging the responsible retailer to compliance with rule 69.1 only before further GNWs can be submitted. This approach would ensure that a switch is either completed within two days of the withdrawal rejection or 23 business days of receipt of the GNT (depending on whether the response is a GTN or GAN respectively), but either way the rules can be enforced through the compliance and breach process (and will be picked up by the existing registry breach reports).

This issue was raised and discussed at both a switching participants workshop and a retail gas governance forum (RGGF). Retailers considered that the more restrictive interpretation, that is where the responsible retailer only gets one shot at a withdrawal request, may actually frustrate customers' wishes. Examples were cited of occasions where a consumer would enter into a contract with a new retailer, and when the existing retailer called to try and win back the customer, they would speak to the customer's spouse or partner, who would agree to stay with the existing retailer, yet when the new retailer checked with the customer they would have no knowledge of this.

Retailers noted that these situations were not uncommon, and could only be resolved by going through the withdrawal process more than once, by which time information could be exchanged between the competing retailers (and presumably a decision reached within the household) determining whether or not the switch should go ahead.

Without the ability to submit more than one GNW, the switch would have to be completed and then subsequently reversed which would entail a longer timeframe plus final meter reading/billing

⁷ Where a GAN has been sent then the GTA timer would flag a breach if the 23 business day deadline is exceeded

procedures, account closure etc, which is an inefficient and costly outcome for the retailer, and tedious for the consumer.

Given the above, Gas Industry Co proposes the following approach to address this problem in the short-term:

- amend the registry so that if the initial response to a gas switching notice is a switch withdrawal request, and this request is rejected, it only allows the responsible retailer to respond with either a gas acceptance notice or a gas transfer notice;
- this will ensure that the GTA timer is started correctly and the responsible retailer will therefore face a compliance breach if it fails to complete the switch (by submitting a GTN either within 2 days if no GAN is submitted or 23 days otherwise); and
- following a gas acceptance notice, subsequent withdrawal requests will not be prevented by the registry. However, note that if all GNWs are rejected, participants must still complete the switch inside the 23 business day period from the date of the GNT and comply with a requested switch date if included, subject to rule 72.2.

If necessary, this proposal could be supported by way of a blanket exemption for all registry participants which exempts compliance with rule 78.5 to the extent that multiple GNWs are permitted subject to them all being completed inside 23 business days⁸. It would need to be made clear that it is the responsible retailer's duty to ensure that no GNW is submitted at such a time that prevents it from meeting the 23-day rule and that nothing overrides the obligation to comply with rule 72.2 if a requested switch date is included in the GNT.

An alternative interpretation of rule 78.5 was put forward at the RGGF which would mean that the above system change could be implemented without any need for an exemption. The notion is that rule 78.5 hinges on compliance with rule 69, so as long as rule 69 is being complied with, there should be no restriction on the number of GNWs permitted since this exception does not apply. In practical terms this means that once a valid response has been given to the GNT (that is, either a GAN or a GTN) then the retailer has complied with rule 69.1 so GNWs are no longer limited. Where the response is a GAN, compliance with rules 69.2 or rules 69.3 cannot be tested until the later stage when the GTN is submitted, so the retailer is assumed to be in compliance with all of rule 69.

If Gas Industry Co were to accept this alternative interpretation then it is unlikely that an exemption would be necessary to align registry operations with the Rules. However Gas Industry Co may have to issue a guideline note to clarify the approach being taken and to remove any ambiguity.

⁸ Under the transitional exemption currently in effect, parties have five business days to respond to a GNW, this suggests that a GNW should not be issued later than 18 days following the GNT to avoid placing the incumbent retailer in breach of rule 69.2.

Long term

In the longer term, when the Switching Rules are next reviewed and a recommendation for changes sent to the Minister, rule 78.5 could be amended or clarified in line with the short term proposal. Such an amendment would have to be worded carefully so as to not remove the general obligation of the retailer to comply with rules 69.2 and 69.3. It may be that the alternative interpretation of rule 78.5 has merit, in that it would not require rewriting in order to give the same effect.

The flow diagrams attached as Appendix B present the switching process as Gas Industry Co interprets the switching rules. This differs from the current approach only with regard to the treatment of multiple withdrawal requests.

Q4: Do participants support the proposed amendment to the registry which would remove the option to re-submit a GNW if the first GNW request were rejected? Do participants agree that following receipt of a GAN or GTN the option to request a switch withdrawal should be re-opened and unlimited withdrawal requests should be allowed?

Q5: If the registry is amended as per the proposal do participants consider that this gives effect to the purpose of rule 78.5? In conjunction with this change, would it be appropriate for Gas Industry Co to issue a blanket exemption or a guideline note to amend or clarify the purpose of the rule?

Q6: In the longer term do participants feel that it is necessary for a rule change to clarify rule 78.5?

4

Non-business days

Switch dates (particularly for move switches) are not confined to occurring on business days, and there is no obligation for a switch message to be sent to the registry on a business day, but the breach timers in the registry (and to some extent, the Switching Rules) only count business days and, when calculating days overdue, there appears to be some inconsistencies in the treatment of non-business days. This has led to some errors in the monthly breach reports with ICPs being flagged where a breach has not occurred, with breaches showing the wrong number of days overdue and with seemingly identical circumstances giving different results.

It should be noted that the problem identified does not hinder the switch process to any great extent and is more a concern for ensuring the correct and accurate reporting of non-compliance with the Switching Rules. The extent of the discrepancy is that a minority of breaches appear with the number of days overdue either one more or one less than the true value. This means that some switches are being investigated where there is no actual breach and, where an actual breach has occurred, more time is required to investigate the facts surrounding the breach and to make a determination.

4.1 Regulatory requirement

There is no specific mention of non-business days in the Switching Rules, other than that inferred by the definition of business day given in rule 5:

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

A further clarification of the way the registry calculates days overdue is given in the functional specification and reproduced in the *Determinations by the Industry Body (Gas Industry Co) under the Gas (Switching Arrangements) Rules 2008*.

Calculation of days overdue

Days overdue = Number of days between midnight of the date of delivery of relevant document to participant and midnight of the due date, (where date of delivery is after due date).

If the relevant document has not arrived (no date of delivery), then for reporting purposes use today's date (runtime of the report). Assume document has until midnight to arrive.

Calculation of business days

Business days must be treated as calendar days, not multiples of 24 hours. For example, Registry routes GNT to retailer at any time on 23 January; current retailer then has until midnight on 25 January to deliver the GAN back to the Registry.

4.2 Current approach

It is taken as given that the count of days overdue is purely a count of business days. For notices sent on non-business days the general rule built into the registry for the purpose of calculating days overdue is that such notices are deemed to have been given on the next business day. Similarly for due dates which are non-business days, notices can be sent on the next business day without causing a breach.

For the purpose of identifying where days overdue are not being calculated correctly it is useful to recognise that the registry breach codes can be separated into two categories: those which measure whether a response has been given within a specified time ('timer breaches') and those which compare date fields within the switch messages ('date breaches').

The timer breaches, which track whether a response has been given to a notice, are:

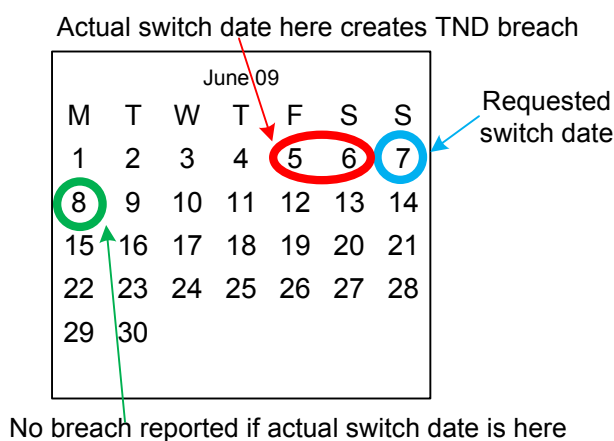
- the GAN/GNW/GTN breach codes which measure compliance with rule 69.1, ie a response within two business days;
- the GTA breach code which corresponds to rule 69.2, ie where a GAN has been given a GTN must be provided within 23 business days of the GNT;
- the GAW breach code which corresponds to rule 78.1, ie a response within five business days; and
- the GAC breach code which corresponds to rule 81.1; ie a response within five business days.

All of these breach codes comply with the above rule for treatment of non-business days when counting days overdue. Thus if a GNT is received by the registry on a Saturday, the responsible retailer has until the end of the following Wednesday to respond, since the notice is deemed as being received on Monday. If the response were given on Thursday a GAN, GNW and GTN breach would be recorded with days overdue equal to one.

The inconsistency appears to arise purely with the date breaches that check and compare switch dates in notices. These comprise:

- the NTD breach code, which checks the requested switch date in a GNT against the GNT delivery date (rule 67.3);
- the AND breach code, which checks the expected switch date in a GAN against the requested switch date (rule 70.2);
- the TND breach code, which checks the actual switch date in a GTN against the requested switch date (rule 72.2); and
- the GTA breach code, which, in addition to measuring 23 business days from the receipt date of the GNT, also checks the actual switch date against the GTN delivery date (rule 69.3).

Where a requested, expected or actual switch date falls on a non-business day, there are no specific provisions for how the count of days overdue should be determined. Taking the TND breach as an example, if a GNT includes a requested switch date on a Sunday and the GTN has an actual switch date of Friday or Saturday it is unclear whether or not the registry should report a breach since it is clearly before the requested date, yet no business days have elapsed between the actual and requested switch dates. Moreover, depending on whether the GTN is submitted before or after the requested switch date, the registry appears to measure different numbers of overdue days.



4.3 Proposed approach

There is no major change required from the existing policy, it merely serves to clarify the situations where there are currently 'gaps'. The suggestion from Jade is for Gas Industry Co to set out a case by

case account of how each breach type should be treated so that the registry functionality can be amended accordingly.

A full list of breach scenarios is provided in Appendix C along with the proposed approach for dealing with non-business days in each case.

The general idea is that where a breach occurs but the number of business days overdue is zero then the registry will not report this as a breach. So in the example given above, no breach would be flagged if the switch occurred on Friday or Saturday, even though the requested switch date is on Sunday. If the switch occurred on Thursday there would be a breach flagged of one business day.

If this approach were taken it would fall on registry participants to allege a breach manually if they believe on reasonable grounds that there has been non-compliance with an adverse effect and it has not been reported by the registry. One such situation would be if the requesting retailer wanted a switch date for a TOU site on the first of the month for billing and downstream reconciliation purposes and this happened to be a non-business day. If the responsible retailer completed the switch on the last business day of the previous month this has a knock-on effect of requiring the new retailer to submit an extra monthly invoice and consumption information, trader notifications etc. under the Downstream Reconciliation rules. There is potential for the incoming retailer to be put in breach of the Downstream Reconciliation rules if the information is not provided within the required timeframes.

An alternative approach for handling breaches which are zero business days overdue is to amend the overdue days counter so that for the date breaches outlined above the registry counts calendar days rather than business days. The rationale behind this approach is that for timer breaches the onus is on giving the retailer the required number of business days to respond but with date breaches the purpose is to measure to what extent the consumer's wishes are or are not being given effect to, and since a consumer is entitled to request any day for a switch it is appropriate to count all days. This option has some value in that breaches of the kind described above would be picked up by the registry report.

It should be noted that in adopting either one of the above proposals Gas Industry Co would not be altering the underlying rules. The proposals above are purely to address situations which were not covered by the detailed requirement specification for the registry.

Q7: Do participants agree that a change is necessary to the method used by the registry for calculating days overdue where non-business days are involved? Would participants prefer that breaches which are 'zero' business days overdue not be reported or that the count of days overdue for such breaches be the number of calendar days?

5

Requested switch dates

A central feature of the switching process is that for a standard switch a requesting retailer can request a switch date when sending a GNT. The responsible retailer must then take this date into account when sending a GAN and GTN. The extent to which the responsible retailer is bound by the requested switch date is governed by whether the responsible retailer has already billed the consumer past this date or not.

Although the treatment of requested switch dates is explicitly referenced in the Rules (rule 72.2 in particular), there have been different interpretations put forward of the point at which the determination should occur of whether or not the consumer has been billed past the requested switch date by the responsible retailer. The resulting uncertainty has led to some retailers taking a different approach to responding to requested switch dates, including cases where the date is ignored and/or an expected/actual switch date exactly 23 business days after the GNT is used.

A recent hearing of the Rulings Panel included the investigation of an instance of alleged non-compliance with rule 72.2. In determining whether the party breached this rule, the Rulings Panel has provided clarification on the correct interpretation of the phrase ‘has billed’ in rule 72.2.2. Paragraph 55 of the Rulings Panel’s decision⁹ reads:

[55] Given these rules deal with consumer choice, I am satisfied that the words “has billed” in rule 72.2.2 refer to when the Gas Switching Notice has been issued. A retailer may only use a switch date other than the requested switch date if it has already billed a consumer to a date after the requested switch date. That accords with the consumer orientation of the rules. [...]

It is expected that following this ruling there is no remaining ambiguity on the correct interpretation of this rule. However it is still of some value to set out, for comment, the background and approach taken in the registry for requested switch dates, as the determination by the Rulings Panel may raise queries around the enforcement of this rule.

5.1 Regulatory requirements

There are constraints on both the retailer requesting a switch date and the retailer responding to a requested switch date; these are given in rules 67.3 and 72.2 respectively (set out below).

⁹ http://www.gasindustry.co.nz/sites/default/files/u24/Decision_on_2009-21_22_23_and_sanctions_1.pdf

- 67.3 If the new retailer includes a requested switch date for a standard switch, that date must not be less than 7 business days after the date the gas switching notice is given to the registry.
- 72.2 If the gas switching notice included a requested switch date, the responsible retailer must -
 - 72.2.1 Use the requested switch date as the switch date and provide switch readings applicable to that date; or
 - 72.2.2 If the responsible retailer has billed a consumer for the ICP up to a date after the requested switch date, use the day after the billed-to-date as the switch date and the billed readings as the switch readings.

The implication of 72.2 is that there are no circumstances where the switch date (in the GTN) can occur before the requested switch date. If a responsible retailer sends a GAN before a GTN then the expected switch date used is also subject to the condition in rule 72.2 (by the exception in rule 70.2.1).

5.2 Current approach

The registry currently tracks compliance with rule 67.3 using the NTD breach code and compliance with rules 70.2 and 72.2 using the TND and AND breach codes. A breach of the latter two codes is flagged in cases where the expected or actual switch date is a date before the requested switch date. The registry does not (and cannot) track compliance with 72.2.2 (that is, whether the responsible retailer has actually billed the consumer past the requested switch date) since there is no billing information held in the registry.

Monitoring compliance of this rule therefore relies on participants notifying the market administrator where they think there are reasonable grounds for a breach.

The apparent ambiguity in the drafting of rule 72.2 has naturally led to a review of the intention behind the rule. During the policy development phase the usage of requested switch dates was discussed and the consensus view was that they are not generally used for standard switches of mass market customers. Gas Industry Co was told that the common approach under the previous arrangements (the customer transfer protocol in the reconciliation code) was to allow the responsible retailer to determine the switch date so that the final meter read fits in with the normal billing cycle. Requested switch dates were therefore only envisaged as being required in exceptional circumstances, for example if a consumer required billing on a set date such as the first of the month.

Notwithstanding the above, the Rules are certainly clear that the requesting retailer can choose to include a requested switch date in the GNT. There are no rule changes proposed at this stage so we must therefore proceed on the basis that a requested switch date may be used for any standard switch and, if included, the responsible retailer's compliance with rule 72.2 is necessary.

5.3 Proposed approach

Gas Industry Co's interpretation of rule 72.2.2, which is consistent with the Rulings Panel's decision, is as per the plain words of the Rule. There is only one situation in which the responsible retailer may switch the consumer on a date other than the requested switch date, and that is when the *"responsible retailer has billed a consumer for the ICP up to a date after the requested switch date"*, ie: the situation contemplated by Rule 72.2.2. The words *"has billed"* in Rule 72.2.2 refer to the point in time when the gas switching notice has been issued.

If a responsible retailer receives a gas switching notice with a requested switch date, and by the time the responsible retailer receives the gas switching notice that retailer has already billed the consumer to a date that post-dates the requested switch date, the actual switch may occur later than the requested switch date, on the day after the billed-to-date, provided that date is no later than 23 business days after the responsible retailer received the gas switching notice. That would mean that a date other than the requested switch date can only be used if the responsible retailer has sent a bill in advance (and in advance of having received a gas switching notice).

There is no proposed change to the operation of the registry since compliance with rule 72.2 is not automatically monitored. It is envisaged that enforcement of the proper use of requested switch dates continues to depend on manual reporting of breaches by participants.

Gas Industry Co would be interested in participants' views on whether they feel that stricter monitoring of compliance is required. Since the registry does not currently contain sufficient information to determine compliance with rule 72.2 (ie there is no billed-to date so if a requested switch date has not been adhered to it is impossible to tell whether this is because the customer has been billed past this date or not), an enhancement to enforce this rule would likely require a substantial change at significant cost.

Q8: Do participants agree that it is sufficient to rely on manual reporting of potential breaches of rule 72.2 or is there a preference for the registry to be amended to automatically flag where an actual switch date falls after a requested switch date?

Appendix A Excerpts from rules 69, 75 and 78

69. Response to a gas switching notice

- 69.1 Within 2 business days after receiving a gas switching notice from the registry, the responsible retailer must give to the registry –
 - 69.1.1 A gas acceptance notice that states that the responsible retailer intends the switch to take place on an expected switch date; or
 - 69.1.2 A gas transfer notice that includes all the information required to complete the switch; or
 - 69.1.3 A gas switching withdrawal notice that states that the responsible retailer believes that the gas switching notice should be withdrawn.
- 69.2 If the responsible retailer gives a gas acceptance notice, it must, subject to rule 69.3, give a gas transfer notice to the registry within 23 business days after receiving the gas switching notice from the registry.
- 69.3 Except where a gas switching withdrawal request has been given, the responsible retailer must give a gas transfer notice within 2 business days of the switch date included in the gas transfer notice.

75. Withdrawal of switching

- 75.1 A switch may only be withdrawn if –
 - 75.1.1 There has been an error in the switch process such that the switch is not giving effect to, or has not given effect to, the agreement with the consumer; or
 - 75.1.2 The consumer, exercising a contractual or statutory right, has requested the switch to be withdrawn.

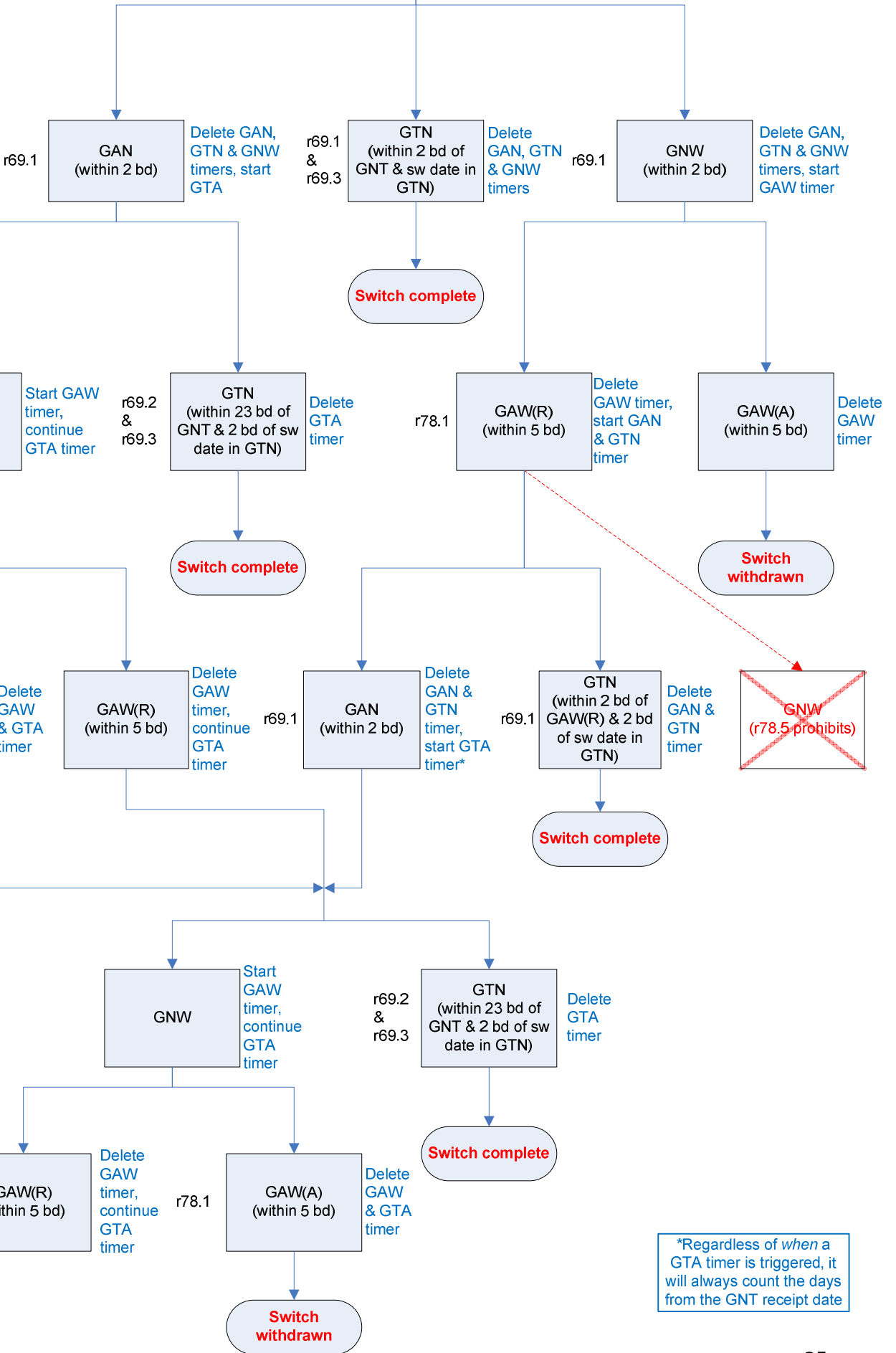
78. Retailer response to a gas switching withdrawal notice

- 78.5 For the avoidance of doubt, if the gas switching withdrawal notice is rejected the responsible retailer must comply with rule 69 except that the responsible retailer may not give another gas switching withdrawal notice for the same gas switching notice.

Appendix B Switching flow diagrams

**Standard switch
No requested switch date**

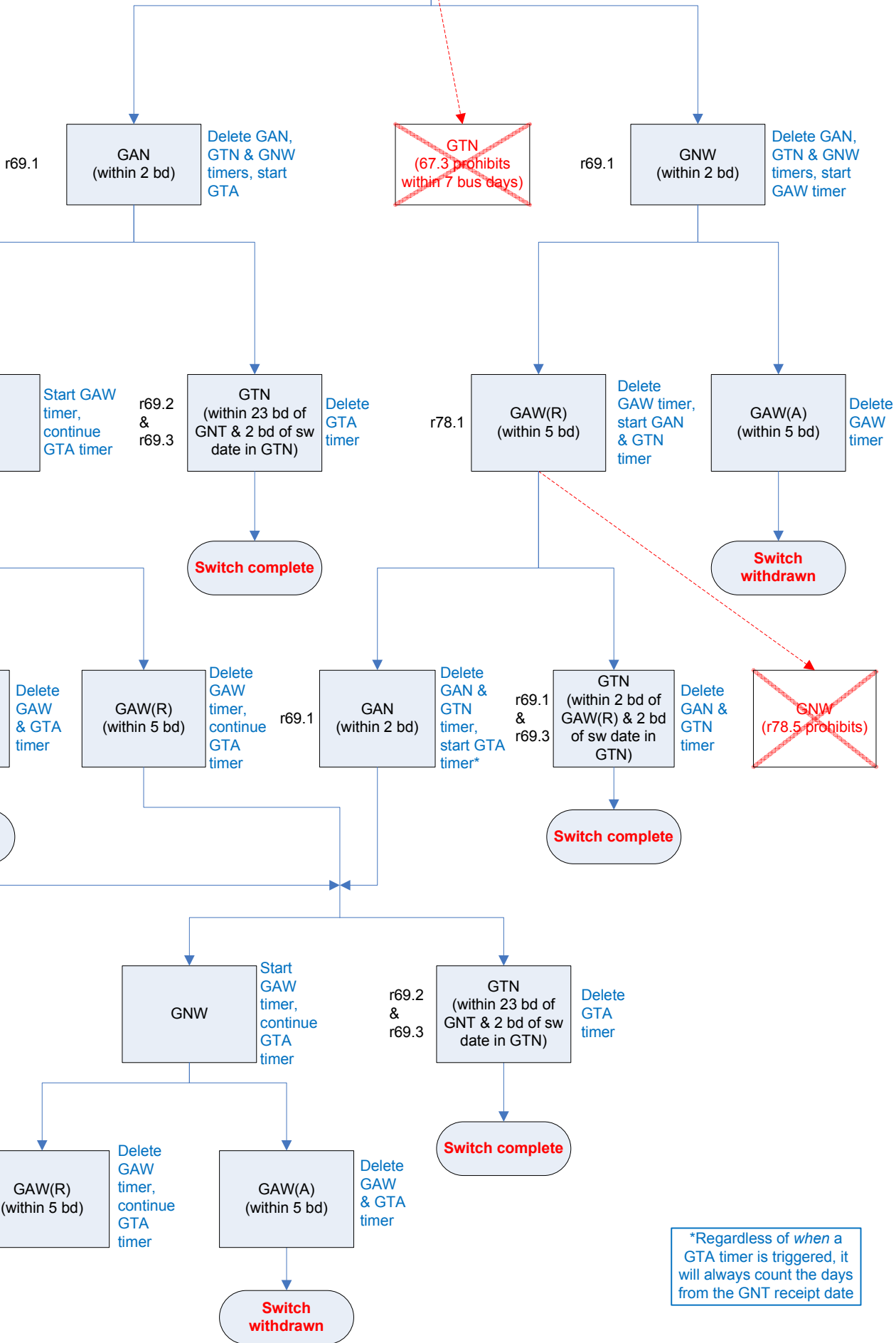
GNT Start timers:
GAN, GTN,
GNW



*Regardless of when a GTA timer is triggered, it will always count the days from the GNT receipt date

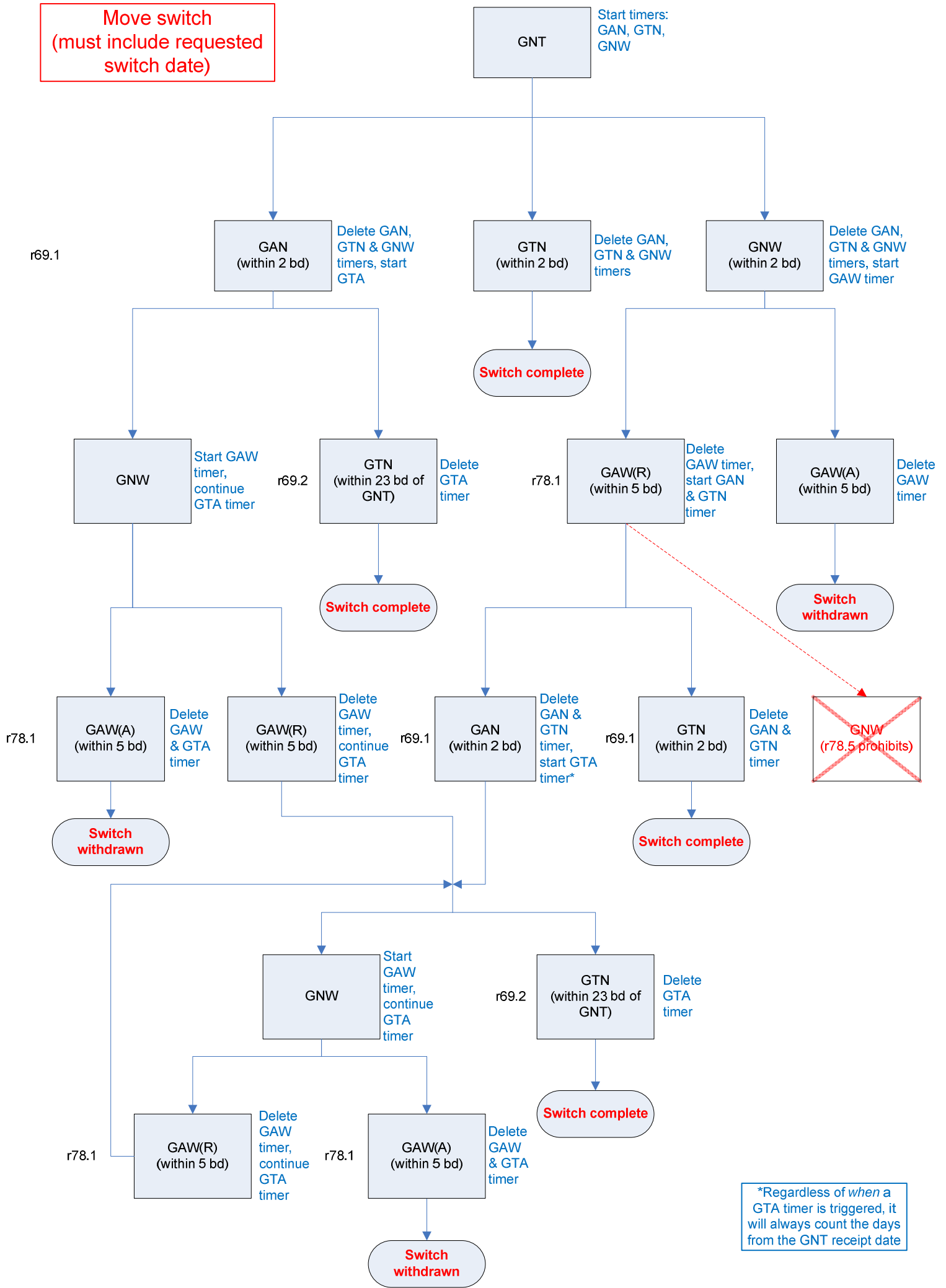
**Standard switch
Requested switch date**

GNT Start timers:
GAN, GTN,
GNW



*Regardless of when a GTA timer is triggered, it will always count the days from the GNT receipt date

Move switch
(must include requested
switch date)



*Regardless of when a
GTA timer is triggered, it
will always count the days
from the GNT receipt date

Appendix C Treatment of non-business days

Breach Code	Inputs	Breach flagged if...	Treatment of non-business days (NBDs)
GAN, GNW, GTN	<ul style="list-style-type: none"> GNT delivery date GAN, GNW or GTN delivery date GAW(R) delivery date (if GNW was first response to GNT) 	<ul style="list-style-type: none"> GAN, GNW or GTN is not received within two business days of GNT delivery date or within two business days of GAW(R) delivery date if GNW was first response to GNT 	<ul style="list-style-type: none"> If GNT delivery date is a NBD, it is taken as given on the next business day If the response is given on a NBD, it is taken as given on the next business day Days in breach are counted from the first business day after the NBD on which the message was sent
GAW	<ul style="list-style-type: none"> GNW delivery date GAW delivery date 	<ul style="list-style-type: none"> GAW is not received within five business days of GNW delivery date 	<ul style="list-style-type: none"> If GNW delivery date is a NBD, it is taken as given on the next business day If GAW date is a NBD, it is taken as given on the next business day Days in breach are counted from the first business day after the NBD on which the message was sent
GAC	<ul style="list-style-type: none"> GNC delivery date GAC delivery date 	<ul style="list-style-type: none"> GAC is not received within five business days of GNC delivery date 	<ul style="list-style-type: none"> If GNC delivery date is a NBD, it is taken as given on the next business day If GAC date is a NBD, it is taken as given on the next business day Days in breach are counted from the first business day after the NBD on which the message was sent

Breach Code	Inputs	Breach flagged if...	Treatment of non-business days (NBDs)
GTA	<ul style="list-style-type: none"> • GNT delivery date • GTN delivery date • Actual switch date 	<ul style="list-style-type: none"> • GTN delivery date is more than 23 business days after GNT delivery date • GTN delivery date is not within two business days of actual switch date 	<ul style="list-style-type: none"> • If GNT delivery date is a NBD, it is taken as given on the next business day • If GTN delivery date is a NBD, it is taken as given on the next business day • Days in breach are counted from the first business day after the NBD on which the message was sent • If the actual switch date is a NBD then the GTN delivery date must be with two business days of the next business day
NTD	<ul style="list-style-type: none"> • Requested switch date • GNT delivery date 	<ul style="list-style-type: none"> • Requested switch date is less than seven business days after the GNT delivery date 	<ul style="list-style-type: none"> • If GNT delivery date is a NBD then the requested switch date must not be less than seven days after the first business day after GNT delivery • If the requested switch date is a NBD then the last business day before this must not be less than seven days after the GNT delivery date • Where days in breach equals zero, the breach is not reported by the registry

Breach Code	Inputs	Breach flagged if...	Treatment of non-business days (NBDs)
AND	<ul style="list-style-type: none"> • Requested switch date • Expected switch date • GNT delivery date 	<ul style="list-style-type: none"> • Expected switch date is before requested switch date • Expected switch date is more than 23 business days after GNT delivery date 	<p>Where the expected switch date falls before the requested switch date:</p> <ul style="list-style-type: none"> • If requested switch date is a NBD and expected switch date is the last business day there is a breach of length zero days • If expected switch date is a NBD and requested switch date is the next business day there is a breach of zero days • If expected and requested switch dates are within a period of consecutive NBDs then there is a breach of zero days • Where days in breach equals zero, the breach is not reported by the registry
TND	<ul style="list-style-type: none"> • Requested switch date • Actual switch date 	<ul style="list-style-type: none"> • Actual switch date is before requested switch date 	<p>Where the actual switch date falls before the requested switch date:</p> <ul style="list-style-type: none"> • If requested switch date is a NBD and actual switch date is the last business day there is a breach of length zero days • If actual switch date is a NBD and requested switch date is the next business day there is a breach of zero days • If actual and requested switch dates are within a period of consecutive NBDs then there is a breach of zero days • Where days in breach equals zero, the breach is not reported by the registry

Appendix D Recommended Format for Submissions

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

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

Question	Comment
<p>Q1: Do participants agree with the proposed approach (currently adopted by Jade and Gas Industry Co) to disregard NEW, DST and RET breaches on the maintenance breach report)? Should alternative arrangements be put in place for assessing compliance with these rules or is it sufficient for breaches to be alleged on an ad hoc basis as they arise?</p>	
<p>Q2: Do participants believe that further automating the production of breach reports and notices, and the inclusion of extra information, would be beneficial in the longer term?</p>	
<p>Q3: Do participants have any further suggestions for the enhancement of the compliance process or to reduce the compliance burden (assuming that changes to the Compliance Regulations will not be progressed in the near future)?</p>	
<p>Q4: Do participants support the proposed amendment to the registry which would remove the option to re-submit a GNW if the first GNW request were rejected? Do participants agree that following receipt of a GAN or GTN the option to request a switch withdrawal should be re-opened and unlimited withdrawal requests should be allowed?</p>	

Question	Comment
<p>Q5: <i>If the registry is amended as per the proposal do participants consider that this gives effect to the purpose of rule 78.5? In conjunction with this change, would it be appropriate for Gas Industry Co to issue a blanket exemption or a guideline note to amend or clarify the purpose of the rule?</i></p>	
<p>Q6: <i>In the longer term do participants feel that it is necessary for a rule change to clarify rule 78.5?</i></p>	
<p>Q7: <i>Do participants agree that a change is necessary to the method used by the registry for calculating days overdue where non-business days are involved? Would participants prefer that breaches which are 'zero' business days overdue not be reported or that the count of days overdue for such breaches be the number of calendar days?</i></p>	
<p>Q8: <i>Do participants agree that it is sufficient to rely on manual reporting of potential breaches of rule 72.2 or is there a preference for the registry to be amended to automatically flag where an actual switch date falls after a requested switch date?</i></p>	