



Proposed Recommendation on the Gas (Processing Facilities Information Disclosure) Rules 2008

Date issued: 26 November 2012
Submissions close: 14 January 2013





About Gas Industry Co.

Gas Industry Co is the gas industry body and co-regulator under the Gas Act. Its role is to:

- develop arrangements, including regulations where appropriate, which improve:
 - the operation of gas markets;
 - access to infrastructure; and
 - consumer outcomes;
- develop these arrangements with the principal objective to ensure that gas is delivered to existing and new customers in a safe, efficient, reliable, fair and environmentally sustainable manner; and
- oversee compliance with, and review such arrangements.

Gas Industry Co is required to have regard to the Government's policy objectives for the gas sector, and to report on the achievement of those objectives and on the state of the New Zealand gas industry.

Gas Industry Co's corporate strategy is to 'optimise the contribution of gas to New Zealand'.

Authorship

This paper was prepared by the Market Operations Group

Submissions close: 14 January 2013

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Executive summary

The Gas (Processing Facilities Information Disclosure) Rules 2008 ('the Rules') expire on 27 June 2014. By 27 June 2013, Gas Industry Co must provide a recommendation to the Minister of Energy and Resources on the need for rules or regulations setting reasonable terms and conditions for access to, and use of, gas processing facilities.

This paper provides the industry with an opportunity to comment on Gas Industry Co's intended recommendation.

Background

Under the Government Policy Statement on Gas Governance 2004 (GPS 2004) Gas Industry Co was invited to develop '*protocols that set reasonable terms and conditions for access to gas processing facilities.*' The GPS 2004 left open the scope, form, and delivery mechanism of the access protocols. In 2005 Gas Industry Co initiated a work programme to consider how best to meet that section of the 2004 GPS which culminated in the development of the Gas (Processing Facilities Information Disclosure) Rules 2008 (the Rules).

The Rules established an information disclosure regime developed with the intention of 'settling the issue of whether it is necessary to recommend rules or regulations setting reasonable terms and conditions for access to, and use of, gas processing facilities.' Gas Industry Co's analysis prior to proposing the Rules did not find a reason to regulate for access to processing facilities, particularly because gas processing facilities do not exhibit strong economies of scale and therefore there is no market failure to regulate for. However, because at the time the New Zealand gas market was transitioning from a few large fields to several smaller fields, Gas Industry Co decided to recommend an information disclosure regime which would maintain a 'watching brief' over the processing facilities market so as to defer making a final decision on whether regulated access is required.

The GPS 2004 was replaced by the Government Policy Statement on Gas Governance 2008 (GPS 2008). The GPS 2008 states the following with respect to outcomes the Government expects Gas Industry Co to report against, and to submit proposals for, if it concludes that such a proposal is required:

- Gas industry participants and new entrants are able to access the following physical assets and related services:
 - third party gas processing facilities;
 - [...]

The Rules were implemented to settle the issue of whether third party access arrangements are required. For Gas Industry Co to be satisfied that such arrangements are not required, it must be satisfied that Gas Industry participants and new entrants are able to access third party processing facilities the extract above from the GPS 2008 was being, or could be, met. Irrespective of the GPS, section 43F(2)(b) of the Gas Act gives Gas Industry Co powers to set reasonable terms and conditions for access to processing facilities where such a step would be necessary to allow new fields to be developed, and spare capacity is available.

Gas Industry Co's analysis

Under the Rules, Gas Industry Co receives facility information and access information. The former is summarised each year on Gas Industry Co's website¹ and contains information on the spare capacity available at processing facilities. The latter is provided to Gas Industry Co on a confidential basis and contains information on *bona fide* approaches by third parties for access to processing facilities.

In preparing to make the Recommendation to the Minister, we appointed Concept Consulting Limited (Concept) to interview processing facility owners and access seekers. We wished to know whether these parties thought a mandatory open access regime was required or appropriate for New Zealand. Concept also reviewed the information disclosed to date under the Rules. Concept did not find anything to suggest a need for a regulated access regime and the interviewed parties were all opposed to regulated access and ambivalent about the expiry of the information disclosures.

Based on the information available, we conclude that our original analysis, prior to proposing the Rules, was correct—there does not appear to be a case for regulated access to processing facilities. Current processing facilities seem to be well utilised and, of the few third party access requests received, all seem to have been satisfactorily resolved. Crucially, there is nothing to suggest that our original reasoning—that gas processing facilities do not exhibit strong economies of scale, therefore there is not a market failure for which to regulate—was incorrect. The market is therefore meeting the GPS 2008 requirement without the need for regulated access.

Proposal

Accordingly, we propose recommending to the Minister that regulated access to processing facilities is not required. We have no evidence of a market failure and it would be inconsistent with Gas Industry Co's Gas Act objectives to recommend regulating in such a situation.

We also propose recommending that the information disclosures be allowed to lapse from 2014. There is no evidence to suggest that the presence of the Rules has positively influenced the operation of the market: there has been minimal usage of the part of Gas Industry Co's website which hosts the facilities information and most of the parties interviewed by Concept say they find little use for the public disclosures.

¹ The information is available at the following link: <http://gasindustry.co.nz/work-programme/gas-processing-facilities-information-disclosure>

Rule 17 does permit Gas Industry Co to recommend to the Minister that the Rules be rolled over for a specified term. However, to make such a recommendation we would need to be convinced that the issue of whether regulated access for processing facilities was necessary had yet to be settled. We do not believe this to be the case, nor do we consider that we have a mandate for prolonging the Rules. Given that the years of information disclosures have provided no evidence to unsettle our original analysis, we conclude that regulated access to processing facilities is not justified.

This does not preclude the possibility that governance arrangements will be necessary in the future. For instance we could use our regulatory powers under section 43F(2)(b) of the Gas Act, but we would first need to identify a market failure.

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1

Introduction

1.1 Background

Under the GPS 2004 Gas Industry Co was invited to develop '*protocols that set reasonable terms and conditions for access to gas processing facilities.*' The GPS 2004 left open the scope, form and delivery mechanism of the access protocols. In 2005 Gas Industry Co initiated a work programme to consider how best to meet that section of the GPS 2004 which culminated in the development of the Gas (Processing Facilities Information Disclosure) Rules 2008 (the Rules).

The Rules were made with the purpose of 'settling the issue of whether it is necessary to recommend rules or regulations setting reasonable terms and conditions for access to, and use of, gas processing facilities.' The Rules expire six years after the commencement date of June 2008 (i.e., in June 2014) but Gas Industry Co is required to provide a recommendation to the Minister of Energy and Resources (the Minister) on the need for rules or regulations within five years of the commencement date (i.e., by June 2013).

The Rules are an information disclosure regime. Gas Industry Co's analysis prior to the development of the Rules indicated that there was no evidence of inefficiencies in the gas processing market in the absence of any regulation. In particular, gas processing facilities were not found to exhibit strong economies of scale. The information received throughout the information disclosure period, combined with the clear purpose statement for the Rules, was therefore envisaged to settle whether Gas Industry Co's initial analysis was accurate, particularly as the New Zealand gas market shifted away from its reliance on the large Maui field towards a greater number of smaller fields.

1.2 Purpose

The purpose of this document is to present the industry with Gas Industry Co's findings from the information disclosure period and to give an indication on its likely recommendation to the Minister which is required no later than 27 June 2013.

Along with the annual information disclosures that Gas Industry Co receives under the Rules, another important input for the purposes of this paper is a report from Concept Consulting ('the Concept report' and attached as an appendix). Concept was engaged in 2012 to:

- review the information available as provided under the information disclosures; and

- interview a range of facility owners and identified access seekers to hear their views on the disclosure regime and whether a regulated open access regime is required or appropriate for the gas processing market in New Zealand.

1.3 Relevant legislation

Government Policy Statement on Gas Governance

The 2004 GPS was replaced by the Government Policy Statement on Gas Governance 2008 (GPS 2008). The 2008 GPS states the following with respect to outcomes the Government expects Gas Industry Co to report against, and to submit proposals for if it concludes they are required to achieve the outcomes, for accessing key infrastructure:

- Gas industry participants and new entrants are able to access the following physical assets and related services:
 - third party gas processing facilities;
 - [...]

The key difference between the GPS 2004 and the GPS 2008 is that the Rules were implemented to settle the issue of whether third party access arrangements were required. If Gas Industry Co decides that such arrangements are not required then it must also be satisfied the extract above from the GPS 2008 can be met.

Gas Act

Section 43F of the Gas Act 1992 (the Gas Act) establishes that governance regulations can be made for the purpose of:

‘...setting reasonable terms and conditions for access to, and use of, gas processing facilities where—

- (i) this is reasonably necessary to allow new fields to be developed; and
- (ii) spare capacity is available or could be made available if the person accessing or using the facilities paid the reasonable costs (including the costs of capital) of providing the additional capacity.’

Section 43ZN of the Gas Act prescribes the objectives of the industry body when recommending regulations, including for processing facilities:

- (a) ‘the principle objective is to ensure that gas is delivered to existing and new customers in a safe, efficient, and reliable manner; and
- (b) the other objectives are—

- (i) the facilitation and promotion of the ongoing supply of gas to meet New Zealand's energy needs, by providing access to essential infrastructure and competitive market arrangements:
- (ii) barriers to competition in the gas industry are minimised:
- (iii) incentives for investment in gas processing facilities, transmission, and distribution are maintained or enhanced:
- (iv) delivered gas costs and prices are subject to sustained downward pressure:
- (v) risks relating to security of supply, including transport arrangements, are properly and efficiently managed by all parties:
- (vi) consistency with the Government's gas safety regime is maintained.'

Gas Industry Co's Strategic Plan 2013-15

Though it is not a piece of legislation, Gas Industry Co's Strategic Plan 2013-15 is an important document outlining our intended short-term work programme which was developed in conjunction with the industry. The Strategic Plan states that:

'Prior to the expiry of the Rules in 2014, Gas Industry Co will consult with gas processing facility owners and the wider industry on experience with the Rules and whether further regulation or other action is required. It is not an option to extend the existing rules, which were put in place to assess whether there are any issues indicating that access regulation is needed. They will be revoked in 2014.'

Forecasted activities for FY2013-FY2015 were:

- '...receive and publish returns from processing facility owners;
- receive reports from access-seekers (if any);
- survey facility owners and others on expiration of Rules; and
- provide a recommendation to the Minister in respect of any further need for regulation.'

1.4 Submissions

We welcome submissions on this document and on Concept's report which is attached as an appendix. Submissions are invited by **5pm on 14 January 2013**.

Where relevant, we request that submitters provide supporting evidence. We intend to publish all submissions received so please clearly indicate any information that is commercially sensitive that you do not wish to be published or discuss this with Gas Industry Co before uploading your submission.

Submissions can be made by logging in to Gas Industry Co's website and uploading your submission after navigating to the Ongoing Operations/Gas Processing Facilities Information Disclosure section. Parties who are unfamiliar with the procedures for uploading submissions can search the website (www.gasindustry.co.nz) for 'help for new users'. Alternatively, please call Tim Herbert on (04) 472 1800 for assistance.

2

Background

2.1 2006 Discussion Paper

In August 2006 Gas Industry Co published the discussion paper 'Access to Gas Processing Facilities' (2006 paper). The 2006 paper concluded, based on quantitative analysis and qualitative analysis, that the best form of access protocols would be both low cost and light-handed, in the form of voluntary information disclosure. Available evidence at the time did not indicate a need for regulated access to processing facilities but because the New Zealand gas market at the time was undergoing a transformation from a fewer number of large gas production fields to a greater number of small gas production fields, Gas Industry Co recommended the development of an information disclosure regime so as to monitor the situation over a period of time.

2.2 2007 Statement of Proposal

In September 2007 Gas Industry Co published the Statement of Proposal 'Information disclosure by owners of gas processing facilities' (Statement of Proposal). Following the publication of the 2006 paper, Gas Industry Co had attempted to achieve voluntary information disclosure. If universal agreement was not reached by mid-2007 then Gas Industry Co would recommend to the Minister to regulate for information disclosure. It had become clear that universal agreement would not be reached by mid-2007 so the Statement of Proposal recommended the regulated option.

2.3 Recommendation and development of rules

The regulated option resulted in the development of the Rules which require facility owners to disclose information annually on:

- the capabilities and availability of their fully or partly owned gas processing facilities; and
- approaches by third parties for access to their fully or partly owned gas processing facilities.

The former is published on Gas Industry Co's website and is updated each year. The latter is provided to Gas Industry Co on a confidential basis but is used to report, as necessary, to the Minister from time to time on the need for further regulatory intervention in the gas processing market.

Information has been disclosed annually since 2008 and will continue to be disclosed until the Rules expire in June 2014. Therefore, there is one more round of information disclosures that will occur following our Recommendation to the Minister.

2.4 Concept's report

In 2012 Gas Industry Co commissioned Concept to:

- review the information available as provided under the information disclosures; and
- interview a range of facility owners and identified access seekers to hear their views on the disclosure regime and whether an open access regime is required or appropriate for New Zealand.

Concept's report is attached to this document as an appendix. We are interested in hearing feedback on it from submitters, particularly those whose organisations may not have been interviewed by Concept. The organisations interviewed by Concept were:

- Greymouth Petroleum Limited;
- Origin Energy Resources Limited;
- Shell NZ Limited;
- TAG Oil NZ Limited;
- Todd Energy; and
- Vector Limited.

Key points from Concept's report are:

- there does not appear to be any new evidence to suggest a need for a regulated access regime for processing facilities in New Zealand;
- facilities owners do not see the need for regulation as access can be reasonably negotiated on commercial terms in the absence of any regulation;
- the information disclosed under the Rules has not been particularly useful for facilities owners and there has been minimal accessing of the information hosted on Gas Industry Co's website; and
- there is nothing to suggest Gas Industry Co's position in 2006—that regulated access was not required—was incorrect.

3

Gas Industry Co's analysis

3.1 A recap of the problem

Gas processing is necessary because raw natural gas consists of a mixture of hydrocarbons as well as other compounds like water vapour, hydrogen sulphide, and carbon dioxide. Impurities such as these must be removed before the gas can be shipped safely by transmission and distribution networks. Processing involves separating out natural gas, water, liquids and sometimes other substances such as naphtha, sulphur, and carbon dioxide.

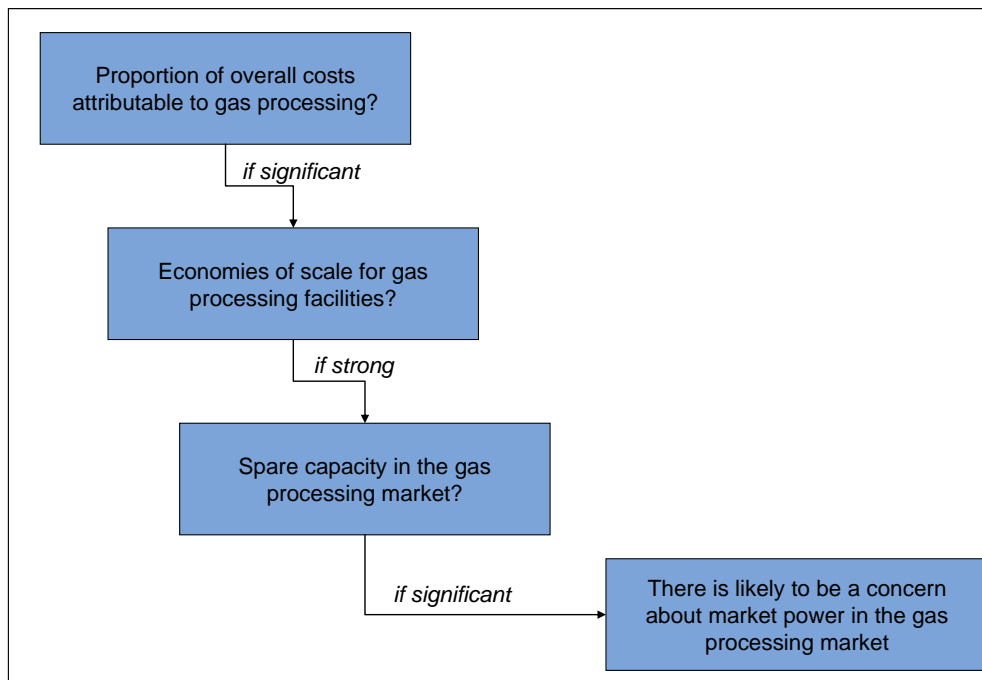
The potential 'problem' of access to processing facilities is somewhat convoluted. On one hand, processing facilities are built and designed by a certain party or parties to meet their specific requirements. In economic terms, such a facility would be reasonably considered a private good because its use would be excludable (either in terms of capacity and/or the particulars of the gas) and rivalrous because one party's use of the facility would prevent another party's use. That said, if a facility owner had spare capacity and it was approached by a prospective producer wishing to use the facility to process similar types of gas then it would be in the owner's best interests to permit the use of their facility for an appropriate fee.

On the other hand, given it is difficult to construe a 'public good' argument for processing facilities, regulation for access could be justified if any of the following inefficiencies were present:

- gas processing costs account for a substantial proportion of the cost of getting gas to market; or
- strong economies of scale exist for gas processing facilities; or
- a monopoly problem hindering the development of a competitive market, for instance vertical integration.

The work carried out by Gas Industry Co prior to go-live of the Rules did not find the strong existence of any of these inefficiencies. The 2006 paper applied the following process for determining whether regulated access might be required for processing facilities where that process would have highlighted the inefficiencies listed above if they were present:

Figure 1: Application of technical/economic assessment framework (reproduced from the 2006 paper)



The 2006 paper found:

- the proportion of overall costs attributable to gas processing could be high, particularly for a gas field vis-à-vis an oil field, but was likely to be in the range of 4-14% of the wholesale cost of gas;
- there are some economies of scale associated with gas processing plants. However, those economies are considerably less than for typical natural monopoly assets such as gas transmission pipelines. Despite finding possible economies, smaller fields have not historically had difficulty getting their gas to market in New Zealand and those scale economies appear to be weak as gas processing plants of widely varying sizes have been built in New Zealand²;
- there is some spare capacity and it could probably be expanded but accessing spare capacity is limited by the lack of options for transporting unprocessed gas; and
- additional considerations like physical constraints and geographical location are important determinants of whether access is sought to another party's processing facility. For example, if a new field seeks access to a nearby processing facility, the cost of running a new pipe to a processing plant was found likely to be a limiting factor. The owner may decide that building his/her own processing facility is a more economical decision.

² Note that the largest and smallest processing plants in New Zealand span a range of sizes of 145:1, indicating that, in practice, the scale economies that do exist are very weak.

These findings are consistent with the review of overseas jurisdictions that found little or no regulatory intervention in the market for access to gas processing facilities. The significant outlier, Alberta, does have a regulated access regime but that arises from environmental concerns about sour gas rather than a reflection of any market failure. The analysis in 2006 concluded there were unlikely to be inefficiencies in the gas processing market and therefore there was not a case for access regulation. Nonetheless, the Rules were established in order to monitor the situation as New Zealand transitioned from few large fields to many smaller fields in order to 'settle the issue'.

One concern that emerged from the earlier investigation and analysis was the apparent shortage of capacity for liquid storage. At the time, Gas Industry Co stated that it had no mandate to investigate for access to liquid storage facilities. The issue was forwarded on to the then Ministry of Economic Development who decided to maintain a watching brief unless the situation became untenable.


































3.2 Has the issue been 'settled'?




The two general categories of information disclosures are: (a) facility disclosures; and (b) access disclosures. Facility disclosures are those published annually on Gas Industry Co's website while access disclosures are those provided confidentially to Gas Industry Co. An example of the facility disclosure information is shown in Figure 2 for the latest disclosure period. The most recent facility disclosures indicate that processing facilities are well utilised with little spare capacity to offer. Only the Rimu production station has spare medium term availability above 25% of processing capacity but the station itself is relatively small. According to the process chart in Figure 1, given the lack of spare capacity, there ought to be little concern about market power in the gas processing market (even if the previous criteria were satisfied).

Based on the utilisation of Gas Industry Co's website, the information disclosure regime has been of minimal use to the industry. Very few unique visitors have accessed the website. From the interviews carried out by Concept, access seekers are of the belief that direct approaches to facility owners can be conducted by telephone without having to rely on the disclosed information. Indeed, many parties interviewed by Concept said they do not use the information on our website.

In itself, the case for continued information disclosure is weak on the basis of limited usage of the information. Coupled with the fact that most processing facilities are well utilised, it does not appear as though the transition to a fewer number of smaller gas fields has highlighted any existing, or created any new, market inefficiencies. Therefore, based on the facility disclosure information at hand, the 2006 analysis cannot be disproved.

Figure 2: Disclosed facility information for 2012

Facility Name	Facility Operator	Indicative Capacity (PJ pa)	Forecast Spare Capacity as a % of Capacity		
			0-24 months	2-5 years	5+ years
Kahiri Separation Facility	Vector Gas Limited	Nil	Nil	Nil	Nil
Kaimiro Production Station	Greymouth Petroleum Limited	1.8			
Kapuni Gas Treatment Plant	Vector Gas Limited	25			
Kowhai A Wellsite	Greymouth Petroleum Limited	5			
Kupe Production Station	Origin Energy Resources NZ Limited	25			
Maui Production Station	Shell Todd Oil Services	86			
McKee-Mangahewa Production Station	Todd Taranaki Limited	McKee: 6 Mangahewa 5-12			
Pohokura Production Station	Shell Exploration New Zealand Limited	83.2			
Rimu Production Station	Origin Energy Resources NZ Limited	8.5			
Sidewinder Production Station	TAG Oil NZ Limited	4			
Turangi A Wellsite	Greymouth Petroleum Limited	10.95			
Waihapa Production Station	Origin Energy Resources NZ Limited	14.9			

Forecast Spare Capacity Legend	
	>25% Spare Capacity
	5-25% Spare Capacity
	<5% Spare Capacity

The confidential access disclosures show that there have been very few *bona fide* approaches for third party access. Where there have been approaches for access, the result seems to have been either a commercial agreement reached by the parties or access has been denied due to either:

- a lack of spare capacity; or
- a lack of suitability between the access seeker's field and the processing facility.

Third party access has been successfully negotiated and granted to at least one small party. While that particular arrangement subsequently changed as a result of a change to the owner's own commercial arrangements, it does show that commercially acceptable outcomes can be reached without the need for regulation. Arrangements for third party processing of gas from a substantial new gas field were also negotiated but did not proceed as the access seeker decided to build their own facility for operational reasons.

Concept's investigation yielded other relevant insights, including:

- that parties generally considered shared access to be not ideal because of operational complexities;
- even if a case for regulated access could be made, it would be difficult to tailor one for New Zealand given the variety of field conditions; and
- where practicable and opportune, commercial arrangements are generally successful in New Zealand. For instance, parties are able to reasonably negotiate water disposal agreements.

We are satisfied based on the access disclosures that there is neither a monopoly problem nor a market power problem in the gas processing market. Once again, the 2006 analysis cannot be disproved.

As noted earlier, the purpose of the Rules is to '...settle the issue of whether it is necessary to recommend rules or regulations setting reasonable terms and conditions for access to, and use of, gas processing facilities...' Given the initial analysis was unable to discover any issues to warrant regulated access and that there has been no evidence from the information disclosure period to suggest that analysis was incorrect, we are satisfied that the issue has been settled as far as it possibly can be: at the present point of time, regulated access to processing facilities is not required.

3.3 Options

The options discussed here relate to the existing Rules. Given our opinion above we see no case to make regulations for access to processing facilities at this point in time. The options available at this point are:

- allow the Rules to expire; or
- roll-over the information disclosure regime.

Option 1: Allow the Rules to expire

Minimal work is required for this option. The Rules would be allowed to expire and would not be replaced. This is a reasonable option given the lack of evidence to suggest the presence of a problem in the first place and the costs to Gas Industry Co (and the industry) in doing anything other than allowing the Rules to expire.

Note that this option would not remove Gas Industry Co's ability to recommend regulations for access to gas processing facilities in the future. The point is that there is no present case to recommend such regulations.

Option 2: Roll-over the information disclosure regime

The Rules would need to expire because the issue of whether regulated access to gas processing facilities has been settled as far as possible: there is simply no evidence to suggest regulation is necessary. Nonetheless, an information disclosure regime of some description could be carried forward. A roll-over of the information disclosures could either be on a voluntary basis, or by recommending to the Minister that the Rules be extended.

There are substantial problems with these variants of option 2.

The first variant was attempted prior to the Statement of Proposal being released in 2007 and was not widely supported by the industry. Further, the case for ongoing information disclosure is weak given the lack of an identifiable problem from the earlier analysis, several years' worth of information disclosures, and the lack of industry support for ongoing disclosures as per Concept's report.

The second variant would essentially extend the information disclosure period established by the Rules. The difficulty with that option is that the Rules were originally justified under section 43G(2)(l) of the Gas Act which states 'other purposes' for making gas governance regulations include:

'...providing for processes for settling particular issues within the gas industry that may result in recommendations for gas governance regulations or rules, and requiring compliance by industry participants, the industry body, and the Commission with those processes, including compliance with requirements to produce documents as part of those processes.'

Given that the issue has been settled as far as possible based on the information to hand Gas Industry Co does not consider it would be feasible to extend the Rules based on the same provision of the Gas Act. In other words, we would not have the necessary regulatory mandate to recommend rolling over the information disclosure period.

However, section 17.2 of the Rules allows the Minister to extend the period for which the Rules shall be in force, provided:

- Gas Industry Co recommends the extension of the Rules; and
- Gas Industry Co consults with representative persons before making such a recommendation.

Based on the evidence referred to above we do not consider we can make such a recommendation to the Minister.

3.4 Evaluation

We have taken most of our evaluative criteria from a 2006 document the then Ministry of Economic Development published called '*Code of Good Regulatory Practice*', which sets out the following qualities for good regulation making:

- efficiency: only adopt and maintain regulations for which the costs on society are justified by the benefits to society;
- effectiveness: regulation should be designed to achieve the desired policy outcome;
- transparency: the regulation making process should be transparent to both the decision-makers and those affected by regulation;
- clarity: regulatory processes and requirements should be as understandable and accessible as practicable; and
- equity: regulations should be fair and treat those affected equitably.

We do not consider it is necessary to analyse the options against the 'transparency' and 'clarity' criteria because they relate to an ex-post assessment of the regulatory development process. We consider the following criteria are also relevant in this case:

- legal feasibility: how easily the option is implemented from a legal perspective; and
- option value: whether the option allows satisfactory oversight of the issue in order to make an assessment in future if necessary. We consider this criterion to have the lowest weighting because there appears to be little benefit in retaining any option value.

The table below presents a qualitative analysis of each option from section 3.3 according to these criteria. Note that these evaluations are relative to the other options.

			✓✓ Great ✓ Good × Average ×× Bad
	Option 1: Allow the Rules to expire	Option 2a: Roll over information disclosure (voluntary)	Option 2b: Roll over information disclosure (regulated)
Efficiency	✓✓	×	××
Effectiveness	✓✓	×	×
Equity	✓	✓	×
Legal feasibility	✓✓	✓	××
Option value	××	✓	✓✓

Option 1

Based on our evaluation, Option 1 is the preferred outcome. While it is the lowest ranked option in terms of option value, we consider option value to be the least important criterion. There does not seem to be a case for regulated access to processing facilities so the weighting of the option value criteria is trumped by all other criteria. We find this option to be the most efficient because, in the absence of a regulatory case, it does not make sense to promote any regulatory objective. In future, if Gas Industry Co became aware of an issue regarding access to gas processing facilities we would still be able to investigate it and, if necessary, recommend some form of regulation.

There are no legal feasibility issues to this option and it rates highly on 'effectiveness' because it is a commensurate response to the lack of an identifiable problem. This option is fair on all relevant parties—it imposes no obligations where obligations are not necessary.

Option 2a

Option 2a—voluntary information disclosure—is our second preferred option. This option would impose costs on Gas Industry Co in negotiating voluntary terms and conditions as well as maintaining its website and processing the information disclosures. It would also impose an uncertainty cost because as far as we are concerned, the issue has been settled as far as possible. Rolling over the information disclosures would not provide a signal consistent with this view. We think the effectiveness of this option is poor compared to option 1 because it assumes some form of regulatory objective must be met. As we have stated several times, no regulatory objective seems to exist nor could the case be made for one based on the evidence available. Given participants are clear that there is little or no value in the information being provided at present, it would seem even less likely that parties would agree to voluntary information disclosure given they did not do so in 2006/7.

Option 2b

Option 2b is our least preferred option. The costs of recommending the rolling over of the information disclosures would be the least efficient of the options because, as well as those costs for option 2a, Gas Industry Co would also need to devote resources to maintaining the processes involved with the information disclosures. This option does have the highest option value but as we consider the option value criteria to have the lowest weighting, this benefit is outweighed by the negative weighting for all of the other criteria, most importantly the efficiency criterion.

4

Proposal

Based on the information we have and of our assessment of the options available, we propose recommending to the Minister that regulations are not required for third party access to processing facilities. We also propose recommending that the information disclosures be allowed to lapse from 2014 when they are due to expire. The presence of the Rules has not influenced the operation of the market and the information disclosures have not provided any benefit to the industry.

Further, there is not a strong mandate to roll over the information disclosures. While the Minister may decide to roll over the information disclosures we must recommend to the Minister that this occurs. We could only make such a recommendation if we were convinced the issue of whether regulated access was necessary remained to be settled. Given there is no evidence to disprove the earlier analysis from the years of information disclosures we can only conclude that the issue has in fact been settled: regulated access is not required to processing facilities.

These recommendations do not preclude the possibility regulation will be necessary in the future, particularly if a market failure can be positively identified, but we have no evidence to suggest this is the case at present. In the absence of the Rules, section 43F(2)(b) of the Gas Act would still apply, i.e., Gas Industry Co would still have a mandate to recommend to the Minister that rules or regulations be made that set reasonable terms and conditions for access to processing facilities where such a step would be necessary to allow new fields to be developed and spare capacity was available to permit it.

The unregulated market for processing facilities appears to meet the GPS requirement of permitting participants to access third party processing facilities without requiring regulatory intervention. The parties interviewed by Concept oppose regulated access to processing facilities and are otherwise nonchalant about the Rules expiring. Information on processing facilities can easily be garnered by directly contacting owners thus the case for ongoing information disclosure itself is weak. We are not aware of any complaints from access seekers or of any information which disproves the 2006 analysis.

Based on all of this evidence, we can only conclude that the market for gas processing facilities is efficient and that neither ongoing information disclosure nor regulated access is required.

Q1: *Do you agree with Gas Industry Co's proposed recommendation that regulated access to gas processing facilities is not necessary? If not, please provide full reasons with supporting evidence.*

Appendix A. Review of Gas Processing Access Arrangements – Concept Consulting
