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8 October 2007

Mark Soper
Strategy and Corporate Adviser
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WELLINGTON

E-mail: submissions@gasindustry.co.nz

Dear Mark

Allocation and Reconciliation of Downstream Gas Quantities

Genesis Power Limited, trading as Genesis Energy, welcomes the opportunity to provide comments to the Gas Industry Company on its statement of proposal 'Allocation and Reconciliation of Downstream Gas Quantities' dated 4 September 2007. Genesis Energy has reviewed the statement of proposal and attended the Gas Industry Company workshop on 18 September.

Genesis Energy is generally supportive of the Gas Industry Company's proposal. Genesis Energy looks forward to the efficiency improvements and consumer benefit that should flow from improved downstream reconciliation and allocation practices. We offer comments in response to the detailed consultation questions in the attached appendix. Other comments that do not fit within the format of the consultation questions are covered below.

Project inter-dependency

The allocation and reconciliation proposal has close dependencies in a number of areas on the registry and switching arrangements (intended to come into effect on 1 October 2008). Given the inherent uncertainty around implementation timeframes for regulatory projects, Genesis Energy suggests that project inter-dependencies should be avoided where

possible to limit the potential for delays in one project to disrupt other projects.

Audit scope

Genesis Energy is adamant that any auditors appointed under the allocation and reconciliation regime should be restricted from examining a retailer's billing systems. In Genesis Energy's view, ring-fencing of auditor powers should be explicitly set out in the allocation and reconciliation rules to avoid any confusion and to prevent future scope creep.

Genesis Energy believes that there is no public policy interest in examining or standardising retailers' billing methodologies and systems. The only public policy interest in billing is in ensuring that customers are not being billed for more gas volume than retailers are purchasing through the market. This allocation and reconciliation proposal will improve transparency in this respect without there being a need to delve into billing systems.

Pan-industry agreement

Genesis Energy is not convinced that a strong case exists for dismissing pan-industry agreements as a potential vehicle for delivering at least portions of the overall allocation and reconciliation proposal.

Genesis Energy suggests that in the spirit of 'co-regulation', the industry (including the Gas Industry Company) should consider in turn the delivery mechanism for each aspect of the proposal, starting with a presumption in favour of industry-based agreement. Genesis Energy expects that there would be aspects of the proposal for which that presumption would be over-turned, but that there is no reason that the presumption shouldn't hold for many of the more technical or procedural aspects of the proposal.

With the benefit of successful experience over time, Genesis Energy would like to think that the locus of industry organisation could move further towards industry agreement over time, rather than towards greater use of statutory regulation.

Gas measurement standard

The draft rules impose a requirement for metering equipment to comply with NZS 5259:2004 (Gas Measurement) and clause 25.2 automatically updates the rules to refer to any subsequent replacement standard. The Gas Regulations 1993 (as amended in 2002 and 2004) cite NZS 5259:1997 as a means of complying with gas measurement requirements.

As a matter of principle, Genesis Energy suggests that:

1. At a minimum, all delegated legislation under the Gas Act 1992 should be consistent. It would not be good practice to have divergent or conflicting requirements for gas measurement under

the Gas Regulations and the Gas (Downstream Reconciliation) Rules for obvious reasons. Genesis Energy suggests that if the rules are indeed the most appropriate location for establishing measurement requirements, then the Gas Regulations should be amended to avoid overlapping provision.

2. It does not appear to be good practice for the rules to include a 'blank cheque' provision delegating regulation of gas measurement to Standards New Zealand. Genesis Energy suggests that the gas measurement standard cited in the rules should be static, such that amendment would require industry agreement. This would provide an appropriate check, albeit at a lower threshold for amendment than provided by regulations.

Additional comments

Genesis Energy offers the following additional comments on specific items in the statement of proposal:

1. Para 5.63. It is not clear what would happen if the allocation agent decided not to perform an allocation.
2. Para 6.66. "Gas Industry Co considers that it should be able to direct the allocation agent to take into account certain information or use different data..." Genesis Energy believes that the Gas Industry Company should be required to consult with the industry before exercising this power. At a minimum, consultation should include:
 - a. The reason for the proposed direction;
 - b. The information/data which the Gas Industry Company proposes the allocation should use; and
 - c. UFG calculations with both sets of data (default and proposed).
3. Genesis Energy suggests that the allocation agent would be well placed to provide:
 - a. An automated service notifying participants of sites for which the gas group should be upgraded or downgraded; and
 - b. Notification to all participants of new gas (similar to the process operating in the electricity industry between EMS and retailers).

If you would like to discuss any of these matters further, please contact me on 04 495 6357 or Tracey Kaio on 09 580 4869.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J Carnegie'.

John A Carnegie
Regulatory Affairs Manager
Genesis Energy

Appendix One – Responses to specific consultation questions

QUESTION	COMMENT
<p>Q1: Do submitters have any general comments on the proposal or the process adopted by Gas Industry Co?</p>	<p>Refer cover letter.</p>
<p>Q2: Do submitters have any comments on the analysis and findings in the Energy Acumen report?</p>	<p>No.</p>
<p>Q3: Do submitters agree that, provided compliance with the conversion processes in NZS 5259:2004 is mandated, it is inappropriate to introduce a standardised billing methodology at this time?</p>	<p>Yes, Genesis Energy believes that it would not be appropriate to introduce a standardised billing methodology.</p> <p>The proposal will in effect provide a 'score card' comparison of end-consumer billed volumes against submitted market volumes. It is the accurate and timely reconciliation of volumes in the market that is of joint concern to market participants.</p> <p>The industry body should not become involved in the specifics of the methodologies that retailers use to bill their customers. The only matter of public policy interest with respect to billing is that customers are not being billed for more than a retailer is purchasing through the market. The proposal will increase transparency in this regard without needing to delve into billing methodologies.</p>
<p>Q4: Do submitters have any comments on Gas Industry Co's proposed method of global allocation which would cap the UFG allocated to allocation groups 1 and 2?</p>	<p>Genesis Energy believes that fixing UFG over a 12-month period for groups 1 and 2 would be beneficial for retailers (ease of pricing) and consumers (price certainty).</p> <p>The proposal appears to be based on an assumption of decreasing UFG across all gas groups. There does not appear to be a process proposed for investigating or 'freezing' UFG for groups 1 and 2 customers where UFG is found to have increased without clear cause.</p> <p>Genesis Energy has reservations around the weak incentives on distributors to monitor and maintain technical losses at low levels. Genesis Energy believes that it would be appropriate to require distributors to report on technical losses on an annual basis.</p> <p>It is not clear how gas gates that are granted</p>

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	<p>an exemption from fixed-level UFG (para 6.68) would be treated. Would these gates default to global allocation, or would a different fixed percentage be applied?</p>
<p>Q5: Do submitters have any comments on the proposed transitional arrangements?</p>	<p>There is the potential for exemptions granted to a participant under Part 5 of the proposed rules to result in increased costs for other non-exempted parties.</p> <p>Genesis Energy suggests that there should be a mechanism for exempted parties to compensate other allocation participants for any increases in allocation volume. Compensation could take the form of one-off payment, or increased UFG allocation. Compensation would ensure that participants faced incentives to achieve compliance with the allocation and reconciliation regime promptly.</p>
<p>Q6: Are the proposed exemption provisions appropriate? Do submitters envisage that, if the proposal is implemented, they would seek an exemption? If so, please provide details.</p>	<p>Genesis Energy suggests that it would be useful for the Gas Industry Company to carry out further work around the exemption proposal. It would be useful to have further information on the proposed process, and the criteria for granting an exemption.</p> <p>Genesis Energy suggests that it would be appropriate for a process to be defined where all participants at a gas gate are notified of any exemption application at that gate. Participants should be given an opportunity to provide evidence for or against the exemption application.</p> <p>Genesis Energy also suggests that any exemptions should apply to the current gas year only and should be reviewed at year end. No site should be granted an exemption for more than two gas years and any such site should be subject to an audit during that period.</p> <p>Sites that have been granted an exemption should not be permitted to retain that exemption if downgraded from group 1 or 2. Any such downgrade should be accompanied by a reversion to normal allocation of UFG.</p> <p>Genesis Energy anticipates that it would only seek an exemption where it was efficient to do so. That is, where the published fixed UFG would result in inequitable allocation and the costs of gaining an exemption wouldn't outweigh the benefits of reduced allocation.</p>

QUESTION	COMMENT
<p>Q7: Do submitters have any comments on the cost-benefit analysis, including any comment on NZIER's report attached as Appendix 5?</p>	<p>Most of the difference between the two scenarios (pan-industry and 'regulated') stems from the differences in assumed timing. As such, it would be useful for the sensitivity analysis to examine the effect of variations in timing.</p> <p>In theory, much of the benefit of a successful pan-industry approach would be an improvement in the quality of the technical arrangements (for example, reduced regulatory error, rejection of non-Pareto efficient measures, etc). As such, it would be useful for the CBA to include a break-even analysis quantifying by what percentage the efficiency benefits of the pan-industry approach would need to exceed the efficiency benefits of the regulatory approach to achieve parity of outcome.</p> <p>Section 2.2. ("Proposals") provides a good summary of the substantive content of the allocation and reconciliation proposal. Genesis Energy agrees that it would not be feasible to analyse the effect of policies and policy combinations at this level of disaggregation. Genesis Energy suggests that it would be useful to analyse policy at an intermediate level of aggregation, where individual options are aggregated into "policy packages". This could provide insights that are not available at the level of full aggregation at which the CBA was conducted.</p> <p>The structuring of the policy packages would be critical to such an exercise, and would best be constructed during policy formulation, rather than as part of the CBA.</p> <p>The CBA continues to follow an increasingly familiar Gas Industry Company approach of dismissing the counter-factual of non-intervention as a baseline for analysis. Genesis Energy is concerned that there is not sufficient justification for this departure from standard analytical practice.</p>
<p>Q8: Do submitters agree with the funding options for the proposal? If not, please state your reasons.</p>	<p>Of the two options proposed, Genesis Energy agrees that volume-based funding appears most equitable. Genesis Energy suggests that a further option should be considered as follows:</p> <ol style="list-style-type: none"> 1. A proportion of monthly costs is shared equally amongst all retailers (say half); and

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	<p>2. The remainder is shared on the basis of allocated volumes.</p> <p>This approach would acknowledge that all retailers (regardless of volume and ICP numbers) intrinsically benefit from the allocation agent services and access to the compliance regime.</p>
<p>Q9: Do submitters agree with the allocation of costs for the proposal? If not, please state your reasons.</p>	<p>Genesis Energy believes that where a participant initiates an audit resulting in no fault being determined, the initiating party should bear the cost of the audit. This would deter excessive audit activity.</p>
<p>Q10: Do submitters have any comments on the proposed rules attached at Appendix 6? If appropriate, please provide a marked-up copy of the rules (a Word version is available on Gas Industry Co's website for this purpose).</p>	<p>Genesis Energy has not had the opportunity to thoroughly review the rules in full at this time.</p> <p>As a general comment, Genesis Energy does not believe that it is appropriate to consult on substantial matters of policy concurrently with draft versions of rules or regulations. This problem is particularly acute where the rules are very detailed and technical or procedural. One way around this problem could be to make more use of a hierarchy of tiered regulatory instruments – that is, higher-level ‘enabling’ provisions are established first, with procedural and technical details deferred and promulgated through supporting instruments.</p> <p>Genesis Energy recommends that a further opportunity to comment on draft rules should be provided once issues arising from this consultation round have been settled.</p> <p>Notwithstanding the above, Genesis Energy offers the following comments on the draft rules as they stand:</p> <ul style="list-style-type: none"> • There is a lack of process detail in some areas: <ul style="list-style-type: none"> ○ What happens if retailer fails to submit a wash-up file? ○ What is the process that the allocation agent uses to assess whether a submitted profile is appropriate? (The draft specifies what data is required to be submitted, but doesn't go into methodology or evaluation criteria for approving or declining the submitted profile).

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	<ul style="list-style-type: none"> • Clause 14.1. Standard industry practice is to make and receive payments on the 20th of the month for invoices received before the 10th of the month. Genesis Energy suggests that this should be explicitly accommodated in the rules rather than simply requiring payment on the invoice due date. • Clause 15.2. Penalty arrangements would benefit from further development. For example, are penalties compounding? • Clause 26.3.2. 'Inactive – Permanent' ICP status should not be included here. • Clause 28.3.2. This suggests that submitting estimated data would be a breach of the rules, but does not specify the next step that the retailer should take. Is a self-reported breach required in this scenario? • Clause 41.3. It not clear whether there is an intention here for financially significant errors to be resolved through special audit or through bilateral negotiation. Genesis Energy suggests that special allocation would be the appropriate course. • Clause 41.4. The limitation of data correction to a period of 60 days seems inconsistent with the aim of providing the most accurate data possible. Genesis Energy suggests that data should be corrected back to the lesser of the origin of the error, or the audit time limit (that is, 3 years under the proposal, or 2 years as suggested by Genesis Energy in Q11). • Clause 41.5. The rules should specify what happens next. Special allocation? Breach? • Clause 48.3. Genesis Energy does not believe that it is appropriate for the rules to permit ad hoc special allocation procedures. It would be preferable for standard special allocation procedures to be included in the rules. • Clauses 50 and 50.3. Genesis Energy suggests that the reports should be

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	<p>made available to all participants.</p> <ul style="list-style-type: none"> • Clause 50.1. The term 'seasonal adjustment' should be defined. Is the adjustment derived from a 12, 24, or 36 month dataset?
<p>Q11:Do submitters have any comments on the proposed compliance arrangements? If appropriate, please provide a marked-up copy of the regulations (a Word version is available on Gas Industry Co's website for this purpose).</p>	<p>Genesis Energy has engaged a public law expert to review the Gas Industry Company's generic compliance regulations and will advise the Gas Industry Company should any issues arise from that review.</p> <p>Notwithstanding the above, Genesis Energy offers the following comments:</p> <ul style="list-style-type: none"> • Clause 51 of the draft compliance regulations gives the ruling panel powers to make any order specified in section 43X(1) of the Act. Section 43X(1)(h) reads 'make an order terminating or suspending the rights of an industry participant under any gas governance regulation or rule'. The potential severity of an injunctive remedy under this clause could significantly exceed the limit imposed in the Act on pecuniary remedies. Given the broad scope of this clause and the potential severity of such an order, Genesis Energy strongly recommends that the rights to which such an order may pertain should be listed in full within the compliance regulations. • Clause 6(2)(a) restricts breaches to those that occurred within the previous three years. Genesis Energy suggests that this timeframe is excessive, and that a two year limitation would be more appropriate. A two year limitation would provide consistency with the electricity industry and would provide industry participants with greater certainty regarding liability exposure. Genesis Energy believes that it is appropriate that breaches dating back further than two years should be pursued via standard dispute resolution approaches rather than through the industry-funded compliance regime.