

DRAFT GAS GOVERNANCE (BALANCING) RULES

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1. Title

These rules are the Gas Governance (Balancing) Rules 2010.

2. Commencement

2.1 Rules 6, 13.1.1, 13.1.2, and 15 come into force on the go-live date.

2.2 The rest of these rules come into force on the 28th day after the date of their notification in the *Gazette*.

3. Purpose

The purpose of these rules is to achieve efficient, unified management of aggregate imbalance in the transmission system.

4. Outline

4.1 These rules provide for—

4.1.1 the appointment of—

- (a) a single balancing operator and development of a unified balancing plan (to be approved by the industry body) by transmission system owners; or
- (b) in certain circumstances, a single balancing operator and development of a unified balancing plan by the industry body; and

4.1.2 the powers and functions of the balancing operator to—

- (a) purchase and sell gas when thresholds in the balancing plan are or may be breached; and
- (b) allocate gas and costs associated with the purchase and sale of gas under the rules; and

4.1.3 the rights and obligations of users and transmission system owners in relation to the balancing operator's functions.

Part 1

General provisions

5. Interpretation

5.1 In these rules, unless the context otherwise requires,—

Act means the Gas Act 1992;

balance has the meaning in rule 5.2;

balancing action means one or more transactions to—

- (a) purchase balancing gas committed to at the same time for the purposes of rule 15.1.1; or
- (b) sell balancing gas committed to at the same time for the purposes of rule 15.2.1;

balancing gas means gas that is sold or purchased as part of a balancing action;

balancing market means the market established or accessed by the balancing operator to comply with rule 16.1;

balancing operator means a person appointed as the balancing operator by the transmission system owners under rule 37 or the industry body under rule 45, as applicable;

balancing operator service provider agreement means an agreement between the transmission system owners or the industry body, as the case may be, and a person in relation to that person's appointment as the balancing operator;

balancing plan—

- (a) means a balancing plan approved by the industry body and in force under subpart 1 of Part 3; and
- (b) includes any amendment to that plan that has come into force;

balancing zone means a part of the transmission system defined as a balancing zone in the balancing plan;

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, or Waitangi Day are observed for statutory holiday purposes; and
- (c) any other day that the industry body has determined not to be a business day as published by the industry body;

cash-out amount means the product of the gigajoules of balancing gas allocated to a user in respect of a balancing action and the cash-out price for that balancing gas;

cash-out price means the price per gigajoule determined by the balancing operator under rule 20.1.2 in respect of balancing gas allocated to a user;

clearing price means,—

- (a) if rule 16.4.3 applies in relation to the purchase of balancing gas by the balancing operator in a balancing action, the highest sum of—
 - (i) the offer price (per gigajoule) for any balancing gas accepted in that balancing action, plus
 - (ii) any transmission charges payable by the balancing operator to transmit that balancing gas from the purchase location to the reference location (per gigajoule); and
- (b) if rule 16.5.3 applies in relation to the sale of balancing gas by the balancing operator in a balancing action, the lowest sum of—
 - (i) the offer price (per gigajoule) for any balancing gas accepted in that balancing action, less
 - (ii) any transmission charges payable by the balancing operator to transmit that balancing gas from the reference location to the purchase location (per gigajoule); and
- (c) if rule 16.4.3 does not apply in relation to the purchase of balancing gas by the balancing operator in a balancing action, the weighted average of the sum of—
 - (i) the offer price (per gigajoule) for any balancing gas accepted in that balancing action; plus
 - (ii) any transmission charges payable by the balancing operator to transmit that balancing gas from the purchase location to the reference location (per gigajoule); and
- (d) if rule 16.5.3 does not apply to the sale of balancing gas by the balancing operator in a balancing action, the weighted average of the sum of—
 - (i) the offer price (per gigajoule) for any balancing gas accepted in that balancing action; less

- (ii) any transmission charges payable by the balancing operator to transmit that balancing gas from the reference location to the purchase location (per gigajoule);

commencement date means the date referred to in rule 2.2;

directly managed, in relation to a balancing zone, means a balancing zone that is to be managed directly through the sale and purchase of balancing gas in accordance with rules 15.1 and 15.2;

go-live date means the date notified by the industry body in the *Gazette* in accordance with rule 33.4;

imbalance has the meaning in rule 5.2;

indirectly managed, in relation to a balancing zone, means a balancing zone that is to be managed through the taking of gas from or injection of gas into a directly managed balancing zone, for example, by pressure regulation;

industry body means—

- (a) the industry body approved by Order in Council under section 43ZL of the Act; or
- (b) in the event that the approval of the industry body is revoked under section 43ZM of the Act and no other industry body is approved, the Energy Commission to be established under section 43ZZH of the Act;

information exchange means—

- (a) any information system that is used to facilitate information exchange in respect of access to all or part of the transmission system; and
- (b) includes OATIS, the online interactive information system that is used to facilitate information exchange in respect of the open access regime under MPOC and VTC;

interconnected party means a person who is a party to an interconnection agreement with a transmission system owner;

interconnection agreement means any agreement or customary arrangement between a transmission system owner and another person relating to the receipt of scheduled or agreed quantities of gas into or delivery of scheduled or agreed quantities of gas out of a part of the transmission system owned by the transmission system owner;

interconnection point means any point where—

- (a) an interconnected party's facilities connect to the transmission system; or
- (b) 2 parts of the transmission system owned by different transmission system owners connect;

line pack, in relation to a part of the transmission system, means the quantity of gas in that part of the transmission system;

Maui Pipeline Operating Code or **MPOC** means the code, issued by the owner of that part of the transmission system identified as the Maui pipeline on the map published under rule 12, covering operation of the Maui pipeline, as amended from time to time;

publish, in respect of information to be published by a person, means to make that information publicly available on the person's website;

reapplication date means the date, notified by the Minister in a notice in the *Gazette* under rule 49.3, from which subpart 2 of Part 3 reapplies;

reference location means the location or balancing zone used by the balancing operator to evaluate balancing gas offers in respect of a proposed balancing action;

shipper means a person who is a party to an agreement with a transmission system owner to have gas transmitted through all or part of the transmission system;

target line pack, in relation to a part of the transmission system, means the target quantity of line pack for that part of the transmission system as specified in or determined in accordance with the balancing plan;

trader means a person who buys or sells gas within the transmission system;

transmission charge means an amount payable to a transmission system owner for transmission of gas in a part of the transmission system;

transmit, in relation to gas, includes to receive a quantity of gas at one point on the transmission system and deliver an equivalent quantity of gas to another point on the transmission system;

transmission system means the system of interconnected high pressure open access gas transmission pipelines depicted on the map published by the industry body under rule 12;

transmission system arrangements mean any or all of the following—

- (a) a transmission system code;
- (b) an agreement entered into under or in accordance with a transmission system code (for example, a transmission services agreement or gas transfer agreement);
- (c) an agreement relating to access to and use of a part of the transmission system entered into other than under or in accordance with a transmission system code;
- (d) an agreement relating to title to gas that is injected into, taken from, or transmitted within the transmission system;
- (e) the Gas (Downstream Reconciliation) Rules 2008;

transmission system code means MPOC, VTC, and any other code that sets out rules covering access, use, and operation of a part or all of the transmission system, as amended from time to time;

transmission system owner means—

- (a) a person who owns all or any part of the transmission system; and
- (b) if two or more persons jointly own any part of the transmission system, those persons jointly and severally;

user—

(a) means—

- (i) a shipper; or
- (ii) a trader; or
- (iii) an interconnected party; or
- (iv) a transmission system owner in relation to—
 - (A) its activities as a shipper, trader, or interconnected party; or
 - (B) its obligation to balance other than in regard to its activities as a shipper, trader, or interconnected party; and

(b) does not include the balancing operator in relation to the performance of the balancing operator's functions;

Vector Transmission Code or **VTC** means the code, issued by the owner of that part of the transmission system identified as the Vector pipeline on the map published under rule 12, covering operation of the Vector pipeline, as amended from time to time.

5.2 For the purposes of these rules—

balance means, in relation to—

- (a) a shipper, to ensure that the shipper's receipts and deliveries of gas match; and
- (b) a trader, to ensure that the trader's quantities of gas purchased and sold match; and
- (c) an interconnected party, to ensure that the same quantity of gas as agreed or scheduled under the terms of an interconnection agreement with the relevant transmission system owner is taken from or injected by that party into the transmission system; and
- (d) a transmission system owner (other than in regard to its activities as a shipper, trader, or interconnected party), to ensure that the line pack in a part of the transmission system owned by the transmission system owner matches the aggregate of the following:
 - (i) the target line pack of that part of the transmission system;
 - (ii) the imbalances of all shippers, traders and interconnected parties in that part of the transmission system (including the imbalance of any transmission system owner in those capacities); and

imbalance means, in relation to—

- (a) a shipper, the amount by which the shipper's receipts and deliveries of gas, as determined under relevant transmission system arrangements, do not match; and
- (b) a trader, the amount by which the trader's quantities of gas purchased and sold, as determined under relevant transmission system arrangements, do not match; and
- (c) an interconnected party, the amount by which the quantity of gas taken from or injected into the transmission system by that party differs from that agreed or scheduled under the terms of any relevant interconnection agreement; and

- (d) a transmission system owner (other than in regard to its activities as a shipper, trader, or interconnected party), the amount by which the line pack of a part of the transmission system owned by that person differs from the aggregate of the following:
 - (i) the target line pack of that part of the system;
 - (ii) the imbalances of all shippers, traders and interconnected parties in that part of the system (including the imbalance of any transmission system owner in those capacities); and
- (e) a balancing zone, the aggregate imbalance of all users in that zone.

Users' obligations

6. Users' obligation in relation to balancing

- 6.1 Subject to rule 6.5, a **user** must use reasonable endeavours—
 - 6.1.1 to **balance** within each **balancing zone**; and
 - 6.1.2 if, despite rule 6.1.1, the **user** has an **imbalance** in any **balancing zone**, to return the **user's imbalance** to zero.
- 6.2 If a **user** has an **imbalance** in a **balancing zone**—
 - 6.2.1 the **user** is—
 - (a) liable to pay to the **balancing operator** the **cash-out amount** of any **balancing gas** purchased by the **balancing operator** and allocated to the **user** under these rules; or
 - (b) entitled to receive from the **balancing operator** the **cash-out amount** of any **balancing gas** sold by the **balancing operator** and allocated to the **user** under these rules; and
 - 6.2.2 the **user's** title to gas in the **transmission system** under any relevant **transmission system arrangements** is subject to adjustment to reflect any **balancing gas** purchased or sold by the **balancing operator** and allocated to that **user** under these rules.
- 6.3 Subject to rule 6.5, but despite anything else in these rules, if 2 or more **transmission system owners** own parts of the **transmission system** that are within a single **balancing zone**, those **transmission system owners**—

- 6.3.1** must each use reasonable endeavours to ensure—
- (a) that the **line pack** in the **balancing zone** matches the aggregate of the following:
 - (i) the **target line pack** for that **balancing zone**;
 - (ii) the aggregate **imbalance** of all **shippers, traders, and interconnected parties** in that **balancing zone** (including the **imbalance** of the **transmission system owners** in those capacities); and
 - (b) any amount by which the **line pack** of the **balancing zone** differs from the aggregate of the matters listed in paragraphs (a)(i) and (ii) is returned to zero; and
- 6.3.2** are jointly liable or entitled, as applicable, to be allocated **balancing gas** by the **balancing operator** in respect of any **imbalance** that has arisen from the failure of the **transmission system owners** to ensure that the **line pack** in the **balancing zone** matches the aggregate of the matters listed in rule 6.3.1(a)(i) and (ii); and
- 6.3.3** are jointly liable to pay or entitled to receive the **cash-out amount** of any **balancing gas** allocated to them in accordance with rule 6.3.2.
- 6.4** The provisions of these rules and the **balancing plan** apply with any necessary modifications in the circumstances specified in rule 6.3 as if the 2 or more **transmission system owners** were a single **transmission system owner**, and the definitions of **balance, imbalance** and **user** in rule 5 were read in light of the joint obligations in rule 6.3.1.
- 6.5** Rules 6.1 and 6.3.1 do not apply in relation to a **balancing zone** during any period where a critical contingency has been declared and not terminated under the Gas Governance (Critical Contingency Management) Regulations 2008 in respect of a part of the **transmission system** that falls within the **balancing zone**.

7. Users' obligation to provide information

- 7.1** A **user** must, if requested by the **balancing operator**, as soon as practicable provide any information to the **balancing operator** that —
- 7.1.1** is in its possession, or over which it has control; and
 - 7.1.2** is reasonably required by the **balancing operator** to enable the **balancing operator** to carry out its functions.

Transmission system owners' obligations

8. Transmission system owners' obligation to facilitate balancing

- 8.1** Subject to rule 8.2, each **transmission system owner** must use reasonable endeavours to ensure its operating procedures and contractual arrangements are consistent with and do not unreasonably prevent **users** complying with the obligations in rule 6.1.
- 8.2** Nothing in rule 8.1, 10, or 11.1.1 requires a **transmission system owner** to take any action that would unreasonably interfere with the transmission of gas in a part of the **transmission system** that is owned by that **transmission system owner**.

9. Transmission system owners to provide transmission system information

- 9.1** Each **transmission system owner** must ensure that any of the following information that is reasonably required by the **balancing operator** for the performance of the **balancing operator's** functions under these rules is made available to the **balancing operator** in relation to any part of the **transmission system** owned by the **transmission system owner**:
- 9.1.1** information about the threshold(s) specified in the **transmission system owner's** critical contingency management plan under the Gas Governance (Critical Contingency Management) Regulations 2008;
- 9.1.2** information about **line pack**;
- 9.1.3** information about the pressure at each of the measurement points specified in the **balancing plan**;
- 9.1.4** information necessary to confirm whether **balancing gas** transactions and any related transmission of **balancing gas** have been carried out;
- 9.1.5** information about the **imbalance** in each **balancing zone** including—
- (a) details of each **user's imbalance** sufficient to enable the **balancing operator** to allocate **balancing gas** and its associated **cash-out amount** under these rules; and
 - (b) details of any amendments made in accordance with **transmission system arrangements** to the information provided about **users' imbalances** that could affect allocations of **balancing gas**;

- 9.1.6 historical **imbalance**, **line pack**, or pressure data;
- 9.1.7 metering (or other equipment) data on the amount of gas received or taken:
 - (a) through each **interconnection point**; and
 - (b) between each **balancing zone** (if there is no **interconnection point** between the zones);
- 9.1.8 the quantity of gas (if any) agreed between the **transmission system owner** and an **interconnected party**, or otherwise expected or scheduled, to pass—
 - (a) through each **interconnection point**; and
 - (b) between each **balancing zone** (if there is no **interconnection point** between the zones);
- 9.1.9 any relevant notices issued by the **transmission system owner** under a **transmission system code**;
- 9.1.10 any other information reasonably requested by the **balancing operator** for the purpose of carrying out its functions under these rules.
- 9.2 The information provided under rule 9.1 must be—
 - 9.2.1 the best information available (including real-time information if applicable) that, in the particular circumstances, is in the **transmission system owner's** possession or can be obtained or derived by the **transmission system owner** without unreasonable difficulty or expense; and
 - 9.2.2 provided as soon as reasonably practicable, including in real-time if this is reasonably practicable, via an **information exchange** or other agreed means.

10. Transmission system owners to provide transmission services for balancing gas

- 10.1 Subject to rule 8.2, each **transmission system owner** must provide the **balancing operator** with transmission services for the transmission of **balancing gas** on reasonable terms and conditions which include:
 - 10.1.1 variable pricing; and
 - 10.1.2 priority access to pipeline capacity not already committed (for example, to approved nominations).

11. Other obligations of transmission system owners in relation to balancing

11.1 Subject to rule 8.2, each **transmission system owner** must—

11.1.1 cooperate with the **balancing operator** in the performance of the **balancing operator's** functions with a view to minimising the quantity of **balancing gas** sold and purchased through **balancing actions**, and in particular by notifying and if relevant coordinating with the **balancing operator** in relation to any operational matters that may affect **line pack** in a part of **transmission system** owned by the **transmission system owner** (for example, the operation of compressors, maintenance, or safety matters);

11.1.2 give sufficient access, on reasonable terms and conditions, to the **balancing operator** to any **information exchange** used by the **transmission system owner** to enable the **balancing operator** to perform its functions; and

11.1.3 ensure records of the relevant **users' (or transmission system owners')** title to gas under relevant **transmission system arrangements** are adjusted as soon as practicable, and as necessary, to reflect allocations made by the **balancing operator** under rule 19 or 25 and notified to the **transmission system owner** under rule 20 or 25.5; and

11.1.4 **publish** as soon as practicable,—

(a) its compressor operation policy, and any amendments to that policy; and

(b) any written operational communications between the **transmission system owner** and the **balancing operator** that affect how the **balancing operator** carries out its functions under these rules; and

11.1.5 immediately notify **users** via any **information exchange** used by the **transmission system owner** if it is notified by the **balancing operator** under rule 15.3 that there is insufficient gas available for sale or purchase within the price thresholds specified in the **balancing plan** to return the **line pack** in a **balancing zone** to, or close to, the relevant threshold (or to stop it falling below or exceeding the threshold, as applicable).

12. Publication of transmission system

12.1 No later than 5 **business days** after the **commencement date**, each person who owns any part of New Zealand's system of interconnected high pressure open access gas transmission pipelines must provide the

industry body with the information specified in clause 1(2) of Part 5 of Schedule 1 of the Gas (Information Disclosure) Regulations 1997.

- 12.2** As soon as practicable after receiving the information described in rule 12.1, the **industry body** must consult with the persons who have submitted the information on a draft map depicting the **transmission system** for the purposes of these rules.
- 12.3** As soon as practicable after that consultation and no later than the **go-live date**, the **industry body** must **publish** a map depicting the **transmission system**.
- 12.4** A **transmission system owner** must notify the **industry body** of any error or change in the boundaries of, and pipelines comprising, the **transmission system owner's** part of the **transmission system** as soon as practicable after becoming aware of the error or change.
- 12.5** The **industry body** must, if necessary, amend or update the boundaries of, and pipelines comprising, the **transmission system** in response to any notice given by a **transmission system owner** under rule 12.4 and, where applicable, must **publish** an updated map depicting the **transmission system**.

Part 2

Balancing

Balancing operator functions

13. Functions of the balancing operator

13.1 The functions of the **balancing operator** are to—

- 13.1.1** buy or sell **balancing gas** in relation to any **directly managed balancing zone** in accordance with rule 15; and
- 13.1.2** take any action provided for in the **balancing plan** in relation to any **indirectly managed balancing zone**; and
- 13.1.3** enter into transmission agreements in relation to the transmission of **balancing gas** to and from **reference locations**; and

- 13.1.4 allocate **balancing gas** and its associated **cash-out amount** in accordance with this Part in respect of each **balancing action** taken by the **balancing operator**; and
- 13.1.5 notify the relevant **transmission system owner** or owners of any adjustments required to be made under **transmission system arrangements** to the owner's records of **users'** (or the **transmission system owner's**) title to gas in the **transmission system** to reflect the allocation of **balancing gas** under this Part; and
- 13.1.6 carry out any other functions provided for in these rules.

14. Functions to be carried out independently

- 14.1 The **balancing operator** must carry out its functions under these rules—
 - 14.1.1 independently of any other functions carried out by that person; and
 - 14.1.2 if the **balancing operator** is, or is related to, a **user** or **transmission system owner**, at arm's length from any other business of that **user** or **transmission system owner**.
- 14.2 The **balancing operator** must use information provided to it under these rules only for the purposes of performing its functions under these rules, and in particular, must keep confidential all information provided or disclosed to it under these rules except to the extent that disclosure—
 - 14.2.1 is required to enable the **balancing operator** to carry out its functions under these rules; or
 - 14.2.2 is otherwise authorised or required by law.

15. Management of aggregate imbalance

- 15.1 If the **line pack** of a **balancing zone** that is defined in the **balancing plan** as **directly managed** falls below, or in the **balancing operator's** reasonable opinion is likely if **balancing action** is not taken to fall below, the lower threshold specified in the **balancing plan** for the zone, the **balancing operator** must—
 - 15.1.1 use best endeavours to purchase the amount of gas that, in the **balancing operator's** opinion, is necessary to return the **line pack** to, or close to, the threshold, or prevent the **line pack** falling below the threshold; and
 - 15.1.2 if necessary, ensure that the **balancing gas** purchased is **transmitted** to the relevant **balancing zone**.

15.2 If the **line pack** of a **balancing zone** that is defined in the **balancing plan** as **directly managed** exceeds, or in the **balancing operator's** reasonable opinion is likely if **balancing action** is not taken to exceed, the upper threshold specified in the **balancing plan** for the zone, the **balancing operator** must—

15.2.1 use best endeavours to sell the amount of gas that, in the **balancing operator's** opinion, is necessary to return the **line pack** to, or close to, the threshold, or prevent the **line pack** exceeding the threshold; and

15.2.2 if necessary, ensure that the **balancing gas** sold is **transmitted** from the relevant **balancing zone**.

15.3 If there is insufficient gas available for sale or purchase within the price thresholds specified in the **balancing plan** to return the **line pack** in a **balancing zone** to, or close to, the relevant threshold (or to stop it falling below or exceeding the threshold, as applicable), then the **balancing operator** must immediately notify—

15.3.1 the **transmission system owner** or owners who own the part or parts of the **transmission system** covered by the affected **balancing zone**; and

15.3.2 the critical contingency operator appointed under the Gas Governance (Critical Contingency Management) Regulations 2008.

Balancing market

16. Rules for transactions relating to balancing gas market

16.1 The **balancing operator** must establish or access the services of a market for buying and selling **balancing gas**.

16.2 The **balancing market** must be open to any person who—

16.2.1 has gas available for sale, or who wishes to purchase gas, no matter where on the **transmission system** the gas is made available or where on the **transmission system** the person wishes to take the gas from, so long as the gas is able to be **transmitted** to or from the required **balancing zone** by the required time; and

16.2.2 meets any technical requirements for procurement of **balancing gas** specified in the **balancing plan**; and

16.2.3 meets and agrees to be bound by the reasonable terms and conditions for the sale and purchase of **balancing gas** published by the **balancing operator** under rule 18.

16.3 The **balancing operator** must purchase or sell **balancing gas**—

16.3.1 only through the **balancing market**; and

16.3.2 unless rule 17 applies, only on the terms and conditions in rule 16.4 or 16.5, as applicable.

16.4 Subject to rule 16.6, when purchasing **balancing gas** through the **balancing market** the **balancing operator** must—

16.4.1 hold open, for as long as is reasonably practicable before the taking of **balancing action**, the period during which the **balancing operator** will consider offers to sell gas, or changes to offers to sell gas; and

16.4.2 accept, or partially accept, the lowest priced offer or offers necessary to meet the **balancing operator's** obligation under rule 15.1.1, (where each offer price is first increased by any **transmission charges** that will be incurred by the **balancing operator** in transmitting that gas from its receipt point to the **reference location**); and

16.4.3 pay the same **clearing price** to each person whose offer to sell gas is fully or partially accepted as part of a **balancing action**, less any **transmission charges** incurred by the **balancing operator** in transmitting that gas from its receipt point to the **reference location**.

16.5 Subject to rule 16.6, when selling **balancing gas** through the **balancing market** the **balancing operator** must—

16.5.1 hold open, for as long as is reasonably practicable before the taking of **balancing action**, the period during which the **balancing operator** will consider offers to purchase gas, or changes to offers to purchase gas; and

16.5.2 accept, or partially accept, the highest priced offer or offers necessary to meet the **balancing operator's** obligation under section 15.2.1, (where each offer price is first decreased by any **transmission charges** that will be incurred by the **balancing operator** in transmitting that gas from the **reference location** to its delivery point); and

16.5.3 require the payment of the same **clearing price** from each person whose offer to purchase gas is fully or partially accepted as part of a **balancing action**, plus any **transmission charges** incurred by the **balancing operator** in transmitting that gas from the **reference location** to the delivery point.

16.6 The **balancing operator** must not accept any offer to sell or purchase **balancing gas** where the resulting **clearing price** would be,—

16.6.1 in the case of purchase of gas, higher than the purchase price threshold specified in the **balancing plan**; or

16.6.2 in the case of sale of gas, lower than the sale price threshold specified in the **balancing plan**.

17. Circumstances in which transactions may be undertaken on other terms

17.1 The **balancing operator** may, for the purposes of rule 15, purchase or sell **balancing gas** other than in accordance with rule 16.4 or 16.5, as applicable, if the **industry body** has given notice to the **balancing operator** under this rule that in its opinion transactions on other terms and conditions would better meet the purpose of these rules.

17.2 In determining whether transactions on terms other than those in rule 16.4 or 16.5 would better meet the purpose of the rules, the **industry body** must have regard to—

17.2.1 the security of the delivery of gas;

17.2.2 the liquidity of the **balancing market**; and

17.2.3 any other relevant matters.

17.3 If the **industry body** gives notice to the **balancing operator** under rule 17.1 it must—

17.3.1 include reasons for the **industry body's** opinion in the notice; and

17.3.2 **publish** the notice; and

17.3.3 in consultation with the **balancing operator**, determine the terms and conditions upon which the **balancing operator** will purchase and sell **balancing gas**, which terms must be consistent with rule 16.4 or 16.5, as applicable, except to the extent that other terms and conditions would, in the **industry body's** opinion better meet the purpose of these rules.

17.4 The **balancing operator** must resume purchasing or selling **balancing gas** in accordance with rule 16.4 or 16.5, as applicable, if the **industry**

body notifies the **balancing operator** that in its opinion transactions in accordance with that rule would better meet the purpose of these rules.

17.5 The **industry body** must—

17.5.1 in determining whether to give a notice under rule 17.4 have regard to the matters in rule 17.2; and

17.5.2 give reasons in any notice given under rule 17.4 as to why the **industry body** is of the opinion that transactions in accordance with rule 16.4 or 16.5, as applicable, would better meet the purpose of the rules; and

17.5.3 **publish** any notice given under rule 17.4.

17.6 To avoid doubt, rule 16.6 continues to apply to purchases or sales of **balancing gas** by the **balancing operator**, even if the **balancing operator** is not required to comply with rule 16.4 or 16.5, as applicable, by operation of this rule 17.

18. Terms of balancing gas transactions

18.1 The **balancing operator** must **publish** the terms and conditions on which it will purchase or sell gas for the purposes of meeting its obligations under rule 15, which—

18.1.1 must be consistent with the intent of rule 16.2 to allow the **balancing market** to be as inclusive as possible; and

18.1.2 must reflect reasonable commercial practice.

18.2 Rule 18.1 applies both to the sale and purchase of gas in accordance with rule 16 and in accordance with any determination of the **industry body** under rule 17.3.3.

Allocation

19. Rules for allocation of balancing gas

19.1 The **balancing operator** must in respect of each **balancing action** taken by the **balancing operator**, allocate the **balancing gas** sold or purchased to **users**—

19.1.1 in accordance with the allocation model specified in the **balancing plan**; and

19.1.2 as soon as practicable after the taking of the **balancing action**; and

19.1.3 based on the best information available to the **balancing operator** at the time of the allocation.

19.2 To avoid doubt, if the **balancing operator** has received insufficient information to fully allocate all **balancing gas** sold or purchased in respect of a **balancing action** under rule 19.1 the **balancing operator** must—

19.2.1 allocate **balancing gas** to those **users** in respect of which the **balancing operator** has sufficient information to apply the allocation model; and

19.2.2 as soon as the **balancing operator** receives sufficient information, if possible allocate the remaining **balancing gas** to **users** under the allocation model.

19.3 If the **balancing operator** is unable to fully allocate **balancing gas** to **users** under the allocation model after having received sufficient information to apply the model, the **balancing operator** must—

19.3.1 allocate the unallocated **balancing gas** to the **transmission system owner** or owners who own the part or parts of the **transmission system** within the **balancing zone** in respect of which the **balancing gas** is unable to be allocated; and

19.3.2 treat a **transmission system owner** allocated **balancing gas** under rule 19.3.1 as a **user** who has been allocated the **balancing gas** under the allocation model in respect of an **imbalance** in the relevant **balancing zone**, and rules 19.4, and 20 to 25 apply accordingly.

19.4 Title to **balancing gas** allocated to a **user** by the **balancing operator** under this rule 19 is deemed to have passed to or from the **balancing operator** at the time of the **balancing action**.

20. Notification of allocations and cash-out price of balancing gas

20.1 As soon as practicable after allocating **balancing gas** to a **user** under rule 19, the **balancing operator** must—

20.1.1 notify any relevant **transmission system owner** of any adjustment needed to the **user's** title to gas under **transmission system arrangements** to reflect the **balancing operator's** allocation of **balancing gas**; and

20.1.2 determine the **cash-out price** for the **balancing gas** allocated to the **user** which—

(a) for the purchase of **balancing gas**, is the sum of—

- (i) the **clearing price** (per gigajoule) for the gas; and
 - (ii) any **transmission charges** (per gigajoule) incurred by the **balancing operator** in **transmitting the balancing gas** from the **reference location** to the location of the **user's imbalance**, and
- (b) for the sale of **balancing gas**, is—
- (i) the **clearing price** for the gas (per gigajoule); less
 - (ii) any **transmission charges** (per gigajoule) incurred by the **balancing operator** in **transmitting the balancing gas** from the location of the **user's imbalance** to the **reference location**, and

20.1.3 notify the **user** of the amount of **balancing gas** from the **balancing action** allocated to the **user** (in gigajoules), and the associated **cash-out price** of that **balancing gas** (per gigajoule).

20.2 A **user** who has been notified of an allocation of **balancing gas** under rule 20.1.3 and who considers that the allocation of **balancing gas** or the determination of its associated **cash-out amount** was calculated in error, must advise the **balancing operator** of the alleged error as soon as reasonably practicable.

21. Payment for balancing gas purchased

21.1 As soon as possible after the end of each month, the **balancing operator** must issue an invoice to each **user** who has been allocated **balancing gas** under rule 19 (or rule 25) during the month (an **affected user**)—

21.1.1 for the total **cash-out amount** of **balancing gas** purchased that the **balancing operator** allocated to the **user** during the month; and

21.1.2 that contains a breakdown of the amount of the invoice showing the quantity (in gigajoules) and **cash-out amount** of the purchased **balancing gas** allocated to the **user** during the month by reference to the **balancing action** to which it relates.

21.2 An **affected user** must pay the total amount of any invoice issued under rule 21.1 to the **balancing operator**,—

21.2.1 if the invoice is received before the 10th of the month, no later than the 20th of the month in which the invoice was issued (or if the 20th of the month is not a **business day**, the following **business day**); or

21.2.2 if the invoice is received on or after the 10th of the month, no later than 10 **business days** after the invoice was received.

22. Payment of proceeds of sales of balancing gas

22.1 As soon as possible after the end of each month, the **balancing operator** must issue a credit note to each **user** who has been allocated **balancing gas** under rule 19 (or rule 25) during the month (an **affected user**)—

22.1.1 for the total **cash-out amount** of **balancing gas** sold that the **balancing operator** allocated to the **affected user** during the month; and

22.1.2 that contains a breakdown of the amount of the credit note showing the quantity (in gigajoules) and **cash-out amount** of the sold **balancing gas** allocated to the **user** during the month by reference to the **balancing action** to which it relates.

22.2 The **balancing operator** must, in relation to each **balancing action** recorded in a credit note issued under rule 22.1, pay the **affected user** the amount calculated in accordance with the following formula as soon as practicable after the beginning of the month following the month in which the credit note was issued (and if necessary the beginning of each month following that):

$$P = R \times (C/\Sigma C)$$

where

P is the total amount in dollars to be paid to the **user** in respect of the **balancing action** for the preceding month

R is the total amount of money in cleared funds received by the **balancing operator** in the preceding month from purchasers of the **balancing gas** sold in the **balancing action** (the **sold balancing gas**)

C is the **cash-out amount** of the **sold balancing gas** allocated to the **user** in respect of the **balancing action**

ΣC is the total **cash-out amount** of the **sold balancing gas** allocated to **users** in respect of the **balancing action**.

22.3 Subject to rule 22.4, the **balancing operator** must make subsequent payments to **affected users** calculated in accordance with the formula in rule 22.2 so that, if full payment is received by the **balancing operator** for the sold **balancing gas**, the amount stated in the credit note is fully paid out to those **users**.

22.4 The balancing operator—

22.4.1 is not required to pay out an amount greater than the total amount of payments received for **balancing gas** sold in a **balancing action**; but

22.4.2 must use best endeavours to pursue each purchaser of **balancing gas** for any outstanding monies relating to **balancing gas** purchased by that person.

22.5 The balancing operator—

22.5.1 may, despite anything in these rules, deduct from any amount payable to a **user** under these rules, the amount (or any part of the amount) of any monies owing under an invoice issued to the **user** under rule 21.1 that is unpaid by the due date; but

22.5.2 must, if any amount is deducted in accordance with rule 22.5.1 notify the **affected user** by way of a monthly statement of the amount deducted.

22.6 Despite anything in these rules, if the **cash-out amount** for **sold balancing gas** allocated to a **user** is negative, the **balancing operator** must not include that **cash-out amount** in a credit note under this rule, but must instead include that amount in an invoice issued to the **user** under rule 21 and rules 6.2.1 and 23 apply accordingly as if the sale of the associated **balancing gas** was a purchase.

23. Further provisions relating to payment

23.1 A **user** who fails to pay the amount of an invoice issued under rule 21.1 in full by its due date is liable to pay interest on the unpaid amount—

23.1.1 at the 90-day bill rate (as at the date payment was due in respect of the invoice);

23.1.2 for the period from the date by which the amount was due to be paid until the date of payment of the whole amount.

23.2 The obligation to pay an amount stated in an invoice is not suspended by any dispute that may affect the amount payable, however, if following resolution of the dispute the **balancing operator** is required to refund any excess payment, the **balancing operator** must pay interest—

23.2.1 on any amount refunded;

23.2.2 at the 90-day bill rate (as at the date the excess payment was made);

23.2.3 for the period from the date the excess payment was made until the date of the refund.

23.3 Neither rule 23.1 nor 23.2 authorises the giving of interest upon interest.

23.4 A **cash-out amount** is exclusive of any goods and services tax payable under the Goods and Services Tax Act 1985, and goods and service tax on the amount (if any) must be added to any invoice or credit note issued under rule 21 or 22.

24. Records of transactions

24.1 The **balancing operator** must maintain a separate record—

24.1.1 for each **balancing gas** transaction of—

- (a) the offer and final prices;
- (b) the quantity of gas purchased or sold;
- (c) the counterparty;
- (d) the **transmission charges** (if any); and
- (e) the **balancing action** with which the transaction is associated; and

24.1.2 for each **balancing action** of—

- (a) the date and time the **balancing action** was committed to;
- (b) the amount (if any) by which the **line pack** of the **balancing zone** to which the **balancing action** related diverged from the relevant threshold at the time of the **balancing action**;
- (c) the **clearing price**;
- (d) the total quantity of **balancing gas** purchased or sold; and
- (e) the **balancing zone** or zones to which the **balancing gas** purchased or sold is allocated, and for each **user** (or **transmission system owner**) to whom **balancing gas** is allocated in respect of that **balancing zone**—
 - (i) the quantity of **balancing gas** allocated to the person; and
 - (ii) the **cash-out price** of the **balancing gas** allocated to the person; and

24.1.3 of any other details of the transactions associated with **balancing actions** that the **balancing operator** considers desirable.

24.2 As soon as practicable after taking **balancing action**, the **balancing operator** must **publish** the following information in respect of the **balancing action**:

24.2.1 the date and time of the **balancing action**;

24.2.2 the **balancing zone** to which the **balancing action** related;

24.2.3 the total quantity of **balancing gas** sold or purchased; and

24.2.4 the **clearing price** for the gas; and

24.2.5 the quantity of **balancing gas** (if any) allocated to any **transmission system owner** under rule 19.3.1; and

24.2.6 the **transmission charges** for any **balancing gas** transmission services used by the **balancing operator**.

24.3 The **balancing operator** must keep the records referred to in rule 24.1 for at least 5 years following the relevant **balancing action**.

25. Amendments to allocations

25.1 This rule applies if the **balancing operator** considers that an allocation of **balancing gas** or its associated **cash-out amount** for a **balancing action** under these rules was incorrect or inaccurate—

25.1.1 due to an error by the **balancing operator**; or

25.1.2 based on new **imbalance** information provided to the **balancing operator** by a **transmission system owner** under rule 9.1.5(b).

25.2 If this rule applies in relation to **balancing gas**, the **balancing operator** must—

25.2.1 assess any difference between any previous allocation of **balancing gas** in relation to the **balancing action** (the **previous allocation**) and the allocation that, having regard to the allocation model and the best information available to the **balancing operator** at the time of the assessment, the **balancing operator** considers should have been made (the **correct allocation**); and

25.2.2 allocate to any **user** who is affected by the assessment the amount of **balancing gas** that is the difference between the previous allocation and the correct allocation (a **mop-up allocation**).

- 25.3** If the **balancing operator** makes a **mop-up allocation** under rule 25.2.2 and the **mop-up allocation** was not made because of a metering error on the **transmission system**, the **balancing operator** must also—
- 25.3.1** assess, for each **user** affected by a **mop-up allocation**, any difference between the **cash-out amount** notified for the previous allocation (the **previous cash-out amount**) and the **cash-out amount** calculated in respect of the correct allocation (the **correct cash-out amount**); and
 - 25.3.2** determine for each **user** who is affected by the **mop-up allocation**, the amount that is the difference between the previous **cash-out amount** and the correct **cash-out amount** (a **mop up cash-out amount**).
- 25.4** The **balancing operator** must also determine a **mop-up cash-out amount** in accordance with rule 25.3 if the **balancing operator** considers there was an error in the previous **cash-out amount**, but no **mopup allocation** is necessary in relation to the **balancing gas** to which that **cash-out amount** relates.
- 25.5** The **balancing operator** must as soon as practicable—
- 25.5.1** give notice to any affected **user** of—
 - (a) any **mop-up allocation**; or
 - (b) any **mop-up cash-out amount**; and
 - 25.5.2** give notice to any relevant **transmission system owner** of any adjustment needed to any affected **user's** title to gas under **transmission system arrangements** to reflect a **mop-up allocation**; and
 - 25.5.3** include any **mop-up cash-out amount** in an invoice or credit note, as applicable, issued to the **user** under rule 21 or 22.
- 25.6** The **balancing operator** must make a decision in relation to a **mop-up allocation** or **mop-up cash-out amount** as soon as practicable after becoming aware of any error or new **imbalance** information.

Reporting

26. Monthly reports

- 26.1** The **balancing operator** must, within 10 **business days** of the end of each month, provide a written report to the **industry body** and to each **transmission system owner** that sets out the following information—

26.1.1 a summary of the information referred to in rule 24.2 for the month; and

26.1.2 any breaches of these rules by the **balancing operator** or any other person of which the **balancing operator** is aware at the date of the report and which have not previously been notified in a report.

26.2 The **industry body** must **publish** the information in the monthly report that is provided under rule 26.1.1 and such information that is provided under rule 26.1.2 as in its opinion is desirable.

26.3 The information reported by the **balancing operator** under rule 26.1.2 and published under rule 26.2 must include the names of any **users** who have failed to pay any amount owing to the **balancing operator** under an invoice issued under rule 21 by the due date, and the amount outstanding.

Part 3

Appointment of balancing operator, development of balancing plan, and funding

Subpart 1

General provisions

Balancing operator appointment

27. Meaning of “appointer”

In this subpart,

appointer means a person required to appoint a **balancing operator** under subpart 2 or 3 of this Part

former appointer has the meaning in rule 31.1.1

new appointer has the meaning in rule 31.2.1

28. Appointment of balancing operator by appointer

- 28.1** An **appointer** may by agreement with any person appoint that person to act as the **balancing operator** under these rules.
- 28.2** In determining whether to appoint a person under rule 28.1, the **appointer** must have regard to—
- 28.2.1** the person's capacity to carry out the functions of a **balancing operator** under these rules; and
 - 28.2.2** any other matter that in the **appointer's** opinion is relevant to the appointment.

29. To avoid doubt, an appointer must appoint a single balancing operator to carry out the functions in Part 2 for the whole transmission system. Terms of appointment of balancing operator

- 29.1** An **appointer** and any person proposed to be appointed as the **balancing operator** must—
- 29.1.1** agree the terms and conditions of the **balancing operator's** appointment; and
 - 29.1.2** record those terms and conditions in a **balancing operator service provider agreement**.
- 29.2** The terms and conditions of the **balancing operator service provider agreement** may provide for—
- 29.2.1** the **appointer** to pay reasonable remuneration to the **balancing operator**; and
 - 29.2.2** any other terms and conditions not inconsistent with these rules, including, if agreed by the parties, for the **appointer** to indemnify the **balancing operator** for any costs incurred by the **balancing operator** that are unable to be recovered from—
 - (a) **users** under rule 6.2.1(a); or
 - (b) contracting parties in relation to the purchase and sale of **balancing gas**.
- 29.3** An **appointer** may at any time terminate, or change the appointment of, or reappoint, any person as the **balancing operator**, subject to the terms of the **balancing operator service provider agreement**.
- 29.4** The appointment of the **balancing operator** is also subject to termination under rule 31.1.

30. Publication of balancing operator service provider agreement

30.1 An **appointer** must **publish**—

30.1.1 any **balancing operator service provider agreement** entered into by the **appointer**; and

30.1.2 any amendment to any **balancing operator service provider agreement**.

31. Consequences of change of application of subpart

31.1 On the day subpart 2 or 3 ceases to apply under rule 36.1 or 36.2, or 43.3, as applicable—

31.1.1 the appointment of any person as **balancing operator** by an **appointer** under that subpart (the **former appointer**) is terminated and ceases to have effect; and

31.1.2 any **balancing plan** in force that was prepared by the **former appointer** under that subpart ceases to apply.

31.2 A **balancing operator** whose appointment is terminated under rule 31.1.1 must—

31.2.1 cooperate with the **balancing operator** appointed by the person required under the subpart that remains in application to appoint a **balancing operator** (the **new appointer**); and

31.2.2 provide copies of all records kept under rule 24 to the **balancing operator** appointed by the **new appointer**; and

31.2.3 provide copies of all other relevant documents held by the **balancing operator** to the **balancing operator** appointed by the **new appointer**.

31.3 A **new appointer** must pay the former **balancing operator** reasonable costs associated with the transfer of the **balancing operator** function, including if agreed between the relevant parties, any transitional arrangements necessary in relation to **balancing gas** transactions and payment for **balancing gas** that have been entered into by the **balancing operator** before termination of the appointment.

31.4 Despite rule 31.1.1, and subject to any contractual arrangements entered into under rule 31.3, the **balancing operator** whose appointment is terminated by operation of that rule—

31.4.1 may exercise the powers of the **balancing operator** under Part 2 in relation to any **balancing actions** undertaken before the

termination of the **balancing operator's** appointment (and the former **balancing plan** remains in force for that purpose); and

31.4.2 remains liable in respect of any breaches of these rules, or obligations incurred by the **balancing operator**, on or before the date of termination (including, in relation to any **balancing gas** transactions undertaken, the obligation to pay the **cash-out price** of any **sold balancing gas** allocated to **affected users** in accordance with rule 22); and

31.4.3 remains entitled to be paid the **cash-out amount** of any purchased **balancing gas** allocated to **users** on or before the termination date; and

31.4.4 must continue to use best endeavours to pursue each purchaser of **balancing gas** for any outstanding monies relating to **balancing gas** purchased by that person.

31.5 To avoid doubt if a **balancing operator** is appointed by the **new appointer** at a time when a **balancing operator** appointed by the **former appointer** is carrying out functions under these rules, the **balancing operator** appointed by the **new appointer** is not required to and may not carry out functions under Part 2 until the date the former **balancing operator's** appointment is terminated under rule 31.1.1.

Balancing plan approval

32. Criteria for approval of balancing plan

32.1 The **industry body** may approve a draft balancing plan or an amendment to a **balancing plan** under this rule if—

32.1.1 the plan, or if relevant, the plan following the proposed amendment, complies with rules 32.2 and 32.3; and

32.1.2 the **industry body** is satisfied that—

- (a) the plan will assist in meeting the purpose of these rules; or
- (b) if the approval relates to amendment to a **balancing plan**, the amendment will assist the plan to better meet the purpose of these rules, or is necessary to reflect changes, for example, in the operational environment of the **balancing operator**, that affect the operation of the plan.

32.2 A **balancing plan** must—

32.2.1 contain and comply with the requirements in the Schedule to these rules; and

32.2.2 be consistent with—

- (a) the Gas Governance (Critical Contingency Management) Regulations 2008; and
- (b) any relevant provisions of the Gas (Downstream Reconciliation) Rules 2008; and
- (c) **MPOC, VTC**, or any other **transmission system code** except to the extent that the inconsistency is necessary or desirable to meet the purpose of these rules.

32.3 A **balancing plan** may—

32.3.1 contain transitional provisions; or

32.3.2 provide for different parts of the **balancing plan** to apply at different times.

33. Publication of balancing plan

33.1 As soon as practicable after the **industry body** has approved a **balancing plan** or an amendment to a **balancing plan** under rule 32, the **industry body** must—

33.1.1 notify each **transmission system owner** that the **balancing plan** or amended **balancing plan** has been approved and of the date that the plan or amended plan will come into force; and

33.1.2 **publish** the approved **balancing plan** or approved amended **balancing plan** together with a notice specifying the date that the plan or amended plan will come into force; and

33.1.3 if an amendment to a **balancing plan** (other than a minor or technical amendment) has been approved by the **industry body** before consultation under subpart 2 or 3 of this Part on the grounds that the amendment is urgent,—

- (a) notify each **transmission system owner** of that fact, and of the date that the amendment will expire under rule 35 unless reapproved by the **industry body** before that date; and
- (b) **publish** with the approved amended **balancing plan**, a notice specifying the date that the amendment will expire

under rule 35 unless reapproved by the **industry body** before that date.

33.2 No later than 5 **business days** after the **transmission system owners** receive a notice from the **industry body** under rule 33.1.1, each **transmission system owner** must—

33.2.1 ensure the **balancing plan** or amended **balancing plan** is **published** on any **information exchange** used by the **transmission system owner**; and

33.2.2 notify **users** via any **information exchange** used by the **transmission system owner**—

- (a) of the publication of the **balancing plan** or amended **balancing plan**; and
- (b) of the date the **balancing plan** or amended **balancing plan** will come into force; and
- (c) if relevant, of the date of expiry of the amendment notified under rule 33.1.3.

33.3 If the **balancing plan** approved under rule 32 is the first **balancing plan** approved by the **industry body** under these rules, the **industry body** must also—

33.3.1 together with the material published under rule 33.1.2, **publish** a statement specifying the **go-live date**; and

33.3.2 notify in the *Gazette*—

- (a) that it has approved a **balancing plan**; and
- (b) the **go-live date**.

33.4 The **go-live date** notified by the **industry body** under rule 33.3.2 must—

33.4.1 be the first day of a month; and

33.4.2 not be later than the date that is 6 months after the date on which the **industry body** approved the **balancing plan**.

34. Date balancing plan or amended balancing plan comes into force

34.1 A **balancing plan** or an amendment to a **balancing plan** that is approved by the **industry body** under rule 32 comes into force—

- 34.1.1** if it is the first **balancing plan** approved by the **industry body**, on the **go-live date**; or
- 34.1.2** if it is not the first **balancing plan** approved by the **industry body**, or if it is an amendment to a **balancing plan**, and it is approved on—
- (a) a date that is before the 25th of a month, on the 1st day of the month following the month in which the plan or amended plan is published in accordance with rule 33.1.2 or such later date as the **industry body** may specify in the approval; or
 - (b) a date that is the 25th, or after the 25th, of a month, on the 1st day of the 2nd month after the month in which the plan or amended plan is published in accordance with rule 33.1.2 or such later date as the **industry body** may specify in the approval.
- 34.2** Despite rule 34.1.2 an amendment to a **balancing plan** that is specified by the **industry body** in a notice given under rule 33.1.3 to be urgent comes into force on the first **business day** after it is notified to the **transmission system owners** under rule 33.1.

35. Expiry of urgent, but not minor and technical, amendments

- 35.1** An amendment to the **balancing plan** that is, in the **industry body's** opinion urgent, but not minor and technical, expires 60 **business days** after it comes into force unless by that date the amendment has been -
- 35.1.1** consulted upon by the **appointer**; and
 - 35.1.2** reapproved by the **industry body**.
- 35.2** If an urgent amendment expires under rule 35.1, the **industry body** must—
- 35.2.1** notify each **transmission system owner** that the amendment has expired; and
 - 35.2.2** **publish** the **balancing plan** as it was before the urgent amendment.
- 35.3** Each **transmission system owner** must as soon as practicable following receipt of notification under rule 35.2.1—
- 35.3.1** ensure the **balancing plan** as it was before the urgent amendment is **published** on any **information exchange** used by the **transmission system owner**; and

35.3.2 notify **users** via any **information exchange** used by the **transmission system owner** that the amendment has expired, and of the publication of the **balancing plan** under rule 35.3.1.

35.4 This subpart applies to re-approval of an urgent but not minor and technical amendment to a **balancing plan** as if it were approval of an amendment to that plan.

Subpart 2

Appointment of balancing operator by joint transmission system owners

36. Application of subpart

36.1 This subpart applies in the period—

36.1.1 from on and after the **commencement date**;

36.1.2 until—

- (a) if it is before the **go-live date**, the date of any notice given under rule 44.2.1 or 44.3; or
- (b) if it is after the **go-live date**, the date that a **balancing plan** prepared by the **industry body** under subpart 3 comes into force.

36.2 This subpart also applies in the period—

36.2.1 from on and after the **reapplication date**;

36.2.2 until the earlier of the date—

- (a) of any notice in the *Gazette* under rule 49.4; or
- (b) that a **balancing plan** prepared by the **industry body** under subpart 3 comes into force.

36.3 To avoid doubt, no person is required to comply with this subpart unless it applies.

37. Joint obligations of transmission system owners in relation to appointment of balancing operator and preparation of balancing plan

37.1 If this subpart applies, all **transmission system owners** must together—

37.1.1 attempt to agree on—

- (a) a person to act as the **balancing operator** under these rules and the terms of a draft **balancing operator service provider agreement**; and
 - (b) the contents of a draft balancing plan; and
- 37.1.2 if they agree on a **balancing operator**, the terms of a draft **balancing operator service provider agreement**, and on a draft balancing plan, consult upon and seek approval of the draft balancing plan from the **industry body** in accordance with the procedure in rule 38; and
- 37.1.3 if the **balancing plan** referred to in rule 37.1.2 is approved by the **industry body** under rule 32, as soon as practicable following notification of such approval, appoint the person named in the **balancing plan** to act as the **balancing operator** for the purposes of these rules; and
- 37.1.4 if they cannot agree on a person to act as the **balancing operator**, on the terms of a draft **balancing operator service provider agreement**, or on a draft balancing plan within 60 **business days** from the **commencement date**, notify the **industry body** accordingly, together with information about the status of their negotiations.
- 37.2 Nothing in rule 37.1.4 prevents a **transmission system owner** notifying the **industry body** before the expiry of 60 **business days** from the **commencement date** that, in the **transmission system owner's** opinion, the **transmission system owners** are deadlocked and will be unable to reach agreement on the matters in rule 37.1.1 within the 60 **business day** period.
- 37.3 If the **transmission system owners** have appointed a **balancing operator** under rule 37.1.3 (whether following the **commencement date** or the **reapplication date**), the **transmission system owners** must use best endeavours to ensure that there remains at all times that this subpart applies a **balancing operator** appointed by the **transmission system owners**.

Balancing plan approval process

- 38. **Procedure for preparation and consultation on draft balancing plan**
 - 38.1 If the **transmission system owners** agree on a draft balancing plan, the owners must—
 - 38.1.1 provide the following documents to the **industry body**—

- (a) a copy of the draft balancing plan; and
- (b) one or more documents setting out the changes (if any) to any relevant **transmission system code** that would be necessary to ensure consistency with the draft balancing plan and these rules if the draft balancing plan were approved by the **industry body**; and

38.1.2 **publish** the draft balancing plan and the documents referred to in rule 38.1.1(b); and

38.1.3 consult on the draft balancing plan with persons that the **transmission system owners** consider are representative of the interests of persons likely to be substantially affected by the draft balancing plan if it is approved by the **industry body**; and

38.1.4 give persons consulted with under rule 38.1.3 at least 20 but not more than 25 **business days** to make submissions to the **transmission system owners** on the draft balancing plan; and

38.1.5 **publish** any submissions as soon as practicable after those submissions are received; and

38.1.6 provide copies of the submissions to the **industry body**.

38.2 The **industry body** must **publish**—

38.2.1 the draft balancing plan and other documents provided to it under rule 38.1.1(b); and

38.2.2 any submissions provided to it under rule 38.1.6.

38.3 After the consultation required by rule 38.1, the **transmission system owners** must either—

38.3.1 submit the draft balancing plan unamended to the **industry body** for approval; or

38.3.2 amend the draft balancing plan and—

- (a) if the amendment does not materially affect the contents of the draft balancing plan, submit the draft balancing plan to the **industry body** for approval; or
- (b) if the amendment materially affects the contents of the draft balancing plan,—
 - (i) produce a new draft balancing plan; and

- (ii) one or more new documents setting out the changes to any relevant **transmission system code** that would be necessary to ensure consistency with the draft balancing plan and these rules if the draft balancing plan were approved by the **industry body**; and
- (iii) follow again the procedure in this rule 38 (however, in this circumstance, the minimum number of days for the making of submissions under rule 38.1.4 is 10 **business days** and the maximum 20 **business days**).

38.4 To avoid doubt, nothing in this rule 38 affects the process or requirements in any **transmission system code** in relation to changes to that code.

39. Decision by industry body on draft balancing plan

39.1 The **industry body** must consider a draft balancing plan submitted under rule 38.3.1, 38.3.2(a), or 39.2.3, and decide within 20 **business days**, whether to approve the draft balancing plan under rule 32 or decline it.

39.2 If the **industry body** declines to approve the draft balancing plan—

39.2.1 it must give reasons; and

39.2.2 it may propose any amendments to the draft balancing plan that in its view would ensure the plan met the requirements for approval; and

39.2.3 the **transmission system owners** must consider the reasons and any amendments proposed by the **industry body** and may amend the draft balancing plan accordingly, and—

- (a) if the amendment does not materially affect the contents of the plan, may resubmit the draft balancing plan to the **industry body** for approval; or
- (b) if the amendment materially affects the contents of the plan, must produce a new draft balancing plan and again follow the procedure in rule 38 (however, in this circumstance, the minimum number of days for the making of submissions is 10 **business days** and the maximum 20 **business days**).

Balancing plan amendments

40. Procedure for amendment to approved balancing plan

- 40.1** A **balancing plan** that has been prepared under this subpart and approved by the **industry body** may be amended at any time in accordance with the procedure in this rule 40.
- 40.2** An amendment to the **balancing plan** may be proposed by—
- 40.2.1** all **transmission system owners** together; or
 - 40.2.2** the **industry body**.
- 40.3** One or more **transmission system owners** or other **users** may request the **industry body** to propose an amendment under rule 40.2.2, and for that purpose may submit a suggested amendment to the **industry body**, which—
- 40.3.1** may, if the proposed amendment in the **industry body's** opinion complies with rule 32, in its discretion decide whether or not to adopt the suggested amendment and propose it under rule 40.2.2; but
 - 40.3.2** must, if it decides not to adopt a suggested amendment—
 - (a) give reasons to the person who proposed the amendment for that decision; and
 - (b) **publish** the suggested amendment, together with its reasons for not adopting it.
- 40.4** If the **transmission system owners** wish to propose an amendment under rule 40.2.1 they must submit the proposed amendment to the **industry body**, together with—
- 40.4.1** an explanation for the proposed amendment; and
 - 40.4.2** a statement as to whether in the **transmission system owners'** opinion the amendment is minor and technical, or needs to be made urgently; and
 - 40.4.3** if in the **transmission system owners'** opinion the amendment is minor and technical, or needs to be made urgently, the reasons for that view; and
 - 40.4.4** one or more documents setting out the changes to any relevant **transmission system code** that would be necessary to ensure

consistency with the proposed amendment were it approved by the **industry body**.

- 40.5** If the **industry body** wishes to propose an amendment, the **industry body** must notify the proposed amendment to the **transmission system owners**, together with an explanation for the proposed amendment.
- 40.6** The **industry body** must—
- 40.6.1** determine in relation to each amendment proposed by itself or the **transmission system owners** whether in its opinion the amendment is urgent or minor and technical; and
- 40.6.2** give notice to the **transmission system owners** of the opinion determined under rule 40.6.1.
- 41. Procedure for minor and technical or urgent amendments to the balancing plan**
- If an amendment proposed by the **industry body** or the **transmission system owners** is in the **industry body's** opinion minor and technical or needs to be made urgently, the **industry body** may approve the amendment under rule 32.
- 42. Procedure for non- minor and technical amendments to balancing plan (whether or not urgent)**
- 42.1** If, in the **industry body's** opinion, an amendment proposed by the **industry body** or the **transmission system owners** is not minor and technical, the **transmission system owners** must, as soon as practicable following notification by the **industry body** of its opinion on that point, follow the procedure in rule 38, which applies with any necessary modifications to the proposed **balancing plan** amendment, as if it were a draft **balancing plan**.
- 42.2** Rule 39 applies with any necessary modifications to any proposed amendment to the **balancing plan** submitted to the **industry body** by the **transmission system owners** in accordance with rule 38.3.1, 38.3.2(a), or 39.2.3, as applied by this rule 42.
- 42.3** Rules 42.1 and 42.2 apply whether or not the **industry body** has approved the proposed non-minor and technical amendment under rule 41 on the grounds it was urgent, but if the amendment has already been approved, then the **industry body** may, on submission of the amendment to the **industry body** under rule 39, reapprove the amendment together with any amendments made to it under rule 38.3.2 if satisfied that it meets the criteria in rule 32 and it has not expired prior.
- 42.4** Despite rule 38.3, if, after following the procedure in rule 38.1 twice in relation to a proposed **balancing plan** amendment, the **transmission**

system owners do not submit the proposed amendment to the **industry body** for approval within 20 **business days** of the closing date for submissions in the second round of consultation,—

- 42.4.1 the **transmission system owners** are not required to take any further action in relation to the amendment; but
- 42.4.2 the **industry body** may, in its discretion, after considering the original proposed **balancing plan** amendment, any amendment made to the proposed amendment by the **transmission system owners** following the first round of consultation, and the submissions received under both rounds of consultation, approve any **balancing plan** amendment that falls within the parameters of the amendment or amendments consulted upon and meets the criteria in rule 32.

Subpart 3

Appointment of balancing operator by industry body

43. Application of subpart

43.1 This subpart applies if—

- 43.1.1 the **transmission system owners** have failed to provide a draft balancing plan to the **industry body** under rule 38.1.1(a) within 60 **business days** of the **commencement date**, or
- 43.1.2 the **transmission system owners** have failed to submit a draft balancing plan to the **industry body** for approval under rule 38.3—
 - (a) within 40 **business days** of the date of provision of the draft balancing plan to the **industry body** under rule 38.1.1; or
 - (b) if a second round of consultation is undertaken in accordance with rule 38.3.2(b), within 30 **business days** of the date of provision of the new draft balancing plan to the **industry body** under rule 38.1.1; or

43.1.3 whether it is before or after the dates referred to in rules 43.1.1 or 43.1.2, in the **industry body's** opinion the procedure in rules 37 and 38—

- (a) is deadlocked; or
- (b) is unlikely to be completed in a timely manner; or

43.1.4 there is no **balancing operator** appointed by the **transmission system owners** carrying out the functions in Part 2 following the **go-live date**; or

43.1.5 in the **industry body's** opinion the **balancing operator** appointed by the **transmission system owners** under subpart 2 is failing to carry out its functions in accordance with these rules.

43.2 Before coming to an opinion under rule 43.1.5, the **industry body** must—

43.2.1 consider—

- (a) the results of any audit conducted under rule 56; and
- (b) any relevant rulings of the Rulings Panel in relation to any breach of these rules by the **balancing operator**; and
- (c) any relevant settlements approved by the Rulings Panel in relation to any alleged breach of these rules by the **balancing operator**; and
- (d) any other relevant evidence that the **balancing operator** is failing to carry out its functions in accordance with these rules; and

43.2.2 give the **balancing operator** a reasonable opportunity to respond to such an audit, ruling or evidence.

43.3 This subpart ceases to apply on the earlier of—

43.3.1 the day that is 25 **business days** after the date of a notice under rule 44.2.2 (unless a further notice is given under rule 44.3 before that day); or

43.3.2 the day that a **balancing plan** prepared by the **transmission system owners** under subpart 2 of this Part comes into force under rule 34.1.

43.4 To avoid doubt,—

43.4.1 having ceased to apply under rule 43.3, this subpart may reapply in the circumstances in rule 43.1.4 or 43.1.5; and

43.4.2 no person is required to comply with this subpart unless it applies.

44. Industry body's obligations if subpart applies

44.1 If this subpart applies, the **industry body** must—

44.1.1 give the **transmission system owners** written notice that, if it is not satisfied by the decision date specified in the notice that there is or will shortly be a **balancing operator** appointed by the **transmission system owners** under subpart 2 carrying out its functions in accordance with these rules the **industry body** will—

- (a) prepare and approve a **balancing plan** under rule 45; and
- (b) appoint a **balancing operator** under this subpart; and

44.1.2 **publish** the notice given under rule 44.1.1; and

44.1.3 give the **transmission system owners** and any other interested persons 15 **business days** to make submissions to the **industry body** in response to the notice given under rule 44.1.1.

44.2 If the **industry body** is—

44.2.1 not satisfied, having regard to any submissions received from any person, on the decision date specified in the notice given under rule 44.1.1 that there is or will shortly be a **balancing operator** appointed by the **transmission system owners** in place who is carrying out functions in accordance with these rules it must give notice to the **transmission system owners** that it intends to prepare and approve a **balancing plan** and appoint a **balancing operator** under this subpart; or

44.2.2 satisfied, having regard to any submissions received from any person, on the decision date specified in the notice given under rule 44.1.1 that there is or will shortly be a **balancing operator** appointed by the **transmission system owners** in place who is carrying out functions in accordance with these rules it must give notice to the **transmission system owners** accordingly.

44.3 Despite rule 44.2.2, if within 20 **business days** after the decision date specified in the notice given under rule 44.1.1 the **industry body** is not satisfied that there is a **balancing operator** appointed by the **transmission system owners** in place who is carrying out functions in accordance with these rules, the **industry body** may, without any further consultation, notify the **transmission system owners** that it intends to prepare and approve a **balancing plan** and appoint a **balancing operator** under this subpart

44.4 The date specified in the notice under rule 44.1.1 must not be earlier than 30 **business days** from the date of the notice.

44.5 The **industry body** must **publish** every notice given under rule 44.2 or 44.3.

Balancing plan approval process, and appointment of balancing operator

45. Procedure for preparation and consultation on balancing plan and appointment of balancing operator

- 45.1 If the **industry body** has given a notice to the **transmission system owners** under rule 44.2.1, the **industry body** must—
- 45.1.1 consult on the contents of a draft balancing plan with the **transmission system owners**; and
 - 45.1.2 prepare and **publish** a draft balancing plan that in its opinion would meet the criteria for approval of a **balancing plan** under rule 32.1; and
 - 45.1.3 consult on the draft balancing plan published under rule 45.1.2 with the **transmission system owners** and other persons that the **industry body** considers are representative of the interests of persons likely to be substantially affected by the draft balancing plan if it is approved by the **industry body**; and
 - 45.1.4 give persons consulted with under rule 45.1.3 at least 20 and not more than 25 **business days** to make submissions to the **industry body** on the draft balancing plan; and
 - 45.1.5 **publish** any submissions received under rule 45.1.4; and
 - 45.1.6 consider the submissions made and make any amendment to the draft balancing plan that the **industry body** considers necessary.
- 45.2 After following the procedure in rule 45.1, the **industry body** —
- 45.2.1 may approve the draft balancing plan under rule 32; and
 - 45.2.2 must, as soon as practicable following approval of a **balancing plan** in accordance with rule 45.2.1, appoint the person named in the **balancing plan** to act as the **balancing operator** for the purposes of these rules.
- 45.3 Despite anything in these rules, the **industry body** may, in the circumstances in rule 45.4—
- 45.3.1 adopt the draft balancing plan consulted upon by the **transmission system owners** and make any amendments permitted by that rule; and

45.3.2 approve the draft balancing plan (including any amendments made under rule 45.3.1) under rule 32 without following the procedure in rule 45.1.

45.4 The circumstances for the purposes of rule 45.3 are—

45.4.1 if—

- (a) a draft balancing plan has been consulted upon by the **transmission system owners** under rule 38, but
- (b) the **transmission system owners** have failed to submit a draft balancing plan to the **industry body** under rule 38.3; and
- (c) the amendments proposed to the draft balancing plan consulted upon are in the opinion of the **industry body**, necessary to ensure that the plan meets the criteria for approval of a **balancing plan** under rule 32; or

45.4.2 if—

- (a) a **balancing plan** prepared by the **transmission system owners** under subpart 2 is in force; and
- (b) this subpart applies because of rule 43.1.4 or 43.1.5; and
- (c) the only significant amendment the **industry body** proposes to make to the **balancing plan** is in relation to the person who will act as the **balancing operator**.

45.5 On and after the date that the **industry body** appoints a **balancing operator** in accordance with rule 45.2.2 (whether before or after the **reapplication date**), the **industry body** must use best endeavours to ensure that there remains at all times that this subpart applies a **balancing operator** appointed by the **industry body**.

Balancing plan amendments

46. Procedure for amendment to approved balancing plan

46.1 A **balancing plan** that has been prepared by the **industry body** under rule 45 may be amended at any time in accordance with the procedure in this rule 46.

46.2 An amendment to the **balancing plan** may be proposed by—

46.2.1 all **transmission system owners** together; or

46.2.2 the **industry body**.

46.3 One or more **transmission system owners** or other **users** may request the **industry body** to propose an amendment under this rule, and for that purpose may submit a suggested amendment to the **industry body**, who—

46.3.1 may, if the proposed amendment in the **industry body's** opinion complies with rule 32, in its discretion decide whether or not to adopt the suggested amendment and propose it under rule 46.2.2; but

46.3.2 must, if it decides not to adopt a suggested amendment—

- (a) give reasons to the person who proposed the amendment for that decision; and
- (b) **publish** the suggested amendment, together with its reasons for not adopting it.

46.4 If the **transmission system owners** wish to propose an amendment under rule 46.2.1 they must submit the proposed amendment to the **industry body**, together with—

46.4.1 an explanation for the proposed amendment; and

46.4.2 a statement as to whether in the **transmission system owners'** opinion the amendment is minor and technical, or needs to be made urgently; and

46.4.3 if in the **transmission system owners'** opinion the amendment is minor and technical, or needs to be made urgently, the reasons for that view; and

46.4.4 a document setting out the changes to any relevant **transmission system code** that would be necessary to ensure consistency with the proposed amendment were it approved by the **industry body**.

46.5 If the **industry body** wishes to propose an amendment, the **industry body** must notify the proposed amendment to the **transmission system owners**, together with an explanation for the proposed amendment.

46.6 The **industry body** must—

46.6.1 determine in relation to each amendment proposed by itself or the **transmission system owners** whether in its opinion the amendment is urgent or minor and technical; and

46.6.2 give notice to the **transmission system owners** of the opinion determined under rule 46.6.1.

47. Procedure for minor and technical or urgent amendments to the balancing plan

If an amendment proposed by the **industry body** or the **transmission system owners** is in the **industry body's** opinion minor and technical or needs to be made urgently, the **industry body** may approve the amendment under rule 32.

48. Procedure for non-minor and technical amendments to balancing plan (whether or not urgent)

48.1 If an amendment proposed by the **industry body** or the **transmission system owners** is in the **industry body's** opinion not minor and technical, the **industry body** must follow the procedure in rule 45.1, which applies with any necessary modifications to a draft balancing plan amendment, as if it were a draft balancing plan.

48.2 After following the procedure in rule 45.1 (as applied by rule 48.1) the **industry body** may approve the **balancing plan** amendment.

48.3 Rules 48.1 and 48.2 apply whether or not the **industry body** has approved the proposed non-minor or technical amendment under rule 47 on the grounds it was urgent, but if the amendment has already been approved, then the **industry body** may, following consultation on the amendment, reapprove the amendment and any amendments to it made under rule 45.1.4 if satisfied that it meets the criteria in rule 32 and it has not expired prior.

49. Reversion to transmission system owner appointment

49.1 This rule applies if at any time that subpart 2 of this Part does not apply the **transmission system owners** agree that the preparation of a **balancing plan** and appointment by the **transmission system owners** of a **balancing operator** under subpart 2 would better meet the purpose of these rules.

49.2 If this rule applies the **transmission system owners** may submit to the **industry body** that in their view subpart 2 should apply, and the **industry body** must—

49.2.1 consult with the **transmission system owners** and other persons that the **industry body** considers are representative of the interests of persons likely to be substantially affected should subpart 2 apply; and

- 49.2.2 give persons consulted with under rule 49.2.1 at least 20 but no more than 25 **business days** to make submissions to the **industry body** on the matter; and
- 49.2.3 **publish** the submissions as soon as practicable after those submissions have been received; and
- 49.2.4 consider the submissions made and if, in the **industry body's** opinion preparation of a **balancing plan** and appointment by the **transmission system owners** of a **balancing operator** under subpart 2 might better meet the purpose of these rules, the **industry body** may recommend to the Minister that the Minister give a notice in the *Gazette* under rule 49.3.

49.3 The Minister may, on the recommendation of the **industry body**, give a notice in the *Gazette* specifying that subpart 2 of this Part reappplies from the date specified in the notice (the **reapplication date**), and subject to rule 49.4, from that date—

49.3.1 subpart 2 of this Part applies; and

49.3.2 each reference to the **commencement date** in rule 37 must be read as a reference to the **reapplication date**.

49.4 If, by the date 60 **business days** after the **reapplication date**, there is not a **balancing operator** appointed by the **transmission system owners** in place carrying out the functions in Part 2,—

49.4.1 the Minister may, in the Minister's discretion by a further *Gazette* notice, revoke the notice given in the *Gazette* under rule 49.3, and

49.4.2 from the date of the notice given under rule 49.4.1, subpart 2 of this Part ceases to apply.

Subpart 4 **Funding**

50. Development fee

50.1 The development fee is a fee to meet the balancing regime development costs.

50.2 The balancing regime development costs are—

50.2.1 if subpart 2 of this Part applies—

- (a) the costs of the **industry body** associated with reviewing and approving a **balancing plan** submitted to it under subpart 2; and
- (b) the costs of the **industry body** in connection with the development and establishment of the balancing arrangements under subpart 2; and

50.2.2 if subpart 3 of this Part applies—

- (a) the costs of the **industry body** associated with the appointment of the **balancing operator** under subpart 3, including the costs of preparing and agreeing a **balancing operator service provider agreement**; and
- (b) the costs (if any) payable by the **industry body** to the **balancing operator** to be appointed under subpart 3 before the date on which the **balancing operator** commences carrying out functions under these rules, for example, for development and establishment of any arrangements necessary under these rules in relation to information technology systems; and
- (c) the costs of the **industry body** in connection with the preparation and consultation on a **balancing plan** under subpart 3; and
- (d) the costs payable by the **industry body** to any **balancing operator** appointed under subpart 2 of this Part whose appointment is terminated under rule 31.1.1

50.3 A person is—

50.3.1 liable to pay a development fee in relation to the costs in rule 50.2.1 if that person is a **transmission system owner** at—

- (a) the **commencement date**; or
- (b) the **reapplication date**, unless a notice is given under rule 49.4.1 with the effect that subpart 2 ceases to apply; or

50.3.2 liable to pay a development fee in relation to the costs in rule 50.2.2 if the person is a **transmission system owner** at the date a **balancing plan** prepared by the **industry body** under subpart 3 comes into force.

50.4 To avoid doubt—

- 50.4.1 the balancing regime development costs do not include costs incurred before the **commencement date**; and
- 50.4.2 if a development fee is payable for the costs in rules 50.2.1 and 50.2.2, the same costs may not be included in both development fees;
- 50.4.3 a **transmission system owner** may be liable to pay—
 - (a) a development fee under both rules 50.3.1 and 50.3.2; and
 - (b) more than one development fee under either rule 50.3.1 or 50.3.2, if subpart 2 or 3 of Part 3 having ceased to apply, reappplies in accordance with these rules.

51. How and when development fee must be paid

- 51.1 A development fee is payable to the **industry body**.
- 51.2 Every person to whom—
 - 51.2.1 rule 50.3.1 applies must supply to the **industry body** a return as at a date that is as soon as practicable after the **commencement date** or **reapplication date**, as applicable, and no later than 38 days after that date; and
 - 51.2.2 rule 50.3.2 applies must supply to the **industry body** a return as at a date that is as soon as practicable after the date of any notice given under rule 44.2.1 or 44.3 and no later than 38 days after that date (in each case, **the deadline for supplying returns**).
- 51.3 A return under rule 51.2 must state—
 - 51.3.1 the total gigajoules of gas that were injected or received into any part of the **transmission system** owned by the **transmission system owner** other than from a part of the **transmission system** not owned by the **transmission system owner**, during the 12 months prior to the month in which **the deadline for supplying returns** occurred; and
 - 51.3.2 the total gigajoules of gas that were taken out of any part of the **transmission system** owned by the **transmission system owner**, other than into a part of the **transmission system** not owned by the **transmission system owner**, during the 12 months prior to the month in which **the deadline for supplying returns** occurred.

51.4 As soon as practicable after any **deadline for supplying returns**, the **industry body** must determine and **publish** a breakdown of the relevant estimated balancing regime development costs.

51.5 As soon as practicable after the publication of the estimated balancing regime development costs, the **industry body** must invoice every **transmission system owner** to whom the relevant paragraph of rule 50.3 applies for that **transmission system owner's** share of the estimated balancing regime development costs calculated in accordance with the following formula:

$$S = A \times B/C$$

where—

A is the estimated balancing regime development costs

B is the sum of—

(a) the total quantity of gas injected or received into the **transmission system owner's** part of the **transmission system** other than from a part of the **transmission system** not owned by the **transmission system owner** during the 12 month period covered by the return; and

(b) the total quantity of gas taken out of the **transmission system owner's** part of the **transmission system**, other than into a part of the **transmission system** not owned by the **transmission system owner**, during the 12 month period covered by the return; and

C is the sum of—

(a) the total quantity of gas injected or received into all parts of the **transmission system** other than from another part of the **transmission system** during the 12 month period covered by the return; and

(b) the total quantity of gas taken out of all parts of the **transmission system**, other than into another part of the **transmission system**, during the 12 month period covered by the return; and

S is the amount that must be invoiced to the **transmission system owner**

- 51.6** As soon as practicable after each of the following dates, the **industry body** must determine and **publish** the actual balancing regime development costs:
- 51.6.1** the **go-live date**;
 - 51.6.2** if subpart 2 applies by operation of a notice under rule 49, the date that a **balancing plan** prepared by the **transmission system owners** under that subpart comes into force;
 - 51.6.3** if subpart 3 applies and the **balancing plan** prepared under subpart 3 is not the first **balancing plan** approved by the **industry body**, the date a **balancing plan** prepared by the **industry body** under that subpart comes into force.

51.7 No less than 10 **business days** after publication of the actual balancing regime development costs, the **industry body** must invoice or issue a credit note to every person to whom rule 50.3.1 or 50.3.2, as applicable, applies for the difference between—

51.7.1 that person's share of the actual balancing regime development costs calculated in accordance with the formula in rule 51.5, with the necessary modifications; and

51.7.2 the amount of the estimated balancing regime development costs invoiced to that person under rule 51.5.

52. Ongoing fees

52.1 The ongoing fees are monthly fees to meet the balancing regime ongoing costs.

52.2 The balancing regime ongoing costs are—

52.2.1 for any period in a year in which a **balancing operator** appointed by the **transmission system owners** is carrying out the functions in Part 2—

(a) the costs of the **industry body** associated with its obligations under these rules, including in relation to any **balancing plan** amendments; and

(b) the costs payable to any auditor appointed by the **industry body** under rule 56; and

52.2.2 for any period in a year in which a **balancing operator** appointed by the **industry body** is carrying out the functions in Part 2—

- (a) the costs payable by the **industry body** to the **balancing operator** in respect of that period under a **balancing operator service provider agreement**; and
- (b) the costs payable to any auditor appointed by the **industry body** under rule 56; and
- (c) any other costs of the **industry body** associated with its obligations under these rules, including in relation to any **balancing plan** amendments.

52.3 Each person who is a **transmission system owner** in a month is liable to pay ongoing fees for that month in accordance with these rules.

52.4 In this rule and rules 53 to 55, **year** means the financial year of the **industry body** unless the context otherwise requires.

53. How and when estimated ongoing fees payable

53.1 The estimated ongoing fees are payable to the **industry body**.

53.2 Rule 53.3 applies to each month after (and including the month of) the **go-live date**.

53.3 Every person to whom rule 52.3 applies must supply to the **industry body** a return no later than the tenth day of each month, unless otherwise agreed by the **industry body**.

53.4 The return must state—

53.4.1 the total gigajoules of gas that were injected or received into any part of the **transmission system** owned by the **transmission system owner**, other than from a part of the **transmission system** not owned by the **transmission system owner**, during the preceding month; and

53.4.2 the total gigajoules of gas that were taken out of any part of the **transmission system** owned by the **transmission system owner**, other than into a part of the **transmission system** not owned by the **transmission system owner**, during the preceding month.

53.5 As soon as practicable after the **go-live date**, the **industry body** must determine and **publish** a breakdown of the estimated balancing regime ongoing costs for the first year or part year of operation of the **balancing plan**.

53.6 As soon as practicable after the publication of those estimated balancing regime ongoing costs, the **industry body** must notify every **transmission**

system owner to whom rule 52.3 applies of the estimated balancing regime ongoing costs, and that ongoing fees will be payable by that person in that year or part year in accordance with the following formula:

$$S = A \times B/C$$

where—

- A is the estimated balancing regime ongoing costs divided by the number of months in the applicable year or part year
- B is the sum of—
- (a) the total quantity of gas injected or received into the **transmission system owner's** part of the **transmission system**, other than from a part of the **transmission system** not owned by the **transmission system owner** during the month before the month in which the relevant invoice is issued under rule 53.10; and
 - (b) the total quantity of gas taken out of the **transmission system owner's** part of the **transmission system**, other than into a part of the **transmission system** not owned by the **transmission system owner** during the month before the month in which the relevant invoice is issued under rule 53.10; and
- C is the sum of—
- (a) the total quantity of gas injected or received into all parts of the **transmission system** other than from another part of the **transmission system** during the month before the month in which the relevant invoice is issued under rule 53.10; and
 - (b) the total quantity of gas taken out of all parts of the **transmission system**, other than into another part of the **transmission system**, during the month before the month in which the relevant invoice is issued under rule 53.10; and
- S is the amount that must be invoiced to the **transmission system owner** for the month.

53.7 For each year following the first year or part year of operation, the **industry body** must—

53.7.1 estimate and **publish**, at least 2 months before the beginning of the year, a breakdown of the estimated balancing regime ongoing costs for that year; and

53.7.2 as soon as practicable after publication of those estimated balancing regime ongoing costs, notify every person to whom rule 52.3 applies of the estimated balancing regime ongoing costs, and that ongoing fees will be payable by that person in that year calculated in accordance with the formula in rule 53.6.

53.8 The **industry body** must review the amount of the estimated balancing regime ongoing costs for a year at the end of each quarter and must, if the estimated costs differ materially from the costs published under rule 53.5 or 53.7.1 (or if relevant under rule 53.8.1 or 53.9.1)—

53.8.1 **publish** an updated breakdown of the estimated balancing regime ongoing costs for that year; and

53.8.2 as soon as practicable after publication of the updated estimated balancing regime ongoing costs, notify every person to whom rule 52.3 applies of the updated estimated balancing regime ongoing costs.

53.9 If during a year a **balancing operator** appointed under either subpart 2 or 3 of Part 3 ceases to carry out functions under these rules and a **balancing operator** appointed under the other subpart begins carrying out functions, the **industry body** must, having regard to rule 52.2,—

53.9.1 estimate and **publish**, as soon as practicable, an updated breakdown of the estimated balancing regime ongoing costs for the year; and

53.9.2 as soon as practicable after publication of the updated estimated balancing regime ongoing costs, notify every person to whom rule 52.3 applies of the updated estimated balancing regime ongoing costs.

53.10 On the first **business day** of each month following the notification in rule 53.6, the **industry body** must invoice every person to whom rule 52.3 applies for that person's share of the estimated balancing regime ongoing costs payable during that month, calculated—

53.10.1 in accordance with the formula in rule 53.6; and

53.10.2 by reference to the last estimated balancing regime ongoing costs published under this rule 53.

54. How and when actual ongoing fees payable

- 54.1** The actual ongoing fees are payable to the **industry body**.
- 54.2** As soon as practicable after the end of each year of operation (including in relation to the first year, any part year of operation), the **industry body** must determine and **publish** a breakdown of the actual balancing regime ongoing costs for that year (or part year).
- 54.3** No less than 10 **business days** after publication of the actual balancing regime ongoing costs under rule 54.2, the **industry body** must invoice, or issue a credit note, to each person who has paid estimated balancing regime ongoing costs during the year for the difference between—
- 54.3.1** that person's share of the actual balancing regime ongoing costs calculated in accordance with the formula in rule 53.6, with the necessary modifications; and
- 54.3.2** the amount of the estimated balancing regime ongoing costs invoiced to that person in respect of the year.

55. General provisions regarding fees and other costs

- 55.1** The due date for the payment of any invoice or refund of any credit under this subpart is—
- 55.1.1** the 20th day of the month in which the invoice or credit note was received; or
- 55.1.2** if the day referred to in rule 55.1.1 is not a **business day**, the following **business day**.
- 55.2** The fees payable under rules 50 to 54 are exclusive of any goods and services tax payable under the Goods and Services Tax Act 1985, and goods and service tax on those fees (if any) must be added to the invoices or credit notes issued under rules 50 to 54.
- 55.3** The **industry body** must ensure that all information and returns supplied under rules 50 to 54 are used only for the purposes of collecting the development fee or fees and ongoing fees.
- 55.4** A **transmission system owner** may pass on the following costs to **shippers** on its part of the **transmission system** in proportion to the quantities of gas **transmitted** by that **shipper** through the **transmission system owner's** part of the **transmission system** or on such other basis as may be agreed by the **industry body**:
- 55.4.1** any fees payable under these rules;

55.4.2 any costs paid by the **transmission system owner** to the **balancing operator** under a **balancing operator service provider agreement**;

55.4.3 any amount paid by the **transmission system owner** to any **balancing operator** appointed under subpart 3 whose appointment is terminated under rule 31.1.1.

55.5 The amount of any fees or other costs passed on by a **transmission system owner** in accordance with rule 55.4 must be net of any amount that the **transmission system owner** is able to recover from a **user** (for example, any amount that the **balancing operator** has been unable to recover under rule 6.2.1(a), and for which the **transmission system owner** is required to indemnify the **balancing operator** under a **balancing operator service provider agreement** or indirectly via the ongoing fee).

55.6 To avoid doubt, a person is not released from any obligation to pay a fee under this subpart because subpart 2 or 3 of Part 3, as applicable, no longer applies.

Part 4

Miscellaneous

Audit of balancing operator's performance

56. Industry body to commission performance audits

56.1 The **industry body** may, from time to time, arrange performance audits of the **balancing operator**.

56.2 The purpose of a performance audit is to assess—

56.2.1 the performance of the **balancing operator** in terms of compliance with these rules; and

56.2.2 the systems and processes of the **balancing operator** that have been put in place to enable compliance with these rules.

56.3 The **industry body** must—

56.3.1 appoint as auditor a person who—

- (a) is independent of and not in a position of conflict of interest with the **balancing operator** or a **transmission system owner**; and
- (b) is not an officer or employee of the **industry body**; and

56.3.2 **publish** the identity of any auditor it appoints under rule 56.3.1, together with the auditor's terms of reference.

56.4 In conducting an audit under this rule, the auditor must not consider any action, circumstance, event, or inaction that occurred 30 months or more before the date the audit was requested by the **industry body**.

57. Provision of information to auditor

57.1 In conducting an audit under rule 56, the auditor may—

57.1.1 request any information from the **balancing operator**, the **industry body** and any **transmission system owner**; and

57.1.2 request to examine any processes, systems and data of the **balancing operator**, provided such processes, systems and data are directly relevant to the performance of the **balancing operator** in terms of compliance with these rules.

57.2 Any request under rule 57.1 must be reasonable and strictly for the purposes of the audit.

57.3 The **balancing operator**, the **industry body** and every **transmission system owner** must comply with a request under rule 57.1 but nothing in this rule limits any claim for legal professional privilege.

57.4 In providing information to the auditor, a **transmission system owner**, the **industry body**, or the **balancing operator** may indicate to the auditor where such information is considered to be confidential.

58. Auditor to prepare draft audit report

58.1 The auditor must prepare, in writing, a draft audit report on its conclusions and recommendations formulated as a result of conducting an audit under rule 56.

58.2 Subject to rule 60, the auditor must give a copy of the draft audit report to—

58.2.1 the **balancing operator**; and

58.2.2 each **transmission system owner**; and

58.2.3 the industry body.

58.3 The persons referred to in rule 58.2, have 10 **business days** from the date the report is received to provide the auditor with comments on the report.

59. Auditor to prepare final audit report

59.1 Before the auditor prepares a final audit report on the conclusions reached and recommendations formulated as a result of conducting an audit under rule 56, the auditor must take into account any comments received on the draft audit report.

59.2 The final audit report must be in writing and, if requested by the **balancing operator**, must include as an appendix any comments from the **balancing operator** on the draft audit report.

59.3 The auditor must give a copy of the final audit report to—

59.3.1 the **balancing operator**; and

59.3.2 each **transmission system owner**; and

59.3.3 the **industry body**.

59.4 Subject to rule 61, once the auditor has given a final audit report under this rule, the report may not be altered in any way.

60. Confidential information in audit reports

60.1 In providing a draft audit report or final audit report, the auditor must provide a complete version to the **industry body**.

60.2 However, at the discretion of the auditor, the versions of the draft audit report and the final audit report provided to any other person or published under these rules may exclude any confidential information obtained in the conduct of the audit.

61. Publication of final audit reports

The **industry body** must **publish** a version of each final audit report received under rule 60 that does not contain confidential information obtained in the conduct of the audit.

62. Use of final audit reports

62.1 To avoid doubt, a final audit report may be used—

62.1.1 for the purposes of the Gas Governance (Compliance) Regulations 2008;

62.1.2 for the purposes of considering any amendment to these rules or the **balancing plan**;

62.1.3 by the **industry body**—

- (a) for the purpose of reviewing the performance of the **balancing operator** under these rules, or under the **balancing operator service provider agreement**;
- (b) for the purpose of reviewing the performance of an auditor; and
- (c) for any other purposes that it considers necessary.

Notices

63. Giving of ordinary notices

63.1 If these rules require any notice to be given, the notice must be in writing and be—

63.1.1 delivered by hand to the nominated office of the addressee; or

63.1.2 sent by post to the nominated postal address of the addressee; or

63.1.3 sent by fax to the nominated fax number of the addressee; or

63.1.4 sent by electronic transmission or any other similar method of electronic communication to the appropriate nominated electronic address of the addressee.

63.2 Despite rule 63.1, it is sufficient notice for the purposes of these rules if notice to **users** of the **balancing operator's** allocation of **balancing gas** and its associated **cash-out amount** is given via an **information exchange** accessible to the **user**.

63.3 This rule does not apply to the giving of urgent notices, but does apply to the confirmation of urgent notices under rule 65.

64. When ordinary notices taken to be given

64.1 In the absence of proof to the contrary, notices are taken to be given,—

64.1.1 in the case of notices delivered by hand to a person, when actually received at that person's address;

- 64.1.2** in the case of notices sent by post, at the time when the notice would in the ordinary course of post be delivered, and in proving the delivery, it is sufficient to prove that the notice was properly addressed and posted;
- 64.1.3** in the case of notices sent by fax, at the time indicated on a record of its successful transmission;
- 64.1.4** in the case of notices sent by electronic transmission or any other similar method of electronic communication, including via an **information exchange**—
- (a) at the time the computer system used to **transmit** the notice has received an acknowledgment or receipt to the electronic address of the person transmitting the notice; or
 - (b) at the time the person who gave the notice proves the notice was transmitted by computer system to the electronic address provided by the addressee.

64.2 This rule does not apply to the giving of urgent notices, but does apply to the confirmation of urgent notices under rule 65

65. Urgent notices

- 65.1** Despite rules 63 and 64, an urgent notice may be given orally where the person issuing a notice considers that the urgency of the situation means the notice should not be given in writing.
- 65.2** If an urgent notice is given orally under rule 65.1 the person who gave that notice must, as soon as practicable, confirm that urgent notice in writing in accordance with rules 63 and 64.

Miscellaneous

66. Safety override

- 66.1** No person is required to comply with a provision of these rules to the extent that compliance would unreasonably endanger the life or safety of that person or any other person.
- 66.2** However, rule 66.1 does not absolve a **user** (or in the circumstances in rule 19.3, a **transmission system owner**) from the liability to pay for any **balancing gas** allocated to it under rule 19.

67. Relationship with transmission system arrangements

- 67.1** All **transmission system arrangements** must be read subject to these rules and subject to all modifications necessary to give effect to these rules.
- 67.2** If both **transmission system arrangements** and these rules impose an obligation or liability in respect of the same matter,—
- 67.2.1** the obligation or liability under these rules prevails to the extent that the obligation or liability in the **transmission system arrangements** is inconsistent with or doubles up with an obligation in these rules; and
- 67.2.2** a party to the **transmission system arrangements** is not liable to comply with the **transmission system arrangements** to the extent that that obligation or liability in those **transmission system arrangements** is inconsistent with or doubles up with an obligation or liability under these rules.
- 67.3** In rules 67.1 and 67.2 **transmission system arrangements** do not include the Gas (Downstream Reconciliation) Rules 2008.

68. Relationship with Gas Governance (Critical Contingency Management) Regulations 2008

- 68.1** If the **balancing operator** receives notice under regulation 51 of the Gas Governance (Critical Contingency Management) Regulations 2008 that a critical contingency has been declared in respect of a part of the **transmission system**—
- 68.1.1** the **balancing operator** must cease to carry out its functions under rule 15 in relation to any **balancing zone** in which that part of the **transmission system** falls until a notice is received under regulation 62 of those regulations to advise that that the critical contingency has been terminated; and
- 68.1.2** to the extent that there is any inconsistency between the Gas Governance (Critical Contingency Management) Regulations 2008 and these rules in respect of the actions to be taken during a critical contingency, the Gas Governance (Critical Contingency Management) Regulations 2008 prevail.
- 68.2** Rule 68.1.1 does not affect the validity of any **balancing action** taken by the **balancing operator** in relation to a part of the **transmission system** in respect of which a critical contingency has been declared before receiving notice of the declaration of the critical contingency, or affect the **balancing operator's** ability to allocate **balancing gas** and the associated **cash-out amount** in respect of that **balancing action**.

SCHEDULE

Requirements for balancing plan

A **Balancing operator**

The name and contact details of the person appointed or to be appointed as the **balancing operator** under rule 37 or 45.

B **Information relating to balancing zones**

1. Details of the boundaries of each part of the **transmission system** that is to constitute a separate **balancing zone**, which -
 - a. must be set to ensure all parts of the **transmission system** are within a **balancing zone**; and
 - b. to avoid doubt, may define the entire **transmission system** as a single **balancing zone**.
2. A statement as to whether each **balancing zone** will be **directly managed** or **indirectly managed** by the **balancing operator** (and at least one zone must be **directly managed**).
3. The following information in relation to each **directly managed balancing zone**:
 - a. the upper and lower threshold for the taking of **balancing action** by the **balancing operator**, which—
 - (i) must be set to give the maximum practicable difference between the upper and lower thresholds without unreasonably interfering with the transmission of gas; and
 - (ii) may be different for—

- (A) different periods of the day, week or year; and
 - (B) different operating conditions within the **balancing zone** (for example, where the **balancing operator** has been notified of maintenance being carried out in the **balancing zone**); and
 - (iii) may be defined by reference to a formula with measurable variables;
 - b. the **target line pack**, which must be set between the upper and lower thresholds referred to in paragraph a. and may be
 - (i) different for—
 - (A) different periods of the day, week or year; and
 - (B) different operating conditions within the **balancing zone** (for example, where the **balancing operator** has been notified of maintenance being carried out in the **balancing zone**); and
 - (ii) defined by reference to a formula with measurable variables;
 - c. any points for measuring pressure that are reasonably necessary for the purposes of the **balancing operator** carrying out its functions.
4. The following information in relation to each **indirectly managed balancing zone**:
- a. the process by which the **balancing zone** will be managed (for example, by pressure regulator feed from a zone that is **directly managed**);

- b. any functions or powers of the **balancing operator** in relation to the **balancing zone** (for example, to operate equipment);
 - c. the thresholds for the exercise of those functions and powers.
- 5 The processes for notification and coordination in relation to operational matters that may affect **line pack**.

C Provision of information

- 1. The methods and times for the giving of information required under rules 7 and 9 to the **balancing operator** by **users** and **transmission system owners**.
- 2. The methods and times of notification of information by the **balancing operator** to **users** and **transmission system owners** for the purposes of these rules, including—
 - a. notifications of allocations of **balancing gas** under rule 20.1; and
 - b. any new allocations of **balancing gas** under rule 25.

D Balancing gas

Details relating to the procurement of **balancing gas** including the following:

- a. reasonable technical requirements for the provision of **balancing gas**;
- b. the times and decision process for **balancing actions**;
- c. price thresholds for the purchase and sale of **balancing gas**, which must be a dollar per gigajoule amount set—
 - (i) in the case of purchase of **balancing gas**, at a level which is a pre-estimate of the critical contingency price that would be applied after a critical contingency under the Gas Governance (Critical Contingency Management) Regulations 2008; and

- (ii) in the case of sale, at a level which is a pre-estimate that is representative of the marginal cost of non-production of gas to producers of gas (and which, to avoid doubt, may be a negative number).

E Allocation model

An allocation model for the allocation of **balancing gas** and associated **cash-out amount** from each **balancing action** that has the following features:

- a. **balancing gas** is allocated based on the best information available under rule 9:
- b. **balancing gas** is allocated—
 - (i) to the **users** who, the best information available shows, had an **imbalance** at the time the **balancing operator** committed to the **balancing action**; and
 - (ii) in the proportions that that information indicates the **user's imbalance** contributed to the need to take the **balancing action**; and
 - (iii) only up to the quantity of the **user's actual imbalance** as determined under the allocation model;
- c. if a **balancing action** is made necessary in a **balancing zone (balancing zone A)** due in part or in whole to an **imbalance** in another **balancing zone (balancing zone B)**—
 - (i) the relevant proportion of **balancing gas** and its associated **cash-out amount** is allocated to the **users in balancing zone B** who contributed to the **imbalance in balancing zone A**, rather than **users in balancing zone A**; and
 - (ii) within **balancing zone B**, the **balancing gas** sold or purchased and its associated **cash-out amount** are allocated—

- (A) to the **users** who, the best information available shows, had an **imbalance** at the time the **balancing operator** committed to a **balancing action**; and
 - (B) in the proportions that that information indicates the **user's imbalance** contributed to the need to take the **balancing action**; and
 - (C) only up to the quantity of the **user's actual imbalance** as determined under the allocation model;
- (iii) provides for the adjustment of title to gas between **users** in **balancing zone A** and **balancing zone B**, to reflect the allocation of **balancing gas** to **users** in **balancing zone B**;
- d. if there is an **interconnection point** within a **balancing zone**—
- (i) allocates the relevant proportion of **balancing gas** and its associated **cash-out amount** to any **users** downstream of the **interconnection point** who contributed to the need to take the **balancing action**; and
 - (ii) allocates **balancing gas** to any **interconnected party** in relation to any **imbalance** at the **interconnection point** only to the extent that that **imbalance** was not contributed to by the users allocated **balancing gas** in accordance with subparagraph (i); and
 - (iii) provides for the adjustment of the title to gas of any **interconnected party** in relation to any **imbalance** at the **interconnection point** to reflect the allocation of the **balancing gas** to the downstream **users**;
- e. the model is, as relevant, consistent with the Gas (Downstream Reconciliation) Rules 2008;
- f. **balancing gas** is allocated in respect of a day in which a critical contingency has been declared or terminated, in a manner that—

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- (i) is as far as possible consistent with paragraphs a. to e.; but
- (ii) takes into account the method used for determination and allocation of contingency imbalances in relation to that critical contingency under the Gas Governance (Critical Contingency) Regulations 2008 .

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