

DRAFT GAS GOVERNANCE (CONSTRAINED TRANSMISSION PIPELINE) RULES 2011

Contents

1. **Title**
These rules are the Gas Governance (Constrained Transmission Pipeline) Rules 2011.
2. **Commencement**
These rules come into force on the 28th day after the date of their notification in the *Gazette*.
3. **Purpose**
The purpose of these rules is to facilitate competition by providing for terms and conditions of access to ensure retailers have access to transmission capacity on any part of the transmission system where capacity is constrained.
4. **Outline**
These rules provide for –
 - (a) a process by which a part of the transmission system may be declared to be a constrained pipeline; and
 - (b) a process by which the capacity of a retailer supplying a large consumer installation via a constrained pipeline may be transferred from an incumbent retailer to a new retailer

Part 1

General provisions

5. **Interpretation**
 - 5.1 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, or Waitangi Day are observed for statutory holiday purposes; and
- (c) any other day that 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 rule 2

constrained pipeline means a part of the transmission system that has been declared to be a constrained pipeline by the industry body under rule 8

consumer—

- (a) means any person who is supplied, or applies to be supplied, with gas (other than a domestic consumer); but
- (b) does not include a transmission system owner or any gas distributor or retailer, except to the extent that the transmission system owner, gas distributor, or retailer is supplied, or applies to be supplied, with gas for its own consumption and not for the purposes of resupply to any other person

consumer installation means 1 or more gas installations that have a single point of connection to a distribution system or the transmission system and for which there is a single consumer

delivery point means a point at which a shipper's gas is taken (or made available to be taken) from a pipeline that forms part of the transmission system –

- (a) into another pipeline (whether that pipeline forms part of the transmission system or the distribution system); or
- (b) into a consumer installation

incumbent retailer means a retailer that supplies gas to a consumer at a large consumer installation

industry body means—

- (a) the industry body approved by Order in Council under section 43ZL of the Act; or
- (b) in the event that the approval of the industry body is revoked under section 43ZM of the Act and no other industry body is approved, the Energy Commission to be established under section 43ZZH of the Act

large consumer installation means a consumer installation that is assigned to allocation group 1 or allocation group 2 under rule 6 of the Gas (Downstream Reconciliation) Rules 2008

maximum capacity amount means the maximum capacity amount for a large consumer installation determined in accordance with rule 14

new retailer means a gas retailer other than an incumbent retailer that agrees to supply gas to a consumer at a large consumer installation

publish, in respect of information to be published by a person, means to make that information publicly available on the person's website

reserved capacity means the amount of transmission capacity which a shipper and a transmission system owner agree or have agreed that the shipper is entitled to use for the purposes of transmitting gas through a part of the transmission system owned by the transmission system owner to a delivery point

reserved capacity increment means the amount of reserved capacity agreed between a retailer and a transmission system owner under rule 15

retailer means a gas retailer

shipper means a person who is a party to an agreement with a transmission system owner to have gas transmitted through all or part of the transmission system

transmit, in relation to gas, includes to receive a quantity of gas at one point on the transmission system and deliver an equivalent quantity of gas to another point on the transmission system

transmission system means the system of interconnected high pressure open access gas transmission pipelines depicted on the map published by the industry body under rule 10 of the Gas Governance (Critical Contingency Management) Regulations 2008

transmission system owner means –

- (a) a person who owns all or any part of the transmission system; and
- (b) if two or more persons jointly own any part of the transmission system, those persons jointly and severally

Declaration of constrained pipeline

6. Obligation of transmission system owner to report refusal of new reserved capacity due to capacity concerns

- 6.1** This rule applies if a transmission system owner declines a request from a shipper for new reserved capacity because it is concerned that security of supply on any part of the transmission system that may be affected by the grant of the reserved capacity will fall to a level that breaches the transmission system owner's relevant security of supply standard.
- 6.2** If this rule applies, the transmission system owner must give notice to the industry body of the following matters –
 - 6.2.1** The details of the request for new reserved capacity required by rule 7.1:
 - 6.2.2** The details of why the transmission system owner was concerned the security of supply standard would be breached if it accepted the request, including the matters in rule 7.2:

6.2.3 The details of the part of the transmission system on which the transmission system believes the security of supply standard would be breached if it accepted the request:

6.2.4 Whether in the transmission system owner's opinion, the situation justifies the making of a constrained pipeline declaration under rule 8, and the reasons for that opinion.

7. Further matters relating to notice by transmission system owner under rule 6.2

7.1 The details of the request for new reserved capacity that must be provided in a notice under rule 6.2 must include the following:

7.1.1 The amount of new reserved capacity requested by the retailer:

7.1.2 The delivery point for which the new reserved capacity was requested:

7.1.3 Whether the new reserved capacity was proposed to be offset by transfer of reserved capacity from another delivery point:

7.1.4 The reasons for the request for new reserved capacity, if known:

7.1.5 The total reserved capacity and demand at the delivery point over the previous 3 years:

7.1.6 Any other information that the transmission system owner considers relevant.

7.2 The details of the why the transmission system owner was concerned the security of supply standard would be breached provided in a notice under rule 6.2 must include or be accompanied by the following:

7.2.1 The security of supply standard that the transmission system owner is concerned about breaching:

7.2.2 The transmission system owner's expectations for future demand growth on the part of the transmission system that supplies the relevant delivery point:

7.2.3 Any relevant system modelling work, including modelling assumptions for the delivery point or part of the transmission system affected; and

7.2.4 Any other information that the transmission system owner considers relevant.

7.3 The transmission system owner must also specify in the notice, under rule 6.2 which information it has supplied that it considers to be confidential.

8. Industry body may declare part of transmission system to be a constrained pipeline

8.1 After receiving a notice under rule 6.2, the industry body must consider whether to declare all or any part of the transmission system described in the notice in accordance with rule 6.2.3 to be a constrained pipeline.

8.2 The industry body may declare a part of the transmission system to be a constrained pipeline only if it is satisfied that -

8.2.1 the transmission system owner's concerns about security of supply on that part of the transmission system –

(a) were reasonable; and

(b) justified the declining of the request for new reserved capacity; and

(c) are likely to arise on an ongoing basis on that part of the transmission system; and

8.2.2 the refusal of the transmission system owner of new reserved capacity due to security of supply concerns is likely to affect competition on the relevant part of the transmission system.

8.3 Before making a final decision on whether to declare a part of the transmission system to be a constrained pipeline, the industry body–

8.3.1 must consider the information provided in or with the notice by the transmission system owner under rule 6.2; and

- 8.3.2 must make such reasonable enquiries of the transmission system owner as are necessary to satisfy it as to the accuracy of the information; and
- 8.3.3 may consult with any persons on particular matters related to the security of supply; and
- 8.3.4 may issue a provisional decision and consult on that decision with any interested persons.

9. Publication of declaration of constrained pipeline

- 9.1 The industry body must publish any declaration of a constrained pipeline together with its reasons for making the declaration.
- 9.2 The declaration must include –
 - 9.2.1 details of the part of the transmission system, (including any delivery points on the part of the transmission system) to which the declaration relates; and
 - 9.2.2 the process that the industry body will use to review the status of the constrained pipeline.

10. Review and revocation of constrained pipeline declaration

- 10.1 A transmission system owner of a constrained pipeline must give notice to the industry body if there is a change in circumstances that mean –
 - 10.1.1 The security of supply concerns that caused the transmission system owner to decline the request for reserved capacity no longer exist; or
 - 10.1.2 The refusal of transmission system owner of new reserved capacity will no longer affect competition on the constrained pipeline.
- 10.2 The industry body –
 - 10.2.1 must review the constrained pipeline declaration if it receives notice from a transmission system owner under rule 10.1; and
 - 10.2.2 may review the constrained pipeline declaration at any other time.

- 10.3** The industry body may amend or revoke a constrained pipeline declaration if it is satisfied following a review that –
 - 10.3.1** The security of supply concerns that caused the transmission system owner to decline the request for reserved capacity no longer exist; or
 - 10.3.2** The refusal of transmission system owner of new reserved capacity will no longer affect competition on the constrained pipeline.

Part 2

Transfer of capacity on constrained pipeline

11. Consumer may request determination of the maximum capacity amount for a large consumer installation

A consumer who is supplied with gas from a constrained pipeline at a large consumer installation and is considering or wishes to investigate the possibility of alternative gas supply arrangements for that installation may request its incumbent retailer to comply with rule 12 so that the installation's maximum capacity amount can be determined.

12. Duties of incumbent retailer

- 12.1** An incumbent retailer that is requested to do so by a consumer under rule 11 must –
 - 12.1.1** notify the transmission system owner of the constrained pipeline on which the delivery point for the large consumer installation is located that the consumer wishes the maximum capacity amount for the installation to be determined; and
 - 12.1.2** provide the transmission system owner with the consumer's daily demand history for the large consumer installation for the period during which the incumbent retailer has supplied the installation.

- 12.2** The daily demand history must be accompanied by a declaration by the incumbent retailer, verifying that the daily demand history is true and correct.

13. Duties of transmission system owner

A transmission system owner who receives a notice under rule 12 must, within 5 business days of receipt of the notice, –

- 13.1** determine the maximum capacity amount for the large consumer installation in accordance with rule 14;
- 13.2** advise the maximum capacity amount for the large consumer installation to –
- 13.2.1** the consumer; and
- 13.2.2** the incumbent retailer; and
- 13.2.3** any other person who requests that information;
- 13.3** publish the maximum capacity amount for the large consumer installation together with a notice advising that that capacity amount is available to any new retailer wishing to buy reserved capacity for the purposes of supplying gas to the installation at the standard posted price for reserved capacity at the relevant delivery point; and
- 13.4** notify the industry body of the matters in rule 13.3.

14. Calculation of maximum capacity amount

The maximum capacity amount for a large consumer installation must be determined as follows:

$$MCA = \sum A_n \div 5$$

where

MCA is the maximum capacity amount

$\sum A_n$ is the sum of the consumer's daily demand for the large consumer installation on the 5 (**n**) peak days of the incumbent retailer's total daily demand on the constrained pipeline during the previous 12 months

15. Agreement in relation to reserved capacity increment

- 15.1 A retailer (other than the incumbent retailer) who wishes to offer to supply gas to a large consumer installation that is supplied from a constrained pipeline must agree with the transmission system owner who owns the constrained pipeline the amount of reserved capacity that it will be allocated if it is chosen as the new supplier for the installation (the retailer's "**reserved capacity increment**").
- 15.2 The retailer's reserved capacity increment may be less than or equal to the maximum capacity amount determined for the large consumer installation.
- 15.3 The transmission system owner must offer the reserved capacity increment to the retailer at the same or better price than the standard offer price.

16. Successful retailer to advise transmission system owner of supply arrangement

- 16.1 A retailer, whether the incumbent retailer or a new retailer, who is successful in winning a supply contract for a large consumer installation that is supplied from a constrained pipeline must give notice to the owner of the constrained pipeline of that.
- 16.2 If the successful retailer is the incumbent retailer no amendment to the retailer's reserved capacity is made.
- 16.3 If the successful retailer is a new retailer, the retailer must also notify the transmission system owner of the switch date obtained by the retailer in accordance with the Gas (Switching Arrangements) Rules 2008.

17. Transmission system owner to transfer capacity

A transmission system owner who receives a notice from a new retailer under rule 16 must, take any necessary action to allocate the new retailer's reserved capacity increment to the retailer on and from the switch date, and on and from the switch date –

- 17.1 the reserved capacity of the incumbent retailer who supplied the large consumer installation is to be treated as having been reduced by the maximum capacity amount determined for the large consumer installation under rule 14; and

- 17.2 the new retailer's reserved capacity is increased by the retailer's reserved capacity increment; and
- 17.3 any difference between the maximum capacity amount for the large consumer installation and the retailer's reserved capacity increment is available to the transmission system owner for resale.

Part 3 Funding

18. Constrained pipeline declaration costs

- 18.1 A **transmission system owner** of a part of the transmission system that is declared to be a constrained pipeline is liable to pay the constrained pipeline declaration costs to the industry body.
- 18.2 The constrained pipeline declaration costs are the costs of the industry body associated with -
 - 18.2.1 reviewing information provided in or under rule 6.2; and
 - 18.2.2 the decision making and declaration of a constrained pipeline.
- 18.3 To avoid doubt, the constrained pipeline declaration costs do not include costs incurred before the date of the relevant notice under rule 6.2.
- 18.4 As soon as practicable after making a constrained pipeline declaration, the industry body must—
 - 18.4.1 determine and publish the constrained pipeline declaration costs; and
 - 18.4.2 invoice the relevant **transmission system owner** for those costs

19. Constrained pipeline review costs

- 19.1 A **transmission system owner** of a constrained pipeline is liable to pay the constrained pipeline review costs to the industry body.
- 19.2 The constrained pipeline review costs are the costs of the industry body associated with -

19.2.1 reviewing the constrained pipeline declaration under rule 10;
and

19.2.2 the decision whether or not to amend or revoke the
constrained pipeline declaration.

19.3 As soon as practicable after completing the review of a constrained
pipeline declaration, the industry body must—

19.3.1 determine and publish the constrained pipeline review costs;
and

19.3.2 invoice the relevant **transmission system owner** for those
costs

20. **General provisions regarding fees and other costs**

20.1 The due date for the payment of any invoice under this subpart is—

20.1.1 the 20th day of the month in which the invoice was received;
or

20.1.2 if the day referred to in rule 20.1.1 is not a **business day**, the
following **business day**.

20.2 The fees payable under rules 18 and 19 are exclusive of any goods
and services tax payable under the Goods and Services Tax Act
1985, and goods and service tax on those fees (if any) must be
added to the invoices under rules 18 and 19.

20.3 A **transmission system owner** may pass on any fees payable
under these rules to **shippers** on its part of the **transmission
system** in proportion to the quantities of gas **transmitted** by that
shipper through the **transmission system owner's** part of the
transmission system or on such other basis as may be agreed by
the **industry body**.

Part 4

Miscellaneous

Notices

21. Giving of ordinary notices

- 21.1** If these rules require any notice to be given, the notice must be in writing and be—
- 21.1.1** delivered by hand to the nominated office of the addressee; or
 - 21.1.2** sent by post to the nominated postal address of the addressee; or
 - 21.1.3** sent by fax to the nominated fax number of the addressee; or
 - 21.1.4** sent by electronic transmission or any other similar method of electronic communication to the appropriate nominated electronic address of the addressee.
- 21.2** This rule does not apply to the giving of urgent notices, but does apply to the confirmation of urgent notices under rule 27.

22. When ordinary notices taken to be given

- 22.1** In the absence of proof to the contrary, notices are taken to be given,—
- 22.1.1** in the case of notices delivered by hand to a person, when actually received at that person's address:
 - 22.1.2** in the case of notices sent by post, at the time when the notice would in the ordinary course of post be delivered, and in proving the delivery, it is sufficient to prove that the notice was properly addressed and posted:
 - 22.1.3** in the case of notices sent by fax, at the time indicated on a record of its successful transmission:

22.1.4 in the case of notices sent by electronic transmission or any other similar method of electronic communication, including via an **information exchange** —

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

22.2 This rule does not apply to the giving of urgent notices, but does apply to the confirmation of urgent notices under rule 27.

23. Urgent notices

23.1 Despite rule 25 and 26, an urgent notice may be given orally where the person issuing a notice considers that the urgency of the situation means the notice should not be given in writing.

23.2 If an urgent notice is given orally under rule 27.1 the person who gave that notice must, as soon as practicable, confirm that urgent notice in writing in accordance with rules 25 and 26.

Miscellaneous

24. Relationship with transmission system arrangements

24.1 All **transmission system arrangements** must be read subject to these rules and subject to all modifications necessary to give effect to these rules.

24.2 If both **transmission system arrangements** and these rules impose an obligation or liability in respect of the same matter, -

24.2.1 the obligation or liability under these rules prevails to the extent that the obligation or liability in the **transmission system arrangements** is inconsistent with or doubles up with an obligation in these rules; and

24.2.2 a party to the **transmission system arrangements** is not liable to comply with the **transmission system arrangements** to the extent that that obligation or liability in

those **transmission system arrangements** is inconsistent with or doubles up with an obligation or liability under these rules.

- 24.3** In rules 28 and 28.2 **transmission system arrangements** do not include the Gas (Downstream Reconciliation) Rules 2008.

**CONSEQUENTIAL AMENDMENTS TO GAS GOVERNANCE
(COMPLIANCE) REGULATIONS 2008**

Regulation 3 is amended by inserting a new paragraph “(e) Gas Governance (Constrained Transmission Pipeline) Rules 2011

Regulation 4(1) is amended by inserting a new paragraph (e) of the definition of “rules ” –

“(e) Gas Governance (Constrained Transmission Pipeline) Rules 2011”

Regulation 11(4) is amended by adding after “Gas (Downstream Reconciliation) Rules 2008,” the words “regulation 58 [**audit reg**] of the Gas Governance (Constrained Pipelines) Regulations 2009,”