



Statement of Proposal

**Information disclosure by owners of
gas processing facilities**

September 2007

Gas Industry Co was formed to be the co-regulator under the Gas Act. As such, its role is to:

- recommend arrangements, including rules and regulations where appropriate, which improve:
 - the operation of gas markets;
 - access to key infrastructure; and
 - consumer outcomes;
- administer, oversee compliance with, and review such arrangements; and
- report regularly to the Minister of Energy on the performance and present state of the New Zealand gas industry, and the achievement of Government's policy objectives for the gas sector.

Authorship

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1 Executive Summary

Background

- 1.1 Under the GPS¹, Gas Industry Co is expected to develop, and submit to the Minister of Energy for approval, “[p]rotocols that set reasonable terms and conditions for access to gas processing facilities” (“access protocols”). The GPS leaves open the scope and form of the access protocols.
- 1.2 Gas Industry Co undertook a review of access to gas processing facilities to assess the need for, and scope of, access protocols during 2006. The review indicated that efficiency in the sector would not be enhanced by requiring prescriptive access protocols. In a paper published in August 2006² (the “August 2006 discussion paper”), Gas Industry Co provided its findings, noted that changes were taking place in the upstream sector, and proposed maintaining a watching brief on the sector by requiring limited information disclosure on plant capabilities and approaches to facility owners by third parties seeking processing services.
- 1.3 In undertaking its assessment of the delivery mechanism for information disclosure, Gas Industry Co concluded that it could be regulatory or voluntary. In response to submissions on the August 2006 discussion paper, and in keeping with the GPS’ stated preference for industry-led solutions, Gas Industry Co recommended to the Minister of Energy in December 2006 that it attempt to implement information disclosure by way of an industry arrangement. If universal agreement to information disclosure was not reached by mid-2007, Gas Industry Co intended to prepare a further recommendation to the Minister to regulate for information disclosure.
- 1.4 The Minister approved Gas Industry Co’s recommendation on 14 March 2007, with a deadline of 30 June 2007 for obtaining industry agreement.

Progress with industry agreement

- 1.5 Gas Industry Co circulated material on the proposed information disclosure arrangement and made significant attempts to have facility owners execute an agreement to disclose the information. When it became clear that universal agreement would not be achieved by the 30 June 2007 deadline, Gas Industry Co wrote to the Minister requesting a three-month extension to 30 September.
- 1.6 Five existing or imminent facility owners have confirmed that they will support the disclosure arrangement, one of whom has actually executed a signed agreement. Another has confirmed that it supports the disclosure arrangement in principle but subject to a termination clause that is unacceptable to Gas Industry Co. A seventh company has informally indicated its support but has yet to confirm this to Gas Industry Co.

¹ The Government Policy Statement on Gas Governance (October 2004).

² Discussion Paper, *Access to Gas Processing Facilities*, August 2006

- 1.7 However, one party has said it will not agree to the proposed information disclosure and another has not indicated whether or not it will support the agreement. Despite the positive support from a number of facility owners, the fact that two existing facility owners are unwilling to support the industry arrangement and the support of another is subject to an unacceptable early termination provision, effectively means that it becomes an unlikely, if not infeasible, option. Experience also suggests that the support of the new owner of a future facility cannot be readily assumed.
- 1.8 It is now considered unlikely that full agreement will be achieved and, therefore, it is necessary to switch to a regulated approach for achieving disclosure of the information.

Objective of access protocols

- 1.9 Gas Industry Co considers the objective of access protocols should be to “*promote efficient access to gas processing facilities to support Government’s overall objective, and the specific outcomes it expects, for the gas industry*”.
- 1.10 The regulatory objective is entirely consistent with the proposal, described in this paper, for limited information disclosure. Information disclosure will:
- allow Gas Industry Co to publish basic information on gas processing facilities, including forecasts of available capacity, so as to provide an efficient means for potential access seekers to screen processing opportunities;
 - report information on approaches by third parties seeking to have gas processed and the outcomes of those approaches; and
 - provide information on the gas processing sector which will assist Gas Industry Co to make a later, and final, recommendation to the Minister on the need for, and form of, access protocols.
- 1.11 The first point will, of itself, help to promote the regulatory objective directly. The second and third points will help to promote the regulatory objective in the longer term by helping to ensure any later recommendation is soundly based.

Legislative requirements

- 1.12 If, in the future, prescriptive access protocols are required and they are to be implemented by way of rules or regulations under the Act, then s43F(2)(b) provides for “*setting reasonable terms and conditions for access to, and use of, gas processing facilities...*”.
- 1.13 For the purposes of this statement of proposal, Gas Industry Co is proposing to gather the information so as to inform a later decision on whether to recommend prescriptive access protocols. The Act provides, at s43G(2)(l) that rules or regulations may be recommended: “*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*”.

- 1.14 Prior to Gas Industry Co recommending rules or regulations to the Minister of Energy, it must first comply with the requirements of section 43L of the Gas Act (the Act). That section requires Gas Industry Co to, among other things, consult with those persons it thinks are “*representative of the interests of persons likely to be substantially affected*” by the proposed rules. For the purposes of that consultation, Gas Industry Co is required by section 43N(1)(d) of the Act to publish a statement of the proposed rules which must contain:
- a detailed statement of the proposal;
 - a statement of the reasons for the proposal;
 - an assessment of the reasonably practicable options for achieving the regulatory objective, including the proposal, identified by Gas Industry Co under section 43N(1)(a); and
 - other information Gas Industry Co considers relevant.
- 1.15 This paper constitutes a statement of the proposed rules required by section 43N(1)(d) of the Act for the purposes of consultation.
- 1.16 Gas Industry Co believes the collective powers in the Act allow it to recommend to the Minister the proposed draft rules for information disclosure on third party access to gas processing facilities. In particular, it proposes to recommend the draft rules to the Minister on the basis of s43G(2)(l) so as to inform a later, possible, recommendation which may be made on the basis of s43F(2)(b).

Conclusions

- 1.17 In light of the analysis and research presented in this statement of proposal, Gas Industry Co proposes that rules for information disclosure be developed. A copy of the draft rules is attached as Appendix B.

Next steps

- 1.18 Gas Industry Co invites submissions on this statement of proposal and any answers to the specific questions contained in Appendix A by 5pm on Friday, 28 September 2007. After considering submissions on this statement of proposal, Gas Industry Co envisages making a recommendation to the Minister of Energy by December 2007, with a view to implementing the recommended rules by April 2008.

Q1: Do you have any general comments on the proposal or the process adopted by Gas Industry Co?

2 Introduction and Submission Requirements

- 2.1 Gas Industry Co is expected to develop, and submit to the Minister of Energy for approval, protocols that set reasonable terms and conditions for access to gas processing facilities.
- 2.2 In December 2006, Gas Industry Co recommended to the Minister that:
- there was insufficient evidence to support a recommendation for prescriptive access protocols at this stage;
 - because the gas industry is going through a period of transition, most particularly as production from the Maui field declines and other, smaller fields come on-stream, a watching brief be maintained so as to monitor the gas processing market;
 - the preferred method for implementing the watching brief would be an industry arrangement for the provision of plant capability and forecast capacity information by gas processing facility owners (with a fall-back to regulating for the information if need be); and
 - a later recommendation would be provided by Gas Industry Co on any need for imposition of access protocols.
- 2.3 It has not proven possible, at the date of publication, to implement an industry arrangement. Gas Industry Co is, therefore, being forced to pursue the alternative course of action referred to in its December 2006 recommendation.
- 2.4 The purpose of this statement of proposal is to set out Gas Industry Co's proposal on regulating for information disclosure to settle the question of whether protocols for access to gas processing facilities are required in the longer term and to invite stakeholder submissions on this proposal.
- 2.5 Submissions on this statement of proposal must be received by 5pm on Friday, 28 September 2007. Please note that submissions received after this date are unlikely to be considered. Gas Industry Co's preference is to receive one hard copy and one electronic copy (in Microsoft Word or Adobe Acrobat format).
- 2.6 The electronic version should be emailed to submissions@gasindustry.co.nz with the phrase "Submission on access to gas processing facilities" in the subject header. The hard copy should be posted to:
- Ian Dempster
Senior Adviser – Wholesale Markets
Gas Industry Co
PO Box 10-646
Wellington
New Zealand
- 2.7 Gas Industry Co will acknowledge receipt of all submissions electronically. Please contact Ian Dempster, on (04) 494 2467, if you do not receive electronic acknowledgement of your submission within two business days.

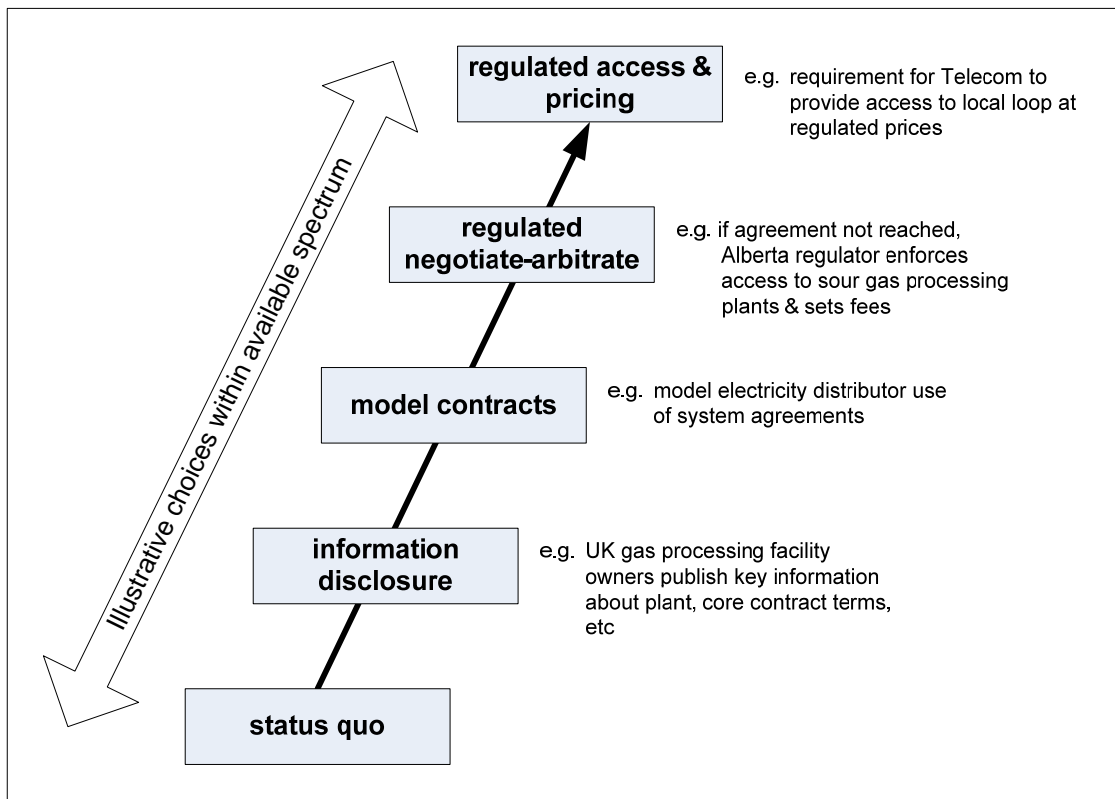
- 2.8 Submissions should be provided in the format shown in Appendix A. For the convenience of stakeholders, a Microsoft Word version of the appendix is available in the consultation section of Gas Industry Co's website.
- 2.9 Gas Industry Co values openness and transparency and, therefore, submissions will generally be made available to the public on Gas Industry Co's website. Where submitters intend to provide confidential information as part of their submissions Gas Industry Co asks you to discuss that with Gas Industry Co prior to lodging the submission.

3 Background

- 3.1 In 2006 Gas Industry Co undertook extensive analysis of the characteristics of the gas processing market and the need for access protocols. The analysis and the conclusions are contained within the August 2006 discussion paper available on the Gas Industry Co website, together with a recommendation which was sent to the Minister in December 2006. This section reviews the background to that work.
- 3.2 At present, gas processing facility owners and access seekers are free to negotiate any commercial arrangements they wish within the normal legal requirements governing commercial arrangements in New Zealand.
- 3.3 These requirements include the Commerce Act, in particular section 36. While, in principle, section 36 could deal with concerns that arise in relation to third party access to gas processing facilities, there are some practical issues which make it a fairly blunt instrument. Enforcement of the section requires an application to the High Court by either the Commerce Commission or industry participants. Enforcement is therefore time-consuming and costly. Cases usually take many years to come to trial and require significant economic evidence.
- 3.4 The GPS leaves open the design options for access protocols. This includes the possibility that existing commercial agreements may already set reasonable terms and conditions for access.
- 3.5 In the event that a stronger form of intervention is necessary, the Act provides for making rules or regulations for access to gas processing facilities if:
- this is reasonably necessary to allow new fields to be developed; and
 - 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.³
- 3.6 The Act also provides Gas Industry Co with a range of other powers, including the power to require industry participants to disclose information.
- 3.7 There is, therefore, a wide range of alternative protocols available to choose from, as illustrated in Figure 1 overleaf. The examples in Figure 1 move through the spectrum from light- to heavy-handed as you move from bottom-left to top-right. The design of non-regulatory protocols (e.g. voluntary industry protocols) is less constrained in terms of purpose than options requiring regulation. The choice of protocol, including the delivery mechanism (e.g. voluntary, regulatory or some form of industry contract), will depend on the nature and extent of any problems that need to be addressed in order to meet the regulatory objective.

³ Gas Act 1992, section 43F(2)(b)

Figure 1: A wide range of choices exist



3.8 Accordingly, the choice of which form of protocols should be developed (i.e. light- to heavy-handed) is informed by analysis and understanding of the current environment of access to gas processing facilities.

3.9 To provide some insights into the alternatives, the August 2006 discussion paper included a summary and comparison of gas processing arrangements in the Australian, Canadian, UK and USA gas markets. The paper noted that there are significant differences in approach and/or structure. Gas Industry Co believes that, while aspects of each jurisdiction are likely to be of interest, the choice of protocols in New Zealand should be based on the specific circumstances that exist here.

Coverage of any access protocols

3.10 For the purpose of the August 2006 discussion paper, Gas Industry Co adopted the commonly accepted meaning for the terms “gas processing” and “gas processing facility”, as detailed below.

Gas processing

3.11 Raw natural gas, which can be sourced from gas or gas/condensate wells, consists primarily of methane, but also contains a mixture of other hydrocarbons (for example, propane, butane and ethane) as well as water vapour, hydrogen sulphide, carbon dioxide, and other compounds. Such impurities must be removed before use.

- 3.12 “Gas processing” involves treating well streams⁴ to separate out natural gas, water, liquids (condensate, natural gasoline and liquefied petroleum gas) and sometimes other substances such as naphtha, sulphur and carbon dioxide (CO₂).
- 3.13 Although some impurities may be removed at the wellhead, processing is typically required to ensure gas meets certain technical prerequisites⁵ for injection into transmission and distribution pipelines and for subsequent use by consumers.
- 3.14 Gas processing is undertaken in stages with the particular requirements depending on the constituents of the raw gas feed. There are generally four main processes: sulphur and CO₂ removal, oil and condensate removal, water removal, and removal of heavier hydrocarbons/natural gas liquids extraction.

Gas processing facility

- 3.15 The term “gas processing facility” is not specifically defined in the Act or in the GPS. However, it is commonly used around the world to refer to the equipment, located at or near wells and/or further downstream, which processes raw gas or gas/condensate streams as described above. This could include on-site liquid storage where that is an integral part of a gas processing facility and could affect overall plant performance and capacity to process gas.
- 3.16 The definition of “gas processing facility” defined in separate regulations made under the Act is consistent with the common usage noted above⁶, indicating Parliament’s view of the definition of gas processing facility.
- 3.17 The pipelines connecting fields to gas processing systems (or upstream gas processing systems to downstream gas processing systems) are commonly called gas gathering systems. Where a third party accesses a gas processing facility, this could involve either sharing part of an existing gas gathering pipeline or constructing a new pipeline. In the August 2006 discussion paper, Gas Industry Co noted that if there were a reasonable argument that proactive protocols for access to gas processing facilities should be developed, then it would also be necessary to consider whether such protocols should also extend to associated gas gathering pipelines.

⁴ Or streams that have already been partially processed.

⁵ Energy content (Wobbe Index) and quality parameters (processed gas must meet technical specifications prior to injection into natural gas transmission or distribution pipelines. In New Zealand, the standard for reticulated gas is NZS 5442: 1999).

⁶ In the Gas (Information Disclosure) Regulations 1997—“a facility for treating gas so that the treated gas is suitable for consumption”—and the Gas (Statistics) Regulations 1997—“a facility for treating gas for the purpose of making it suitable for domestic consumption”.

4 Problems With Current Arrangements

- 4.1 As noted in the introduction, Gas Industry Co recommended, and the Minister agreed, that information disclosure was a desirable first step insofar as it would be a low-cost means of:
- allowing Gas Industry Co to maintain a watching brief on the gas processing sector for a period as the industry goes through a transition to supply from a larger number of fields; and
 - providing the opportunity to publish technical specifications and capacity availability in one location. Parties seeking to have their gas processed could then use the information as an efficient way to screen the options and identify facilities of interest to them.
- 4.2 The recommendation stated that Gas Industry Co intended to implement information disclosure by way of an industry arrangement. This is consistent with Gas Industry Co's commitment to pursuing industry arrangements where that is the most practical and efficient option. It was also consistent with most views expressed by industry participants on this topic that there was a strong preference for an industry arrangement⁷.
- 4.3 Gas Industry Co also recommended that, if it proved impractical to implement an industry arrangement, the alternative would be to make a recommendation to regulate for information disclosure. This reflects the fact that industry arrangements can be vulnerable to "hold-out" and other delaying tactics.

Pursuit of industry arrangement

- 4.4 Gas Industry Co wrote to each facility owner, and to parties who have committed to developing new facilities, outlining the background to, and process for, seeking voluntary disclosure agreements. The letters:
- explained the Minister had approved the recommendations arising from the August 2006 discussion paper;
 - reminded facility owners that the proposal was for a low-cost, low-impact information disclosure regime;
 - noted the intention to implement information disclosure by way of an industry arrangement—specifically, facility owners would be requested to enter into an agreement with Gas Industry Co to provide the requisite information at annual rests;
 - included a template showing the form and content of the information being sought; and
 - outlined the process for securing an industry arrangement.

⁷ Although one submission in response to the August 2006 consultation paper opposed the proposal, it sought to widen the definition of gas processing facilities to apparently address a wider range of concerns.

- 4.5 Subsequently, the parties were contacted to request their support and to introduce to them the information disclosure agreement prepared by Gas Industry Co. That agreement, included as Appendix E for reference, was a deliberately simple document which requested supply of basic technical data on an annual basis (which data Gas Industry Co would publish), together with information on bona fide approaches by third parties seeking processing services (which information Gas Industry Co would hold confidential). The disclosure guidelines for supply of the technical data had been prepared with input from facility owners.
- 4.6 Contact, or attempted contact, was made with each of the parties on several occasions. Despite these efforts over an extended period, only one facility owner had executed the disclosure agreement by the deadline of 30 June 2007. As most parties appeared not to have issues with either the disclosure agreement or the information being requested, it is assumed that either the necessary internal approvals were difficult to obtain and/or the issue was not seen as important enough to command attention.
- 4.7 Gas Industry Co subsequently made a request to the Minister for an extension of time to 30 September 2007.
- 4.8 Perhaps because one facility owner had taken a leadership position and executed the disclosure agreement, progress since June has been slightly better. A number of others have now written to Gas Industry Co indicating their support for the industry agreement and undertaking to procure the agreement of their various joint venture partners.
- 4.9 However, one party has indicated strongly that it has no interest in entering into the industry arrangement. This highlights one of the key vulnerabilities of an industry arrangement—it only takes one party to hold out and the arrangement cannot be completed.
- 4.10 Even though progress had been slow, Gas Industry Co was willing to apply resources to secure agreement. Such efforts made sense whilst there was some prospect of eventually obtaining unanimous agreement to the arrangement. However, with one party so strongly opposed to the arrangement there does not seem to be any point in continuing to seek executed agreements.
- 4.11 Gas Industry Co finds itself in the position of needing to switch to a course of action which will have greater certainty of achieving the required outcome—i.e. certainty of information disclosure.

5 Regulatory Objective

The Gas Act and GPS – general objectives and outcomes

5.1 In determining the objective of any proposed gas governance arrangements, Gas Industry Co must take into account the purposes and objectives stated in the Act and the GPS.

5.2 The GPS sets out the Government’s objectives and outcomes for governance of the New Zealand gas industry, and its expectations for industry action. Under section 43ZO of the Gas Act, Gas Industry Co must have regard to those objectives and outcomes when making recommendations for gas governance rules or regulations. The Government’s overall policy objective for the gas industry, as stated in the Gas Act and the GPS, is:

To ensure that gas is delivered to existing and new customers in a safe, efficient, fair, reliable, and environmentally sustainable manner.

5.3 Paragraph 5 of the GPS adds that, consistent with this overall objective, the Government is seeking certain specific outcomes which include:

- (a) *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;*
- (b) *Energy and other resources are used efficiently;*
- (c) *Barriers to competition in the gas industry are minimised to the long-term benefit of end-users;*
- (d) *Incentives for investment in gas processing facilities, transmission, distribution, energy efficiency and demand-side management are maintained or enhanced;*
- (e) *The full costs of producing and transporting gas are signalled to consumers;*
- (f) *Delivered gas costs and prices are subject to sustained downward pressure;*
- (g) *The quality of gas services and in particular trade-offs between quality and price, as far as possible, reflect customers’ preferences;*
- (h) *Risks relating to security of supply, including transport arrangements, are properly and efficiently managed by all parties;*
- (i) *Consistency with the Government’s gas safety regime is maintained; and*
- (j) *The gas sector contributes to achieving the Government’s climate change objectives by minimising gas losses and promoting demand-side management and energy efficiency.*

Specific gas processing objectives

- 5.4 Paragraph 9 of the GPS sets out the Government's expectation that Gas Industry Co will develop and submit to the Minister for approval proposed arrangements, including regulations and rules where appropriate, providing for effective industry arrangements in certain areas. In relation to gas processing, Gas Industry Co is to develop and propose:

[p]rotocols that set reasonable terms and conditions for access to gas processing facilities.

Purposes in the Gas Act

- 5.5 Section 43F of the Act provides that regulations may be made for all or any of the purposes specified in section 43F(2). Those purposes include:

- (a) *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 additional capacity:*

...

- 5.6 In addition, where Gas Industry Co considers that further information is required before it is able to conclude whether regulatory intervention is justified, section 43G(2)(l) of the Gas provides that Gas Industry Co may recommend rules or regulations:

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.

- 5.7 That section fits with the intent of the information disclosure arrangement which was recommended to the Minister of Energy in December 2006. There, Gas Industry Co was recommending that, in order to confirm any need for access protocols, a watching brief be maintained on the sector to provide a sound basis for a later, and final, recommendation.

Timeframes

- 5.8 The GPS sets the date for delivery of gas processing access protocols for December 2005. However, Gas Industry Co has, on behalf of the industry, agreed with the Minister of Energy to extend this deadline. The new dates for delivery of gas processing protocols are set out in Gas Industry Co's Strategic Plan issued pursuant to section 43ZQ of the Act for 2008–2010.

- 5.9 The Strategic Plan for 2008-2010 sets the dates for the following activities to take place:
- implement voluntary information disclosure arrangements and publish collated information disclosure by November 2007; or
 - make a recommendation to the Minister for regulated information disclosure by November 2007.

Regulatory objective against which options are to be assessed

- 5.10 In the August 2006 discussion paper, Gas Industry Co proposed that the objective of access protocols should be to:

promote efficient access to gas processing facilities to support Government's overall objective, and the specific outcomes it expects, for the gas industry.

- 5.11 The submissions received on the August 2006 discussion paper were generally supportive of the proposed objective.
- 5.12 Gas Industry Co considers that this regulatory objective is entirely consistent with the proposal in this paper for limited information disclosure. As noted earlier, the intention of the information disclosure is to provide further information on the gas processing market during the transition to a larger number of smaller gas fields. This will help to ensure that any later decision to impose access protocols will be soundly based and, therefore, promote the regulatory objective.

6 Legislative Framework

Powers under the Gas Act 1992

Specific powers for proposed information disclosure rules

- 6.1 The Act allows the Government to directly regulate gas industry participants to ensure effective outcomes for consumers of gas. In exercising the power to recommend regulations or make rules, the Minister of Energy must have regard to any recommendation made by Gas Industry Co.
- 6.2 The draft information disclosure rules are being proposed for the dual purpose of:
- making publicly available information on the capability and availability of gas processing facilities; and
 - providing sufficient information for Gas Industry Co to advise the Minister whether there is a need for regulation of the terms and conditions of third party access to gas processing facilities under section 43F.
- 6.3 Section 43G(2)(l) of the Gas provides that Gas Industry Co may recommend regulations:
- 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.*
- 6.4 In addition, section 43S of the Act includes supplementary empowering provisions in respect of regulations or rules made under Subpart 1 of Part 4A of the Act. Those provisions include the power to make rules or regulations to:
- (a) ...
 - (b) *provide for systems, processes and procedures (including dispute resolution procedures), and the keeping, supply and disclosure of information, in relation to any of the matters specified in this subpart:*
 - (c) *prescribe the form and manner in which information is to be disclosed:*
 - (d) *require disclosed information, or information from which disclosed information is derived (in whole or in part), to be certified, in the prescribed form and manner, by persons belonging to any class of person;*
 - (e) *prescribe when and for how long information must be disclosed:*
 - (f) ...
 - (g) *provide for the supply of information for the purpose of administration and enforcement of this Act, and regulations and rules made under this Act:*

- (h) ...
- (i) *provide for any other matters contemplated by this Act or necessary for its administration or necessary for giving it full effect.*

Conclusion on powers

- 6.5 The Act clearly gives Gas Industry Co wide powers to regulate the terms and conditions of third party access to gas processing facilities.
- 6.6 Gas Industry Co has concluded that, at the present time, the market for gas processing would not be improved by the introduction of formal access protocols governing the terms and conditions of access. However, it was acknowledged in the August 2006 discussion paper that changes in the gas market meant that there would be value in maintaining a watching brief on the sector. This culminated in the recommendation for facility owners to provide sufficient information to allow third parties to efficiently screen opportunities for gas processing.
- 6.7 In addition, Gas Industry Co requires sufficient information to enable it to report to the Minister from time to time on whether more extensive regulatory intervention is required.
- 6.8 Gas Industry Co has therefore concluded that the regulatory objective will be best achieved by the recommendation of rules requiring facility owners to disclose information to Gas Industry Co 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.
- 6.9 Gas Industry Co believes the collective powers in the Act support the proposed draft information disclosure rules set out in this statement of proposal.

Legal requirements when recommending rules or regulations

Section 43L consultation

- 6.10 Prior to Gas Industry Co recommending rules or regulations to the Minister of Energy under the Gas Act, it must first comply with section 43L(1) of that Act. This section requires Gas Industry Co to:
- (a) *undertake an assessment under section 43N; and*
 - (b) *consult with persons the recommending body thinks are representative of the interests of persons likely to be substantially affected by the proposed regulations; and*
 - (c) *give those persons an opportunity to make submissions; and*
 - (d) *consider those submissions.*

Section 43N(1) assessment

- 6.11 The assessment under section 43N(1) of the Act requires Gas Industry Co to:
- (a) *seek to identify all reasonably practicable options for achieving the objective of the regulation; and*
 - (b) *assess those options by considering-*
 - (i) *the benefits and costs of each option; and*
 - (ii) *the extent to which the objective would be promoted or achieved by each option; and*
 - (iii) *any other matters that the industry body or the Commission considers relevant; and*
 - (c) *ensure that the objective of the regulation is unlikely to be satisfactorily achieved by any reasonably practicable means other than the making of the regulation (for example, by education, information, or voluntary compliance); and*
 - (d) *prepare a statement of the proposal for the purpose of consultation under section 43L(1).*

Section 43N(2) statement of proposal

- 6.12 A statement of proposal must, under section 43N(2) of the Act, contain:
- (a) *a detailed statement of the proposal; and*
 - (b) *a statement of the reasons for the proposal; and*
 - (c) *an assessment of the reasonably practicable options, including the proposal, identified under subsection (1); and*
 - (d) *other information that the industry body or the Commission considers relevant.*
- 6.13 This paper constitutes a statement of the proposal provided for the purposes of consultation as required by sections 43N and 43L of the Act. The paper is structured as follows:
- a detailed statement of the proposal is set out in section 9 and Appendix B;
 - a statement of the reasons for the proposal, including the issues with the current arrangements identified by Gas Industry Co, is set out in section 4;
 - the reasonably practicable options identified by Gas Industry Co for resolving those issues are set out in section 7; and
 - Gas Industry Co's assessment of the reasonably practicable options, including the proposal, is set out in section 8.

Rules and regulations

- 6.14 Section 43Q(1) of the Act allows the Minister of Energy to make a rule for all or any of the purposes for which a gas governance regulation may be made.
- 6.15 Under section 43Q(2) of the Act, in deciding whether to make a recommendation for a rule, the Minister must only have regard to the following:
- (a) *the importance of the rule, including whether the rule has a material effect on the rights and interests of individuals:*
 - (b) *the subject matter of the rule, including whether the rule contains detailed or technical matters rather than matters of general principle:*
 - (c) *the application of the rule, including-*
 - (i) *whether the rule applies principally to a particular group (e.g. industry participants) rather than the general public:*
 - (ii) *whether the benefits of publication in accordance with section 43R rather than the Acts and Regulations Publication Act 1989 outweigh the costs of publication by that method:*
 - (d) *the expertise and rule-making procedures of the recommending body.*
- 6.16 Given that the proposed information disclosure rules:
- govern the limited domain of information disclosure on third party access to gas processing facilities;
 - incorporate detailed and technical matters affecting gas processing;
 - apply only to gas processing facility owners;
 - are aimed at making third party access to gas processing facilities more efficient;
 - will be readily accessible, at no charge and at all reasonable times, on Gas Industry Co's website making the cost of publication under the Acts and Regulations Publication Act unwarranted; and
 - have been drafted by Gas Industry Co, a co-regulatory body set up by the Government to undertake the specific task of regulating the New Zealand gas industry through rules or regulations where appropriate;

Gas Industry Co has concluded it is appropriate that they should be implemented by way of rules rather than regulations.

7 Identification of Reasonably Practicable Options

7.1 Before making a recommendation to the Minister for rules or regulations, section 43N of the Act requires Gas Industry Co to (amongst other things):

- seek to identify all reasonable practicable options for achieving the objective of the regulation or rule;
- assess those reasonably practicable options by considering:
 - the benefits and costs of each option;
 - the extent to which the objective would be promoted or achieved by each option; and
 - any other matters that Gas Industry Co considers relevant; and
- ensure that the objective of the regulation or rule is unlikely to be satisfactorily achieved by any reasonable practicable means other than the making of the regulation or rule (for example, by education, information, or voluntary compliance).

7.2 In this section of the paper, Gas Industry Co:

- describes its review of the current market for third party access to gas processing facilities;
- sets out the issues with the current arrangements; and
- sets out the reasonably practicable options that it identified to resolve those issues in the course of that review.

7.3 Gas Industry Co's full statement of the proposal for resolving the issue of whether protocols on access to gas processing facilities are required, including the decisions it has made in respect of the other options identified in this section, is set out in section 9 of this paper.

Review of current arrangements

7.4 Without evidence of systematic gas processing access problems and substantial inefficiencies it is difficult to justify access protocols that would intervene in existing ownership and commercial transactions in any substantial way. All but relatively benign interventions carry the risk of deterring E&P investment⁸ and compromising a number of the GPS objectives.

⁸ A common point made in interviews is that NZ is not as attractive to E&P parties as other jurisdictions with higher prospectivity and deeper gas markets, even if these jurisdictions are more regulated, and that heavy handed upstream interventions in NZ could therefore be a significant deterrent to E&P activity.

- 7.5 Gas Industry Co was therefore required to identify the most appropriate form of access protocols to recommend from the available choices ranging from light-handed arrangements (such as model agreements and information disclosure) through to heavy-handed interventions (such as mandated access terms and pricing).
- 7.6 The framework used by Gas Industry Co to assess the need for, and scope of, access protocols used a combination of quantitative and qualitative analysis. The quantitative analysis was aimed at identifying whether the conditions for substantial inefficiency exist in the gas processing market. The qualitative analysis utilised interviews with industry participants to identify the existence of any access issues.

August 2006 discussion paper

- 7.7 The quantitative analysis was undertaken by Transfield Worley, the results of which are set out in section 6 and Appendix III of the August 2006 discussion paper.
- 7.8 In summary, Transfield Worley's analysis suggested that:
- the cost of a gas processing facility, based on estimates derived from the Transfield Worley study, accounts for a moderate proportion of the wholesale price of gas (perhaps 4 to 14 percent depending on facility size);
 - there are some economies of scale for gas processing facilities although these are relatively weak compared to those associated with natural monopoly assets; and
 - there is some spare processing capacity, and more capacity could be made available through expansions of existing facilities (it is understood that plants are relatively modular in nature and, subject to available land and resource consents, expansion is relatively straightforward).
- 7.9 Although there is a strong network of transmission pipelines in Taranaki, these pipelines are predominantly used for carrying *processed* gas. There is not a strong network of transmission pipelines capable of, and available for, transporting *unprocessed* gas over long distances.
- 7.10 If it is viable to transport unprocessed gas to a particular existing processing facility, it is possible that that facility may have some ability to set the access price for a small field developer above a cost-based (competitive) price. But the scope for that behaviour (and resulting impact) is limited by both the ability of the third party to build its own processing facility and the existence of any other facilities nearby.
- 7.11 Transfield Worley's findings were therefore not a strong indicator that efficiency problems exist. However, they did justify some investigation of historical cases to determine whether there are in practice substantial efficiency concerns that need to be addressed. That, in turn, led to the qualitative analysis.
- 7.12 It should be noted that there is a wide range of field specific and geographical factors that could mean, from the perspective of an economic planner, use of an existing processing facility would not be the best way to bring a new gas field to market. The cost structure of gas processing alone cannot take account of these broader factors.

The circumstances of each individual case may frequently dominate any apparent cost advantages of an existing facility.

- 7.13 In section 7 of the August 2006 discussion paper, Gas Industry Co set out:
- a summary of current gas processing facilities in NZ;
 - a summary of perspectives of facility owners and access seekers; and
 - consideration of historical practices with regard to gas processing.
- 7.14 The stakeholder discussions tended to reinforce the technical/economic analysis undertaken by Transfield Worley, in that gas processing costs can be significant and there are some economies of scale for gas processing plants.
- 7.15 However, the discussions also supported Gas Industry Co's conclusion that it is unlikely that these factors are of sufficient magnitude as to introduce inefficiencies. A number of smaller plants have been built indicating that it is economic to do so. Most companies believe that they will be able to negotiate commercial arrangements without the assistance of prescriptive access protocols.
- 7.16 Gas Industry Co found that the stakeholder interviews did not identify any systematic problems relating specifically to gas processing facilities.
- 7.17 The August 2006 discussion paper concluded:
- no substantive policy intervention appeared to be warranted;
 - information disclosure would be useful to maintain a watching brief on the sector and to make it easier for third parties to identify processing facilities of interest (and which of them had available capacity); and
 - given the low-impact and low-cost nature of the disclosure, it would be well-suited to being implemented by way of an industry arrangement (with a fall-back to regulation if that proved to be necessary).

Submissions on August 2006 discussion paper

- 7.18 Gas Industry Co received submissions on the August 2006 discussion from nine respondents.
- Austral Pacific
 - Bridge Petroleum
 - Contact Energy
 - Genesis Energy
 - Mighty River Power
 - Origin Energy
 - Swift Energy

- Todd Energy
 - Vector.
- 7.19 Origin Energy also wrote separately to Gas Industry Co setting out its views on the proposal.
- 7.20 With the exception of one industry participant, the submissions expressed general support for both the methodology and conclusions in the discussion paper. Given that not all submitters are owners of gas processing facilities this suggests Gas Industry Co has achieved a balance of interests in its preferred option.
- 7.21 While the one industry participant agreed with the objective for the work stream, it strongly disagreed with the definition of processing facilities, analytical framework, quantitative analysis, conclusions and recommendation in the discussion paper.
- 7.22 In that participant's opinion, processing facilities include "ancillary facilities" even where "remote from the processing facility". Thus, in its view, liquids storage and liquids pipelines should be included within the definition of gas processing facilities. The logic is that liquids need to be separated from the wellhead gas and blocking the evacuation of liquids will, in effect, block production of gas. The participant regarded Gas Industry Co as failing to address the issue by defining gas processing too narrowly. Gas Industry Co engaged in discussion with the participant on this issue and this has revealed:
- its central concern is that owners of upstream infrastructure, where they are vertically integrated, have incentives to deny access to that infrastructure as a means of reducing competition in downstream markets; and
 - alternatively, in order to avoid accusations of exclusionary behaviour, such parties may choose to charge prices for access which are significantly higher than efficient prices, thereby hampering the ability of access seekers to compete.
- 7.23 In its recommendation to the Minister, Gas Industry Co included a suggestion that this issue be further examined. The Ministry of Economic Development has accordingly undertaken a review of the issue of liquids storage. Its conclusions are discussed further in paragraphs 7.28 to 7.36 below.
- 7.24 It is notable that Gas Industry Co had further dialogue with that industry participant, inviting supply of quantitative information which would allow for an independent assessment of the criticisms levelled at Gas Industry Co's analysis. No response to that invitation was received.

Conclusion

- 7.25 The objective of any protocols should be to facilitate access to gas processing facilities only where that is both economically efficient and contributes to better achievement of the Government's overall policy objective.
- 7.26 The analysis undertaken by Gas Industry Co, together with the submissions received, suggests that no substantive policy intervention appears to be warranted at this stage. Heavy-handed interventions would be expected to impose unnecessary costs

on the sector and could, as a result, deter investment in E&P activities in New Zealand.

- 7.27 However, the gas sector is in a state of transition from an industry reliant on a small number of larger fields to sourcing supply from a larger number of smaller fields. Because of this, Gas Industry Co determined that a limited form of information disclosure would assist it to keep a watching brief on the sector, eventually allowing it to make a final recommendation to the Minister on access protocols at a later date.⁹

Q2: Do you agree that alternatives to the status quo that may meet the objective are limited to low cost, light-handed measures?

Liquid Storage

- 7.28 Access to liquid storage is an issue that was raised during a number of interviews and in several submissions.
- 7.29 As noted earlier, the well-head fluids are a mixture of hydrocarbons and other substances. Depending on the characteristics of the field, the hydrocarbons may include a range of paraffins (general formula C_nH_{2n+2} and these may be gas or liquid at room temperature), aromatics (C_6H_5-Y where Y is a longer straight chain, typically liquids) and naphthenes (C_nH_{2n} and typically liquids). Processing involves the separation of the various substances so that the desired components can be delivered to markets and the contaminants disposed of in an appropriate manner.
- 7.30 The liquid components need to be evacuated and transported to a storage facility prior to being loaded onto a tanker for transport to a refinery. Given the limited amount of tank storage in the Taranaki region (the Shell-owned tank farm at Omata being the primary facility), the logistics for managing storage and co-ordinating with shipping are complex.
- 7.31 The complex logistics introduces a tension between producers, who may wish to have long term, secure capacity rights, and the storage facility owner, who has a need to optimise the use of limited storage among a diverse range of users.
- 7.32 Gas Industry Co takes the view that it has no power under the Act to recommend any gas governance arrangements with respect to liquid storage. In its recommendation to the Minister, Gas Industry Co therefore suggested that the Minister may wish to seek further advice on this matter.
- 7.33 As a result of the concerns raised during Gas Industry Co's review of gas processing facilities, the Ministry of Economic Development undertook an initial investigation of issues relating to liquids storage and reported back to the Minister in June 2007.

⁹ The alternative would be to undertake a study of the sector at a later date and this was regarded as a more expensive option. Requesting information while it is current is likely to result in lower costs of provision compared with asking participants to report on historical information at a later date.

- 7.34 The Minister has advised Gas Industry Co that the investigation highlighted the concerns of various industry participants that a bottleneck situation has arisen following the streaming of Pohokura which reduces the flexibility for existing operators and limits storage access for smaller onshore producers looking to commence or ramp-up production. If their concerns were justified, this situation could potentially act as a major disincentive for future exploration and production development in onshore and offshore Taranaki, with consequent negative impacts on New Zealand's future gas supply.
- 7.35 However, the Minister has formed the view, based on the report, that a combination of contractual limitations, commercial drivers and technical constraints are the key factors that determine what product gets stored where. For companies affected by the immediate bottleneck situation, there would appear to be some commercial solutions available over and above the commercial approaches that are currently being pursued. Anecdotal evidence also suggests that there may be a commercial possibility for a prospective crude aggregator to construct new facilities and to store crude and condensate from smaller players.
- 7.36 Given the commercial nature of the current disputes, the relatively limited number of fields that are likely to be affected by a lack of access to current storage facilities but with potential new-build or other existing storage options that could potentially be pursued, the Minister has advised Gas Industry Co that he does not intend to take the matter further at this stage. The Minister also confirmed that any government intervention, if warranted, would require new legislation which would not be a quick or straight-forward process. The Minister has, however, asked his officials to maintain a watching brief over the sector and report back to him if developments become untenable.

Identification of reasonably practicable options

- 7.37 The following options were identified and assessed in the August 2006 discussion paper:
- model contracts regime;
 - information disclosure; and
 - maintaining the status quo.
- 7.38 That paper concluded:
- a model contract would be unlikely to enhance efficiency in the sector (compared with the cost of producing such a contract);
 - information disclosure would support a later, robust recommendation to the Minister; and
 - maintaining the status quo would likely incur greater costs at a later date when a reassessment of the sector would be required to provide a final recommendation.

7.39 This statement of proposal, therefore, focuses on the option of information disclosure as a means of best supporting the process of providing a final recommendation on access protocols. As explained in the August 2006 discussion paper, the two reasonably practical options identified, at that time, for implementing information disclosure were:

- an industry arrangement whereby processing facility owners would agree to sign-up to provide the necessary information; or
- regulating for the provision of information.

7.40 These remain the only options under consideration for the provision of the information required to underpin a future recommendation on access protocols.

Q3: *Given the finding on no substantial inefficiency in the gas processing market and given the need to maintain a watching brief for a later recommendation on access protocols, do you agree that the only reasonably practical options are information disclosure provided either by industry agreement or mandated by rules under the Act?*

8 Assessment of Reasonably Practicable Options

- 8.1 Once it has identified the reasonably practicable options for resolving the issues with the current arrangements, section 43N(1)(b) of the Act requires Gas Industry Co to assess those options by considering:
- the costs and benefits of each option; and
 - the extent to which the regulatory objective would be promoted or achieved by each option; and
 - any other matters that Gas Industry Co considers relevant.
- 8.2 Gas Industry Co has previously concluded that information disclosure is the most reasonably practicable option at this stage in the path to reaching the regulatory objective. It was considered information disclosure could be achieved through two means, a voluntary arrangement or regulation.
- 8.3 In this section of the paper, Gas Industry Co sets out its assessment of the extent to which each of those means promotes or achieves the regulatory objective.

Background

- 8.4 There are two distinct options for delivering information disclosure:
- a scheme whereby the facility owners voluntarily opt-in to a formal agreement with Gas Industry Co specifying the form, content and frequency of information disclosed; or
 - rules approved by the Minister that specify the form, content and frequency of information to be disclosed, together with associated compliance mechanisms.

Voluntary information disclosure

- 8.5 Clearly the first of these options requires the support of all facility owners in order to be viable. In that regard, it may be that facility owners will be incentivised to support an opt-in arrangement as a means of demonstrating support for an industry-led solution in this area. However, as has been Gas Industry Co's experience, an arrangement which relies on all facility owners to opt-in is vulnerable to the possibility of hold-out by one or more of those facility owners.
- 8.6 In addition, even once it is implemented, such a scheme will continue to be exposed to a number of risks:
- withdrawal by one or more facility owners;
 - a facility changing hands and the new owner choosing not to opt-in; and
 - the owner of any new facility who chooses not to opt-in.

- 8.7 The advantage of an opt-in scheme is that it may be easier to change the form and content of disclosures (in light of feedback and experience) as compared with a regulated alternative.

Mandatory information disclosure

- 8.8 The second means of delivering information disclosure is to provide a mandatory scheme through rules or regulations promulgated under the Act.
- 8.9 As discussed earlier in this statement of proposal, the requirement for disclosure is prompted by the need to acquire the information to be able to assess the operation and efficiency of the gas processing market over time. Analysis of the information collected, together with further analysis undertaken by Gas Industry Co, will allow a final recommendation to be made to the Minister and, thereby, allow achievement of the regulatory objective.
- 8.10 Satisfying this requirement for information to settle a matter (i.e. the need for, and form of, access protocols) is an activity contemplated by section 43G(2)(l) of the Act.

Analysis

The decision to pursue an industry arrangement

- 8.11 Gas Industry Co concluded in the August 2006 discussion paper that the costs involved in both delivery mechanisms are relatively small. In the case of the opt-in scheme the costs included:
- designing the form and scope of information to be disclosed;
 - drafting the agreement between facility owners and Gas Industry Co; and
 - communicating with facility owners to get their agreement so as to achieve universal support.
- 8.12 In the case of the regulatory option, the costs would include:
- designing the form and scope of information to be disclosed;
 - preparing a proposal on the information disclosure regime, including drafting the disclosure rules, and consulting on that proposal;
 - preparing a recommendation to the Minister; and
 - implementing the rules.
- 8.13 Given that there is likely to be very little difference in cost between the two options, and assuming the benefits are the same in both cases (i.e. both result in the information being disclosed), it appeared the voluntary arrangement offered a marginally greater degree of flexibility.

- 8.14 Gas Industry Co therefore concluded that it should offer industry participants the opportunity to volunteer to provide the necessary information. The following recommendation was made to the Minister in December 2006.
- the appropriate protocols for access to gas processing facilities in New Zealand, on the basis of current evidence, should be limited to information disclosure.
 - of the available options, annual disclosure of information (on plant technical characteristics based on nameplate ratings, spare capacity and bona fide approaches by access seekers) is the most efficient option.
 - given the strong support for Gas Industry Co's conclusions, an attempt is made to implement the information disclosure by way of a voluntary arrangement.
 - if universal agreement to information disclosure has not been reached by mid-2007, Gas Industry Co will prepare a recommendation for the Minister of Energy to regulate for the supply of that information.
 - information collected on technical specifications and capacity forecasts shall be published on the Gas Industry Co website.
 - Gas Industry Co will maintain a watching brief on the sector and Gas Industry Co will, after two years, reassess the need for access protocols and make a further recommendation to the Minister of Energy.
- 8.15 Gas Industry Co's recommendation was approved by the Minister on 14 March 2007.

Process to pursue an industry arrangement

- 8.16 Letters dated 27 April 2007 were sent to parties identified as gas processing facility owners and those who are known to be involved in developing processing facilities (e.g. the Kupe partners). Those letters summarised the process leading to Gas Industry Co's recommendation for information disclosure and the Minister's subsequent approval. The letters noted that Gas Industry Co was asking for facility owners to support the voluntary information disclosure regime and that Jim Truesdale of Concept Consulting Group would be contacting them to discuss the proposed form of agreement between facility owners and Gas Industry Co. Also enclosed with the letter were:

- a copy of the Minister's letter approving Gas Industry Co's recommendation;
- the guidelines for information disclosure in the form of a template listing the information being sought by Gas Industry Co; and
- an information sheet giving additional background to the process.

- 8.17 In explaining the process, the information sheet noted:

An agreement is currently being prepared and it is intended to discuss the agreement with facility owners and ask them to agree to it. The agreement will be a relatively simple document and that is consistent with the aim of Gas Industry Co to make the disclosure process straightforward.

Provided all facility owners are willing to execute the agreement prior to 30

June 2007 then Gas Industry Co will be able to confirm to the Minister that an industry arrangement for information disclosure is in place. Conversely, if not everyone agrees then Gas Industry Co is required, consistent with its recommendation and as stated in the Minister's letter, to pursue the alternative course of action. That alternative will entail preparing rules under the Gas Act and recommending to the Minister that he, in turn, implements those rules.

- 8.18 Of particular note is the last paragraph which clearly outlines the choices available to Gas Industry Co: either obtain unanimous formal agreement from facility owners to the voluntary disclosure arrangement; or invoke the secondary option of making a recommendation to the Minister to regulate for the supply of information.
- 8.19 Initially, Swift, Vector and Shell were approached as these were organisations which had previously indicated a level of support for voluntary disclosure. Each of the three continued to express support in principle. Todd was also approached early on, primarily as it had expressed strong opposition to the disclosure recommendation in its submission to the August 2006 discussion paper.
- 8.20 Numerous follow-up calls were made to facility owners during May and June and, despite feedback being encouraging, it was not until mid-July 2007 that Gas Industry Co received the first executed agreement from Vector.
- 8.21 At the end of June (the period the Minister had indicated was the point at which he expected an industry arrangement to be concluded) Gas Industry Co wrote to the Minister, noting the difficulties being experienced but also noting the reasonably high level of "in principle" support. In that letter Gas Industry Co requested a three-month extension of time to conclude an industry arrangement giving a new deadline for an industry arrangement of 30 September 2007.
- 8.22 The request for an extension was designed to ensure that those parties who had expressed agreement in principle would be given sufficient time to work through the formal approvals required within their organisations. The extension also reflected Gas Industry Co's commitment to implementing the recommendation by way of an industry arrangement rather than by rules under the Act. This corresponds to the stated preference by many of Gas Industry Co's stakeholders that, given the opportunity, the gas industry is supportive of industry arrangements.
- 8.23 Follow-up calls continued to be made during July and August, endeavouring to coax facility owners to formally commit to the industry arrangement. Results have been mixed, with certain parties continuing to indicate that they believe their organisation will sign-up to the arrangement but that internal approvals were still being sought. One party has yet to indicate a position of either support or opposition. Another party has gone so far as to say that the arrangement is a waste of time and Gas Industry Co should focus its resources in other areas. Gas Industry Co would be pleased to settle this matter quickly, but the lack of executed agreements requires the Company to continue to expend time and resources in this area.
- 8.24 Thus far, the results are listed in the table below.

Status	Party
Agreement executed with Gas Industry Co	Vector
Formally advised that it will support the disclosure arrangement once its plant (Kupe) is in place	Genesis
Informally advised that it will support the disclosure arrangement once its plant (Kupe) is in place and that it intends to formally advise of this	Origin
Formally advised that it supports the disclosure agreement subject to the support of its JV partners	OMV
Advised that it will support the disclosure arrangement once its plant (Kupe) is in place	NZOG
Formally advised that it supports the disclosure agreement and that it will seek the support of JV partners	Shell
Formally advised that it supports the agreement but subject to right to withdraw given possible sale of New Zealand interests	Swift
Has not confirmed position	Todd
No intention of being a party to the disclosure agreement	Greymouth (inc Bridge)

Conclusion on reasonably practicable options

- 8.25 It must be acknowledged that far more time and effort is being committed to pursuing an industry agreement than was originally envisaged. One of the key arguments in favour of an industry arrangement was that it would entail a lower level of resource compared with that which would otherwise be required to draft rules and to prepare a statement of proposal.
- 8.26 The information which Gas Industry Co is seeking is straightforward for the facility owners to provide and is most unlikely to impose significant incremental costs. The agreement which Gas Industry Co has provided to facility owners is very simple (a copy is included as Appendix E) and should not cause any difficulties for facility owners to execute, noting endorsement by a number of facility owners.
- 8.27 Because the facility owners have not all agreed to the industry arrangement after considerable efforts to encourage acceptance, Gas Industry Co considers it unlikely that further efforts would yield full agreement. Gas Industry Co also considers that even if an agreement could be achieved now, this would be vulnerable to future hold-out.
- 8.28 Accordingly, Gas Industry Co has concluded that it will not be possible to conclude an industry arrangement for voluntary information disclosure. Gas Industry Co has concluded, therefore, that the only reasonably practicable option is to recommend the draft rules attached as Appendix B to require disclosure of the information covered in the industry agreement.

Q4: *Do you agree Gas Industry Co has provided industry participants with a reasonable opportunity to adopt information disclosure by way of an industry arrangement?*

Q5: *Do you agree, given at least one party has chosen to “hold out” from joining the industry arrangement, the only reasonably practicable option which remains for Gas Industry Co is to recommend rules for information disclosure? If not, please give your reasons.*

Assessment of costs and benefits

8.29 When making a recommendation to the Minister for rules or regulations Gas Industry Co is also required to assess the benefits and costs of each option.

8.30 In the original recommendation it was considered the costs of each option were similar. The benefits of each option were also regarded as being similar except that the industry arrangement may have been more flexible and that flexibility tipped the balance in favour of the industry arrangement.

8.31 Gas Industry Co has now gone through a process of endeavouring to implement the industry arrangement. Despite the input of considerable resources and time, the facility owners have not all chosen to agree to the industry arrangement. Those costs are now sunk, as are the costs of drafting the proposed rules attached to this statement of proposal.

8.32 Thus the comparison is now between:

- the costs involved in continuing to pursue an industry arrangement without being able to be certain that process will result in a successful conclusion; and
- the costs involved in consulting on this statement of proposal, based on a discussion paper and a solution which has already been positively received by most stakeholders, together with the cost of finalising the rules and making a recommendation to the Minister.

8.33 Moreover, only the second of the two options is most likely to give a definitive result. If the first option were to be pursued further, based on experience to date it would simply incur further costs and result in a switch to the second option at a later date.

8.34 It is logical to conclude that, in the light of experience with the attempt to implement an industry arrangement, the regulated option offers a greater overall net benefit and is the reasonably practicable option which will best promote the regulatory objective.

Q6: *Do you agree with the assessment of costs and benefits, in particular that the uncertainties associated with continuing to pursue the industry arrangement mean it is likely to be the more expensive option?*

9 Statement of Proposal

- 9.1 The purpose of this paper is to comply with the requirement in section 43N(1)(d) of the Gas Act to issue a statement of the proposal for the purpose of consultation with persons that Gas Industry Co thinks are representative of the interests of persons likely to be substantially affected by the proposal (s43L(1)(b)).
- 9.2 The statement of the proposal must contain:
- a detailed statement of the proposal;
 - a statement of the reasons for the proposal;
 - an assessment of the reasonably practicable options, including the proposal; and
 - other information that Gas Industry Co considers relevant.
- 9.3 The proposal is to make a recommendation to the Minister of Energy under section 43G(2)(l) of the Act for rules requiring disclosure of information on third party access to gas processing facilities. A draft of the proposed rules is attached in Appendix B. This section of the paper provides a detailed statement of those proposed rules.

Detailed description of the proposed information disclosure rules

- 9.4 The draft rules are divided into three parts. The first part sets out general obligations, including the obligation on all facility owners, which is defined in the rules, to provide information in accordance with the rules.
- 9.5 Part 2 of the draft rules prescribes the information that facility owners must supply on the capability of, and availability of capacity at, their fully or partly owned gas processing facilities. Such information will be required to be provided annually in accordance with a disclosure form published by Gas Industry Co from time to time. An example disclosure form is attached as Appendix D to this statement of proposal.
- 9.6 A director or principal of the facility owner will be required to certify that the information is correct each time that it is provided.
- 9.7 Gas Industry Co will publish on its website all information provided in accordance with Part 2.
- 9.8 Part 3 of the draft rules prescribes the information that all facility owners must supply on bona fide approaches by third parties for access to their fully or partly owned gas processing facilities. Facility owners must provide:
- the numbers of bona fide approaches;
 - a summary of the nature of the approaches; and
 - a summary of the outcome of the approaches.

- 9.9 The draft rules make it clear that a facility owner will not be required to disclose any information that a reasonable person would consider was commercially sensitive at the time the disclosure was made. The draft rules also provide for third party access seekers to provide information to Gas Industry Co on access approaches where the facility owner has not already provided that information. Provision of the information by the access seeker does not relieve the facility owner of the obligation to provide the information itself. Failure to provide the information may therefore be considered a breach of the draft rules.
- 9.10 Gas Industry Co will not publish any information provided in accordance with Part 3. Gas Industry Co will, however, use that information to report to the Minister from time to time on the need, if any, for further regulation in this area thereby fulfilling the purpose of the rules to resolve the issue of whether access protocols are required.
- 9.11 In order to avoid duplication, the draft rules make it clear that only one disclosure is required in respect of any jointly-owned gas processing facility.
- 9.12 It is proposed that any breaches of the draft rules will be dealt with through Gas Industry Co's compliance regime.

Choice between rules and regulations

- 9.13 Section 43Q(1) of the Act allows the Minister of Energy to make a rule for all or any of the purposes for which a gas governance regulation may be made. Given that the draft rules:
- govern the limited domain of information disclosure on third party access to gas processing facilities;
 - incorporate detailed and technical matters affecting gas processing;
 - apply only to gas processing facility owners;
 - are aimed at making third party access to gas processing facilities more efficient;
 - will be readily accessible, at no charge and at all reasonable times, on Gas Industry Co's website making the cost of publication under the Acts and Regulations Publication Act unwarranted; and
 - have been drafted by Gas Industry Co, a co-regulatory body set up by the Government to undertake the specific task of regulating the New Zealand gas industry through rules or regulations where appropriate;

Gas Industry Co has concluded that the information disclosure arrangements should be implemented by way of rules under the Act.

Other means to achieve the regulatory objective

- 9.14 For the reasons previously outlined, Gas Industry Co does not believe that the regulatory objective is likely to be satisfactorily achieved by any reasonably practicable means other than the making of the proposed rules.

Conclusion

- 9.15 Gas Industry Co concludes that the reasonably practicable option which best achieves the regulatory objective is the making of the draft information disclosure rules under the Gas Act.

Q7: Do you have any comments on the draft information disclosure rules contained in Appendix B?

10 Compliance and Enforcement

General approach to compliance and enforcement

- 10.1 In April 2006, Gas Industry Co released a discussion paper on proposed compliance and enforcement arrangements for the New Zealand gas industry¹⁰. In that paper, Gas Industry Co proposed setting up a compliance and enforcement regime, based around the Rulings Panel and investigative powers contemplated in the Act, which would apply to any arrangements established through rules or regulations promulgated under the Act.
- 10.2 Submitters on that paper were strongly of the view that any compliance and enforcement regime should be “fit for purpose” and that therefore Gas Industry would need to consider on a case by case what type of regime was appropriate for each set of arrangements being proposed. Gas Industry Co has proceeded to develop arrangements for compliance and enforcement on that basis.
- 10.3 The first gas governance arrangements in respect of which Gas Industry Co proposed a compliance regime were those for a central gas registry and rules which would apply when switching customers between gas retailers (the “switching compliance proposal”)
- 10.4 Following extensive consultation with the industry, on 31 May 2007, Gas Industry Co recommended to the Minister of Energy that he recommend to the Governor General the making of regulations by Order in Council to establish a compliance and enforcement regime to support the Gas (Switching Arrangements) Rules 2007 (the “compliance regulations”). The compliance regime is made up of:
- a Market Administrator which has responsibility for receiving notices of reported breaches of the rules, attending to administrative tasks, determining the materiality of breaches, and attempting to resolve any immaterial breach with the agreement of the parties.
 - an Investigator who investigates material or unresolved immaterial breaches, endeavours to settle the matter, and refers settlements and unresolved breaches to the Rulings Panel.
 - a one member Rulings Panel which approves or rejects settlements, determines unresolved breaches and orders remedies.¹¹

¹⁰ See *Compliance and Enforcement Arrangements in the New Zealand Gas Industry*, 12 April 2006 at www.gasindustry.co.nz

¹¹ See *Recommendation to the Minister of Energy on Regulation for Enforcement of Switching Rules*, May 2007 at www.gasindustry.co.nz

Legislative powers

Power to make regulations for compliance and enforcement

- 10.5 The specific powers in the Act which allow Gas Industry Co to recommend rules in respect of information disclosure are described in section 3 of this statement of proposal.
- 10.6 In addition, section 43G(2) of the Act provides that the Minister of Energy can recommend to the Governor-General the making of regulations for the purpose of:
- ...
- (i) *providing procedures for resolving disputes between industry participants:*
 - (j) *providing for the operation and facilitation of those dispute resolution procedures by a person, and the powers and procedures of that person:*
 - (k) *providing for compliance with gas governance regulations and rules to be monitored and enforced by the industry body or the Commission or any other person or court, and the powers and procedures of that person or court:...*

Specific provisions relating to enforcement and compliance

- 10.7 Subpart 1 of Part 4A of the Act sets out a broad framework for enforcing compliance with any gas governance rules and regulations made pursuant to Part 4A. The provisions within the Act:
- contemplate that a Rulings Panel might be established;
 - include limits on investigation powers for monitoring and enforcing compliance with gas governance regulations and rules, obligations on industry participants to co-operate with any investigation, and privileges protection (sections 43U to 43W);
 - contain a list of the orders that the Rulings Panel can make (sections 43X and 43Y);
 - impose limits on tort claims against service providers (section 43Z); and
 - establish rights of judicial review and appeal to the Courts (sections 43ZA to 43ZJ).

Supplementary powers

- 10.8 In addition, section 43S of the Act includes supplementary empowering provisions applying to any regulation or rule made under Subpart 1 of Part 4A of the Act (which includes rules for allocation and reconciliation arrangements). Those provisions include the ability for rules or regulations to:
- (a) *provide for 1 or more persons or bodies or groups of persons to carry*

out functions in relation to those regulations or rules, and for matters concerning their establishment, constitution, functions, members (including their appointment, removal, duties, and protection from liability), procedures, employees, administration and operation, funding by participants, and reporting requirements:

- (b) provide for systems, processes and procedures (including dispute resolution procedures), and the keeping, supply and disclosure of information, in relation to any matters specified in this subpart:*
- (c) prescribe the form and manner in which information is to be disclosed:*
- ...*
- (e) prescribe when and for how long information must be disclosed:*
- (f) exempt or provide for exemptions (including provide for the revocation of exemptions), on any terms and conditions, of any person or class of persons from all or any of the requirements in regulations or rules made under this subpart:*
- (g) provide for the supply of information for the purpose of administration and enforcement of this Act, and regulations and rules made under this Act:*
- (h) provide for transitional provisions:*
- (i) provide for any other matters contemplated by this Act or necessary for its administration or necessary for giving it full effect.*

Requirements when recommending regulations

- 10.9 Prior to making a recommendation for regulations relating to compliance and enforcement, the Act places the same requirements on Gas Industry Co to:
- identify the reasonably practicable options for achievement of the regulatory objective;
 - assess the benefits and costs of each option and the extent to which each of them achieves the regulatory objective; and
 - issue a statement of proposal for consultation with industry participants.
- 10.10 This section of the paper sets out a statement of the proposal for compliance and enforcement of the proposed information disclosure rules for the purposes of consultation with industry participants.

Options for compliance and enforcement of information disclosure rules

- 10.11 One of the potential issues with a voluntary information disclosure regime is the difficulty of enforcing ongoing compliance with the regime once facility owners have “signed up”. It was hoped that facility owners would be incentivised to support an opt-in arrangement as a means of demonstrating support for an industry-led solution in this area. Compliance issues were therefore not considered in the August 2006

discussion paper.

- 10.12 Given that Gas Industry Co is now proposing draft rules for information disclosure the issue of enforcing compliance turns to a consideration of the most appropriate compliance mechanism for those rules.

Assessment of options

- 10.13 As with other regulatory arrangements proposed by Gas Industry Co, consideration needs to be given to whether the compliance regime should be effected through a pan-industry agreement or regulations. The objective of any compliance regime is to provide a high degree of confidence that the proposed information disclosure will be adhered to, thereby contributing to the overall achievement of the Government's policy objectives for the gas industry.
- 10.14 Having concluded that rules are required for information disclosure, it follows that it would be most effective for the compliance regime to also be regulated under the Act. Further, as a compliance regime affects peoples' rights, including empowering a decision-making body to make determinations and impose penalties on parties to such determinations, it is appropriate that the regime should be implemented through regulations under the Act rather than rules.
- 10.15 The costs and benefits of a compliance regime are necessarily linked to ensuring that the benefits of the arrangements which they enforce are achieved. The benefits of the compliance regime are therefore the achievement of the benefits derived from the implementation of those arrangements.
- 10.16 In this case, the benefit of a regime for compliance with, and enforcement of, rules for information disclosure is ensuring the achievement of the benefits described earlier in this statement of proposal. In particular, given that Gas Industry Co has concluded that only a light-handed, low cost approach is justified, it is important that compliance be achieved in the most efficient manner possible.
- 10.17 The likely range of costs for a compliance regime was set out in Appendix 1 of the switching compliance proposal. These covered all the initial establishment and set up costs for the regime, including appointment of investigators and the Rulings Panel.
- 10.18 As those costs will have already been incurred, the costs of information disclosure compliance will only consist of the incremental cost of amending the switching compliance regulations to include information disclosure, and any additional workload for the compliance bodies set out in paragraph 10.4 above. It is not envisaged, for example, that coverage of the information disclosure rules will require appointment of additional personnel to any of those bodies. Indeed, Gas Industry Co considers that there is a very low likelihood of enforcement procedures being required in respect of information disclosure. It is therefore proposed that any incremental costs be recovered through the Gas Industry Co levy.

Conclusion

- 10.19 It is proposed that Gas Industry Co recommends amending the compliance regulations so as to include in those regulations provision for them to cover the proposed information disclosure rules.
- 10.20 A draft of the amended regulations is attached as Appendix C.

11 Conclusion and Next Steps

Conclusion

- 11.1 Gas Industry Co's view is that the objective of any access protocols should be to facilitate access to gas processing facilities only where that is both economically efficient and contributes to better achievement of the Government's overall policy objective.
- 11.2 Neither the quantitative or qualitative analysis undertaken suggests any substantive policy intervention is warranted at this time. Heavy handed interventions would be expected to impose unnecessary costs on the sector and could, as a result, deter investment in E&P activities.
- 11.3 The preferred option is the development of an information disclosure regime. Such a regime would ensure that possible access options are able to be ascertained without constraining the ability of parties to negotiate access agreements in a form that suits their particular requirements. It should reduce the costs of assessing access options. Also, the preferred option will facilitate a watching brief on access arrangements and the information thus obtained will inform a future recommendation on access protocols.
- 11.4 Given the failure of the industry to secure support for a voluntary information disclosure regime, Gas Industry Co proposes to recommend to the Minister rules for disclosure by facility owners of information 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.
- 11.5 Gas Industry Co proposes to make the information on the capabilities and availability of gas processing facilities available to the public to enable third party access seekers to be better informed of their gas processing options. The information on approaches for access will be used by Gas Industry Co to report to the Minister from time to time on the need for further regulatory intervention in the gas processing market.

Next Steps

- 11.6 After taking into account submissions on this statement of proposal and making any necessary revisions to the draft rules and compliance regulations, Gas Industry Co will prepare a recommendation to the Minister that he make the information disclosure rules and recommend the amendment of the compliance regulations. Gas Industry Co envisages making such a recommendation by December 2007.

Appendix A: Recommended Format for Submissions

To assist the Gas Industry Co in the orderly and efficient consideration of stakeholders' responses, a suggested format for submissions has been prepared. This is drawn from the questions posed throughout the body of this consultation document. Respondents are also free to include other material in their responses.

Submission prepared by: (company name and contact)

QUESTION	COMMENT
<p>Q1: Do you have any general comments on the proposal or the process adopted by Gas Industry Co?</p>	
<p>Q2: Do you agree that alternatives to the status quo that may meet the objective are limited to low cost, light-handed measures?</p>	
<p>Q3: Given the finding on no substantial inefficiency in the gas processing market and given the need to maintain a watching brief for a later recommendation on access protocols, do you agree that the only reasonably practical options are information disclosure provided either by industry agreement or mandated by rules under the Act?</p>	

QUESTION	COMMENT
Q4: Do you agree that Gas Industry Co has provided industry participants with a reasonable opportunity to adopt information disclosure by way of an industry arrangement?	
Q5: Do you agree, given at least one party has chosen to “hold out” from joining the industry arrangement, the only reasonably practicable option which remains for Gas Industry Co is to recommend rules for information disclosure? If not, please give your reasons.	
Q6: Do you agree with the assessment of costs and benefits, in particular that the uncertainties associated with continuing to pursue the industry arrangement mean it is likely to be the more expensive option?	
Q7: Do you have any comments on the draft information disclosure rules contained in Appendix B?	

Appendix B: Draft information disclosure rules

GAS (PROCESSING FACILITIES INFORMATION DISCLOSURE) RULES 2007

1. Purpose

The purpose of these rules is to:

- 1.1** Provide for public disclosure of a common set of information on capability of, and availability of capacity at, gas processing facilities; and
- 1.2** Monitor the efficiency of the market for third party access to gas processing facilities; and
- 1.3** Report to the Minister of Energy on the need for regulation of third party access to gas processing facilities.

2. Outline

These rules provide for –

- 2.1** Disclosure of information on gas processing facilities; and
- 2.2** A process for making such information publicly available; and
- 2.3** A means for the industry body to monitor approaches for third party access to those facilities.

3. Commencement

The rules come into force 28 days after the date these rules are notified in the *Gazette*.

Part 1

General provisions

4. Interpretation

4.1 In these rules, unless the context otherwise requires, a word or expression defined in the Act has the same meaning as it has in the Act.

4.2 In these rules, unless the context otherwise requires,-

Act means the Gas Act 1992;

business day means any day of the week except –

- (a) Saturday and Sunday; and
- (b) Any day that Good Friday, Easter Monday, ANZAC Day, the Sovereign's Birthday, Labour Day, Christmas Day, Boxing Day,

New Year's Day, the day after New Year's Day, and Waitangi Day are observed for statutory holiday purposes; and

- (c) Any other day which the industry body has determined not to be a business day as published by the industry body;

commencement date means the date referred to in regulation 3;

day means a calendar day;

facility owner means the whole or part owner of a gas processing facility;

gas processing facility means a facility which separates the various constituents of the fluid from a well so as to remove impurities and provide specification gas and gas liquids;

industry body means the industry body approved by the Governor General by Order in Council under section 43ZL of the Act. In the event that the industry body is revoked under section 43ZM of the Act, all references to the industry body shall be replaced with references to the Commission;

month means a calendar month;

rules means these Gas (Processing Facilities Information Disclosure) Rules 2007 as amended from time to time and includes every schedule to the rules, any code of practice and any technical code made pursuant to the rules, and every amendment to, deletion of, or addition to, any of the rules.

- 4.3** A reference to a rule is a reference to a rule in these rules unless the reference specifically states otherwise.
- 4.4** References to the singular include the plural and vice versa.

Compliance

5. Compliance

The Gas (Compliance) Regulations 2007 apply to these rules.

Scope

6. Obligation to disclose information

- 6.1** All facility owners must disclose information in accordance with these rules.
- 6.2** Notwithstanding rule 6.1, for the purposes of these rules, if a gas processing facility is owned by a joint venture the operator of that joint venture must disclose information in accordance with these rules, on behalf of the parties to the joint venture, as if the operator of the joint

venture was a facility owner that wholly owned such gas processing facility and the parties to that joint venture will not be required to separately disclose information for that gas processing facility.

Notices and receipt of information

7. Giving of notices

- 7.1** If these rules require any notice to be given, the notice must be in writing and be –
- 7.1.1** Delivered by hand to the nominated office of the addressee; or
 - 7.1.2** Sent by post to the nominated postal address of the addressee; or
 - 7.1.3** Sent by facsimile to the nominated facsimile number of the addressee; or
 - 7.1.4** Sent by electronic transmission or any other similar method of electronic communication to the appropriate nominated electronic address of the addressee.
- 7.2** An office, postal address, facsimile number and electronic address is nominated for the purposes of rule 7.1 if the party making the nomination provides written notice of such nomination to the registered office of the other party.
- 7.3** In the case of an emergency, a person may give notice other than in accordance with rule 7.1, but the person must as soon as practicable, confirm the notice in writing and by a method set out in rule 7.1.

8. When notice taken to be given

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

- 8.1** In the case of notices delivered by hand to a person, when actually received at that person's address;
- 8.2** In the case of notices sent by post, at the time when the letter would in the ordinary course of post be delivered; and in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted;
- 8.3** In the case of notices sent by fax, at the time indicated on a record of its transmission;
- 8.4** In the case of notices sent by electronic transmission or any other similar method of electronic communication, at the time: –
 - 8.4.1** The computer system used to transmit the notice has received an acknowledgment or receipt addressed to the electronic mail address of the person transmitting the notice; or

8.4.2 The person who gave the notice proves the notice was transmitted by computer system to the electronic address provided by the addressee.

Part 2

Information for public disclosure

9. Purpose of information disclosure

The purpose of this Part 2 of the rules is to provide for public disclosure of a common set of information on availability of capacity at gas processing facilities.

10. Information to be disclosed

Facility owners must disclose the following information for each of the gas processing facilities wholly or partly owned by the facility owner -

10.1 The ownership share and contact details of all of the facility owners; and

10.2 Forecasts of spare gas processing capacity; and

10.3 Such other information as the industry body may require facility owners to disclose from time to time.

11. Obligation to certify that information disclosed is correct

11.1 Facility owners must ensure that all information disclosed under this Part 2 of the rules is certified as correct by a director or principal officer of the facility owner which discloses the information.

11.2 In these rules:

director has the same meaning as in section 2(1) of the Securities Act 1978

principal officer means a person whose functions include ensuring that the facility owner discloses the information required under these rules.

12. When and how information is provided

12.1 Facility owners must give a notice disclosing the information in rule 10 to the industry body –

12.1.1 No later than 30 business days after the commencement date; and

12.1.2 Annually on the anniversary of the date the information was first supplied under rule 12.1.1; and

12.1.3 Whenever there is a material change in the information disclosed under rules 12.1.1 or 12.1.2.

12.2 The information in rule 10 must be provided in accordance with the disclosure form published by the industry body on the commencement date, as amended and published by the industry body form from time to time.

13. Publication of information

The industry body must publish all information provided by facility owners in accordance with this Part 2 of the rules on its website within 10 business days of receiving such information.

14. No reliance on information

The information published in accordance with this Part 2 of the rules is published for disclosure purposes only and is not intended be relied upon by third parties.

Part 3

Monitoring access

15. Purpose of disclosure of approaches for access

The purpose of this Part 3 of the rules is to:

- 15.1 allow the industry body to monitor the efficiency of the market for third party access to gas processing facilities; and
- 15.2 report to the Minister of Energy on the need for regulation of third party access to gas processing facilities.

16. Information on approaches for access to be disclosed

16.1 Facility owners must disclose the following information on each of the gas processing facilities wholly or partly owned by the facility owner -

- 16.1.1 The numbers of bona fide approaches by third parties investigating the possibility of access to the gas processing facility; and
- 16.1.2 A summary of the nature of the approach for access; and
- 16.1.3 A summary of the outcome of the approaches.

16.2 When providing the information required by rules 16.1.2 and 16.1.3, facility owners will not be required to disclose any information that a reasonable person would consider was commercially sensitive at the time the disclosure was made.

16.3 The information provided in accordance with rule 16.1 must be correct and provide a fair representation of the nature of the approach.

17. When and how information is to be disclosed

Facility owners must give a notice to the industry body containing the information required by rule 16 -

- 17.1 For the twelve month period ended on the commencement date, no later than 30 business days after the commencement date; and
- 17.2 For any twelve month period ended on the anniversary of the commencement date, annually on the anniversary of the date the information was first supplied under rule 17.1.

18. Access seekers may provide information

18.1 Any third party which has sought access to a gas processing facility may provide the information set out in rule 16.1 to the industry body in relation to an approach for access.

18.2 Provision of information by a third party access seeker under rule 18.1 does not relieve the obligation of the facility owner to provide the

information required by rule 16.1 in relation to the same approach for access.

19. Confidentiality

19.1 The industry body must treat all information disclosed in accordance with this Part 3 of the rules as confidential unless agreed otherwise with the facility owner.

19.2 The industry body must only use the information disclosed in accordance with this Part 3 of the rules for the purposes of –

19.2.1 Monitoring the efficiency of the market for third party access to gas processing facilities; and

19.2.2 Reporting to the Minister of Energy from time to time on the need for regulation of third party access to gas processing facilities.

Appendix C: Draft compliance regulations

Draft Gas (Compliance) Regulations 2007

1 Title

These regulations are the Gas (Compliance) Regulations 2007

2 Commencement

These regulations come into force 28 days after the date these regulations are notified in the Gazette.

3 Purpose

(1) These regulations provide for the monitoring and enforcement of the:

- (a) Gas (Switching Arrangements) Rules 2007; and
- (b) Gas (Processing Facilities Information Disclosure) Rules 2008;

made by the Minister of Energy under the Gas Act 1992, as may be amended from time to time.

4 Interpretation

(1) In these regulations, unless the context otherwise requires —

Act means the Gas Act 1992

breach notice means any notice given under regulation 9 , 10 or 11

Commission means the Energy Commission established under section 43ZZH of the Act

facility owner has the same meaning as in rule 4.2 of the Gas (Gas Processing Information Disclosure) Rules 2008

industry body means the industry body approved by the Governor General by Order in Council under section 43ZL of the Act. In the event that the industry body is revoked under section 43ZM of the Act, all references to the industry body shall be replaced with references to the Commission

investigator means any investigator appointed under regulation 25

notifying participant means a participant that gives a breach notice under regulation 9

market administrator means the industry body or the service provider appointed by the industry body under regulation 5 to undertake the role of market administrator

participant means a registry participant and facility owner as defined in the rules and includes the registry operator

publish means, in relation to a document, to make that document available at no cost —

- (a) on the industry body's website at all reasonable times; and
- (b) in any other manner that the industry body may decide

registry operator means the service provider appointed by the industry body to establish, maintain, and operate the registry

rules means the -

- (a) Gas (Switching Arrangements) Rules 2007; and
- (b) Gas (Gas Processing Information Disclosure) Rules 2008;

as amended from time to time and includes every schedule to the rules, any code of practice and any technical code and every amendment to, deletion of, or addition to, any of the rules

Rulings Panel or **Panel** means the Panel established by regulation 59.

- (2) Any term that is defined in the rules and used, but not defined, in these regulations has the same meaning as in the rules.
- (3) Any term that is defined in the Act and used in these regulations, but not defined in these regulations or the rules, has the same meaning as in the Act.

5 Role of market administrator

- (1) The role of the market administrator is to —
 - (a) receive breach notices; and
 - (b) provide a filter so that breach allegations that do not raise material issues are not automatically referred to the investigation process and the Rulings Panel; and
 - (c) provide a pragmatic, fast and efficient resolution service for complaints that do not raise a material issue; and
 - (d) refer complaints that do raise material issues to investigators for investigation.
- (2) The industry body may, from time to time, by agreement with a person, appoint that person to undertake the role of market administrator.
- (3) To avoid any doubt, the industry body does not have a conflict of interest by reason of the fact that it may be carrying out the role of market administrator.

6 Breaches

- (1) In these regulations, unless the context otherwise requires, a reference to a participant that has breached a provision of the rules is a reference to a participant that —
 - (a) has contravened the provision; or
 - (b) has attempted to contravene the provision; or

- (c) has aided, abetted, counselled, or procured any other participant to contravene the provision; or
 - (d) has induced, or attempted to induce, any other participant, whether by threats or promises or otherwise, to contravene the provision; or
 - (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other participant of the provision; or
 - (f) has conspired with any other participant to contravene the provision.
- (2) In these regulations, unless the context otherwise requires, a reference to a breach (including an alleged breach) of the rules refers only to a breach —
- (a) that was discovered, or ought reasonably to have been discovered, within 3 years of the date of the breach; and
 - (b) that occurred within 10 years of the date of any investigation or other proceedings under these regulations.
- (3) The rules specify which rule breaches are enforceable against the registry operator under these regulations.

7 Relationship between remedies under these regulations or the rules and other remedies

- (1) There is no remedy, other than the remedies provided in these regulations, in respect of a breach of these regulations or the rules.
- (2) In particular, no one can bring an action for breach of statutory duty that is based on a breach of these regulations or the rules by a participant or a service provider.
- (3) However, this regulation does not affect –
- (a) Any right to recover a debt owing under these regulations or the rules by a participant; or
 - (b) Any right to bring any action for any tort other than a breach of statutory duty, for breach of contract, or for any other wrong that arises from any act or omission that is also just happens to be a breach of these regulations or the rules.

Part 1

Reporting and investigation of breaches

Participants must investigate complaints made to them

8 Participants must investigate complaints made to them

- (1) Any person may complain, in writing, to a participant about any business activity of the participant that the person believes might constitute a breach of the rules.

- (2) The participant must ensure that the complaint is promptly, thoroughly, and fairly investigated by the participant, and that appropriate remedial action is taken.
- (3) The participant must promptly notify the person who made the complaint in writing of the result of the investigation and the remedial action (if any) taken by the participant.

Voluntary reporting to market administrator of alleged breaches

9 Participant may notify market administrator of alleged breach

- (1) If any participant believes, on reasonable grounds, that it or another participant has breached the rules, that participant may notify the market administrator as soon as possible of that alleged breach.
- (2) The notice must be in writing and must specify —
 - (a) the participant that is alleged to have breached the rules; and
 - (b) the rule allegedly breached; and
 - (c) the circumstances relating to the alleged breach; and
 - (d) the date and time on which the alleged breach occurred.

10 Voluntary reporting of alleged breaches

- (1) Any consumer or other person (other than a participant) may notify the market administrator if the consumer or other person believes, on reasonable grounds, that —
 - (a) a participant has breached the rules; and
 - (b) that the consumer or other person is affected by that alleged breach.
- (2) The industry body may notify the market administrator of an alleged breach of the rules by a participant of which the industry body becomes aware of by other means.

Mandatory reporting to market administrator of alleged breaches

11 Registry operator must notify market administrator of alleged breach

- (1) If the registry operator believes, on reasonable grounds, that any other participant has breached the rules, then the registry operator must notify the market administrator of the alleged breach as soon as possible.
- (2) The notice must be in writing and must specify —
 - (a) the participant that is alleged to have breached the rules; and

- (b) the rule allegedly breached; and
 - (c) the circumstances relating to the alleged breach; and
 - (d) the date and time on which the alleged breach occurred.
- (3) The registry operator may include notices under subclause (2) in regular reports to the market administrator as agreed between the registry operator and the market administrator.

12 Market administrator must notify participant allegedly in breach

- (1) If the market administrator receives a breach notice, the market administrator must —
- (a) acknowledge receipt of the breach notice by any manner considered appropriate by the market administrator; and
 - (b) notify the participant allegedly in breach of the following:
 - (i) the name of the notifying participant; and
 - (ii) the rule allegedly breached and the circumstances relating to the alleged breach; and
 - (iii) the date and time the alleged breach occurred.
- (2) The market administrator must use reasonable endeavours to give the acknowledgement and notice within 5 working days of receiving the breach notice.

13 Alleged breach must be notified and affected participants may join as parties

- (1) At the same time as the market administrator gives notice under regulation 12(1)(b), the market administrator must notify all other participants of the contents of that notice.
- (2) Within 5 working days after the market administrator notifies the participants of the content of the notice under subclause (1), any participant may notify the market administrator that it considers that it is affected by the alleged breach and wishes to become a party to the breach notice.
- (3) The participant is then joined as a party to the breach notice.

14 Market administrator may request further information

The market administrator may request information about the circumstances of the alleged breach from any of the following:

- (a) the notifying participant or other person that gave the breach notice:
- (b) the participant who is allegedly in breach:
- (c) the registry operator:
- (d) any other participant that has joined as a party to the breach notice.

15 Market administrator must keep information confidential

- (1) The market administrator must keep confidential all information provided or disclosed to it except to the extent that disclosure —
- (a) is required to enable the market administrator to carry out its obligations and duties under these regulations or the rules; or
 - (b) is otherwise compelled by law.
- (2) Participants that provide or disclose information to the market administrator must identify to the market administrator any information that the participant —
- (a) considers to be confidential; and
 - (b) considers should not be published under regulation 20 .

Notices and receipt of information

16 Giving of notices

- (1) If these regulations require any notice to be given, the notice must be in writing and be —
- (a) delivered by hand to the nominated office of the addressee; or
 - (b) sent by post to the nominated postal address of the addressee; or
 - (c) sent by facsimile to the nominated facsimile number of the addressee; or
 - (d) sent by electronic transmission or any other similar method of electronic communication to the appropriate nominated electronic address of the addressee.
- (2) In the case of an emergency, a person may give notice other than in accordance with subclause (1), but the person must as soon as practicable confirm the notice in writing and by a method set out in subclause (1).

17 When notices taken to be given

- (1) In the absence of proof to the contrary, notices are taken to be given,-
- (a) In the case of notices delivered by hand to a person, when actually received at that person's address;
 - (b) In the case of notices sent by post, at the time when the letter would in the ordinary course of post be delivered; and in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted;
 - (c) In the case of notices sent by fax, at the time indicated on a record of its transmission;
- (2) In the case of notices sent by electronic transmission or any other similar method of electronic communication, at the time -

- (a) The computer system used to transmit the notice has received an acknowledgment or receipt to the electronic mail address of the person transmitting the notice; or
- (b) The person who gave the notice proves the notice was transmitted by computer system to the electronic address provided by the addressee.

Market administrator to determine materiality

18 Market administrator to determine materiality

- (1) The market administrator must determine whether an alleged breach raises a material issue on the information provided in the breach notice and any other information obtained in accordance with regulation 14.
- (2) If, in the opinion of the market administrator, the alleged breach does not raise a material issue, the market administrator may, in its discretion,—
 - (a) determine to take no action on the alleged breach; or
 - (b) attempt to resolve the alleged breach with the agreement of the parties in accordance with regulation 21.
- (3) If, in the opinion of the market administrator, the alleged breach raises a material issue, the market administrator must refer the alleged breach to an investigator for investigation.
- (4) If the market administrator is unable to determine whether an alleged breach raises a material issue because the market administrator cannot obtain sufficient information, the market administrator must refer the alleged breach to an investigator for investigation.
- (5) The market administrator may decline to make a determination in respect of an alleged breach that –
 - (a) relates to a matter that has already been referred to; or
 - (b) the market administrator considers is more properly dealt with by;

the Electricity and Gas Complaints Commission or any other approved complaints resolution system.

19 Factors to be taken into account when determining materiality

- (1) The market administrator must, in determining whether or not an alleged breach raises a material issue, take into account the following factors:
 - (a) the severity of the alleged breach:
 - (b) whether the alleged breach had a material impact on the operation of the market:
 - (c) whether the alleged breach appears to have been intentional or malicious:

- (d) whether the participant allegedly in breach took remedial action immediately upon, or soon after, discovery of the breach:
 - (e) whether the alleged breach has a potential anti-competitive effect:
 - (f) whether the alleged breach has resulted in costs being borne by other participants or persons:
 - (g) whether the alleged breach is admitted:
 - (h) whether the alleged breach was an isolated event, or indicates a systemic problem with compliance with the rules:
 - (i) whether the breach allegation is frivolous or vexatious or is not made in good faith:
 - (j) whether, considering the length of time that has elapsed between the date when the alleged breach became known to the participant allegedly in breach and the date when the alleged breach was reported to the market administrator, an investigation of the alleged breach is no longer practicable or desirable:
 - (k) whether the participant allegedly in breach is, or has been, subject to any other orders under these regulations:
 - (l) the likelihood that the same breach or a similar breach may occur in the future:
 - (m) whether the participant allegedly in breach has benefited from the breach:
 - (n) whether the complexity of facts warrant investigation:
 - (o) any other factors that the market administrator considers relevant.
- (2) The market administrator may publish guidelines from time to time to illustrate how it is weighting and applying these criteria.

20 Decision to be made expeditiously and in a fair and reasonable manner

- (1) The market administrator must make its determination under regulation 18 expeditiously and in a fair and reasonable manner.
- (2) If regulation 18(2)(a) applies, the market administrator must notify the following parties of its determination as soon as practicable:
 - (a) the notifying participant or other person that gave the breach notice; and
 - (b) the participant allegedly in breach; and
 - (c) any other participant that has joined as a party to the breach notice under regulation 13.

21 Market administrator to use informal resolution process

- (1) If regulation 18(2)(b) applies, the market administrator must endeavour to resolve the alleged breach with the agreement of the following parties:
 - (a) the notifying participant or other person that gave the breach notice; and
 - (b) the participant allegedly in breach; and
 - (c) any other participant that has joined as a party to the breach notice under regulation 13.
- (2) In effecting an agreement, the market administrator may use any process that the market administrator thinks fit.
- (3) Every resolution under regulation 18(2)(b) must —
 - (a) be in writing; and
 - (b) specify the details of any breach of the rules that is admitted by a participant; and
 - (c) record the terms of the resolution.
- (4) The persons referred to in subclause (1) must notify their acceptance of the terms of the resolution in writing to the market administrator.

22 Market administrator must publish decisions

The market administrator must —

- (a) notify the industry body in a monthly report to the industry body; and
- (b) subject to regulation 15, publish;

all of its determinations under regulation 18, including the outcome of any resolutions achieved under regulation 21.

Provisions relating to referral of alleged breaches to investigator

23 Market administrator to refer alleged breaches to investigator

- (1) This regulation applies if —
 - (a) the market administrator determines under regulation 18(3) that an alleged breach raises a material issue in relation to compliance with the rules and must be referred to an investigator for investigation; or
 - (b) the market administrator determines under regulation 18(4) that the alleged breach will be referred to an investigator for investigation.
- (2) The market administrator must —
 - (a) refer the alleged breach to an investigator appointed under regulation 25 selected by the market administrator for the investigation; and

- (b) notify the following parties that the alleged breach has been referred to an investigator, including the identity of that investigator and contact details:
 - (i) the notifying participant or other person that gave the breach notice; and
 - (ii) the participant allegedly in breach; and
 - (iii) any other participant that has joined as a party to the breach notice under regulation 13; and
- (c) provide the investigator with all relevant materials provided to, or created by, the market administrator concerning the alleged breach.

24 Right to refer alleged breach to investigator directly

- (1) This regulation applies if —
 - (a) the market administrator has determined not to take any action on the alleged breach; or
 - (b) the attempt of the market administrator to resolve the alleged breach with the agreement of the parties in accordance with regulation 21 has been unsuccessful within 35 days after the alleged breach was notified under regulation 13.
- (2) The following parties may require the market administrator to refer the alleged breach to the investigator:
 - (a) the notifying participant or other person that gave the breach notice; or
 - (b) the participant allegedly in breach; or
 - (c) any other participant that has joined as a party to the breach notice under regulation 13.
- (3) If subclause (2) applies, regulation 23(2) applies to the market administrator.

Investigation of alleged breaches

25 Appointment and selection of investigators

- (1) The industry body must appoint one or more persons as investigators who have the requisite skills and experience to carry out independent investigations of alleged breaches.
- (2) In selecting an investigator under regulation 23, the market administrator must take reasonable steps to ensure that the investigator selected is free from conflicts of interest in carrying out the investigation.

26 Investigator may appoint other persons to give advice

In carrying out an investigation, the investigator may, subject to the agreement of the market administrator, appoint any external auditor, technical expert, or

other persons that the investigator thinks fit to give advice or assistance to the investigator.

27 Investigator must keep information confidential

- (1) The investigator must keep, and must ensure that every person appointed by an investigator under regulation 26 keeps, confidential all information provided or disclosed to them, except to the extent that disclosure —
- (a) is required to enable the investigator or other person to carry out its obligations and duties under these regulations; or
 - (b) is otherwise compelled by law.
- (2) The investigator must require participants that provide or disclose information to the investigator must identify any information that the participant considers —
- (a) to be confidential; and
 - (b) should not be included in the investigator's report under regulation 39(3).

28 Funding of market administrator and Investigator

- (1) The industry body must fund the market administrator and any investigators selected by the market administrator.
- (2) The industry body may recover the costs of that funding from industry participants through the ongoing fees in the rules.
- (3) Nothing in this regulation limits the ability of the Rulings Panel to make orders under section 43X of the Act relating to the reasonable costs of an investigation.

29 Investigator must investigate

The investigator must conduct an investigation of the facts surrounding all alleged breaches notified to it under regulations 21 and 22.

30 Participants must co-operate with investigation

Every participant must co-operate fully with any investigation carried out by the investigator in accordance with section 43U of the Act.

31 Privileges protected

Privileges are protected in accordance with section 43V of the Act.

32 Limits on investigation powers

The investigation powers of the investigator are limited by section 43W of the Act.

Procedures if alleged breach resolved by settlement

33 Settlement process

- (1) The investigator must endeavour to effect a settlement of every alleged breach under investigation by agreement between —
 - (a) the notifying participant or other person that gave the breach notice; and
 - (b) the participant allegedly in breach; and
 - (c) any other participant that has joined as a party to the breach notice under regulation 13.
- (2) In effecting a settlement, the investigator may use any process that the investigator thinks fit, after consultation with the persons referred to in subclause (1).

34 Settlements must be written, etc

- (1) Every settlement must —
 - (a) be in writing; and
 - (b) specify the details of any breach of the rules that is admitted by a participant; and
 - (c) record the terms of the settlement.
- (2) The persons referred to in regulation 33(1) must notify their acceptance of the terms of the settlement in writing to the investigator.

35 Rulings Panel decides whether to approve settlements

- (1) The investigator must provide to the Rulings Panel —
 - (a) a copy of the settlement; and
 - (b) a report containing as much of the information specified in regulation 39(3) as the investigator reasonably considers relevant in the circumstances of the matter.
- (2) The investigator may make a recommendation to the Rulings Panel that the Rulings Panel should not approve the settlement on the ground that the settlement is not in the best interests of the gas industry or the public.
- (3) The Rulings Panel must either —
 - (a) approve the settlement, in which case the settlement is final and binding on all participants; or
 - (b) reject the settlement.

36 Settlements must be published

- (1) The industry body must publish the terms of every settlement approved by the Rulings Panel under regulation 35.

- (2) However, the Rulings Panel may direct the industry body not to publish any part, or all, of any particular settlement if the Rulings Panel considers that there are special circumstances that justify the non-publication.

37 What happens if Rulings Panel rejects settlement

If the Rulings Panel rejects a settlement under regulation 35(3), it must —

- (a) direct the investigator to further endeavour to effect a settlement under regulation 33; or
- (b) direct the investigator to abandon the investigation; or
- (c) determine the alleged breach itself under regulations 39 to 50.

38 What happens if investigator unable to effect settlement

- (1) If, within the timeframe specified in subclause (2), an investigator is unable to effect a settlement of an alleged breach in accordance with regulation 31, the investigator must refer the alleged breach to the Rulings Panel for determination under regulations 47 to 48.

(2) The timeframe is —

- (a) within 30 working days (or any longer period that the investigator agrees in writing) of the alleged breach being referred to the investigator under regulation 23; or
- (b) if applicable, within 10 working days of the investigator further endeavouring to effect a settlement in accordance with a direction given under regulation 37(a).

Process if alleged breach is determined by Rulings Panel

39 Process if Rulings Panel to determine alleged breach

(1) This regulation applies if the Rulings Panel —

- (a) decides under regulation 37(c) that it will determine an alleged breach itself; or
- (b) must determine an alleged breach under regulation 38 because an investigator has been unable to effect a settlement between the parties.

(2) The investigator must provide to the Rulings Panel a report and recommendation sufficient to enable the Rulings Panel to determine the alleged breach.

(3) The report must, to the extent reasonably practicable, specify or contain the following information:

- (a) the rule allegedly breached; and
- (b) the participant allegedly in breach; and

- (c) the estimated date and time the breach allegedly occurred; and
 - (d) the relevant issues raised by the participant allegedly in breach in response to the allegations of breach; and
 - (e) the comments made to the investigator by any other person in response to the relevant issues raised by the participant allegedly in breach; and
 - (f) any additional information that the investigator considers relevant to the decision of the Rulings Panel as to how the matter may be dealt with by the Rulings Panel; and
 - (g) the investigator's assessment of the impact on the other participants of the conduct alleged to constitute the breach; and
 - (h) the investigator's assessment of the likelihood of the alleged breach recurring; and
 - (i) details of any similar situations previously dealt with by the Rulings Panel, including any settlement approved by the Rulings Panel under regulation 35(3) in response to those situations (if known by the investigator); and
 - (j) a copy of all correspondence with the investigator or market administrator relating to the alleged breach.
- (4) The investigator must use reasonable endeavours to give the report to the Rulings Panel within 5 working days of —
- (a) the Rulings Panel deciding that it will determine the alleged breach; or
 - (b) the investigator referring the alleged breach to the Rulings Panel for determination under regulation 38.
- (5) The investigator must forward a copy of the report to the following parties as soon as practicable:
- (a) the notifying participant or other person that gave the breach notice; and
 - (b) the participant allegedly in breach; and
 - (c) any other participant that has joined as a party to the breach notice under regulation 13.

40 Rulings Panel to set date for considering alleged breach

- (1) If regulation 39(1) applies, the Rulings Panel must set a date for considering the alleged breach, and must give to the persons referred to in subclause (2) at least 20 working days notice of the place, date, and time at which the Rulings Panel will consider the alleged breach.
- (2) The following persons are entitled to be heard at any hearing or, if there is to be no hearing, to provide written submissions and evidence:
 - (a) the notifying participant or other person that gave the breach notice:

- (b) the participant allegedly in breach:
- (c) any participant that has joined as a party to the breach notice under regulation 13:
- (d) the investigator who investigated the alleged breach.

Part 2

Proceedings of Rulings Panel

41 Rulings Panel may regulate own procedures

- (1) The Rulings Panel may regulate its own procedures, except as otherwise provided in these regulations, and subject to the requirements of natural justice.
- (2) The Rulings Panel must provide a summary of its procedures to the industry body and the industry body must publish those procedures.

42 Rulings Panel must conduct hearings

- (1) The Rulings Panel must conduct a hearing in respect of a matter that is being considered by the Rulings Panel —
 - (a) if the Rulings Panel considers that it is appropriate for any participant to be given an opportunity to be heard; or
 - (b) if any participant requests a hearing in respect of the matter.
- (2) Hearings must be in public, unless the Rulings Panel directs otherwise.
- (3) If there is no hearing the Rulings Panel must consider and decide the matter on the basis of the written submissions and evidence provided in accordance with regulation 40(2).

43 Pre-hearing statements and materials

- (1) If there is to be a hearing, the Rulings Panel must ensure that the persons referred to in regulation 40(2) have been provided with —
 - (a) a copy of any report provided by the investigator under regulation 39; and
 - (b) a copy of all relevant material collected or prepared during the course of the investigation of the matter up to the time the statement is provided.
- (2) The Rulings Panel must comply with subclause (1) —
 - (a) not less than 10 working days before the hearing; or
 - (b) if the Rulings Panel, in its discretion, decides that an urgent hearing is desirable, as soon as practicable.

44 Private hearings may be opposed

- (1) If the Rulings Panel decides that a hearing should be held in private, it must advise the industry body, and the industry body must publish the decision of the Rulings Panel and the grounds for that decision.
- (2) Any participant that disagrees with the decision may, within 5 working days of the decision being published, make a written submission to the Rulings Panel setting out the reasons for its disagreement.
- (3) The Rulings Panel must consider the submission and then advise the industry body of its decision in respect of that submission.
- (4) The industry body must publish any further decision of the Rulings Panel and the grounds for that further decision.

45 Urgent hearings

If the Rulings Panel considers that the subject matter of a hearing involves a significant area of dispute, or is a matter of urgency, it must arrange for a hearing to take place as soon as practicable.

46 Evidence not otherwise admissible

- (1) The Rulings Panel may receive in evidence any statement, document, or information that would not otherwise be admissible as evidence that may, in its opinion, assist it to deal effectively with its consideration of a matter.
- (2) This regulation is subject to regulation 31.

47 Rights of persons entitled to be heard at hearing

- (1) Subject to regulations 42 to 44, any person that is entitled to be heard under regulation 40(2) at any hearing of the Rulings Panel, —
 - (a) is entitled to be represented:
 - (b) must be given a reasonable opportunity to make written and oral representations:
 - (c) is entitled to call witnesses and to cross-examine any witness called against it:
 - (d) is entitled to make a plea to the Rulings Panel in mitigation of penalties:
 - (e) is entitled to have any other person present to give evidence.
- (2) At any hearing of the Rulings Panel, the investigator who has investigated the alleged breach must, if requested to do so by the Rulings Panel, speak to his or her report and recommendation provided under regulation 39(2).

48 Rulings Panel may request further information

- (1) The Rulings Panel may request the investigator to obtain any further information if the Rulings Panel considers that, in relation to any matter before it, the Rulings Panel does not have sufficient information for it to determine what action to take under regulation 51.

- (2) The Rulings Panel may make the request of its own initiative or following an application by any person referred to in regulation 40(2).
- (3) Participants must provide any information reasonably requested by the Rulings Panel or the investigator under this regulation.
- (4) Subclause (3) is subject to regulation 31.

49 Rulings Panel may seek advice

- (1) The industry body may approve as industry experts any external auditor, technical expert, or other person to give advice or assistance to the Rulings Panel as and when required.
- (2) In determining an alleged breach of the rules, the Rulings Panel may, subject to the agreement of the industry body, employ or otherwise seek advice or assistance from not more than 2 industry experts approved by the industry body.

50 Participant may make written submissions

- (1) Any person referred to in regulation 40(2) may make written submissions to the Rulings Panel on the subject of any order that the Rulings Panel may make, including any penalty.
- (2) Any submission under this regulation must be made by the date set by the Rulings Panel as the closing date for submissions.

Part 3

Decisions of Rulings Panel

51 Rulings Panel may make certain orders

The Rulings Panel may, after considering any allegation that a participant has breached the rules, make any order specified in section 43X(1) of the Act.

52 Offence to breach compliance orders

Every participant commits an offence, and is liable on summary conviction to a fine not exceeding \$20,000, who breaches an order made under section 43X(1) of the Act.

53 Rulings Panel may order payment of civil pecuniary penalty up to \$20,000

- (1) The Rulings Panel may require a participant to pay to the industry body a civil pecuniary penalty of an amount not exceeding \$20,000 in any case where that participant has breached any provision of the rules.
- (2) When ordering payment of a civil pecuniary penalty, the Rulings Panel must —
 - (a) take account of the level of civil pecuniary penalties it has ordered in any similar situations; and

- (b) seek to order payment of a civil pecuniary penalty that is commensurate with the seriousness of the case.
- (3) In making that assessment, the Rulings Panel must have regard to the following matters:
- (a) the severity of the breach:
 - (b) the impact of the breach on other participants:
 - (c) the extent to which the breach was inadvertent, negligent, deliberate, or otherwise:
 - (d) the circumstances in which the breach occurred:
 - (e) any previous breach of the rules by the participant:
 - (f) whether the participant disclosed the matter to the market administrator:
 - (g) the length of time the breach remained unresolved:
 - (h) the participant's actions on learning of the breach:
 - (i) any benefit that the participant obtained, or expected to obtain, as a result of the breach:
 - (j) any other matters that the Rulings Panel thinks fit.

54 Rulings Panel decisions

- (1) The Rulings Panel must use reasonable endeavours to make its final decision on each matter under its consideration within 40 working days of the date by which it has received all written and oral submissions on the matter.
- (2) The Rulings Panel must give the decision, in writing together with the reasons for the decision, to the persons that were entitled to be heard under regulation 40(2).
- (3) The Rulings Panel must give the decision to the industry body as soon as practicable after the decision is made.

55 Decisions must be published

- (1) The industry body must publish every decision made by the Rulings Panel under this Part, together with the reasons for the Panel's decision, within 10 working days of receiving the decision from the Rulings Panel.
- (2) However, the industry body must not publish any part, or all, of any particular decision if the Rulings Panel advises the industry body that there are special circumstances that justify the non-publication.

56 Participants must comply with orders and directions

- (1) Every participant must comply with every order relating to it, including any direction or arrangement made by the Rulings Panel for the purpose of giving effect to the order.

- (2) Every participant must perform any action, or make any payment, directed by the Rulings Panel within 10 working days of receiving notice of the direction, or any longer period that the Rulings Panel allows.

57 Sums to be paid by party are debt due

- (1) Any sum due to be paid by a participant under these regulations is a debt due by the participant and is recoverable as such in any court of competent jurisdiction..
- (2) A failure by a participant to pay a sum due to be paid under these regulations is a breach of these regulations.
- (3) A sum that is not paid when due bears interest at the prescribed rate (within the meaning of section 87 of the Judicature Act 1908).

58 Liability of registry operator

The registry operator is not liable under these regulations for a sum in excess of —

- (a) \$20,000 in respect of any one event or series of closely related events arising from the same cause or circumstance; or
- (b) \$100,000 in respect of all events occurring in any financial year.

Part 4

Rulings Panel

59 Establishment of Rulings Panel

- (1) A Rulings Panel is established.
- (2) The Rulings Panel is a body corporate with perpetual succession.

Functions of Rulings Panel

60 Functions of Rulings Panel

The functions of the Rulings Panel are to —

- (a) determine, in accordance with these regulations, whether a participant has committed a breach of the rules:
- (b) propose to the industry body that it recommend to the Minister a change to any regulation or rule that the Rulings Panel considers, in the course of considering any matter, to be necessary or desirable:
- (c) exercise any other functions or powers conferred on the Rulings Panel by these regulations.

Membership of Rulings Panel

61 Membership of Rulings Panel

- (1) The industry body must, by written notice, appoint one person with the characteristics described in regulation 69 to be the member of the Rulings Panel.
- (2) A member of the board of the industry body may not be appointed as a member of the Rulings Panel.
- (3) The appointment is effective from the latest of —
 - (a) the date specified in the notice of appointment; or
 - (b) the day that the appointee provides the industry body with written consent to the appointment and a written undertaking to be bound by these regulations.

62 Alternate member

- (1) The industry body may appoint a person with the characteristics described in regulation 69 to act as the alternate of the member of the Rulings Panel in accordance with this regulation.
- (2) The alternate member may act in place of a member of the Rulings Panel, but only if that member of the Rulings Panel is unable by illness, absence, or other reason to so act.
- (3) The alternate member is to be treated as a member of the Rulings Panel for the purposes of the performance or exercise of any function, duty, or power under these regulations.
- (4) Unless the context otherwise requires, a reference to a member of the Rulings Panel in these regulations also includes a reference to the alternate member.
- (5) No appointment of a person under this regulation as the alternate member and no acts done by that person or the Rulings Panel while that person is the alternate member, may in any proceedings be questioned on the ground that the occasion of the person's appointment had not arisen or had ceased.

63 Restrictions on membership of Rulings Panel

The following persons are disqualified from being members of the Rulings Panel:

- (a) a person who is an undischarged bankrupt;
- (b) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under section 382, 383, or 385 of the Companies Act 1993;
- (c) a person who is subject to a property order made under section 10, 11, 12, 30, or 31 of the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under section 32 of that Act;

- (d) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon or served the sentence or otherwise suffered the penalty imposed on the person:
- (e) a person who has failed to disclose all interests under regulation 69:
- (f) a person who is not a natural person.

64 Term of appointment

- (1) A member of the Rulings Panel —
 - (a) holds office for the term specified in his or her notice of appointment, which may be up to 5 years; and
 - (b) may be reappointed; and
 - (c) continues in office despite the expiry of his or her term of office until—
 - (i) that member is reappointed; or
 - (ii) that member's successor is appointed; or
 - (iii) the industry body informs that member by written notice that he or she is not to be reappointed and no successor is to be appointed.
- (2) This clause is subject to regulation 67.

65 Removal and resignation of member of Rulings Panel

- (1) The industry body must remove a member of the Rulings Panel in the event of his or her serious misconduct, inability to perform the functions of the office, or if he or she becomes a person to whom any of the paragraphs in regulation 63 apply.
- (2) The industry body must state its reasons in any notice of removal.
- (3) The industry body must fill the vacancy created by a removal as soon as possible.
- (4) A member of the Rulings Panel may resign from office by written notice to the industry body signed by him or her.
- (5) The resignation is effective on receipt by the industry body of the notice, or at any later time specified in the notice.

66 No compensation

No member of the Rulings Panel is entitled to any compensation or other payment or benefit relating to his or her removal from office.

67 Member ceasing to hold office

A member of the Rulings Panel ceases to hold office if he or she —

- (a) resigns in accordance with regulation 65; or
- (b) is removed from office in accordance with regulation 65 or any other enactment; or
- (c) becomes disqualified from being a member under regulation 63; or
- (d) otherwise ceases to hold office in accordance with any enactment.

68 Validity of acts

The acts of a person as a member of the Rulings Panel are valid even if —

- (a) the person's appointment was defective; or
- (b) the person is not qualified for appointment.

69 Characteristics of Rulings Panel

A member of the Rulings Panel —

- (a) must have the requisite knowledge, skills, and experience to carry out the functions to be performed by the Rulings Panel; and
- (b) must act impartially in carrying out those functions.

70 Member of Rulings Panel must not be interested

(1) No person may be appointed as a member of the Rulings Panel if that person —

- (a) has a material financial interest in a participant; or
- (b) is a director, officer, member, employee, or trustee of a participant; or
- (c) is otherwise directly or indirectly materially interested in a participant.

(2) A member is "interested" in a matter relating to the Rulings Panel if, and only if, the member —

- (a) is a party to, or will or may derive a material financial benefit from the matter; or
- (b) has a material financial interest in another party to the matter or in a person to whom the matter relates; or
- (c) is a director, officer, member, or trustee of another party to, or a person who will or may derive a material financial benefit from the matter; or
- (d) is the parent, child, or spouse of another party to, or a person who will or may derive a material financial benefit from the matter; or
- (e) is otherwise directly or indirectly materially interested in the matter.

71 Obligation to disclose interest

(1) Any member of the Rulings Panel who is interested in a matter relating to the Rulings Panel must —

- (a) disclose the nature of the interest in accordance with regulation 72 as soon as practicable after he or she becomes aware that he or she is interested; and
 - (b) immediately step aside from any deliberations or decision of the Rulings Panel in relation to the matter.
- (2) If subclause (1) applies, the alternate member must act in place of the interested member.

72 Method of disclosure of interest

- (1) If regulation 71 applies, the member must disclose the details listed in subclause (2) in an interests register and to the industry body.
- (2) The details are —
- (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or
 - (b) the nature and extent of the interest (if the monetary value cannot be quantified).

73 Remuneration and expenses of Rulings Panel

A member of the Rulings Panel is entitled to receive, from the funds of the Rulings Panel, —

- (a) remuneration and other benefits for services as a member at a rate and of a kind determined by the industry body; and
- (b) reasonable and actual travelling and other expenses relating to the performance of his or her duties and responsibilities as a member.

Other matters relating to Rulings Panel

74 Funding of Rulings Panel

- (1) The industry body must fund the Rulings Panel.
- (2) The industry body may recover the costs of that funding from industry participants through the charging of ongoing fees under the rules.
- (3) Nothing in this regulation limits the ability of the Rulings Panel to make orders under section 43X of the Act relating to the reasonable costs of an investigation.

75 Powers

The Rulings Panel has all the powers necessary to enable it to perform its functions.

Miscellaneous provisions

76 Rulings Panel to keep information confidential

The Rulings Panel must keep confidential all information provided or disclosed to it under these regulations except to the extent that disclosure —

- (a) is required to enable the Rulings Panel to carry out its obligations and duties under these regulations; or
- (b) is necessary for complying with regulations 71 and 72; or
- (c) is otherwise compelled by a law other than these regulations.

77 Rulings Panel may prohibit publication of information

(1) The Rulings Panel may prohibit the publication or communication of any information or document —

- (a) that is, or is intended to be, supplied or given or tendered to, or obtained by, the Rulings Panel under these regulations; or
- (b) in connection with any notification, investigation, report, or procedure under Part 1 or 2 or 3.

(2) The Rulings Panel may make the prohibition only after it has had regard to the following factors:

- (a) whether the information or document is confidential, commercially sensitive, or otherwise unsuited to publication or communication; and
- (b) whether the publication or communication is required to enable the Rulings Panel to carry out its obligations under these regulations; and
- (c) whether the publication or communication is compelled by a law other than these regulations; and
- (d) the rules of natural justice.

(3) The Rulings Panel may make the prohibition —

- (a) on the application of any participant or on its own application; but
- (b) only after notifying each participant that the Rulings Panel considers would be affected by the publication, communication, or prohibition; and
- (c) only after having regard to any views that the participant may make known to the Rulings Panel within the time specified by the Panel.

78 Liability of Rulings Panel

No member or employee of the Rulings Panel is personally liable for —

- (a) any liability of the Rulings Panel; or
- (b) any act done or omitted to be done by the Rulings Panel, any member, or any employee of the Rulings Panel, in good faith in pursuance or

intended pursuance of the functions, duties, or powers of the Rulings Panel.

79 Rulings Panel costs and performance objectives

- (1) As early as practicable before the beginning of each financial year, the industry body and the Rulings Panel must agree on a budget for the expenses anticipated by the Rulings Panel, and on any performance objectives for the next 12 months.
- (2) Each month, the Rulings Panel must provide the industry body with a written report on actual costs incurred during the month compared with budgeted costs.
- (3) If the Rulings Panel anticipates incurring expenditure in excess of any budgeted amount, it must notify the industry body and apply for a variation to the agreed budget.

80 Rulings Panel reports quarterly on other matters

At the end of each quarter of the financial year, the Rulings Panel must provide the industry body with —

- (a) a summary of the decisions made by the Rulings Panel during that quarter, including details of all awards of costs and compensation; and
- (b) a summary of the current workload of the Rulings Panel, ability to meet performance objectives, and resources; and
- (c) any other matters of concern.

81 Rulings Panel reports annually

At the end of each financial year, the Rulings Panel must provide the industry body with an annual report —

- (a) summarising the performance of the Rulings Panel against budget for the financial year; and
- (b) summarising the decisions of the Rulings Panel during the financial year; and
- (c) summarising the performance of the Rulings Panel during the financial year against agreed performance objectives; and
- (d) commenting on any area of these regulations or the rules where the Rulings Panel considers that a change is required.

Appendix D: Example information disclosure form

Gas Processing Facilities – Disclosure of Information Guidelines

1 Location and Contact Information

Facility owner

Company name:

Contact person:

Phone:(office)(mobile)

Address:

Facility details

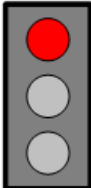
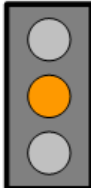
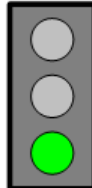
Facility name:

Physical address:

2 Forecast Ullage

Forecast gas capacity availability:

(tick one for each time period)

<input type="radio"/>	<input type="radio"/>	<input type="radio"/> 5+ years
<input type="radio"/>	<input type="radio"/>	<input type="radio"/> 2 – 5 years
<input type="radio"/>	<input type="radio"/>	<input type="radio"/> 0 – 18 months
<5% ullage	5-25% ullage	>25% ullage
		

Comments:

.....

.....

3 Processing Facility Capability (nameplate ratings)

Entry specification:
.....
.....

Exit specification:.....
.....
.....

Outline details of gathering facilities:
.....
.....

Outline details of primary separation processing facilities:.....
.....
.....

Outline details of gas treatment facilities:
.....
.....

Gas lift capacity:
.....

Produced water handling capacity:.....
.....

Water injection capacity:.....

.....

CO₂ removal capacity:.....

.....

H₂S removal capacity:

.....

Dehydration capacity:.....

.....

Hydrocarbon dewpointing capacity:.....

.....

Export Gas compression capacity:.....

.....

Gas export capacity:.....

.....

Oil export capacity:

.....

LPG fractionation capacity.....

.....

LPG storage and loadout capacity

.....

Limiting factors:

.....

4 Certification

The Facility Owner has used reasonable endeavours to ensure the accuracy of the information provided in this disclosure , but is neither providing a guarantee of performance nor a commitment to process gas as a result of this disclosure.

Signed on behalf of:..... (company name)

.....(signature)

By: (insert name of signatory)

Information provided as at:(insert date)

Notes

- The information provided will be made available on Gas Industry Co’s website www.gasindustry.co.nz.
- Unless instructions to the contrary are given, information from any previous return will be removed from the website and replaced by the information in this return.
- If there is any plant for which information has previously been supplied and that plant is no longer operational, please inform Gas Industry Co so that all published information can be removed from the website.
- Facility owners will be requested to provide information annually. However, Gas Industry Co will also accept returns between anniversaries where a facility owner elects to notify a change in data (e.g. throughput has changed such that the ullage forecasts previously provided are no longer relevant).

Appendix E: Information Disclosure Agreement

Gas Processing Facilities Information Disclosure Agreement

BETWEEN: (“Facility Owner”)

AND: Gas Industry Company Limited (“Gas Industry Co”)

BACKGROUND

- A.** The October 2004 Government Policy Statement on Gas Governance requires Gas Industry Co, as the industry body under the Gas Act 1992, to develop and submit to the Minister of Energy for approval protocols that set reasonable terms and conditions for access to gas processing facilities.
- B.** Following consultation with the industry, in December 2006 Gas Industry Co recommended to the Minister of Energy that:
- The appropriate protocols for access to gas processing facilities in New Zealand, on the basis of current evidence, should be limited to information disclosure.
 - Of the available options, annual disclosure of information is the most efficient option.
 - Given the strong support for Gas Industry Co’s conclusions, an attempt is made to implement the information disclosure by way of a voluntary arrangement.
 - If universal agreement to information disclosure is not able to be reached, Gas Industry Co will prepare a recommendation for the Minister of Energy to regulate for the supply of that information.
 - Gas Industry Co report regularly to the Minister of Energy on the efficiency of the market for third party access to gas processing facilities and the need to regulate that market.
- C.** The Minister of Energy accepted that recommendation in March 2007.

PURPOSE

The purpose of this agreement is to set out the terms on which the Facility Owner will disclose information to Gas Industry Co in accordance with Gas Industry Co’s recommendation to the Minister referred to in paragraph B above, and the purposes for which Gas Industry Co will use that information.

THE PARTIES AGREE AS FOLLOWS:

1. DISCLOSURE OF INFORMATION

- 1.1** The Facility Owner will disclose the following information to Gas Industry Co:
- 1.1.1** ownership and contact details for each of the gas processing facilities wholly or partly owned by the Facility Owner;
 - 1.1.2** the technical specifications of each of those gas processing facilities;
 - 1.1.3** indicative forecasts of spare capacity at each of those facilities; and
 - 1.1.4** numbers of bona fide approaches by third parties investigating the possibility of having gas processed, together with a summary of the nature of the approach and the outcome (if concluded), excluding any commercially sensitive information;
- (together, the "Information").
- 1.2** The Information shall be provided to Gas Industry Co substantially in accordance with the form attached to this agreement, or as amended from time to time and posted on Gas Industry Co's website.
- 1.3** The Information shall be provided to Gas Industry Co within 60 working days of the date of this agreement and annually thereafter on the anniversary of the date on which the Information was first supplied. Gas Industry Co will accept any Information provided between anniversaries where a Facility Owner wishes to notify a change in previously disclosed Information.
- 1.4** Gas Industry Co will publish the Information provided in accordance with clauses 1.1.1, 1.1.2 and 1.1.3 above on its website.
- 1.5** Gas Industry Co will not publish the Information provided in accordance with clause 1.1.4 above.
- 1.6** The Information is to be provided for disclosure purposes only and will be published by Gas Industry Co on the basis that it is not intended to be relied upon by third parties to identify possible processing opportunities.
- 1.7** Gas Industry Co shall only use the Information for the purpose of monitoring the market for third party access to gas processing facilities and reporting to the Minister of Energy on the need to regulate that market.
- 1.8** Where the Facility Owner is comprised of a joint venture, only one Information form shall be disclosed for each gas processing facility owned by the joint venture.

2. TERM

This agreement commences on the execution date and terminates on [].

3. CONFIDENTIALITY

Gas Industry Co will keep confidential all Information provided pursuant to clause 1.1.4 above except to the extent that it is required to disclose that Information for the purposes of reporting to the Minister of Energy in accordance with clause 1.7 above.

DATED: _____

Signed for and on behalf of the Facility Owner

Signed for and on behalf of the Facility Owner

Signature

Signature

Name

Name

Designation

Designation

Signed for and on behalf of Gas Industry Co

Signature

Name

Designation