

Appointment by the Chief Executive under the Gas Governance (Critical Contingency Management) Regulations 2008

Introduction and Purpose

On 26 November 2008, the Gas Industry Co Board delegated to the Chief Executive authority to make certain determinations under the Gas Governance (Critical Contingency Management) Regulations 2008 (the "Regulations").

The delegation required that determinations are only to be made on receipt of certification from the responsible Senior Adviser that appropriate consultation has been undertaken and the determinations are sufficient for the purposes of the Regulations.

On 4 December 2008, determinations under the Regulations were made by the Chief Executive relating to the definition of "working day" and "financial year" under regulation 5.

The purpose of this document is to appoint Concept Consulting Group Limited as the expert adviser under regulation 27 to review the proposed critical contingency management plans and make a recommendation to Gas Industry Co on whether it should approve each proposed critical contingency management plan.

The document also provides the certification required by the delegation.

Determination

For each proposed critical contingency management plan (CCMP), regulation 27 requires Gas Industry Co to appoint an expert adviser to review the proposed plan within 30 business days of the commencement date ie by 27 January 2009.

Vector Gas Limited and Maui Development Limited, as transmission system owners, are currently consulting on their draft CCMPs, which are required to be submitted to Gas Industry Co for final approval on 25 February 2009.

Once a proposed CCMP has been received, the expert adviser is required to:

- review the CCMP to determine whether or not to recommend approval of the proposed critical contingency management plan to Gas Industry Co;
- in carrying out that review, consult with the critical contingency operator and have regard to any report submitted by the critical contingency operator; and
- within 20 business days after receiving the proposed critical contingency management plan, make a recommendation, with reasons, to Gas Industry Co on whether Gas Industry Co should approve the proposed critical contingency management plan.

It is proposed that Concept Consulting Group Limited be appointed as the expert adviser to review the proposed CCMPs from Vector Gas Limited and Maui Development Limited.

The Regulations do not require Gas Industry Co to carry out any consultation prior to appointing an expert adviser. In addition, there are only a handful of people with the required gas outage and contingency management knowledge in New Zealand to undertake the expert adviser role. However, through the Contingency Management Implementation Group, industry participants were invited to nominate persons to undertake the role of Expert Adviser. Those nominations (Tricia Spence and Peter Hazeldine) were discussed with the wider group and the prevailing view was that Stuart Dickson was a better candidate in terms of both knowledge regarding contingency management and independence from industry participants. Stuart Dickson, as a consultant with Concept Consulting Group Limited, has previously assisted Gas Industry Co on aspects of the policy development of the Regulations. It is proposed that, for this role, Concept Consulting Group Limited be appointed as expert adviser, with Stuart Dickson primarily undertaking the reviews and Jim Truesdale (Director) providing quality assurance. No objections were advised in respect of the potential appointment of Concept Consulting Group Limited as expert adviser.

The letter of engagement appointing Concept Consulting Group Limited (the Service Provider) as the expert adviser is attached as Appendix A to this document.

This appointment is a “one-off” and relates solely to the review of the proposed CCMPs from Vector Gas Limited and Maui Development Limited. To avoid doubt, the appointment does not extend to any future review required by an expert adviser of subsequent amendments to CCMPs that have been approved by Gas Industry Co under regulation 30 or 31.

The key terms of the appointment, as set out in the letter of engagement, are:

- the Service Provider agrees to comply with the Regulations, including undertaking all the duties and obligations of an expert adviser under the Regulations;
- the appointment will terminate on the approval by Gas Industry Co of each proposed CCMP under regulation 30 or 31;
- for the Service Provider, Stuart Dickson and Jim Truesdale will be carrying out the Services;
- the Service Provider will be paid on a hourly rate basis for the time spent carrying out the Services (Stuart Dickson @ \$240 per hour and Jim Truesdale @ \$300 per hour), with invoicing to occur on a monthly basis (note an estimate of the total costs for the expert adviser is difficult (as it depends on whether any proposed CCMPs will need to be submitted for review) but a conservative allowance of \$80,000 has been included in the estimated critical contingency development costs to be published under regulation 16);
- to manage potential conflicts, the Service Provider warrants that it is not undertaking consultancy work for other clients that conflicts directly or indirectly with the Services and will inform Gas Industry Co immediately if it becomes aware of a potential conflict;
- either party may otherwise terminate the appointment on provision of five business days' written notice;
- the Service Provider's maximum aggregate liability to Gas Industry Co is limited to the value of the fees paid for the Services, except for liability arising as a result of wilful breach or fraud; and
- where any breach by the Service Provider also constitutes a breach of the Regulations, Gas Industry Co's sole remedy will be as provided for in the Gas Governance (Compliance) Regulations 2008.

Recommendation

It is recommended that the Chief Executive:

- **Appoint** Concept Consulting Group Limited as the expert adviser under regulation 27 to review the proposed critical contingency management plans, from Vector Gas Limited and Maui Development Limited respectively, and make a recommendation to Gas Industry Co on whether it should approve each proposed critical contingency management plan, on the terms and conditions set out in the letter of engagement attached as Appendix A.

- **Sign** the letter of engagement attached as Appendix A.

It has been certified that:

- Appropriate consultation has been undertaken in respect of the appointment; and
- The appointment is sufficient for the purposes of the Gas Governance (Critical Contingency Management) Regulations 2008.

Ian Dempster
Senior Adviser – Wholesale Markets

Determination made by:

Christine Southey
Chief Executive

Date

Appendix A

27 January 2009

Lee Wilson
Concept Consulting Group Limited
PO Box 10045
The Terrace
WELLINGTON 6143

Dear Lee,

Letter of engagement—Critical Contingency Expert Adviser

This letter sets out the proposed approach and scope of engagement between Gas Industry Co and Concept Consulting Group Limited (the "Service Provider") in relation to the supply of services in performing the role of Expert Adviser pursuant to the Gas Governance (Critical Contingency Management) Regulations 2008 (GGCCMR or the Regulations) for:

- the review of the proposed critical contingency management plan submitted by Vector Gas Limited; and
- the review of the proposed critical contingency management plan submitted by Maui Development Limited.

1. Background

Changes to the Gas Act in late 2004 provided for co-regulation of the gas industry by the Government and an industry body. Gas Industry Co was established to fulfil the role of the industry body under the Act. A particular objective of the company is to develop proposals for gas governance arrangements that meet the objectives of the Act and the Government Policy Statement on Gas Governance (GPS). Gas Industry Co provided a recommendation to the Minister of Energy for regulations to manage critical gas contingencies, being the GGCCMR.

In making recommendations for gas governance regulations such as the GGCCMR, Gas Industry Co is required by section 43ZN of the Act, and its constitution, to have regard to the following objectives:

Section 43ZN

The principal objective is to ensure that gas is delivered to existing and new customers in a safe, efficient and reliable manner.

The other objectives are:

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| <ul style="list-style-type: none">(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) barriers to competition in the gas industry are minimised;(c) incentives for investment in gas processing facilities, transmission and distribution are maintained or enhanced;(d) delivered gas costs are subject to sustained downwards pressure;(e) risks relating to security of supply, including transport arrangements are properly and efficiently managed by all parties;(f) consistency with the Government's gas safety regime is maintained. |
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The GPS also outlines certain specific objectives and outcomes to which Gas Industry Co must have regard. In particular, Gas Industry Co is expected to provide *sound arrangements for the management of critical gas contingencies*.

With the GGCCMR having been made, Gas Industry Co is undertaking a number of implementation tasks. The Service Provider is being engaged to perform the role of Expert Adviser in respect of proposed critical contingency management plans as outlined in regulations 28 and 29 of the GGCCMR.

2. Critical contingency management

By design the GGCCMR take a minimalist approach, providing for intervention in the management of contingency events only where that is needed and, even then, only to the extent necessary to meet the objective of the regulations. This means that much of the implementation detail is in the hands of the industry.

National critical contingencies come about as a result of the market failing to manage a developing situation such that the major pipeline, Maui, is delivering gas at a rate faster than it is being supplied into the pipeline. MPOC¹ requires shippers to have balanced nominations (except where the pipeline chooses to place shipper(s) into mismatch) and welded parties to maintain their flows within tolerances from scheduled quantities.

Once a critical contingency is declared, the Critical Contingency Operator is able to direct retailers to shed load as a means of balancing the system. The order of curtailment is unrelated to whether a party has lost supply which can result in:

- some parties who were previously balanced leaving gas in the system (which they have paid for but cannot use due to being curtailed); and
- other parties who have lost supply gaining access to gas to which they do not have title.

¹ Maui Pipeline Operating Code which sets out the common terms governing the relationship between the pipeline owner and pipeline users, available on the MDL information exchange at www.oatis.co.nz.

The GGCCMR provide for this situation to be rectified by, in effect, “trading” quantities of gas between such parties, using the critical contingency price.

The GGCCMR requires that certain actions and responsibilities of the transmission system owners (TSOs) and Critical Contingency Operator relating a critical contingency are detailed in a critical contingency management plan (CCMP). A CCMP must be prepared by each TSO and must include:

- the threshold conditions for declaring a critical contingency;
- a description of events that may feasibly result in a breach of the threshold conditions;
- the actions the TSO may take to remedy a breach;
- a process for implementing curtailment and restoration of supply to certain consumers;
- a communication plan for communications by the TSO;
- the contact details for key roles fulfilled by the TSO and other affected parties;
- the process for calculating contingency imbalances for each affected party; and
- any other requirements considered necessary to give effect to the Regulations.

A TSO is required to issue its draft plan for consultation and to consider submissions on its draft plan prior to submitting it to Gas Industry Co for approval. The proposed CCMPs must be provided to Gas Industry Co by no later than 25 February 2009.

The role of the Expert Adviser is to review the proposed CCMPs (including resubmitted plans) and make a recommendation to Gas Industry Co as to whether or not Gas Industry Co should approve the proposed CCMP. It is expected that the Expert Adviser would, as part of its review, consider and, where appropriate, have regard to the submissions on the draft CCMPs.

3. Services

Gas Industry Co wishes to appoint the Service Provider as an Expert Adviser under the GGCCMR and engage the Service Provider to provide the following Services in accordance with the GGCCMR:

- in accordance with regulation 29, review the proposed CCMPs that have been submitted by the transmission system owners (Vector Gas Limited and Maui Development Limited) under regulation 24 (or resubmitted plans under regulations 29(5) or 30(3) where applicable);
- assess whether each proposed CCMP provides for the content required by, and otherwise complies with, regulation 25 and gives effect to the purpose of the GGCCMR;
- consult with the Critical Contingency Operator and have regard to any report submitted by the Critical Contingency Operator under regulation 28;

- in accordance with regulation 29, make a recommendation in respect of each proposed CCMP with reasons to Gas Industry Co on whether Gas Industry Co should approve that proposed CCMP; and
- give notice to the relevant transmission system owner and the Critical Contingency Operator of its recommendation and the reasons for its recommendation.

Regulations 28 and 29 of the GGCCMR state:

28 Expert adviser to consult critical contingency operator

- (1) As soon as practicable following receipt of a proposed critical contingency management plan under regulation 24 or a proposed amendment under regulation 33(4)(c), 34(6)(c), or 65(3)(c), the industry body must provide the proposed plan or proposed amendment to the expert adviser and the critical contingency operator.
- (2) In reviewing the proposed critical contingency management plan or proposed amendment under regulation 29, the expert adviser must consult with the critical contingency operator.
- (3) The critical contingency operator may provide the expert adviser with a report on the proposed critical contingency management plan or proposed amendment in relation to any issues it perceives as material to the review by the expert adviser under regulation 29.
- (4) Any report prepared by the critical contingency operator under subclause (3) must be submitted to the expert adviser no later than 10 business days after the proposed critical contingency management plan or proposed amendment was received from the industry body.

29 Review of critical contingency management plan

- (1) The expert adviser must review—
 - (a) a proposed critical contingency management plan provided by a transmission system owner under regulation 24; or
 - (b) a proposed amendment to a critical contingency management plan under regulation 33(4)(c), 34(6)(c), or 65(3)(c),—

to determine whether or not to recommend approval of the proposed critical contingency management plan or proposed amendment to the industry body.
- (2) In reviewing the proposed critical contingency management plan or proposed amendment, the expert adviser—
 - (a) must have regard to any report submitted in accordance with regulation 28(3) and (4); and
 - (b) may have regard to any submissions received by the transmission system owner under regulation 26.
- (3) Following the review, and no later than 20 business days after receiving the proposed critical contingency management plan or proposed amendment, the expert adviser must—

- (a) make a recommendation, with reasons, to the industry body on whether the industry body should approve the proposed critical contingency management plan or proposed amendment; and
 - (b) give notice to the relevant transmission system owner and the critical contingency operator of its recommendation and the reasons for its recommendation.
- (4) If the expert adviser considers that the proposed critical contingency management plan or proposed amendment complies with regulation 25 and gives effect to the purpose of these regulations, the expert adviser must make a recommendation that the industry body should approve the proposed critical contingency management plan or proposed amendment.
- (5) If the expert adviser gives notice under subclause (3)(b) that it has recommended that the proposed critical contingency management plan or proposed amendment should not be approved by the industry body, then, no later than 10 business days after receiving that notice, the relevant transmission system owner—
- (a) must revise the proposed critical contingency management plan in response to the reasons given in that notice, and resubmit the proposed plan to the industry body for approval; or
 - (b) may revise the proposed amendment in response to the reasons given in that notice, and resubmit the proposed amendment to the industry body for approval.
- (6) Regulations 27 to 30 apply to a proposed plan or proposed amendment resubmitted for approval under subclause (5).
- (7) The industry body must publish a proposed plan or proposed amendment resubmitted for approval under subclause (5).

4. Conflicts

The Service Provider undertakes consultancy work for a range of clients on energy sector issues. In order to manage potential conflicts, the Service Provider:

- (a) warrants that, as at the date of the execution of this letter of engagement, it is not undertaking consultancy work for other clients that conflicts directly or indirectly with the Services; and
- (b) will, on the execution of this letter of engagement, provide Gas Industry Co notice in writing of the industry participants that the Service Provider is undertaking consultancy work for; and
- (c) will not, during the term of this letter of engagement, undertake consultancy work for other clients that conflicts directly or indirectly with the Services and will inform Gas Industry Co immediately if it becomes aware of a potential conflict with the Services.

The Service Provider also warrants that, for the term of this letter of engagement, it:

- (a) has no material financial interest in an industry participant; or
- (b) is not a director, officer, member, employee, or trustee of an industry participant; or

- (c) is not otherwise directly or indirectly materially interested in an industry participant (to avoid doubt, this does not include circumstances where the Service Provider undertakes consultancy work for an industry participant on matters that do not conflict directly or indirectly with the Services).

5. Personnel

The Service Provider will provide the following resources to undertake the role of Expert Adviser:

Person	Role
Stuart Dickson – Principal Consultant	To perform the detailed role of Expert Adviser as set out in the GGCCMR
Jim Truesdale – Director	To review the draft recommendations (and any associated report) provided by Stuart Dickson and provide overall quality assurance

For the Service Provider, Stuart Dickson and Jim Truesdale will collectively deliver the Services required of the Expert Adviser as set out in the GGCCMR.

6. Performance

The Service Provider must:

- (a) comply with the GGCCMR, including undertaking all the duties and obligations of an Expert Adviser under the GGCCMR;
- (b) exercise all reasonable skill, care and diligence in the performance of the Services;
- (c) at all times deal, and fully co-operate, with Gas Industry Co in good faith and do such things and sign such documents as are required for the provision of the Services; and
- (d) on becoming aware of the same, promptly notify Gas Industry Co of any breach of its obligations under the GGCCMR or this letter of engagement or any matter which may impact on the Service Provider's ability to perform the Services.

7. Payment and invoicing

The Service Provider will invoice Gas Industry Co for the Services performed within five business days of the end of each month, including a summary of work undertaken and number of hours worked. The rate(s) will be as set out in the table below:

Service Provider	Rate (ex GST if applicable)
Stuart Dickson	\$240 per hour

Jim Truesdale	\$300 per hour
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In the estimated critical contingency developments costs to be determined under regulation 16, Gas Industry Co has allowed a conservative estimate of \$80,000 for expert adviser costs to review the proposed CCMPs. If, during the provision of the Services, the Service Provider reasonably considers that the costs of providing the Services will exceed \$80,000, the Service Provider must as soon as practicable give notice to Gas Industry Co of the same.

The Service Provider will commence the Services on 27 January 2009. The Services are required to be completed within the time limits specified in regulation 29 of the GGCCMR.

8. Reporting arrangements

The Service Provider will liaise with and report on progress regularly to Ian Dempster, Senior Adviser – Wholesale Markets (Gas Industry Co) or in his absence Andrew Walker, Adviser (Gas Industry Co).

9. Confidentiality

All information provided by Gas Industry Co to the Service Provider that is indicated in writing by Gas Industry Co as being confidential shall not be disclosed by the Service Provider other than:

- (a) as required by law; or
- (b) to its professional advisers; or
- (c) where the information is already in the public domain.

This provision also applies to any information that is provided to the Service Provider by an industry participant in the provision of the Services and has been indicated either verbally or in writing by the industry participant as being confidential in nature.

All information provided by the Service Provider to Gas Industry Co that is indicated in writing by the Service Provider as being confidential shall not be disclosed by Gas Industry Co other than:

- (a) as required by law; or
- (b) to its professional advisers; or
- (c) where the information is already in the public domain; or
- (d) where any information is contained within draft and final report(s) received by Gas Industry Co as part of the Services.

10. Intellectual property

All information and material provided by Gas Industry Co to the Service Provider for the purposes of providing the Services shall continue to be owned by Gas Industry Co.

All Intellectual Property which arises directly from the Service Provider undertaking the Services shall belong to Gas Industry Co. The Service Provider may only use such Intellectual Property with the written consent of Gas Industry Co (not to be unreasonably withheld).

All pre-existing copyrights and other existing intellectual property rights will belong to the party that owned such rights.

11. Liability

The Service Provider's obligations and duties under this letter of engagement are obligations and duties owed solely to Gas Industry Co and are not obligations and duties for the benefit of any other person.

Where any breach of this letter of engagement by the Service Provider also constitutes a breach of the GGCCMR, Gas Industry Co's sole remedy will be as provided for in the Gas Governance (Compliance) Regulations 2008 and the Service Provider shall have no liability under this letter of engagement in respect of such breaches (provided, for the avoidance of doubt, that this does not prevent Gas Industry Co from exercising any right of termination it may have in respect of such breach).

The Service Provider's maximum aggregate liability under or in connection with this letter of engagement (whether in contract, tort or otherwise), except for liability arising as a result of wilful breach or fraud on the part of the Service Provider, is to be limited to the value of the fees paid for the Services (exclusive of GST). Under no circumstances shall either party be liable for consequential, punitive, special or similar damages or claims in the nature of lost profits.

12. Termination

This engagement shall terminate on the date that Gas Industry Co has approved CCMPs under regulation 30 or 31 to cover all of the transmission system. Either party may otherwise terminate this engagement on provision of five business days' written notice to the other party. Paragraphs 9, 10 and 11 of this letter shall survive termination of this engagement. Upon termination, Gas Industry Co shall pay to the Service Provider any fees and/or expenses outstanding, to be calculated on a time and materials basis, for Services provided prior to the termination date.

13. Conclusion

We would be grateful if you could confirm your agreement to these terms and conditions by signing below.

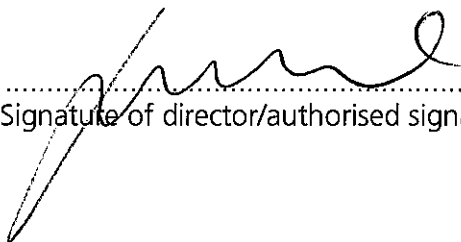
Yours sincerely



Ian Dempster

Senior Adviser—Wholesale Markets

Concept Consulting Group Limited accepts the appointment as Expert Adviser under the Gas Governance (Critical Contingency Management) Regulations 2008 on the terms and conditions set out above in this letter of engagement.



.....
Signature of director/authorised signatory

..... *Lee Athol Wilson (Director)*
Full name of director/authorised signatory

..... *27 January 2009*
Date