

Consultation on Exemption Application under the Gas (Switching Arrangements) Rules 2008

Application SW08-11-T for the exemption of 'bypass' distribution systems and associated ICPs from rule 41 of the Switching Rules

1. Introduction

Rule 90 of the Gas (Switching Arrangements) Rules 2008 ('the Rules') provides for registry applicants to apply for the granting of a transitional exemption from the Rules. Exemptions cannot be granted by Gas Industry Co on its own initiative - there must be an external application. If granted the transitional exemption must specify a period for which the exemption applies. The exemption must also set out the alternative arrangements that will apply for complying with the rules from which the exemption is granted, and Gas Industry Co may also set other conditions as it sees fit.

Complex or contentious exemption applications are considered by a subcommittee of the independent directors on the Gas Industry Co Board. Decisions on non-complex or non-contentious exemption applications have been delegated to the Chief Executive of Gas Industry Co.

A detailed description of the exemption framework can be found in the exemptions information paper published on the Gas Industry Co website. This paper can be downloaded from <http://www.gasindustry.co.nz/work-programme/switching-and-registry?tab=587>.

This notice publishes and seeks submissions on an exemption application from Nova Gas as described below. Submissions must be received by Gas Industry Co no later than 5pm on Tuesday 10 March 2009.

The recommended format for submissions is attached as Appendix A. Submissions can be made by registering on Gas Industry Co's website www.gasindustry.co.nz and downloading the submissions template attached to the consultation document. All submissions will be published on the website after the closing date. For further information, see *Guide for New Users* on the Gas Industry Co homepage.

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.

It is requested that submitters use the submission template attached as Appendix A. Submissions may be uploaded to the switching and registry section of the Gas Industry Co website.

2. Summary of Application

The full application is attached as Appendix B. A summary of the application follows:

GIC Code: SW08-11-T

Applicant: Nova Gas Ltd

Exemption sought:

An exemption is sought from rule 41 of the Gas (Switching Arrangements) Rules 2008 in relation to all customers connected to each of the following gas gates:

FLB15601	Nova – Flatbush
HST05203	Nova - Hastings
HWA20802	Nova - Hawera 2
HUN15302	Nova - Hunua 2
TWB24810	Nova - Tawa B

Alternative arrangements, expiry date and other conditions

- A nine month exemption until 30 November 2009 is sought.
- The alternative arrangement proposed is that a new ICP will be created which represents all customer installations downstream from the interconnection point for each Nova bypass network.
- A proposed condition is that prior to the expiry of the exemption, issues around the definition of 'gas distributor' in relation to bypass networks are resolved.

Reasons:

- The Rules are unclear as to whether the requirements to enter information relating to customers connected to the Nova gas distribution network apply. This is because customers taking supply through Nova's gas distribution network currently can only switch to another supplier by connecting, or reconnecting, to the open access network that Nova's distribution network competes with. No other retailer or supplier has an agreement to supply customers on Nova's distribution network and as such, there is no switching activity on the Nova distribution network.
- The issue of Nova being defined as a 'distributor', as defined by the Act, is currently being reviewed, both in this context and in relation to similar circumstances under the Gas (Downstream Reconciliation) Rules 2008 (refer DR08-27-U); and Nova Gas has received a temporary exemption so that the treatment of Nova's non open access networks can be investigated.
- An exemption as sought is appropriate, as it will allow the issues related to reconciliation and switching to be considered together at a later date.

Additional information

Relationship to other exemptions

An earlier application, DR08-27-U, from Nova Gas under the Gas (Downstream Reconciliation) Rules 2008 to exempt bypass gas gates from the gas allocations process set out under those Rules (but not from other aspects of the Rules), has been previously considered by Gas Industry

Co. It was decided to grant a time limited exemption, to 30 June 2009, to allow time for the underlying issues to be further investigated – see [Gas \(Downstream Reconciliation\) Rules 2008 \(Transitional Exemption DR08-27-U: Bypass Gas Gates\) Notice 2008](#).

The current application cross references to the previous application and exemption, in that it suggests that if the current application is approved it will allow the substantive issues in relation to the treatment of bypass networks under both the Gas (Downstream Reconciliation) Rules 2008 and the Switching Rules to be considered together. However, because the downstream reconciliation exemption expires on 30 June 2009, it would be necessary to carry out the substantive consideration prior to that date. The current application seeks an exemption until 30 November 2009.

Application history

The current application from Nova Gas replaces a previously submitted application which sought permanent exemption of the specified bypass networks from the whole of the Switching Rules. This application was not determined by Gas Industry Co because of concerns that it sought an exemption beyond the scope possible under the transitional exemption powers as set out in rule 90. Nova Gas resubmitted the current application for consideration, which:

- is expressed as being transitional in nature as it is intended to be in place until the substantive issues for both switching and downstream reconciliation are considered together; and
- is specifically time limited and proposes alternative arrangements as set out in rule 90.3.

While Gas Industry Co acknowledges this current application more closely reflects the nature of a transitional type exemption, it reserves its position on whether it has the jurisdiction to grant the exemption under rule 90. It also seeks the views of submitters on this issue.

It is noted that one of the reasons given, in the Nova application, for granting an exemption is that the matter of Nova being a ‘distributor’ as defined by the Gas Act is under review. That issue has been considered by Gas Industry Co and its view is that Nova Gas **is** a distributor for the purposes of the Gas Act 1992 and the Rules in respect of its bypass networks. While Gas Industry Co has not planned any further formal consideration of this issue, it is interested in receiving the views of submitters on whether they agree or disagree with the position taken by Gas Industry Co.

How bypass networks are addressed under the Rules

Generally speaking, consumer installations on bypass networks are treated the same as consumer installations on open access (or other) networks under the Rules and the registry. One of the purposes of the Rules is to establish a central gas registry that includes ICPs for all gas consumers, including direct connect consumers and those on bypass networks. Rule 43 makes it clear that Nova Gas, as a distributor, must assign an individual ICP identifier for each single consumer installation that is connected to its bypass distribution networks. Under rule 41, prior to go-live, distributors, retailers and meter owners are required to populate the registry with ICP parameters for those consumer installations – Nova Gas would be responsible for carrying out

each of those functions for its bypass consumer installations. Post go-live, Nova Gas would also be responsible for maintaining its bypass network ICP information on the registry, to ensure that information is current and accurate (rules 58 and 59).

However, there is one key difference between the treatment of bypass network consumer installations and open access network consumer installations under the switching framework. In short, a change by a consumer to or from a retailer on a bypass network is not a 'switch' for the purpose of the Rules and none of the registry switching processes apply. Rule 82 makes it clear that such a change is to be processed by either the creation of a new ICP or by the recommissioning of an existing ICP, ie when the distributor providing the connection service to a consumer is replaced. In addition, rule 63 provides that the switching processes set out in the Rules only apply to move switches and standard switches in respect of existing and current consumer installations – and not moves between distribution networks.

A move by a consumer to or from Nova Gas' bypass networks will necessarily involve a new connection (or reconnection) to a different distribution network. Under the Rules, a consumer installation must have a single point of connection to a distribution system (or transmission system), meaning that a new consumer installation (and ICP in the registry) is created (or recommissioned) each time a consumer connects to a different distribution network. These processes are set out in rules 51 to 59, including timeframes for ICP creation and recommissioning to occur. Notice of a proposed bypass must be given by the new retailer ten business days prior to the bypass occurring. Once the bypass is completed through the creation/recommissioning of the new ICP, the 'losing' distributor/retailer is required to correct the consumer's previous ICP information, including ICP status – which would become INACTIVE-PERMANENT then DECOMMISSIONED. These same processes would apply where a consumer moves from one open access distribution network to another.

How bypass networks would be addressed under the proposed exemption

The current application seeks an exemption for Nova Gas' bypass networks from rule 41 which deals with the initial population of the gas registry with ICP parameters for existing ICPs. Nova Gas proposes as an alternative arrangement that it will enter one ICP on the registry for each of its bypass networks. Therefore there will be no ICPs on the registry for the consumer installations connected to Nova Gas' bypass networks. An important consideration is that of whether the absence of ICP data for each of Nova Gas' bypass consumer installations in any way impacts on the ability of Nova Gas to carry out other obligations under the Rules in respect of bypass networks, or prejudices the ability of other retailers to effect a 'switch' or bypass to or from a bypass network. In this respect an initial analysis by Gas Industry Co concludes as follows:

- If the alternative arrangement suggested by Nova Gas is accepted as a condition of the exemption (ie that all of the ICPs on a bypass network should be represented by a single notional ICP connected to the transmission system), then Nova Gas' obligations as a distributor would be limited to entering and maintaining five ICPs on the registry (ie that essentially treats Nova Gas' bypass network consumer installations at each gas gate as one large direct connect consumer). While it may be unclear how some ICP parameters might be

populated (ie load shedding category, ICP altitude and allocation group) for such a deemed 'ICP' and regarding the application of rule 36 (ICP identifier to appear on consumer invoices), there would appear to be no issues preventing Nova Gas being able to carry out its other obligations under the Rules in respect of that deemed 'ICP'.

- There should be no impact on the ability of other retailers to effect a 'switch' from a customer installation on a bypass network, given that 'switches' of this type are governed by rule 82 which provides for a new ICP to be created (or an old one re-commissioned) on the open access network.
- The absence of any information on such customer installations on the gas registry will detrimentally affect the ability of other retailers to access information on a Nova Gas customer's individual customer installation – which would otherwise be legitimately available on the registry and is available in respect of all other consumer installations. There is also the issue of whether there will be wider adverse effects from not having the Nova Gas data on the gas registry for the period of the exemption. One of these impacts will relate to the allocation of ongoing fees, as the alternative arrangement proposed will likely result in other retailers paying a greater proportion of the ongoing fees than would have otherwise been the case (ongoing fees are allocated on a ICP basis). But there may be other issues such as how the registry would 'record' a move by a consumer by a Nova Gas bypass network to a retailer on an open access network.

Gas Industry Co also notes the alternative arrangement in the exemption does not address the application of rule 43 – which, as noted above, provides that an ICP identifier must be identified for each consumer installation. Gas Industry Co considers that, if a transitional exemption were to be granted, alternative arrangements for rule 43 would need to be specified as well.

3. Issues

Stakeholders are invited to comment on the following issues which may be relevant to consideration of the application.

- Do you agree or disagree that the consumer installations connected to Nova Gas' bypass networks should be included in the gas registry and subject to the Rules? Please give your reasons.
- Do you agree or disagree that a transitional exemption should be granted as sought? Please give your reasons.
- Do you agree or disagree with Nova's proposition that a transitional exemption should be granted mainly as a holding action until the issues in relation to bypass networks under both the Rules and the Gas (Downstream Reconciliation) Rules 2008 can be properly addressed? (The alternative is to address the underlying issues in the present application on their merits)

immediately, and deal separately with the downstream reconciliation issues at a later time.)
Either way please give reasons.

- If a transitional exemption is granted – and given the desirability as suggested by Nova Gas, of considering at the one time, the substantive issues in regard to the coverage of bypass networks by both the Rules and the Gas (Downstream Reconciliation) Rules 2008 – is there any merit in the exemption expiring other than on the same date (30 June 2009) as the existing downstream reconciliation exemption?
- Given the additional information set out above, do you consider that there would be any adverse impact on other registry participants if the exemption as sought was granted? In particular would the ability of a move to occur from a customer installation on a bypass network to a new/recommissioned consumer installation on an open access network be impaired? If you think there would be adverse impacts, explain what they are and the reasons for those impacts occurring.
- The possibility of adverse impacts on the ability to move to or from a bypass network under the Rules notwithstanding, do you have any information available which would indicate that these occurrences would be likely during the proposed term of the exemption?
- The ability to make a switch aside, are there any wider reasons for not granting the exemption and ensuring that data for all Nova Gas' bypass ICPs is entered into the registry? If yes, what are those wider reasons?
- Do you think the condition suggested by Nova Gas, ie that all of the ICPs on each bypass network should be represented by a single notional ICP, is practicable or acceptable? Give the reasons for your view. If you disagree with this alternative arrangement, do you have any views on a more acceptable alternative condition?
- Do you consider that the nature of the exemption proposed by Nova Gas is such that Gas Industry Co has the jurisdiction to grant a transitional exemption under rule 90?
- Do you have any views on the contention by Nova Gas that, in respect of its bypass networks, Nova Gas is not a 'distributor' under the Gas Act 1992 and the Rules?

Appendix A Recommended Format for Submissions

To assist Gas Industry Co with the consideration of submissions, a suggested format for the preparation of submissions is set out below. This reflects the issues discussed in the main body of the paper. Submitters are free to provide any other material.

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

Question	Comment
<i>Q1: Do you agree or disagree that the consumer installations connected to Nova Gas' bypass networks should be included in the gas registry and subject to the Rules? Please give your reasons</i>	
<i>Q2: Do you agree or disagree that a transitional exemption should be granted as sought? Please give your reasons.</i>	
<i>Q3: Do you agree or disagree with Nova's proposition that a transitional exemption should be granted mainly as a holding action until the issues in relation to bypass networks under both the Rules and the Gas (Downstream Reconciliation) Rules 2008 can be properly addressed? (The alternative is to address the underlying issues in the present application on their merits immediately, and deal separately with the downstream reconciliation issues at a later time.) Either way please give reasons.</i>	

Question	Comment
<p><i>Q4: If a transitional exemption is granted – and given the desirability as suggested by Nova Gas, of considering at the one time, the substantive issues in regard to the coverage of bypass networks by both the Rules and the Gas (Downstream Reconciliation) Rules 2008 – is there any merit in the exemption expiring other than on the same date (30 June 2009) as the existing downstream reconciliation exemption?</i></p>	
<p><i>Q5: Given the additional information set out above, do you consider that there would be any adverse impact on other registry participants if the exemption as sought was granted? In particular would the ability of a move to occur from a customer installation on a bypass network to a new/recommissioned consumer installation on an open access network be impaired? If you think there would be adverse impacts, explain what they are and the reasons for those impacts occurring</i></p>	
<p><i>Q6: The possibility of adverse impacts on the ability to move to or from a bypass network under the Rules notwithstanding, do you have any information available which would indicate that these occurrences would be likely during the proposed term of the exemption?</i></p>	
<p><i>Q7: The ability to make a switch aside, are there any wider reasons for not granting the exemption and ensuring that data for all Nova Gas' bypass ICPs is entered into the registry? If yes, what are those wider reasons?</i></p>	

Question	Comment
<p><i>Q8: Do you think the condition suggested by Nova Gas, ie that all of the ICPs on each bypass network should be represented by a single notional ICP, is practicable or acceptable? Give the reasons for your view. If you disagree with this alternative arrangement, do you have any views on a more acceptable alternative condition?</i></p>	
<p><i>Q9: Do you consider that the nature of the exemption proposed by Nova Gas is such that Gas Industry Co has the jurisdiction to grant a transitional exemption under rule 90?</i></p>	
<p><i>Q10: Do you have any views on the contention by Nova Gas that, in respect of its bypass networks, Nova Gas is not a 'distributor' under the Gas Act 1992 and the Rules?</i></p>	

Appendix B

Gas Industry Company Limited

Application for an Exemption from the Gas (Switching) 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):

Transitional (under rule 90)

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

Gas (Switching) Rules 2008 41.

In relation to all customers connected to Nova Gas's distribution network behind each of the following dedicated gates:

FLB15601 Nova – Flatbush

HST05203 Nova - Hastings

HWA20802 Nova - Hawera 2

HUN15302 Nova - Hunua 2

TWB24810 Nova - Tawa B

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.

The rules are unclear as to whether the requirement in the Gas (Switching) Rules 2008 to enter information relating to customers connected to the Nova Gas distribution network apply.

Customers taking supply through Nova's gas distribution network currently can only switch to another supplier by reconnecting to the open access network that Nova's distribution network competes with.

No other retailer supplies or has an agreement to supply customers on Novas distribution network and as such there is no switching activity on the Nova distribution network.

The issue of Nova being defined as a 'distributor' as defined by the Act is currently being reviewed also in relation to similar circumstances under the Reconciliation Rules (refer DR08-27-U) and Nova Gas has received a temporary exemption so that the treatment of Nova's non open access network can be investigated.

The exemption request allows the issues relating to reconciliation and switching to be considered together to ensure a consistent outcome is achieved.

The exemption request is without prejudice to Nova's views about whether Nova's proposed alternative arrangement is not compliant with the rules. In fact we believe that Novas alternative arrangement is compliant with the rules however we recognise that the GIC currently has a different view on this matter and we suggest that the consideration of the issues relating to reconciliation and switching are related and should be considered together.

In order to combine consideration of the reconciliation and switching issues we suggest an exemption is appropriate so that we do not end up with two separate processes.

The underlying Issues we seek resolution of under the Reconciliation and Switching Rules:

At the heart of the issues relating to both whether or not the reconciliation and switching rules should apply to Nova Gas's bypass non open access network is the definition of gas distributor under the Gas Act 1992. Nova Gas believes that it is not acting in the capacity as a distributor as intended and defined under the Gas Act 1992 and as such the rules and regulations do not apply to the customers downstream of the interconnection point to the Vector Transmission system with the supplied through Nova's own network.

The gas gates listed above are non open access pipelines of Nova's that deliver gas to

Nova's gas customers only.

Nova's bypass network competes with the Powerco and Vector open access distribution networks and offers an alternative distribution service for customers of Nova.

Rule 65.2.3 of the switching rules require a retailer to have a distribution services agreement before a valid switch can be completed. As there are no other retailers able to distribute gas on Nova's network then no customer on the Nova network can switch to another retailer – instead they must disconnect (and they do from time to time) from the Nova network and reconnect to the open access network.

This makes redundant the application of the switching and registry rules to Nova's distribution network.

We note that this situation exists also on the open access distribution systems of Powerco and Vector where there are embedded networks within malls, office buildings and apartment buildings that supply multiple consumers (that are metered and can be disconnected independently) yet switching and metering only occurs at a master meter level with the embedded network not being considered a distribution network for the purposes of reconciliation or switching.

Why the Exemption should be granted

Section 90 provides that:

90.1 – a registry participant may apply in writing to the industry body for a transitional exemption from complying with one or more of the Rules;

90.2 a transitional exemption must set out alternative arrangements for compliance

90.3 in the application the participant must set out:

- the rules from which it seeks an exemption;
- the reasons for the exemption;
- the alternative arrangements;

90.4 the industry body may grant an exemption (subject to additional conditionals) if it sees fit.

There is no specific guidance in the regulations as to what criteria is to be used in evaluating exemption applications and we suggest similar to the Reconciliation rules that the appropriate criteria are:

1) Support and achievement of the Gas Act 1992 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 43F, 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 switching and registry arrangements by ensuring that competition between multiple retailers trading on their network is carried out in an efficient and cost effective manner.

Requiring a non open access network that competes with an open access network to incur costs associated with compliance with the new switching rules where no switching activity can actually occur will represent a reduction in competitive tension and introduce 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:

- (a) maintaining economic efficiency, and reliability of supply created by having multiple competing distribution networks
- (b) (i) ensuring that there not disincentives to new investment in competitive distribution networks;
- (b) (ii) barriers to competition in the market for distribution services are minimised;
- (b) (iii) maintaining incentives for development and investment in new distribution networks and in particular those that compete with existing monopoly networks;
- (b) (iv) delivered gas costs are subject to downward price pressure through competition in

not only the energy part of the supply chain but also the distribution segment.

2) The purpose of the Gas (Switching) Rules 2008

The purpose of the rules as per Section 39 of the Gas (Switching) Rules 2008 states:

39 ' *The purpose of the registry is to:*

39.1 To facilitate efficient and accurate switching of retailers by consumers; and

39.2 To provide an authoritative database of current and historical information on all ICP parameters, to facilitate accurate billing of consumers and allocation of charges to retailers; and

39.3 To provide a mechanism by which the accuracy and timeliness of information provided in relation to an ICP is controlled and recorded.'

Applying the switching rules downstream connections to Nova distribution network is unnecessary as:

- a) consumers are not able to switch to another retailer without also reconnecting to a competing open access network;
- b) Nova Gas meters all gas consumption off its distribution network at the point of connection to the Vector Transmission network (except in the instance of Tawa A, where this quantity is metered by difference)

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

- it would not be fair or efficient to impose requirements and costs on a reconciliation participant where there is no possibility of switching activity occurring between multiple retailers. Ultimately, this leads to higher costs being passed through to consumers and a reduction in competitive tension between the open access networks of Vector/Powerco and the non open access network of Nova.
- granting an exemption will not affect the reliability of the switching registry in relation to customers and their switching activity on open access networks.

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

The exemption will not affect other participants.

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

9 months from 1 March 2009 until 30 November 2009.

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

- 1) the issues around definition of 'gas distributor' in relation to bypass networks and reconciliation are resolved
- 2) Nova Gas will provide data regarding each gas interconnection as one ICP presenting all downstream connections. All metered gas consumption at the interconnection point for each gate is allocated to Nova Gas.

We believe that this interpretation is consistent with the Switching Rules however in order to prevent two separate processes relating to bypass networks being run simultaneously given the GIC has indicated that it has a different interpretation, then we believe a short term exemption is appropriate.

6. Additional information for a transitional exemption

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

N/a

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