

Date 22 September 2010

Subject Analysis of Submissions - Consultation on Minor Amendments to the Gas (Switching Arrangements) Rules 2008

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## Introduction and Purpose

In July 2010, Gas Industry Co consulted on proposed minor amendments to the Gas (Switching Arrangements) Rules 2008 (the Rules). The amendments seek to:

- alter the scope of some of the Rules to align with intended best practice to ensure the effective operation of switching arrangements;
- clarify the scope of some of the existing provisions in the Rules;
- promote ease of understanding and interpretation; and
- resolve some minor drafting and wording issues to provide greater consistency within the Rules, and between the Rules and other gas governance regulations and rules.

This document summarises the submissions made on the proposals and provides Gas Industry Co's response to issues raised.

## Summary of proposals

Submitters were invited to provide feedback on eight questions corresponding to eight areas of amendments to the Rules. These categories can be broadly summarised as follows:

1. *Definitions*: amendments to, or insertion of, various definitions including recognition of defined terms in other gas governance arrangements.
2. *Payment year for ongoing fees*: amendments sufficient to align the payment year of the ongoing fees with Gas Industry Co's financial year.
3. *Notices and notifications*: amendments to clarify the form in which notices are to be given, their means of transmission and when notices are deemed to be given and received.
4. *Loss factors*: amendments to remove the mandatory requirement for distributors to set loss factors, given that loss factors are no longer widely used.

5. *Gas switching notice*: amendments relating to requirements prior to initiating a switch; timeframes and constraints on switch dates for standard and move switches; and clarifications to the responses available to a switching notice and the timeframes for providing a response.
6. *Gas switch withdrawal notice*: clarifications regarding the requirements that apply when responding to a withdrawal notice and the process that follows a withdrawal being rejected, including a requirement for refresher instructions if a further withdrawal request is to be given.
7. *Deletion of transitional provisions*: amendments to remove provisions relating to the switch process, registry functionality and reporting requirements in the period up to and around go-live and provisions for transitional exemptions.
8. *Other minor amendments*: several minor drafting changes to improve clarity, insert cross-references and ensure consistency across the Rules, the Gas Act and other gas governance arrangements.

## Summary of submissions

Seven submissions were received from a cross-section of retailers, a distributor and a transmission system owner. Submissions were generally positive with the majority of submitters agreeing with the proposals in their entirety. There were a few alternative drafting suggestions, questions as to whether provisions were redundant, questions as to repetitiveness, and questions related to the operation of certain rules. Table 1 summarises the responses from each submitter, with a tick indicating that the submitter agreed with the proposed changes, agreed with the drafting (unless otherwise noted with a subscript) and agreed that the changes are minor.

**Table 1 Summary of response to proposals**

Submitter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8
<b>Contact</b>	✓	✓	✓	✓	✓ <sub>MD</sub>	✓	✓	✓
<b>Energy Direct NZ</b>	✓	✓	✓	✓	✓	✓	✓	✓
<b>Energy Online</b>	✓	✓	✓	✓	✓	✓	✓	✓
<b>Genesis</b>	✓	✓	✓ <sub>MD</sub>	✓	✗	✓ <sub>MD</sub>	✓	✓
<b>Mighty River Power</b>	✓	✓	✓	✓	✗	✗	✓	✓
<b>Powerco</b>	✓	✓	✓	✓	✓	✓	✓	✓
<b>Vector</b>	✓	✓ <sub>MD</sub>	✓	✓	✗	✓	✓	✓

✓<sub>MD</sub> indicates agreement with proposals but with minor drafting suggestions

The fifth category of changes—regarding the initiation of, and response to, a switch notice and the constraints on a requested switch date—is possibly the largest of the minor changes being considered. Hence it is unsurprising that this area attracted the most feedback from submitters and suggestions on alternative approaches. Further details of the issues raised are given in the next section. In response to

feedback and subsequent discussions with submitters, Gas Industry Co has revised the drafting of parts of rules 67 and 72 to provide greater clarification.

## Issues raised and Gas Industry Co response

### Payment year

Vector suggested that, for greater accuracy, rule 24.5.1(a) be reworded as follows:

- (a) On the first day of a calendar month; and...

Gas Industry Co agrees that the amendment provides more clarity and it has been incorporated in the final draft of the Rules.

### Notices and notifications

Genesis noted a spelling mistake in rule 29. This has been corrected.

### Loss Factors

Contact submitted that *"the inclusion of the loss factor for gas serves no useful purpose and would suggest that this field be removed from the registry"*. This issue was discussed with distributors prior to the re-draft of the Rules and at least one distributor noted that they still use this field (and still use loss factors for billing purposes). Gas Industry Co therefore proposes to retain the field within the registry and preserve the changes as drafted to rules 43.2.2 and 47.1.

### Initiation of switch

Vector submitted that rule 65.5.6 should not be deleted as *"the removal of rule 65.2.6 implies that all parties are covered by the Downstream Reconciliation Rules. However, there are some parties in relation to direct connect gas gates that are exempt, or may in the future be exempt, from certain provisions of the Rules."* Vector further recommends that the clause should be amended as follows:

Where the **ICP** is a **direct connect gas gate**, and is or will be supplied by more than one party, be a party to a valid and subsisting agreement with an **allocation agent** authorised to allocate gas at the **direct connect gas gate** from which gas is supplied to the **ICP**.

Gas Industry Co recognises that there have been instances in the past where multiple shippers have supplied direct connect consumers and that this situation could easily arise again in the future. Gas Industry Co considers that, since there can only be one responsible retailer recorded in the registry for a direct connect consumer, the reconciliation of quantities in the case of multiple shippers and a single meter would have to be recognised through a commercial arrangement with the responsible retailer<sup>1</sup>. Gas Industry Co does not consider that the Rules should be used to mandate contractual agreements for this purpose.

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<sup>1</sup> This issue would presumably only arise on the Vector transmission system, since the nominations regime on the Maui system already provides a mechanism for determining shipper quantities, with the welded party responsible for any imbalance.

The clause was included in the Rules because the original drafting pre-dated the Gas (Downstream Reconciliation) Rules 2008 (the Reconciliation Rules) and had to reflect the incumbent allocation arrangements under the Reconciliation Code. With both sets of rules now in place, Gas Industry Co believes that a requirement to be party to an agreement with an allocation agent is redundant (and nonsensical for the majority of gas gates). If there are concerns over allocations at gas gates which are exempted from certain aspects of the Reconciliation Rules then this is a policy question for the Reconciliation Rules.

It is further noted that exemptions granted under the Reconciliation Rules can be varied or revoked at any time if Gas Industry Co determines that the exemption does not better achieve the purpose of the Reconciliation Rules and the objectives in section 43ZN of the Gas Act. Therefore there are more appropriate remedies to address the concerns of Vector in respect of the deletion of this rule.

### **Requested switch date for move switches**

Two retailers commented on the proposal to include a new rule 67.3A, which sets out the time constraints for a requested switch date in a move switch request. Contact proposed new wording to give the rule greater clarity; Genesis submitted that the proposed drafting does not achieve its aim of clarifying switch timeframes.

Gas Industry Co agrees with Contact to the extent that rule 67.3A would be more consistent if it echoed the drafting of rule 67.3. However this wording would infer that a requested switch date is optional for a move switch which is not the case. The current drafting of rule 67.3A captures the fact that a requested switch date is mandatory for a move switch.

The Genesis submission supposes that rule 67.3A limits the requested switch date to being, at its earliest, the day after the new retailer becomes responsible for the site. This is not the intent of the rule and is not what is proposed. Rule 67.3A states that the earliest date for a requested switch date is the day after the responsible retailer (that is, the current retailer shown in the registry when the switch is initiated) became responsible for supply.

The reason for this lower bound on the requested switch date is so that a retailer cannot unwind a previous switch by back dating a move switch to a time before the current retailer became the responsible retailer. It is possible that the situation could arise where a previous switch needs to be unwound, but this is catered for by the switch withdrawal process.

Given that the current drafting has caused some level of confusion, Gas Industry Co proposes to slightly re-word rule 67.3A as follows:

**If the new retailer requests a move switch, the requested switch date must not be earlier than 1 business day after the date the responsible retailer became the responsible retailer and must not be more than 23 business days after the date the gas switching notice is given to the registry.**

## **Response to a gas switching notice**

Two submissions made comments on the proposed re-drafting of rule 69. Genesis believes that the phrase in brackets in rule 69.1A is redundant and Mighty River Power raised concerns that the drafting of rule 69 *“does not give flexibility to retailers when the consumer exercise their contractual or statutory right to change their mind at a date close to the 23<sup>rd</sup> business day switch date.”*

Gas Industry Co accepts Genesis’ point that rule 69.1A is rather verbose, but given that compliance with, and interpretation of, rule 69 has been an issue for some participants, the intention is to remove all ambiguity from the process that has to be followed.

Mighty River Power’s objection to the drafting of rule 69 is that a (responsible) retailer’s compliance with rule 69.2 can be contingent on the requesting retailer responding to a switch withdrawal request. Gas Industry Co notes that this is already the case in the current version of the Rules and also in the way the registry operates. The proposed drafting doesn’t change the current operation of the registry – it merely draws greater attention to how the withdrawal process interacts with the provision of a gas transfer notice.

Given that the purpose of the Rules is to *“[...] enable consumers to choose, and alternate, efficiently and satisfactorily between competing retailers”*, Gas Industry Co believes that it is important to promote efficient and effective switching in compliance with the 23 business day timeframe for completing a switch. The knowledge that entering a switch withdrawal after 18 business days could jeopardise compliance with rule 69.2 should provide adequate motivation for any requests to withdraw to be conducted as early as possible and for attempts to resolve this process to occur as soon as possible thereafter, including, if necessary, by communicating directly with the requesting retailer.

## **Switching within seven business days of the gas switching notice**

The current drafting of the Rules prevents a requesting retailer from requesting a switch date less than seven business days after the date the gas switching notice was given (for a standard switch). Following experience with the new switching arrangements and feedback from participants, Gas Industry Co recognised that situations can occur where the requesting and responsible retailer both agree on an earlier switch date but rule 67.3 prevents that date being used.

The amendment proposed by Gas Industry Co to allow the above situation to occur was by inclusion of a new rule 72.2.2. Two submitters commented on this provision; both of whom questioned how this approach can be used whilst still complying with rule 67.3.

Mighty River Power noted that there are circumstances where the responsible retailer may prefer an earlier switch date and this is not recognised by the amendment. Also, in practical terms, including a preferred date in a comments field presents difficulty for a system engineered around key fields, and thus the preferred date may be missed. Genesis agreed with the aim of the proposal but suggested alternative drafting that would give effect to the proposals and ensure that there is no ambiguity surrounding compliance with rule 67.3.

In light of submissions, Gas Industry Co considers that the best way to facilitate 'early switching' is to allow the requested switch date in the gas switching notice to be less than seven business days from the date of the gas switching notice, but, where the requested switch date is less than seven business days later, to give the responsible retailer discretion as to whether it accepts the early date. This is consistent with the approach suggested by Genesis. If the responsible retailer does not accept the early date then the seventh business day must be used instead. Allowing the responsible retailer to choose a date earlier than that requested would provide an opportunity to pass on periods of unwanted ownership of an ICP, so this will not be permitted.

Gas Industry Co believes that this approach provides a good balance since it allows the requesting retailer to request an early switch, gives the responsible retailer discretion over accepting an early switch and also uses the existing functionality of the switch process without requiring extra fields or use of the comments field. To give effect to this process, rule 67.3 and parts of rule 72 will be modified as follows:

**67.3** If the **new retailer** includes a requested **switch date** for a **standard switch**, that date must not pre-date the date the gas switching notice is given to the **registry** and must not be more than **23 business days** after the date the gas switching notice is given to the **registry**.

[...]

**72.2** Subject to rules 72.3 and 72.4, if the gas switching notice included a requested **switch date** that complied with rule 67.3 or 67.3A, the **responsible retailer** must use the requested **switch date** as the **switch date** and provide **switch readings** applicable to that date.

**72.3** If the **responsible retailer** has, at the time the gas switching notice was given to the **responsible retailer** by the **registry**, billed a consumer for the **ICP** up to a date after the requested **switch date** then the **responsible retailer** must use –

**72.3.1** The day after the billed-to-date as the **switch date** and the billed readings as the **switch readings** if the billed-to-date is less than **23 business days** after the gas switching notice was received; or

**72.3.2** A **switch date** no later than **23 business days** after the gas switching notice was received if the billed-to-date is 23 or more **business days** after the gas switching notice was received.

**72.4** For a **standard switch**, if rule 72.3 does not apply and the requested **switch date** in the gas switching notice is less than **7 business days** from the date the gas switching notice was received by the **registry**, the **responsible retailer** may, at its discretion, use –

**72.4.1** The requested **switch date**; or

**72.4.2** A **switch date 7 business days** from the date the gas switching notice was received by the **registry**.

**72.5** If a gas transfer notice relates to a gas switching notice that did not include a requested **switch date** the **switch date** must be no later than 23 **business days** after the gas switching notice was received by the **responsible retailer**.