

Consultation Document

Proposed guidelines for the management of proposed changes to gas governance rules and regulations

Description

Five sets of gas governance rules and regulations are now in effect.

Over a period of time and for a variety of reasons it is expected that proposals for changing rules and/or regulations will be put forward, either by industry participants or by Gas Industry Co. In the case of the Gas (Downstream Reconciliation) Rules 2008, it is already planned to consider a first package of rule change proposals in mid 2009.

The rule change process is time consuming and has a significant cost, in part because of the need to meet the requirements of the Gas Act but also because rule changes must be approved by the Minister (and by Cabinet for regulations). It is thus appropriate to have clear processes and criteria in place, so that proposals can be processed efficiently and so that all those involved have clear expectations.

The draft guidelines attached as Appendix A have been developed to provide this clarity. Before coming into effect they will be put to the Gas Industry Co Board for consideration. It is appropriate that industry views are sought first and that is the purpose of this consultation document.

Consultation process

Industry participants are invited to provide submissions on the draft guidelines attached. It is suggested that submitters use the template attached as appendix B. Submissions should be forwarded by email to submissions@gasindustry.co.nz.

Submissions close on Thursday 27 November 2008.

Appendix A Proposed Guidelines

GAS INDUSTRY CO

GUIDELINES FOR THE MANAGEMENT OF PROPOSED CHANGES TO GAS GOVERNANCE RULES AND REGULATIONS

Introduction

The development of these guidelines had been prompted by the anticipated need to deal with proposals for rule changes for Downstream Reconciliation, but they have been framed so that they apply to proposed changes for any gas governance rules or regulations. For simplicity, unless otherwise specified in this document, references to rules include references to regulations.

Initiation of proposed rule changes

Proposals for rule changes can be initiated in the following ways:

- as an outcome of consultation processes carried out for other purposes, eg for the development of determinations and notices required under rules;
- to remedy an acknowledged gap in rules or a need to cover unanticipated circumstances, most particularly but not exclusively as a result of exemptions put in place by Gas Industry Co to provide a temporary remedy for such an acknowledged gap;
- through a general policy review initiated by Gas Industry Co; and
- by the submission of a rule change proposal by an industry participant.

General guidelines and constraints

Rule changes can only occur in accordance with the requirements and processes set out in the Gas Act, and the process will accordingly have a significant cost in time and money for Gas Industry Co and for participants. In order to minimise this cost:

- in general, individual rule change proposals will be accumulated until there are sufficient proposals in hand to justify initiating the rule change process, but budget constraints permitting there will usually not be a delay of longer than 6 to 9 months from the receipt of a proposal able to be actioned (see below) and the initiation of the rule change process. (As an example it is known that a number of relatively straightforward changes have been proposed for the Gas (Downstream Reconciliation) Rules 2008 and the intention is to initiate a process for these changes no later than April 2009);
- proposals for rule changes will only be processed on an individual basis if there is a clear need to do so. This will generally be because the change is urgently required to enable rules to operate

effectively, or to remedy an unanticipated, unfair and significant disadvantage to some participants; and

- in instances where a major policy review is carried out this will include the initiation of a rule change process for rule change proposals resulting from the review, ie the 6 to 9 month delay will not apply.

As set out below proposed rule changes can be progressed under the Gas Act through the full process or a simplified process. As far as possible rule changes of these two types will be kept in separate packages, but this may not always be possible.

Proposals for rule changes will not be automatically accepted into the rule change process. First they will be subjected to a preliminary review by Gas Industry Co intended to identify and set aside proposals which do not meet any or all of the following criteria:

- the proposal must be for a matter which is already covered to some degree by the rules or by exemptions to the rules, ie an ad hoc proposal cannot be used to introduce a completely new matter. Participants making such proposals will be advised to resubmit their proposals as part of the next scheduled major policy review of those particular rules;
- the proposal must be consistent with the purpose of the rules;
- the proposal must be legally possible, eg a proposal which contravenes or seeks to change provisions in the Gas Act could not be accepted;
- the proposal must fall within the empowering provisions of the Gas Act; and
- the proposal must be of reasonably wide applicability to participants or deal with a matter of principle, ie a proposal which purely serves the commercial interest of the participant making the proposal will not be accepted.

Processing of rule change proposals under the Gas Act

Proposals will be processed and considered in accordance with the provisions of the Gas Act. The Gas Act provides for two sets of circumstances in this regard.

For rule changes which are major or substantially adversely impact on the interests of any person, the full provisions of section 43N of the Act must be applied. In particular:

- in accordance with section 43N(1) of the Gas Act, proposed rule changes will be set out in a statement of proposal (SOP) which identifies all of the reasonably practicable options for achieving the objective of the rule change, and assesses the options by looking at:
 - the benefits and costs of each option;
 - the extent to which the objective of the rule change would be promoted or achieved for each option; and

- any other matters considered to be relevant.
- as required by section 43L(1) of the Gas Act, the SOP will then be issued to all interested and potentially affected parties, so they have the opportunity to make submissions; and
- submissions will be considered before a recommendation for changes to the rules is made to the Minister of Energy.

For rule changes which are minor and will not have a substantial adverse impact on the interests of persons, section 43N(3) of the Act provides for a simplified process to apply which removes the need to comply with section 43N(1) of the Act. However consultation will still need to occur in accordance with section 43L(1) of the Act. This simplified process will be implemented by still issuing a SOP but restricting the SOP to:

- a statement of the rule changes proposed;
- a brief description of why the changes are needed and what effect they will have; and
- any relevant information on implementation eg timing, which allocation participants will be affected and how.

Process

The first part of the process (Step 1) covers proposals put forward by industry participants. The second part of the process (Steps 2 to 7) covers all proposals for rule changes. If the proposals for rule changes have been generated by a general policy review then this will have its own process, involving consultation with industry participants, before getting to Step 2.

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| Step 1: | Proposal received by GIC and assessed against the criteria set out above. If the proposal is not acceptable against the criteria then the participant is so advised and the reasons given. If the proposal is acceptable against the criteria then the participant is so advised and the proposal is placed on the rule change register (see next section below). |
| Step 2: | Proposed rule changes will be discussed with MED to ensure there are no higher level issues to consider as a part of the rule change process. |
| Step 3A: | For rule changes requiring the full process in the Act, assessment will be carried out as required by section 43N of the Act. |
| Step 3B: | A draft statement of proposal (SOP) is prepared, incorporating a full assessment as required, which is then approved by the GIC Board and released to industry participants for submissions. |

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| Step 4: | Between 4 and 6 weeks will be allowed for submissions to be made. The shorter period will apply to proposals which accord with the criteria in the Act for a simplified process to apply. Submissions will be analyzed and both the analysis of submissions and the submissions will be made available to participants. |
| Step 5: | A recommendation to the Minister will be prepared for approval by the GIC Board, and forwarded to the Minister. |
| Step 6: | The rule changes will be approved by the Minister and published in the Gazette. For regulations the changes will need to be approved by PCO and Cabinet prior to publication in the Gazette. |
| Step 7: | After 28 days the rule changes take effect. |

It can be expected that the total duration between the start of step 2 and the completion of step 7 will be between six and eight months.

Register

As indicated by the process above a register of rule change proposals will be maintained on the Gas Industry Co website. The register will contain the following information:

Date of proposal:

Initiated by:

Short title:

Reason for proposal:

Accepted for prospective initiation and reasons:

Rule change outcome:

The register will be periodically edited to remove items on which action is completed, but the full register will be archived by Gas Industry Co so that the information can be retrieved if necessary.

Appendix B Template for Submissions

Submitters are invited to provide comments against the questions below but there is also a space for other information to be provided:

| Question | Comments |
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| Question 1: What change if any would you suggest to the proposed criteria for deciding whether or not proposals will be accepted? | |
| Question 2: What changes if any would you suggest to the proposals for the packaging and timing of rule change proposals? | |
| Question 3: What changes if any would you suggest to the proposals for dealing with proposed changes which meet the criteria for the simplified process? | |
| Question 4: Is the description of the steps in the rule change process sufficiently full? If not what would you add? | |
| Question 5: Do you agree with the range of headings in the register? If not what changes would you suggest? | |
| Question 6: Is there anything missing from the guidelines document which should be added to | |

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| make it more useful? | |
| Question 7: Is there any other information you would like to provide? | |