



Consultation Document

Minor Amendments to the Gas (Switching Arrangements) Rules 2008

Date issued: 20 July 2010
Submissions close: 30 August 2010





About Gas Industry Co.

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 infrastructure; and
 - consumer outcomes;
- administer, oversee compliance with, and review such arrangements; and
- report regularly to the Minister of Energy and Resources 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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Submissions close: 27 August 2010

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Executive summary

On the go-live date of 1 March 2009, the registry and switching regime under the Gas (Switching Arrangements) Rules 2008 (the Rules) came fully into effect. The rules governing the switching regime are technically complex and need to provide for a range of circumstances, not all of which may have been anticipated when the Rules were approved. As with many new rules, once there has been time to observe how they operate, refinements are often desirable. It was anticipated that changes would be required to reflect experience and to ensure that the Rules are as effective as possible in achieving their purpose.

This consultation document contains a package of proposed rule changes.

Sections 43L, 43N and 43Q of the Gas Act 1992 (the Act) set out the requirements for making recommendations on rule changes. Section 43N(3) provides that a simplified process will apply if the industry body (Gas Industry Co) is satisfied that 'the effect of the recommendation [for rule changes] is minor and will not adversely affect the interests of any person in a substantial way'. All of the proposals set out in this consultation document are considered by Gas Industry Co to meet this requirement. They are minor and non-controversial, and as such have been dealt with in accordance with section 43N(3) of the Act.

The proposals have come primarily from feedback by participants, Gas Industry Co and the Investigator. They are also the result of lessons learned as to how the Rules operate in practice, now that there have been a number of hearings before the Rulings Panel. The amendments seek to:

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

Subject to its consideration of submissions on this consultation document, and any necessary changes as a result, Gas Industry Co will make a recommendation to the Minister of Energy and Resources (the Minister) proposing those minor rule amendments.

All of the proposed rule amendments are set out in track change format in the existing rules in Appendix A to this consultation document.

Submissions are sought by **30 August 2010**. A template for submissions is set out in Appendix B to this consultation document.

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Introduction

1.1 Background

A recommendation was made to the Minister of Energy in mid-2007 for the establishment of a central gas registry and associated rules to support the efficient switching of gas customers between retailers. Relevant amendments to support this were made to the Gas Act 1992 (the Act) in 2007.

The Gas (Switching Arrangements) Rules 2008 (the Rules) provide for a gas registry, created in March 2008. The Rules fully came into effect on 1 March 2009.

The purpose of the Rules as set out in rule 3 is to:

Establish a set of gas switching and registry arrangements that will enable consumers to choose, and alternate, efficiently and satisfactorily between competing retailers.

Industry participants have now had 15 months experience of operating under the new arrangements. Their experience, together with that of Gas Industry Co and determinations and decisions made under the compliance regime, has brought to light areas where the Rules require some minor amendments in order to better reflect the purpose of the Rules and reflect industry best practice. This also creates an opportunity to make editorial 'tweaks' to the Rules.

Under the Act, a recommendation for rule changes is, in the first instance, subject to the same requirements and processes as apply to proposed new rules as set out in section 43N(1) of the Act. However, section 43N(3) provides that if the effect of a recommended rule change is minor and will not adversely affect the interests of any person in a substantial way, the recommendation is not required to comply with the process requirements set out in section 43N(1) of the Act. Gas Industry Co considers that each of the proposed changes outlined in this consultation document fall within the ambit of section 43N(3), and as such proposes a streamlined process for the amendments. That process involves issuing this consultation document, inviting submissions, considering those submissions, and making proposals to the Minister¹ for change.

The proposed amendments to the Rules make minor changes to certain definitions; and provisions in relation to the payment of fees; notices and notifications; loss factors; the gas switching notice process; and the gas switching withdrawal notice process. It is also proposed to delete the now redundant transitional provisions. Finally there are a number of very minor

¹ The Minister of Energy and Resources has delegated the approval function to the Associate Minister of Energy and Resources.

typographical and editorial changes. All of the changes are highlighted in the marked-up version of the Rules attached as Appendix A to this document.

The proposed amendments have been identified from the following sources:

- Over the past year a number of matters have come through the compliance process as alleged breaches of the Rules and it has become apparent changes are desirable to enable the switching arrangements set out in the Rules to operate in a more effective manner and to achieve the purpose of the Rules.
- Several proposed rule amendments have been based on industry best practice now in existence, where the experience with the Rules has indicated that the proposed amendments are appropriate and effective in meeting the original policy intent.
- Gas Industry Co has proposed rule changes where it considers that changes are required to give proper effect to the purpose of the Rules, to correct minor errors, to clarify the scope of some the existing provisions in the Rules, to promote ease of understanding and interpretation and to provide greater consistency, both within the Rules and between the Rules and other gas governance arrangements.
- Comment from industry participants directly to Gas Industry Co.

1.2 Submissions

Submissions on the proposed amendments are invited from stakeholders. Submissions should be provided no later than **5pm on 30 August 2010**.

Please note that submissions received after this date are unlikely to be considered.

Submissions can be made by logging on to Gas Industry Co's website www.gasindustry.co.nz, navigating to the switching arrangements work programme, and uploading your submission in the Consultation section. The recommended format for submissions is attached as Appendix A to this consultation document. For further information, see Help for New Users on the Gas Industry Co homepage.

Feedback is also sought in the drafting of the proposed rule amendments contained in Appendix A. For convenience, a Word version of the proposed rule amendments will be made available separately on the Gas Industry Co website so that, where appropriate, stakeholders can provide feedback by marking up the document with suggested amendments and comments.

All submissions will be published on the website after the closing date. As such, submitters should discuss any intended provision of confidential information with Gas Industry Co prior to submitting the information.

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Legislative Requirements

2.1 Regulatory objective

The Government Policy Statement (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 Act, Gas Industry Co must have regard to the objectives and outcomes set out in the GPS when making recommendations to the Minister for gas governance rules or regulations.

The Government's overall policy objective for the gas industry, as stated in the 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.

In regard to switching and registry the GPS states the following outcome:

Establish a set of gas switching and registry arrangements that will enable consumers to choose, and alternate, efficiently and satisfactorily between competing retailers.

This outcome is the regulatory objective underpinning all of the proposals (with the exception of the very minor editorial changes) set out in this consultation document. The proposed amendments seek to improve the operation and efficiency of the processes for switching and registry.

2.2 Rule making powers

Section 43G(2)(c) of the Act provides that regulations (and rules in accordance with section 43Q) may be made *'providing for arrangements to enable consumers to switch gas retailers'*. The proposed amendments to the Switching Rules are considered to come within these regulation or rule making powers.

2.3 Gas Act requirements for recommending rule changes

Sections 43L and 43N of the Act set out the requirements for making recommendations to the Minister on gas governance rules or rule changes.

Under section 43L(1), before making a recommendation, Gas Industry Co must:

- (a) undertake an assessment under section 43N; and

- (b) consult with persons that the industry body (Gas Industry Co) thinks are representative of the interests of persons likely to be substantially affected by the proposed [rule changes]; and
- (c) give those persons the opportunity to make submissions; and
- (d) consider those submissions.

Section 43N(1) requires that, before making a recommendation to the Minister, Gas Industry Co must:

- (a) seek to identify all of the reasonably practicable options for achieving the objective of the [rule change]; and
- (b) assess those options by considering:
 - (i) the benefits and costs of each option; and
 - (ii) the extent which the objective would be promoted or achieved by each option; and
 - (iii) any other matters considered to be relevant; and
- (c) ensure that the objective of the [rule change] is unlikely to be satisfactorily achieved by any reasonably practicable means other than the making of the [rule change]; and
- (d) prepare a statement of proposal for the purpose of consultation under section 43L(1).

However, under section 43N(3), a simplified process can apply in the following circumstances:

The industry body ... is not required to comply with subsection (1) if it is satisfied that the effect of the recommendation is minor and will not adversely affect the interests of any person in a substantial way.

Gas Industry Co considers that the proposed rule amendments outlined in this consultation document are such that section 43N(3) applies. The proposals involve minor technical matters rather than matters of general principle and will only be binding on industry participants rather than the general public.

Therefore Gas Industry Co intends to follow a simplified process in respect of the proposed rule amendments. However it still wishes to consult so that the best possible outcome is achieved by the rule changes, and the process it has adopted is outlined below:

- Following the closing date for submissions, Gas Industry Co will consider all submissions to assess whether it remains satisfied that the proposed rule amendments are minor and will not adversely affect the interests of any person in a substantial way.
- Following, and subject to, the analysis of submissions, recommendations to the Minister for rule changes will be made.²

² Any suggested changes to the rules that potentially fall outside the application of section 43N(3) should be made separately to Gas Industry Co. Gas Industry Co will then include these suggestions on its Rule Change Register.

