



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Energy and Resources
Title of Cabinet paper	Gas Governance Regulations on Production and Storage Facility Outage Information Disclosure	Date to be published	23 September 2022

List of documents that have been proactively released

Date	Title	Author
August 2022	Gas Governance Regulations on Production and Storage Facility Outage Information Disclosure	Office of the Minister of Energy and Resources
10 August 2022	Gas Governance Regulations on Production and Storage Facility Outage Information Disclosure DEV-22-MIN-0180 Minute	Cabinet Office
27 May 2022	Regulatory Impact Statement: Information disclosure rules and regulations under the Gas Act 1992	MBIE
29 August 2022	Gas Industry Company recommendations: Information disclosure arrangements for gas production and storage facility outages	MBIE

Information redacted

YES / NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reason of privacy of natural persons.



BRIEFING

Gas Industry Company recommendations: Information disclosure arrangements for gas production and storage facility outages

Date:	8 April 2022	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2122-4001

Action sought		
	Action sought	Deadline
Hon Dr Megan Woods Minister of Energy and Resources	Agree to the Gas Industry Company's recommendations to make new gas outage information disclosure rules and amend the Gas Governance (Compliance) Regulations 2008.	26 April 2022

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Lena MacCarthy	Acting Manager, Resource Markets Policy	Privacy of natural persons	✓
Ayesha Myra Amin	Principal Policy Advisor, Resource Markets Policy	Privacy of natural persons	

The following departments/agencies have been consulted
N/A

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



BRIEFING

Gas Industry Company recommendations: Information disclosure arrangements for gas production and storage facility outages

Date:	8 April 2022	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2122-4001

Purpose

To seek your decision, pursuant to the requirements of the Gas Act 1992, to either accept or reject the Gas Industry Company's recommendations in relation to new gas outage information disclosure rules and amendments to the Gas Governance (Compliance) Regulations 2008.

Executive summary

In 2018, a combination of unplanned and planned gas production outages brought into focus the role of information transparency and asymmetry in the gas sector. Multiple affected parties in the gas and broader energy sector raised concerns about who is made aware of such supply issues and when.

In July 2018, you wrote to Gas Industry Company (GIC), the co-regulator, requesting it to investigate current information disclosure requirements under the Gas Act 1992 (Gas Act) and assess if they are adequate. GIC responded that the type of information disclosure required was not contemplated by the Gas Act. In 2021, the Gas Act was amended to allow you, as Minister of Energy and Resources, to recommend regulations for the disclosure of information that may have significant downstream impact, or may contribute to the risk of critical contingency events.

On 18 February 2022, you received two separate recommendations for new/amended gas governance arrangements from GIC:

- to make new gas governance rules for the disclosure of gas production and storage facility outage information under section 43F(2)(e), 43F(2)(f), and 43Q of the Gas Act 1992 (see **Annex One**); and
- to amend the Gas Governance (Compliance) Regulations 2008 (Compliance Regulations) under section 43G(2)(k) of the Gas Act to refer to the proposed rules above (see **Annex Two**).

You are now required to make a statutory decision under the Gas Act on these recommendations. While there are different statutory requirements applied to these recommendations (as they are made under different empowering provisions), these need to be considered as part of one regulatory amendment package.

In relation to the disclosure of gas production and storage facility outage information (which is provided for in section 43F), you may only recommend regulations to the Governor-General if they implement the effect of the GIC's recommendations, and do not differ in any material way. This means that, in effect, you may only accept or reject a GIC recommendation. You have until 19 May 2022 (90 days from the date the recommendation was received), to either accept or reject the recommendation, and notify this decision in the Gazette. These requirements do not apply to GIC's recommendation relating to the Compliance Regulations which are under section 43G of the Gas Act, not 43F.

If you were to decline GIC's recommendation, the alternative is for information disclosure to be governed by the voluntary and industry-led Upstream Gas Outage Information Disclosure Code (the Code), which was entered into in 2020. While GIC considers that the introduction of the Code has led to an improvement in both the quantity and quality of production and storage facility outage

information shared publicly, the absence of a compliance and enforcement regime is a significant limitation.

We are satisfied that GIC's Statement of Proposal, consultation and written recommendation on proposed gas production and storage outage information disclosure arrangements meet the procedural requirements set out in sections 43L, 43M, 43N, 43O, 43ZN, and 43ZO of the Gas Act. Our analysis of GIC's compliance with these requirements is set out in **Annex Three**.

Further, GIC has recommended that you make information disclosure rules instead of regulations. Section 43Q(2) sets out a number of matters you must have regard to in making this decision. We consider rules to be the appropriate mechanism as their impact on the rights and interests of gas production and storage facility owners is no greater than the requirements of the industry-led Code, the disclosure requirements are detailed and technical, and they only apply to a subset of industry participants. In addition, we consider that GIC has the relevant expertise and rule-making procedures as the recommending body.

We recommend you accept GIC's recommendations. If you accept, GIC will begin drafting the proposed outage information disclosure rules, and you will need to seek Cabinet agreement to instruct the Parliamentary Counsel Office to draft amendments to the Compliance Regulations. You may wish to also inform Cabinet of your decision on the information disclosure recommendation at the same time.

The rules and amendments to the Compliance Regulations could come into force by October 2022.

Recommended action

The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

- a **Note** that in 2018, both planned and unplanned reductions in gas supply had a range of impacts on the downstream gas sector and related electricity markets;

Noted

- b **Note** that initial investigations by Gas Industry Company (GIC), the industry co-regulator, found that there was limited publicly available information about gas supply issues and that some gas industry participants had greater access to information than others, giving them an advantage in decisions;

Noted

- c **Note** that the Gas (Information Disclosure and Penalties) Amendment Act 2021 was passed in July 2021 to enable the Minister of Energy and Resources to recommend regulations for the disclosure of information that may have significant downstream impact, or may contribute to the risk of critical contingency events;

Noted

- d **Note** that on 18 February 2022, GIC recommended:

- i. making new gas governance rules (attached at **Annex One**) for the disclosure of gas production and storage facility outage information under section 43F(2)(e), 43F(2)(f) and 43Q of the Gas Act 1992 (Gas Act); and
- ii. amendments to the Gas Governance (Compliance) Regulations 2008 (Compliance Regulations, attached at **Annex Two**) under section 43G(2)(k) of the Gas Act to refer to the proposed rules above;

Noted

e **Note** that under section 43ZP(3) of the Gas Act, you may only accept or reject GIC's recommendations relating to proposed rules under section 43F and that you have 90 days to make this decision (until 19 May 2022);

Noted

f **Note** that MBIE is satisfied GIC has met the statutory requirements for making recommendations under the Gas Act;

Noted

g **Agree** to accept GIC's recommendation to make new gas governance rules for the disclosure of gas production and storage facility outage information under section 43F(2)(e), 43F(2)(f) and 43Q of the Gas Act;

Accept / Reject

h **Agree** to accept GIC's recommendation to amend the Compliance Regulations under section 43G(2)(k) of the Gas Act to refer to the proposed rules in recommendation (g) above;

Accept/ Reject

i **Note** that under section 43ZP of the Gas Act, your decision under recommendation (g) above must be followed by a *Gazette* notice stating your reasons, which we will provide you following your decision;

Noted

j **Note** that if you agree to accept GIC's recommendations, we will provide you with a draft Cabinet paper informing Cabinet of your decision and seeking Cabinet's agreement to issue drafting instructions to the Parliamentary Counsel Office to amend the Compliance Regulations; and

Noted

k **Note** that GIC, as the expert rule-making body, will draft the proposed gas governance information disclosure rules and recommend them to you.

Noted

Privacy of natural persons

Lena MacCarthy
Acting Manager, Resource Markets Policy
Building, Resources and Markets, MBIE

8 / 4. / 2022

Hon Dr Megan Woods
Minister of Energy and Resources

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Background

In 2018, limited systematic disclosure of information from gas producers caused concerns in the wider energy market

1. In 2018, the gas market experienced supply constraints due to two unscheduled outages at the Pohokura gas field and a reduction in gas flow from the Kupe field as a result of planned statutory inspections. The reduction in gas supply had a range of impacts on the downstream gas sector and related electricity markets. A wide range of stakeholders and sector commentators noted at the time that there was limited information publicly available about gas supply issues, potentially undermining efficient market behaviour to the detriment of consumers.

The Gas Act 1992 was amended in 2021 to enable outage disclosures through gas governance regulations

2. In July 2018, you wrote to Gas Industry Company (GIC) asking it to investigate information disclosure requirements and inquired as to GIC's view of whether or not current regulations were adequate.
3. GIC reported back in August 2018 that regulations of this type could not be made under the Gas Act 1992 (Gas Act) as the regulations enabled by the Gas Act at the time were limited to a narrow range of matters, for example, disclosure by certain participants of tariff and other charges and disclosure of data and other market information.
4. In 2019, GIC began a workstream to progress issues relating to information availability in the wholesale gas sector. From consultation, it identified that the limited availability of information on gas production and storage facility outages needed to be addressed.
5. In October 2019, Cabinet Environment, Energy and Climate Committee agreed to amend the Gas Act to enable the Minister of Energy and Resources to recommend regulations for the disclosure of information that may have significant downstream impact, or may contribute to the risk of critical contingency events [ENV-19-MIN-0055]. The Gas (Information Disclosure and Penalties) Amendment Act 2021 (the Amendment Act) was passed in July 2021.

You have received recommendations for new gas governance rules and regulations from GIC

6. In 2020 and 2021, GIC developed and consulted twice on a Statement of Proposal for new information disclosure arrangements.
7. On 18 February 2022, you received two separate recommendations from GIC:
 - a. to make new gas governance rules for the disclosure of gas production and storage facility outage information under section 43F(2)(e), 43F(2)(f) and 43Q of the Gas Act; and
 - b. to amend the Gas Governance (Compliance) Regulations 2008 (Compliance Regulations) under section 43G(2)(k) of the Gas Act to refer to the proposed rules above.

GIC's recommendations

The recommendations are intended to ensure the effective and timely availability of gas outage information for all gas and related market participants

8. GIC's recommendations relate to the following purposes under sections 43F and 43G of the Gas Act:

- a. Providing, in relation to wholesale or any other markets for gas, for arrangements relating to outages and other security of supply risks, including imposing requirements in connection with those matters on any industry participant or consumer (other than a domestic consumer).
 - b. Providing for the provision and disclosure of data and information by any industry participant or consumer (other than a domestic consumer).
 - c. Providing for compliance with gas governance regulations and rules to be monitored and enforced by the industry body or the Commission or any other person or court, and the powers and procedures of that person or court.
9. GIC recommends the following, which are outlined in more detail in Annexes One and Two:
- a. a minimum size for gas production and storage facilities that are required to disclose outage information;
 - b. definitions of planned and unplanned gas production and storage facility outages that are covered by the rules;
 - c. a description of the information that should be disclosed;
 - d. requirements for the timing of disclosures;
 - e. information sharing requirements that enable GIC to monitor parties' compliance with the rules;
 - f. obligations that ensure the quality of disclosed information; and
 - g. a link to the compliance framework in the Compliance Regulations.

The alternative to GIC's recommendations for new rules is the industry-led Upstream Gas Outage Information Disclosure Code

10. As an immediate response to the gas outages in 2018 and information asymmetry issues, all large gas producers and Flexgas (owner and operator of the Ahuroa Gas Storage Facility) developed the Upstream Gas Outage Information Disclosure Code (the Code) in June 2020. The Code is an industry-led, voluntary framework for the disclosure of gas production and storage facility outage information. The Code was developed through a process of consensus among gas producers "to establish the expectations of producers in terms of information disclosure in relation to both planned and unplanned gas outages."¹
11. The Code sets out requirements for the disclosure of any unplanned or planned outage and GIC has based its recommendations for new information disclosure rules on the Code. The operation of the Code is meant to be reviewed no later than 12 months after it comes into force, and every two years after that.
12. While GIC considers that the introduction of the Code has led to a major improvement in both the quantity and quality of production and storage facility outage information shared publicly, it identified the following limitations:
 - Compliance with the Code may be difficult for external parties to monitor and verify because disclosure is based on private information.
 - The structure of the Code, as a multilateral agreement between upstream parties, means that the Code can only be enforceable between those parties. The parties who are most likely to be affected by non-compliance sit outside the Code and have limited ability to effect change in the Code or enforce its reporting obligations. In contrast, the signatories to

¹ Upstream Gas Outage Information Disclosure Code 2020, available at <https://www.energyresources.org.nz/assets/Uploads/Upstream-Gas-Outage-Information-Disclosure-Code-March-2020.pdf>

the Code are not directly impacted by non-compliance and have limited incentives to enforce its rules.

- When considered in conjunction with the absence of an effective compliance and enforcement regime, the broad liability exclusion in the Code reduces the incentives for parties to the Code to comply with its requirements.
 - GIC considers that it is unlikely that upstream parties would amend the Code to include appropriate mechanisms for compensating parties affected by non-compliance and incentivising compliance.
13. GIC has therefore considered and rejected the Code as a solution that meets the objectives of the Gas Act and the Government Policy Statement on Gas Governance 2008.

Your decision on GIC's recommendations

Gas governance regulations follow a statutory decision-making process under the Gas Act 1992

14. Under the Gas Act the Governor-General may, by Order in Council, make regulations for the purpose of gas governance (sections 43F and 43G of the Gas Act). You can recommend regulations to the Governor-General.
15. If there is an industry body but no Commission, as is the current situation, per section 43J of the Gas Act, you may only recommend regulations or rules of the kind allowed for under section 43F if:
- the regulations or rules implement the effect of a recommendation of the industry body (currently GIC); and,
 - the regulations or rules do not differ from that recommendation in any material way (i.e., other than drafting style or minor detail).
16. The above requirements do not apply to regulations or rules made under section 43G of the Gas Act.
17. Sections 43L, 43M, 43N, 43O, 43ZN, and 43ZO of the Gas Act set out the requirements that GIC must meet before making a recommendation to you. These requirements are discussed in more detail in the next section.
18. Further, if you consider it appropriate, you can recommend rules rather than regulations. When doing this, you must have regard to specific considerations detailed in section 43Q of the Gas Act.
19. Finally, under section 43ZP(1) you have 90 days to make your decision to either accept or reject the recommendations. On making your decision, you must publish a notice in the *Gazette* stating the reasons for it or where copies of that explanation may be obtained. These requirements do not apply to your decision in relation to regulations under section 43G.

GIC has followed the procedural requirements for making a recommendation under the Gas Act

20. We are satisfied that GIC's Statement of Proposal, consultation, and written recommendation on proposed gas production and storage outage information rules meet the following requirements under the Gas Act:

- **Section 43L(1):** Requirement to consult with persons that the recommending body thinks are representative of the interests of persons likely to be substantially affected by the proposed regulations; to give those persons the opportunity to make submissions; and to consider those submissions.
- **Section 43M(1)(c):** Requirement to undertake an assessment under section 43N before making a recommendation.
- **Section 43N(1):** Requirement to seek to identify all reasonable practicable options for achieving the objective of the regulation; to assess those options by considering their costs and benefits, the extent to which the objective would be promoted or achieved by each option, and any other relevant matters; ensure that the objective of the regulation is unlikely to be satisfactorily achieved by any reasonably practicable means other than the making of the regulation (for example, by education, information, or voluntary compliance); and prepare a statement of proposal for the purpose of consultation.
- **Section 43N(2):** Requirement for the statement of proposal to be detailed; provide reasons for the proposal; and contain an assessment of the reasonably practicable options and any other relevant information.
- **Section 43O(1):** Requirement to publicise the recommendation and the assessment completed under section 43N no later than 10 working days after submitting the recommendation to the Minister.
- **Section 43ZN:** Requirement to have regard to the objectives in section 43ZN when recommending gas governance regulations under section 43F.
- **Section 43ZO(4):** Requirement to have regard to the objectives and outcomes that the Government wants the industry body to pursue in relation to the governance of the gas industry when making recommendations for gas governance regulations under Part 4A of the Gas Act.

21. **Annex Three** contains a table outlining these requirements in more detail and how GIC has complied with them.

We recommend making gas outage information disclosure rules, rather than regulations

22. Section 43Q of the Gas Act enables you to make a rule for all or any of the purposes for which a gas governance regulation may be made. In deciding whether to make a rule instead of recommending a gas governance regulation, you must have regard to the following:
- a. the importance of the rule, including whether the rule has a material effect on the rights and interests of individuals;
 - b. the subject matter of the rule, including whether the rule contains detailed or technical matters rather than matters of general principle;
 - c. the application of the rule, including whether the rule applies principally to a particular group (e.g., industry participants) rather than the general public; and
 - d. the expertise and rule-making procedures of the recommending body.
23. GIC has recommended that you make information disclosure rules instead of regulations. It considered the following when making this recommendation:

- a. The impact of the disclosure requirements on the rights and interests of gas production and storage facility owners is similar to the requirements of the Code, which provides for disclosure of similar information.
 - b. The disclosure requirements are relatively detailed and technical.
 - c. The disclosure requirements apply to a subset of industry participants (gas production and storage facility owners).
24. We agree with GIC's analysis and we consider that GIC, as the recommending body, has the relevant expertise and rule-making procedures to draft the rules.
25. We therefore, recommend you make gas outage information disclosure rules, rather than regulations, as we consider rules to be the appropriate mechanism. This is consistent with other information disclosure rules made under the Gas Act, such as the now expired Gas (Processing Facilities Information Disclosure) Rules 2008, which provided for disclosure of information on capacity at gas processing facilities.

We recommend linking the proposed rules to the compliance framework in the Compliance Regulations

26. The lack of a meaningful compliance and enforcement framework in the industry-led Code is what led GIC to conclude that the Code does not satisfactorily achieve the regulatory objective of ensuring the effective and timely availability of material gas production and storage outage information for all gas and related market participants.
27. GIC has therefore recommended amending the Compliance Regulations to provide for monitoring and enforcement of the proposed gas outage information disclosure rules. The regime in the Compliance Regulations comprises:
- a. a market administrator role performed by GIC, which has responsibility for receiving notices of breaches, determining their materiality, and attempting to resolve any immaterial breaches;
 - b. an investigator; and
 - c. a one-member Rulings Panel, which approves or rejects settlements, determines unresolved breaches, and orders remedies.
28. We consider that making the proposed rules subject to this existing compliance and enforcement regime would ensure the integrity of the proposed information disclosure framework.

Next steps for implementing the GIC's recommendations

29. You have until 19 May 2022 to either accept or reject GIC's recommendations in relation to the proposed rules. There are no time requirements in relation to decisions about amending the Compliance Regulations.
30. If you accept its recommendations, GIC, as the expert rule-making body, will begin drafting the proposed gas outage information disclosure rules. At the same time, we recommend that you seek Cabinet agreement to instruct the Parliamentary Counsel Office (PCO) to draft amendments to the Compliance Regulations.
31. GIC has indicated that it could have rules drafted and consulted on by July 2022 before it recommends the draft rules to you for approval. As the minor amendments to the Compliance Regulations will refer to the proposed rules, the amendments cannot be made until the rules are developed and accepted.

32. The table below outlines an indicative timeline for implementing GIC's recommendations:

Date	Action
26 April 2022	Decide on GIC's recommendations
2 May 2022	<i>Gazette</i> date
w/c 9 May 2022	Draft Cabinet Economic Development Committee (DEV) paper provided for two-week ministerial consultation
25 May 2022	Lodge DEV paper with Cabinet Office
1 June 2022	DEV
7 June 2022	Cabinet
June 2022	Drafting instructions to PCO
Until July 2022	GIC drafts and potentially consults on proposed rules
August 2022	GIC recommends draft rules to you for approval Draft Cabinet Legislation Committee (LEG) paper provided for two-week ministerial consultation
18 August 2022	Lodge LEG paper with Cabinet Office
25 August 2022	LEG
29 August 2022	Cabinet
5 September 2022	Executive Council
October 2022	All new provisions will come into force

Risks and mitigations

33. In submissions on GIC's first options paper in 2019, the major gas producers agreed that information regarding upstream gas outages is important for a well-functioning gas market. However, a regulatory approach was not favoured, and the Code was largely developed to pre-empt regulation. The Code itself notes that producers "do not believe the case has been made for more widespread regulatory intervention."
34. Gas producers and storage facility owners may, once again, object to the development of new information disclosure rules. However, as GIC has consulted with impacted parties extensively on the content of the rules, we consider the risk and impact of any objections to be low.
35. The proposed timeline above is indicative and subject to delays that may arise during consultation on the proposed rules. Once again, we consider this risk to be low as the content of the rules have largely been developed and consulted on.

Next steps

36. After you decide whether to accept or reject GIC's recommendations, you must publish a notice in the *Gazette* stating your decision and explaining reasons for it, or where copies of that explanation can be obtained. We will provide you with a draft *Gazette* notice following your decision.
37. If you choose to accept the recommendations, we will provide you with a briefing and a draft DEV paper to be considered at DEV on 1 June 2022, with Cabinet consideration on 7 June 2022.


Annexes

- Annex One:** GIC's recommendation for new gas governance rules for the disclosure of gas production and storage facility outage information

Annex Two: GIC's recommendation for amendments to the Gas Governance (Compliance) Regulations 2008

Annex Three: GIC's compliance with regulation-making requirements under the Gas Act 1992

Annex One: GIC’s recommendation for new gas governance rules for the disclosure of gas production and storage facility outage information

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Recommendation to the Minister of Energy and Resources: Information Disclosure Arrangements for Gas Production and Storage Facility Outages

RECOMMENDATION TO MINISTER

18 February 2022



Gas Industry Co.

Executive Summary



The purpose of this paper is to recommend that the Minister of Energy and Resources makes new gas governance rules for the disclosure of gas production and storage facility outage information.¹

Background

Gas Industry Co workstream on information disclosure

Gas production outages related to the Pohokura field in 2018 led to concerns across the gas industry and wider energy sector regarding information transparency and asymmetry in the wholesale gas market. The Minister requested that Gas Industry Co investigate the current information disclosure requirements and consider whether they are adequate.

In response to this request, Gas Industry Co established a workstream to progress issues related to information availability in the wholesale gas sector. Following an initial investigation phase (including consultation on the discussion paper *Options for Information Disclosure in the Wholesale Gas Sector*), we developed a Problem Assessment paper (*Information Disclosure: Problem Assessment*) which reviewed ten potential information areas where there may be information transparency or asymmetry issues. From consultation on this paper, we identified that limited information on gas production and storage facility outage information was the most important information issue that needed to be addressed. It was concluded that work on this information element should be prioritised, and that it should be advanced to a Statement of Proposal (SOP).

This SOP was developed in two stages. We first developed a draft SOP (*Draft Statement of Proposal: Gas Production and Storage Facility Outage information*). Following consultation on this draft, we then developed and consulted on a final SOP (*Statement of Proposal: Gas Production and Storage Facility Outage information*).

This recommendation paper follows the final SOP and incorporates feedback we received on this paper.

Industry Notifications page

Gas Industry Co developed the Industry Notifications webpage as an interim measure to help improve the flow of information in the gas industry. The page went live in August 2019. This webpage was developed as a communications channel for parties to voluntarily post information on the industry (including production and storage outages).

Upstream Gas Outage Information Disclosure Code 2020

In submissions on the initial discussion paper (see above), the major gas producers² and Energy Resources Aotearoa (ERA) agreed that information regarding upstream gas outages is important for a well-functioning gas market. Together with Flexgas (owner/operator of the

¹ Gas Industry Co is recommending that the information disclosure arrangements be made as rules (see the discussion at Section 2.4). However, whether the recommendation is given effect to as regulations or rules is a matter for the Minister under section 43Q of the Gas Act.

² OMV, Todd Energy, Beach Energy and Greymouth Petroleum.

Ahuroa gas storage facility), these parties developed the *Upstream Gas Outage Information Disclosure Code 2020*³ ("Upstream Disclosure Code") to address this need for information. This Code is an industry-led, voluntary framework for both planned and unplanned outage information disclosure. The Code has been in operation since June 2020.

This Code was developed by these parties in response to Gas Industry Co's information disclosure workstream. In our SOP process and the assessment in this paper, this Code is considered as one of the options for addressing problems with limited gas production and storage facility outage information.

Problem assessment

Free-flowing, timely and accurate information is a key element of a well-functioning market. Accessible information is a cornerstone for market participants in making decisions. In the gas sector, it supports the efficient production of gas and the allocation of supply to those users who value it the most. Information reduces the barriers to market entry for new participants. It supports parties in managing their risks, enabling them to make more informed operational and investment decisions. Information also facilitates better monitoring by regulators and third parties.

Most of the gas that is produced in New Zealand is sold under long-term, bilateral gas supply agreements (GSAs). Flexgas also has bilateral arrangements with its customers for storage of gas. Gas producers and Flexgas provide production and storage outage information respectively to contract counterparties. Prior to Gas Industry Co's launch of our Industry Notifications page and the subsequent introduction of the industry's Upstream Disclosure Code, this information had not been shared generally with the wider gas sector. This resulted in production and storage outage information being relatively opaque to the broader gas market. The contract counterparties had an information advantage relative to other sector participants; that is, there was information asymmetry regarding production and storage outage information.

Our problem assessment noted that limited transparency and asymmetry of gas production and storage facility outage information affects a range of energy sector participants. In particular, the assessment found that limited information has efficiency implications for parties across several parts of the gas sector value chain and the wider energy sector (including the electricity sector). We also note that limited and asymmetric information is inconsistent with the Government's outcome for good, publicly available information on the present state of the gas sector.

Gas producers and Flexgas developed the Upstream Disclosure Code to address these issues. The option of the Upstream Disclosure Code as a permanent solution for addressing gas production and storage information issues is considered in our review.

Regulatory objective

Gas Industry Co's approach to developing governance arrangements under the Gas Act requires the development of a regulatory objective. From the Final SOP, we have determined that this objective should be:

³ Upstream Gas Outage Information Disclosure Code 2020, available at <https://industrynotifications.gasindustry.co.nz/assets/Upstream-Gas-Outage-Information-Disclosure-Code-March-2020-Copy.pdf>

That arrangements are in place that ensure the effective and timely availability of material gas production and storage outage information for all gas and related market participants.

This regulatory objective addresses the problems associated with limited transparency and availability of gas production and storage facility outage information that were identified in the problem assessment.

Options for achieving the objective

We consider that the options for achieving this objective are:

1. Disclosure of gas production and storage facility outage information under the voluntary, industry-led *Upstream Gas Outage Information Disclosure Code 2020* (Upstream Disclosure Code).
2. Rules under the Gas Act for the disclosure of gas production and storage facility outage information.

The first option is to use the current industry-led framework as the permanent solution for the disclosure of gas production and storage facility outage information. The second option uses the basic structure of the Upstream Disclosure Code in a regulated set of arrangements. In this option, some elements of the Code are augmented or replaced to address various limitations and/or make the elements workable as a regulated set of arrangements.

Analysis of options

Upstream Disclosure Code

The Upstream Disclosure Code is an industry-led, voluntary framework for the disclosure of gas production and storage facility outage information. The Code is currently in operation. It was acceded to by natural gas producers Beach Energy, Greymouth Petroleum, OMV and Todd Energy and gas storage facility owner Flexgas in June 2020.

The introduction of the Upstream Disclosure Code has led to a major improvement in both the quantity and quality of production and storage facility outage information that is shared publicly. Despite the improvement in outage reporting that has occurred, Gas Industry Co considers that there are issues with the Code that limit its suitability as an enduring framework. These issues include:

- Compliance with the Code may be difficult for external parties to monitor and verify because disclosure is based on private information.
- The structure of the Code as a multilateral agreement between Upstream Parties means that the Code can only be enforceable between those parties. The parties most likely to be affected by non-compliance sit outside the Code and have limited ability to effect change in the Code or enforce its reporting obligations. In contrast, the signatories to the Code are not directly impacted by non-compliance and have limited incentives to enforce its rules.
- When considered in conjunction with the absence of an effective compliance and enforcement regime, the broad liability exclusion in the Code reduces the incentives for parties to the Code complying with its requirements.
- Gas Industry Co considers that it is unlikely that Upstream Parties could amend the Code to include appropriate mechanisms for compensating parties affected by non-compliance and incentivising compliance.

Rules under the Gas Act

The regulatory option uses the basic structure of the Upstream Disclosure Code. It augments or changes particular elements to address limitations that we have identified. The option includes requirements for gas producers and storage owners to provide Gas Industry Co with information so that we can monitor their adherence with the Code. Importantly, the option also includes a compliance and enforcement framework that is used across various gas rules and regulations. In this option, the disclosure of information is subject to the compliance framework in the Gas Governance (Compliance) Regulations 2008.

Gas Industry Co considers that this option addresses the main deficiency of the Upstream Disclosure Code, which is an inadequate monitoring, compliance and enforcement framework. We consider that this regulatory option will ensure that information disclosure arrangements are effective and durable.

Cost benefit analysis

Section 43N of the Gas Act requires Gas Industry Co to assess the costs and benefits of each of the options when recommending regulations (or rules) to the Minister. We engaged Sapere Research Group (Sapere) to conduct this analysis.

Sapere's focus was on the efficiency of the means of disclosing this information, given that a decision to disclose outage information has been made. This involved determining whether a voluntary scheme (i.e. the Upstream Disclosure Code) or a regulated set of arrangements is likely to result in the highest net economic benefit (lowest net cost).

Sapere concluded that a regulated set of arrangements is likely to be closer to the goal of information being disclosed where the economic benefits of disclosure outweigh the costs. Because these arrangements would be closer to this objective, they would provide more of the benefits of information disclosure than the industry-led Upstream Disclosure Code.

Summary of the regulatory option design

The regulatory option includes:

- A minimum size for gas production and storage facilities that are required to disclose outage information
- Definitions of planned and unplanned gas production and storage facility outages that are covered by the rules
- A description of the information that should be disclosed
- Requirements for the timing of disclosures
- Information sharing requirements that enable Gas Industry Co to monitor parties' compliance with the rules
- Obligations that ensure the quality of disclosed information
- A link to the compliance framework in the Gas Governance (Compliance) Regulations 2008.

Recommendation

Gas Industry Co recommends to the Minister of Energy and Resources, under sections 43F(2)(e), 43F(2)(f) and 43Q of the Gas Act 1992, the making of new gas governance rules for the

disclosure of gas production and storage facility outage information, as set out in Section [4](#) of this paper.



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1. Purpose and background

1.1 Purpose

The purpose of this paper is to recommend that the Minister makes new gas governance rules for the disclosure of gas production and storage facility outage information.

These rules will require owners of these facilities to publicly disclose planned and unplanned outage information. The information will be freely available to all interested parties, including gas sector participants and related energy sector parties (including electricity sector participants).

In this paper, a gas production facility is defined as a facility at which gas is produced or processed for domestic export or sale and includes any associated gas production or other wells. A gas storage facility storage is a facility where gas is injected and later made available for withdrawal (the Ahuroa Gas Storage Facility, owned and operated by Flexgas, is currently the only gas storage facility in New Zealand).

1.2 Background

Gas Industry Co workstream on information disclosure

Gas production outages related to the Pohokura field in 2018 led to concerns across the gas industry and wider energy sector regarding information transparency and asymmetry in the wholesale gas market. The Minister requested that Gas Industry Co investigate the current information disclosure requirements and consider whether they are adequate. In response to this request, Gas Industry Co established a workstream to progress issues related to information availability in the wholesale gas sector.

The initial phase of the workstream focussed on understanding the scope of information issues in the gas sector. We met with industry stakeholders to understand their perspectives. Following these discussions, we developed the *Options for Information Disclosure in the Wholesale Gas Sector*⁴ paper ("Options paper") on information issues in the gas sector for consultation. This was followed by a pan-sector workshop for parties to share their views with us and other workshop participants. Gas Industry Co received thirty-three submissions and cross submissions on the Options paper from a wide range of parties spanning New Zealand's energy sector.

From this investigation phase, we identified ten separate information areas or "information elements" where we considered there may be information transparency or asymmetry issues. We assessed these information elements against the Government's policy objectives for the gas sector (as set out in the Gas Act 1992 and the Government Policy Statement on Gas Governance 2008) in the *Information Disclosure: Problem Assessment* paper⁵ ("Problem Assessment paper"). The assessment framework is attached as Appendix B.

⁴ Options for Information Disclosure in the Wholesale Gas Sector, available at <https://www.gasindustry.co.nz/work-programmes/gas-sector-information-disclosure/consultation/document/6480>

⁵ Information Disclosure: Problem Assessment, available at <https://www.gasindustry.co.nz/work-programmes/gas-sector-information-disclosure/problem-assessment-october-2019/document/6634>

Amongst other matters, the Problem Assessment paper concluded that gas production and storage facility outage information should be disclosed publicly. Gas Industry Co received thirty submissions and cross-submissions on the paper. In these submissions, there were no parties that disagreed that this information should be disclosed in some form. Several parties submitted that this information element was the most important area that needed to be addressed. We concluded that work on gas production and storage facility outage information disclosure should be prioritised, and that it should be advanced to a Statement of Proposal (SOP).

This SOP assessed options to address the identified gaps in gas production and storage facility outage information disclosure. Given the range of issues associated with the disclosure of this information, we developed the SOP in two stages. We first developed a draft SOP (*Draft Statement of Proposal: Gas Production and Storage Facility Outage Information, "Draft SOP"*)⁶ which identified the problem, the associated regulatory objective and assessed options for achieving this objective. This assessment included an evaluation of the Upstream Disclosure Code, the design and assessment of a regulatory option, a cost benefit analysis of both options and a recommendation on a preferred option. We received sixteen submissions on the Draft SOP.

This draft paper was followed by a final SOP (*Statement of Proposal: Gas Production and Storage Facility Outage Information, "Final SOP"*)⁷. This paper incorporated stakeholder feedback on the Draft SOP. This Final SOP was released for a further round of consultation. We received nine submissions on the Final SOP. Parties were generally supportive of the process that Gas Industry Co has followed in the workstream. Submitters' perspectives on various matters in the Final SOP are discussed in Section 3.

This recommendation paper follows the Final SOP and includes stakeholder feedback from the consultation process on this paper. We have incorporated various detailed suggestions for improving the design of the regulatory option (see Section 4).

Industry Notifications page

Gas Industry Co developed the Industry Notifications webpage as an interim measure to help improve the flow of information in the gas industry. The page went live in August 2019. This webpage was developed as a communications channel for parties to voluntarily post information on the industry (including production and storage outages). The information that has been posted to-date is information related to gas production and storage facility outages, although any industry information can be included on the page.

Parties to the *Upstream Gas Outage Information Disclosure Code 2020* (see below) wrote to Gas Industry Co in March 2020 requesting that we host a platform to facilitate their disclosures under this Code. Gas Industry Co decided to enhance the Industry Notifications page to perform this function. An upgraded version of the Notifications page launched in August 2020.

Upstream Gas Outage Information Disclosure Code 2020

In submissions on the Options paper, the major gas producers⁸ agreed that information regarding upstream gas outages is important for a well-functioning gas market. Together with Energy Resources Aotearoa (ERA, previously PEPANZ), these parties developed the *Upstream*

⁶ Information Disclosure: Problem Assessment, available at <https://www.gasindustry.co.nz/work-programmes/gas-sector-information-disclosure/problem-assessment-october-2019/document/6634>

⁷ Draft Statement of Proposal: Gas Production and Storage Facility Outage Information, available at <https://www.gasindustry.co.nz/work-programmes/gas-sector-information-disclosure/consultation-2/document/7154>

⁸ OMV, Todd Energy, Beach Energy and Greymouth Petroleum.

*Gas Outage Information Disclosure Code 2020*⁹ ("Upstream Disclosure Code") to address this need for information. This Code is an industry-led, voluntary framework for both planned and unplanned outage information disclosure.

These parties invited Flexgas to join in the Upstream Disclosure Code's development. Flexgas agreed to this request, supporting the disclosure of gas information outages. Flexgas is treated as a producer for the purposes of the Code, but is an owner of a gas storage facility.

The Upstream Disclosure Code came into effect on 22 June 2020. It was acceded to by natural gas producers Beach Energy, Greymouth, OMV and Todd Energy as well as gas storage owner Flexgas. In the following discussion, we refer to these parties collectively as the "Upstream Parties".

This Code has been developed by the Upstream Parties independent of Gas Industry Co's information disclosure workstream. Feedback from energy sector participants on the information that has been published to-date has been positive. In our SOP process, this Code was considered as one of the options for addressing problems with limited gas production and storage facility outage information.

⁹ Upstream Gas Outage Information Disclosure Code 2020, available at <https://industrynotifications.gasindustry.co.nz/assets/Upstream-Gas-Outage-Information-Disclosure-Code-March-2020-Copy.pdf>

2. Process to establish regulations and rules



2.1 Power to regulate information disclosure

Section 43F of the Gas Act provides the Governor General, on the recommendation of the Minister of Energy and Resources, with the power to make regulations for the following purposes:

Arrangements relating to outages and other security of supply risks

- (e) *providing, in relation to wholesale or any other markets for gas, for arrangements relating to outages and other security of supply risks, including imposing requirements in connection with those matters on any industry participant or consumer (other than a domestic consumer):*

Information disclosure for whole gas industry

- (f) *providing for the provision and disclosure of data and information by any industry participant or consumer (other than a domestic consumer).*

We note that the Minister's power to recommend regulation under section 43F of the Gas Act is subject to section 43J of the Act. That section provides that, in relation to the section 43F regulation making powers, the Minister may only recommend regulation if the recommendation gives effect to a recommendation from Gas Industry Co, and does not differ from Gas Industry Co's recommendation in any material way.

The Government Policy Statement on Gas Governance 2008 (GPS), at paragraph 9, states that the Government's objective for the entire gas industry is:

To ensure that gas is delivered to existing and new customers in a safe, efficient, fair, reliable and environmentally sustainable manner.

The above objective incorporates, and expands on, the objectives in section 43ZN of the Gas Act.

The specific objectives that Gas Industry Co applies when making recommendations for regulations are summarised in Appendix B of this paper.

2.2 Regulatory objective

Gas Industry Co's approach to developing gas governance arrangements under the Gas Act requires the development of a regulatory objective as part of the process. The proposed regulatory objective is contained in Section [3.3](#) of this paper.

2.3 Requirements when recommending regulations

Section 43L(1) of the Act requires the body recommending gas governance regulations to the Minister to:

1. undertake an assessment under section 43N of the Act; and
2. consult with persons that the recommending body thinks are representative of the interests of persons likely to be substantially affected by the proposed regulations; and

3. give those persons the opportunity to make submissions;
4. consider those submissions.

A summary of the consultation undertaken by Gas Industry Co is included in Section [1.2](#).

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

1. seek to identify all reasonably practicable options for achieving the objective of the regulation;
2. assess those options by considering—
 - (a) the benefits and costs of each option
 - (b) the extent to which the objective would be promoted or achieved by each option
 - (c) any other matters that the industry body considers relevant;
3. ensure that the objective of the regulation is unlikely to be satisfactorily achieved by any reasonably practicable means other than the making of the regulation (for example, by education, information, or voluntary compliance);
4. prepare a statement of the proposal for the purpose of consultation under section 43L(1).

Section 43N(2) requires that the statement of proposal referred to in section 43N(1)(d) must contain:

1. a detailed statement of the proposal;
2. a statement of the reasons for the proposal;
3. an assessment of the reasonably practicable options, including the proposal, identified under subsection (1);
4. other information that the industry body or the Commission considers relevant.

Gas Industry Co considers that it has complied with the requirements of sections 43L and 43N of the Act.

2.4 Rules or regulations

Section 43Q of the Act empowers the Minister to make a rule for all or any of the purposes for which a gas governance regulation may be made. In deciding whether to make a rule rather than a regulation, the Minister must have regard to:

1. the importance of the rule, including whether the rule has a material effect on the rights and interests of individuals;
2. the subject matter of the rule, including whether the rule contains detailed or technical matters rather than matters of general principle;
3. the application of the rule, including whether the rule applies principally to a particular group (eg, industry participants) rather than the general public;
4. the expertise and rule-making procedures of the recommending body.

Having regard to the factors in section 43Q, Gas Industry Co recommends that disclosure of gas production and storage facility outage information should be achieved by rules rather than regulations. In reaching that view, we have had regard to the following factors:

1. The impact of the disclosure requirements on the rights and interests of gas production and storage facility owners is similar to the requirements of the Upstream Disclosure Code which provides for disclosure of similar information
2. The disclosure requirements are relatively detailed and technical
3. The disclosure requirements apply to a subset of industry participants (gas production and storage facility owners).

Gas Industry Co notes that the now expired Gas (Processing Facilities Information Disclosure) Rules 2008, which provided for disclosure of information on capacity at gas processing facilities, were made as rules.



3. Problem Assessment

3.1 Introduction

In this section, issues with inadequate gas production and storage outage information in the New Zealand wholesale gas sector are discussed. This summarises the analysis in the Problem Assessment paper and the Final Statement of Proposal. This assessment incorporates feedback that stakeholders have provided Gas Industry Co at the various stages of this work programme. A list of stakeholders that have been consulted is attached as Appendix A.

3.2 Problem Assessment

Introduction

Free-flowing, timely and accurate information is a key element of a well-functioning market. Accessible information is a cornerstone for market participants in making decisions. In the gas sector, information supports the efficient production of gas and the allocation of supply to those users who value it the most. Information reduces the barriers to market entry for new participants. It supports parties in managing their risks, enabling them to make more informed operational and investment decisions. Information also facilitates better monitoring by regulators and third parties.

In contrast, situations where parties do not have access to information or where information is uneven (or asymmetric) amongst parties may be regarded as examples of information failure, a type of market failure. If information is not available widely, some market participants may be required to make decisions based on limited facts. In these situations, parties may make inefficient business decisions, leading to a misallocation of resources, with users paying too much or too little, and producers supplying too much or too little.

We note that although transparent and widely accessible information is important for the efficient operation of a market, this does not mean all information should necessarily be made available. For instance, protection of a right to withhold information (including commercial information) may be necessary for parties to make efficient and effective business decisions. The design of an information disclosure regime should carefully consider the costs and benefits of disclosing information.

Most of the gas that is produced in New Zealand is sold under long-term, bilateral gas supply agreements (GSAs). Flexgas also has bilateral arrangements with its customers. Gas producers and Flexgas provide production and storage outage information respectively to contract counterparties. Prior to Gas Industry Co's launch of our Industry Notifications page (as an interim measure) and the subsequent introduction of the industry's voluntary Upstream Disclosure Code, this information had not generally been shared with the wider gas sector. These arrangements resulted in production and storage outage information being relatively opaque to the broader gas market. The contract counterparties had an information advantage relative to other sector participants; that is, there was information asymmetry regarding production and storage outage information.

Gas producers and Flexgas developed the Upstream Disclosure Code for the voluntary disclosure of gas production and storage facility outage information to deal with these issues. This industry-led Code has improved the level of publicly available gas production and storage

facility outage information. The option of the Upstream Disclosure Code as a permanent solution for addressing production and storage information issues was considered in the SOP and is discussed later in this section.

Assessment framework

The following discussion identifies the problems with limited production and storage outage information. These problems are determined by assessing the issues identified in the workstream against the Government's policy objectives for the sector. These objectives are set out in the Gas Act and the Government Policy Statement on Gas Governance 2008 (GPS). Tables listing the relevant Gas Act and GPS objectives and outcomes are attached as Appendix B. A more detailed review is included in the Problem Assessment paper.

An effective information disclosure regime should address these problems. Options for this framework are identified in Section 3.4 and include the Upstream Disclosure Code (as a permanent solution) as well as other options.

Assessment

Efficiency

Limited gas production and storage facility outage information has efficiency implications for several parts of the gas industry value chain and associated markets:

- **Gas production and storage.** There could be efficiency losses at production and storage facilities if outage information is not shared between individual gas production and storage operators. For instance, a lack of information may inhibit the coordination of plant maintenance and contingency planning. However, the small size of the upstream sector in New Zealand means that any efficiency cost is likely to be small, since there are informal channels for sharing this information.
- **Transmission.** Firstgas (the transmission pipeline owner and system operator) sometimes receives provisional information on planned outages from gas producers; however, the supply of this information is inconsistent. Closer to the time that a production outage is taking place, nominations information may provide some indication of an outage. The lack of consistent information on production facility outages potentially leads to operational efficiency issues for the transmission system operator. Regarding gas storage facility outages, Flexgas is an affiliate of Firstgas, so Firstgas has knowledge of Ahuroa storage facility outages.
- **Downstream gas sector (including major users).** In the consultation rounds, several downstream parties commented that a lack of information regarding production facility outages has adversely affected their operations. For instance, limited knowledge of outage events has affected some parties' ability to make effective business decisions in response to gas supply shocks. The Problem Assessment paper observed that the efficiency implications of limited storage facility outage information are not unlike production outages.
- **Gas wholesale trading market.** Transparent and symmetric availability of information is a cornerstone for the efficient operation of any market. The gas wholesale market is no different. emsTradepoint commented in its submission on the Options paper that limited outage information inhibits "efficient arrangements for the short-term trading of gas".
- **Related markets – electricity.** A common theme among several electricity parties' submissions was that there is a need for information transparency, particularly around gas

supply availability. Several parties commented that information regarding gas sector events is important for the efficient operation of the electricity wholesale market. Thermal electricity generation (mostly fuelled by gas or coal) is important for both baseload and peaking duties and is often the marginal form of generation in the market. The renewables-only generators (Meridian and Mercury) submitted that they had asymmetric information regarding gas production outages, relative to competitors who have thermal generation in their portfolios. The electricity system operator commented that a lack of information on gas supply issues makes it more difficult for it to manage outages on the electricity network and can also lead to potential gaps in security of supply forecasting and information. We note that the Electricity Authority has made amendments to the Electricity Industry Participation Code and its information disclosure guidelines to improve the disclosure of thermal fuel information.

Fairness

A theme across several submissions was that some parties have greater access to gas production facility information than others (i.e. asymmetric information), which has fairness implications.

Reliability

The main impact of limited outage information on this measure is that downstream parties have increased uncertainty regarding the reliability of gas supply availability. This uncertainty affects these companies' business decisions and leads to inefficient outcomes.

Environment

There was limited comment in the submissions processes on the impact that limited information transparency regarding gas facility outages may have on environmental outcomes.

Safety

There were no impacts on safety outcomes from a lack of information transparency regarding gas production and storage facility outages identified in submissions.

Summary

This problem assessment has identified several issues associated with limited transparency and asymmetry of gas production and storage facility outage information. In particular, we have found there are implications for efficiency and fairness in both the gas sector and related energy markets arising from limited publicly available information regarding gas production and storage outages. These issues appear in several parts of the gas sector value chain and most notably at the consumer end of the market. We also note that limited and asymmetric information is inconsistent with the Government's policy outcome for good, publicly available information on the present state of the gas sector (GPS Item 13 point 4).

In the submissions on the Problem Assessment paper, there were no parties that disagreed that these outages (planned and unplanned) should be disclosed in some form. This is consistent with the views expressed in the Options paper submission process.

3.3 Regulatory objective

Gas Industry Co's approach to developing governance arrangements under the Gas Act requires the development of a regulatory objective. From the Statement of Proposal papers (including feedback that we have received), we consider that this objective should be:

That arrangements are in place that ensure the effective and timely availability of material gas production and storage outage information for all gas and related market participants.

We consider that this regulatory objective addresses the problems associated with limited transparency and availability of gas production and storage facility outage information that were identified in the problem assessment.

3.4 Options for achieving the objective

Section 43N of the Gas Act requires Gas Industry Co to identify and assess reasonably practicable options for addressing the regulatory objective.

The following options for achieving this objective were identified in the Final SOP:

1. Disclosure of gas production and storage facility outage information under the *Upstream Gas Outage Information Disclosure Code 2020* (the industry's Upstream Disclosure Code).
2. Rules or regulations under the Gas Act for the disclosure of gas production and storage facility outage information.

The first option is to use the industry-led framework as the permanent solution for the disclosure of gas production and storage facility outage information. The second option uses the basic structure of the Upstream Disclosure Code in a regulated set of arrangements. In this option, some elements of the Code are augmented or replaced to address various limitations and/or make the elements workable as a regulated set of arrangements.

In the Draft SOP consultation, most parties that commented agreed that these are two possible options for meeting the regulatory objective. Some of the Upstream Parties considered that a third option of an amended Upstream Disclosure Code should also be considered. This option would be developed in the Code's review process, which was scheduled to commence in June 2021 (we note that this review has not been conducted). These parties commented that the issues identified with the current version of the Upstream Disclosure Code would be addressed in the amended Code. We concluded in the Final SOP that a modified Upstream Disclosure Code would not be substantially different to the Code currently in place (particularly on the key issues of compliance and enforcement). Accordingly, a potential amended Code is not included as a separate option. There was little feedback on this conclusion in submissions on the Final SOP apart from Energy Resources Aotearoa, who restated its preference for an amended Code.

An effective information disclosure framework should address the information issues identified in Section [3.2](#), while minimising disclosure costs across all parties. These options are analysed in the following section, with a cost benefit analysis of these options included in Section [3.6](#).

3.5 Analysis of options

Introduction

These options were assessed in the SOP papers following the process prescribed in the Gas Act for evaluating options when recommending regulations or rules to the Minister. This process is set out in Section 43N which requires Gas Industry Co to:

1. Assess the costs and benefits of each of the options;

2. Assess the extent to which the objective would be promoted or achieved by each option;
3. Ensure that the problem(s) are unlikely to be satisfactorily addressed by any reasonably practicable means other than the making of the regulation or rule (including, for example, education, information, or voluntary compliance).

Upstream Gas Outage Information Disclosure Code 2020

Review

Our review of the Upstream Disclosure Code in our SOP papers found that the Code has resulted in a major improvement in both the quantity and quality of information that Upstream Parties have shared publicly regarding both planned and unplanned facility outages. This Code has gone a considerable way in addressing the problems identified in the problem assessment (Section [3.2](#)).

Despite the step change improvement in outage reporting that has occurred, Gas Industry Co considers that there are issues with the Code that limit its suitability as an enduring framework.

We commented in the Draft SOP that compliance with the Code may be difficult for external parties to monitor because disclosures involve information that is private to the Upstream Parties. In the consultation process, some of these parties submitted that the Code could be amended to address this issue. We agree that information available for monitoring could potentially be improved through Code amendments, however the ability of third parties to verify the accuracy of information is likely to remain limited.

Of greater concern, the compliance and enforcement mechanisms in the Code are very limited. The structure of the Code as a multilateral agreement between Upstream Parties means that the Code can only be enforceable between those parties. The parties most likely to be affected by non-compliance sit outside the Code and have limited ability to effect change in the Code or enforce the reporting obligations in the Code. In contrast, the Upstream Parties are not directly impacted by non-compliance with the Code and have few incentives to enforce the Code. Furthermore, enforcement is confined largely to the possibility that a party might be removed from the Code for repeated infringements. However, the potential removal of a party is at odds with the aim of the Upstream Disclosure Code, which is to encourage the greater disclosure of information.

In addition, the broad liability exclusion in the Code reduces the incentives for parties to the Code complying with its requirements.

The lack of a credible compliance and enforcement mechanism means that costs of non-compliance with the Upstream Disclosure Code may not outweigh any benefits of non-disclosure.

We commented in the Final SOP that amendments to the Code would not ameliorate the incentive issues identified above, for the following reasons:

- As we noted, the current signatories to the Code are not directly impacted by non-compliance with the Code and have few incentives to enforce the Code. Signing every potentially impacted party up to the Code to address this issue unlikely to be achievable.
- It is unlikely that Upstream Parties could develop an appropriate mechanism for compensating parties impacted by non-compliance and incentivising compliance. The impact and severity of non-compliance is likely to vary depending on the circumstances of a particular non-disclosure event. Upstream Parties, and those who are impacted by non-

compliance, require a fair and impartial process for determining the impact of non-compliance. This is likely to require an independent adjudicator who can make orders that are binding on both Code signatories and impacted parties. This is unlikely to be achieved through an amended Code that is not inclusive of all impacted parties.

Stakeholder feedback

In submissions on the Draft SOP, several of the Upstream Parties submitted that the reputational risk from not complying is significant and provides strong incentives to meet the requirements of the Upstream Disclosure Code. In response, Gas Industry Co commented that we do not consider reputation to be a sufficient incentive for ensuring compliance with the Code. While reputation risk may provide some incentives for an Upstream Party to comply with the Code, it does not provide anyone else with the ability to hold the Upstream Party accountable for compliance with the Code's framework. There is a possibility that at some future date, a party may decide that the benefits of non-disclosure (which could potentially be significant in a gas market that is under transition, with increased levels of uncertainty) may outweigh the associated costs, including reputational implications.

Several of these parties also submitted that the Code is working well and that so far there have been no compliance problems. In the Final SOP, Gas Industry Co commented that this observation is incorrect. As an example, we noted that a party had recently made a planned production facility outage that did not comply with the Code disclosure rules. Gas Industry Co has also contacted at least one party to correct issues with the content of a disclosure. We observed that there are also limits to our ability to verify Upstream Parties' claims there have been no compliance issues given that some of the triggers for disclosure in the Code rely on private information. The implication of this is that there may have been other departures from the Code that Gas Industry Co is unaware of.

Todd Energy, OMV and Energy Resources Aotearoa repeated their preference for the Upstream Disclosure Code in their submissions on the Final SOP. These submissions did not include any substantive new points to the matters these parties had previously made. Todd restated the position it made in previous consultation rounds that the industry Code is operating effectively and achieving the regulatory objective. It remained of the view that it is inappropriate for Gas Industry Co to regulate when there has been no signal that this voluntary Code has failed. OMV also preferred an industry-based approach. It noted that if regulation is to be pursued, it supported the great extent to which the proposed regulation builds on the framework established in the existing industry Code. ERA's submission made similar points to OMV.

Over the various consultation phases, six of the nineteen parties who provided feedback on the two options favoured the Upstream Disclosure Code option. With the exception of Contact Energy, all of these parties are either signatories or were involved in the development of the Code.

Many of the other submitters on the SOP papers agreed with our assessment that the Upstream Disclosure Code does not have an effective compliance and enforcement framework. For instance, in its submission on the Draft SOP, Genesis noted that the lack of material consequences in the Code for non-disclosure creates a heightened risk of non-compliance. Vector, Haast Energy, emsTradepoint and Trustpower made similar points in their submissions on the Final SOP.

Rules under the Gas Act

Description

The regulatory option uses the basic structure in the Upstream Disclosure Code, which we consider captures matters that we would reasonably expect to be included in an information disclosure framework. The proposed regulatory option adopts aspects of the Upstream Disclosure Code where we consider those aspects to have merit. Other aspects of the Upstream Disclosure Code are augmented or replaced to address various limitations and/or make the elements workable as a regulated set of arrangements.

The biggest difference between this option and the Upstream Disclosure Code is the monitoring, compliance and enforcement framework. In this option, gas production facility owners are required to provide Gas Industry Co with information on planned and actual production volumes. Likewise, storage facility owners are required to provide information on storage withdrawal volumes. This information will be used by Gas Industry Co to monitor parties' compliance with the disclosure rules.

Gas Industry Co's design of the option has the disclosure of information being subject to the compliance framework in the Gas Governance (Compliance) Regulations 2008. The advantage of this approach is that the compliance and enforcement framework would be consistent with the approach used for other gas rules and regulations. Breaches of the information disclosure regulations would be processed in the same manner as breaches of the Gas (Switching Arrangements) Rules 2008, the Gas (Downstream Reconciliation) Rules 2008 and Gas (Critical Contingency Management) Regulations 2008.

Gas Industry Co considers that this option addresses the key deficiency of the Upstream Disclosure Code, which is an inadequate monitoring, compliance and enforcement regime. We consider that this regulatory option will ensure that information disclosure arrangements are more efficient and durable. A stable information disclosure framework should provide certainty and support energy sector participants' decision-making, which is particularly important in a sector that is in transition.

We consider that this option is the most practicable approach for implementing enduring information disclosure arrangements for the disclosure of gas production and storage facility outage information.

Stakeholder feedback

Thirteen of the nineteen parties who submitted over the various phases of consultation favoured a regulated set of arrangements. As we discussed in the previous section, many of these stakeholders considered that a key benefit of this option over the Upstream Disclosure Code is its compliance and enforcement mechanism. For instance, emsTradePoint commented in its submission on the Draft SOP that "...the voluntary nature of the Upstream Disclosure Code leads to limitations, including lacking independence and penalties for non-compliance. We perceive this creates a risk that the quality of disclosures may not be enduring."

The key design elements for this option are outlined in Section [4](#).

In its submission on the Final SOP, Todd commented that parties' disclosure of outage information should be based on firm plans for outage remediation or for planned outage events rather options that are still being assessed and developed.

We note that there is a similar focus on firm information in the electricity sector's wholesale market information disclosure guidelines¹⁰:

A participant is not required to make disclosure information publicly available if the disclosure information concerns an incomplete proposal or negotiation. (7.25)

A participant does not have to disclose matters of supposition or disclosure information which is insufficiently definite to warrant being made readily available to the public. (7.26)

For example, a participant does not have to publicly disclose that there is a possibility of an outage of one of its generators. However, once a decision has been made that a planned outage is required for maintenance, then it may be difficult for the participant to argue that this exclusion applies. (7.27)

The Upstream Disclosure Code has a similar clause where a planned outage that is not certain does not have to be disclosed (cl. 16.3). In addition, in 13.1 (b) of the Code, knowledge of a planned outage is first acquired once the event has been confirmed to be planned for the relevant facility.

Gas Industry Co considers that the design of the regulatory option should be focussed on the disclosure of firm information. We have added a paragraph under the "Information that should be disclosed" heading in Section 4.2 reflecting this point.

3.6 Cost Benefit Analysis

Section 43N requires Gas Industry Co to assess the costs and benefits of each of the options when recommending regulations or rules to the Minister.

To fulfil this requirement, Gas Industry Co engaged Sapere Research Group ("Sapere") to conduct a cost benefit analysis of the options. Sapere's two papers on the subject are attached to the Final SOP.

Sapere's analytical approach takes the decision to disclose upstream outage information as given. This assumption reflects the fact that Upstream Parties have already made this decision with their implementation of the Upstream Disclosure Code. Given that assumption, Sapere's focus was on the efficiency of the means of disclosing that information. This involved determining whether a voluntary scheme (i.e. the Upstream Disclosure Code) or a regulated set of arrangements is likely to result in the highest net economic benefit (lowest net cost).

Sapere considered this issue by assessing the extent to which the options establish rights over the following elements of an information disclosure regime:

- The type and specification of information that should be disclosed.
- The monitoring of parties' compliance with the disclosure rules that have been specified.
- The enforcement, or assuring that parties have complied, with the rules that have been specified.

Sapere assessed these elements by determining the various parties' (in this context, the parties are the Upstream Parties or Gas Industry Co) comparative advantage over each of these elements. In this context, comparative advantage is determined by:

¹⁰ Electricity Authority (2021) "Guidelines for participants on wholesale market information disclosure obligations", 23 March 2021, accessed at <https://www.ea.govt.nz/assets/dms-assets/27/Guidelines-for-participants-on-wholesale-market-information-disclosure-obligations-clean.pdf>

- The information that is available to the party exercising the right.
- The incentives faced by the party exercising the right.
- The respective capabilities and expertise of the party in exercising the right.

Sapere's assessment is summarised in the table below.

		Information available to the party exercising the right	Incentives faced by the party exercising the right	Respective capabilities and expertise of the party in exercising the right
Specification of information to be disclosed	Upstream Disclosure Code	The parties to the Code have good knowledge of what information is available and what would benefit them. They may be less knowledgeable of what information would benefit downstream entities	Strong incentive to specify information of benefit to Code parties relative to cost of supplying that information. Weak incentives to specify information that benefits wider market	Only the parties know what the planned and unplanned outages are
	Regulated approach	Reliant on information from the parties. Possibly have more insight into how the information is used	Required to weigh the costs and benefits of information disclosure on all affected parties. Incentive to over specify information as do not bear the cost.	Reliant on information from the parties but may be more knowledgeable of what information would benefit downstream parties
Monitoring whether information is disclosed	Upstream Disclosure Code	The individual parties have the ability to self-monitor but not so clear they can monitor the other parties.	Driven by risk of reputational damage to ensure compliance with the scheme is monitored.	Only able to self-monitor to see if information is available when it is most needed.
	Regulated approach	Only able to monitor after the fact which may be too late to ensure benefits are achieved.	Represent all affected parties and are motivated to carry out monitoring	Only able to enforce release of information after the fact.
Enforcing compliance with disclosure requirements	Upstream Disclosure Code	The individual parties have the ability to test self compliance but not the other parties.	Individual parties driven by risk of reputational damage to ensure all of the parties are compliant.	It is not clear the parties have the ability to enforce the rule on all parties.
	Regulated approach	The regulator has the capability to enforce compliance after the fact.	Represent the interests of all parties and not just the parties to the multilateral contract	This is one of the GIC's roles and they have the capability to enforce compliance.

Sapere concluded that a regulated set of arrangements is likely to be closer to the goal of information being disclosed where the economic benefits of disclosure outweigh the costs. Because these arrangements would be closer to this objective, they would provide more of the benefits of information disclosure than the industry-led Upstream Disclosure Code.

3.7 Conclusion

Based on the analysis presented above, Gas Industry Co considers that:

1. The Upstream Gas Outage Information Disclosure Code 2020 does not satisfactorily achieve the regulatory objective. Regarding the Government's objectives for the gas sector (summarised in Appendix B), we consider:
 - (a) An improvement in efficiency outcomes requires information to be available to all relevant parties, all of the time and on a consistent basis. The lack of a meaningful compliance and enforcement framework in the Code means that this outcome is not assured under this framework.
 - (b) The fact that there is a risk that information transparency and symmetry may not be consistently achieved implies that fairness outcomes may not be delivered over time.
2. The regulatory objective will be satisfactorily achieved by implementing information disclosure arrangements for gas production and storage facility outage information within a framework of rules under the Gas Act. This option addresses the compliance and enforcement issues identified with the Upstream Disclosure Code and should ensure that gas production and storage facility outage information is available to all interested parties on a timely basis.



4. Statement of Proposal

4.1 Introduction

As noted above, we consider that the regulatory objective is likely to be satisfactorily achieved through rules under the Gas Act for gas production and storage facility outage information disclosure.

The Final SOP paper sets out the main elements of this regulatory option design. This paper incorporated feedback we received from stakeholders on the design of this option in the Draft SOP. The table below provides further detail on the regulatory option design included the Final SOP. The table also includes some amendments following feedback we received on the Final SOP (see Section [3.5](#)).

4.2 Regulatory option design

Table 1 Statement of Proposal: regulatory option design

<p>Coverage of arrangements</p> <p>The arrangements apply to the following facilities:</p> <ul style="list-style-type: none">• Gas production facilities. Production facilities that have produced a minimum of 20 TJ/day.• Gas storage facilities. Storage facilities that have a maximum withdrawal rate of at least 20 TJ/day. <p>A gas production facility is defined as a facility at which gas is produced or processed for domestic export or sale and includes any associated gas production or other wells.</p> <p>A gas storage facility storage is a facility where gas is injected and later made available for withdrawal.</p> <p>Disclosures under these arrangements may be made on behalf of a production or storage facility owner by the operator (or another nominated person) of the relevant facility.</p>
<p>Outage definitions</p> <p>Information disclosed under the arrangements includes reductions in gas production or storage withdrawal associated with a facility outage.</p> <p>The outage definitions cover both planned and unplanned gas production and storage facility outages:</p> <p><i>Planned gas production facility outage.</i></p> <ul style="list-style-type: none">• For the following 12-month rolling period, a reduction in the production of gas from a production or processing facility caused by an outage, in a quantity greater than or equal to the Threshold Quantity (for a gas day).• The planned reduction is measured against the producer's forecast gas production for the 14 gas days preceding the forecast start of the outage. <p><i>Unplanned gas production facility outage.</i></p>

- A reduction in the production of gas caused by an outage in a quantity greater than or equal to the Threshold Quantity (for a gas day).
- The unplanned reduction is measured against a forecast of week ahead total gas production.

Planned gas storage facility outage.

- For the following 12-month period, a reduction in the withdrawal capacity from a gas storage facility, caused by an outage, in a quantity greater than or equal to the Threshold Quantity (for a gas day).
- The reduction is measured against the total withdrawal capacity of that facility.

Unplanned gas storage facility outage.

- A reduction in the withdrawal capacity from a gas storage facility, caused by an outage, in a quantity greater than or equal to the Threshold Quantity (for a gas day).
- The reduction is measured against the total withdrawal capacity of that facility.

A gas day is a period of 24 consecutive hours, beginning at 0000 hours (New Zealand standard time).

Threshold Quantity

The Threshold Quantity is 20 TJ/day for each outage definition.

Definition of gas production from a gas production or processing facility

For these disclosure arrangements, the definition of gas production from a gas production or processing facility includes all gas exported from a gas processing facility.

Timing of disclosures

Planned outages

- A gas producer or storage owner must make rolling 12-month forecast planned outage disclosures within 10 working days of 10 January, 1 April, 1 July and 1 October in each year.
- If the party becomes aware of any material change in disclosed information in events that are forecast to occur in the first six months, the change must be disclosed as soon as reasonably practical. The party must identify that the updated information supersedes previously reported information.
- If the party becomes aware of any material change in information for outages in the latter six months, the update must be included as part of subsequent quarterly notifications. The party must identify that the updated information supersedes previously reported information.
- Once a planned outage is underway, a gas producer or storage owner must disclose as soon as reasonably practicable a description of any material change to the information previously disclosed. The party must identify that the updated information supersedes previously reported information. This information must include confirmation of the plan for returning to normal operations or other disclosure as to the final status of the facility following completion of work in response to the outage.

Unplanned outages

- *Initial disclosure.* A gas producer or storage owner is required to disclose an initial notification identifying that there is an unplanned outage at a facility as soon as

reasonably practicable after it has occurred. The timing of this notification must not be greater than 12 hours after the outage has occurred.

- *Disclosures over the first two weeks of the outage.* If the outage extends beyond the day it occurred, the party is required to disclose daily information for the following two weeks.
- *Disclosures after the first two weeks of the outage.* If the outage extends beyond these two weeks, weekly updates must be provided after this period.
- *Cessation disclosure.* The production or storage facility owner must notify that the facility has resumed normal operation as soon as reasonably practicable after this event has occurred.

Information to be disclosed

The information that is required to be disclosed under these arrangements is listed below, with the information varying by the timing of the disclosure and whether the event is a planned or unplanned outage.

Planned outage – first six months

- Date and time of disclosure
- Name of operator and name of facility owner(s)
- Name of production/storage facility(ies) affected
- Name of outage
- Brief description of nature/purpose of outage
- Estimated quantity per gas day of likely reduction in gas production (for a production facility) or withdrawal capacity (for a storage facility)
- Expected duration of outage
- Proposed start and completion date
- When an outage is already underway, confirmation of plan for return to normal operations/revised operations (with brief detail)

Planned outage – second six months

- Date and time of disclosure
- Name of operator and name of facility owner(s)
- Name of production/storage facility(ies) affected
- Name of outage
- Brief description of nature/purpose of outage
- The month(s) that the outage is expected to occur

Planned outage – cessation disclosure

- Date and time of disclosure
- Name of operator and name of facility owner(s)
- Name of production/storage facility(ies) affected
- Name of outage

- Confirmation of resolution of outage and return to normal operations/revised operations (with completion date and brief detail)

Unplanned outage – initial notification

- Date and time of disclosure
- Name of operator and name of facility owner(s)
- Name of production/storage facility(ies) affected
- Name of outage
- Date of the outage
- Whether the threshold for disclosure is met or likely to be met

Unplanned outage – daily disclosures for the first two weeks of the outage

- Date and time of disclosure
- Name of operator and name of facility owner(s)
- Name of production/storage facility(ies) affected
- Name of outage
- Description of the nature and cause of outage (if known)
- Estimated duration of the outage (if known)
- Estimated end date for the outage (if known)
- Description of progress made in confirming plan for resolution of the outage
- Estimated quantity per gas day of the reduction in gas production (for a production facility) or withdrawal capacity (for a storage facility)

Unplanned outage – weekly disclosures after the first two weeks of the outage.

- Date and time of disclosure
- Name of operator and name of facility owner(s)
- Name of production/storage facility(ies) affected
- Name of outage
- Description of the nature and cause of outage (if known)
- Estimated duration of the outage (if known)
- Estimated end date for the outage (if known)
- Description of progress made in confirming plan for resolution of the outage
- Updated estimate of quantity per gas day of the reduction in gas production (for a production facility) or withdrawal capacity (for a storage facility)

Unplanned outage – cessation disclosure

- Date and time of disclosure
- Name of operator and name of facility owner(s)
- Name of production/storage facility(ies) affected
- Name of outage

- Confirmation of resolution of outage and return to normal operations/revised operations (with completion date and brief detail)

A gas producer or storage owner may at any time provide other disclosures that it considers are necessary or desirable to ensure the disclosed information for an outage event is as up to date as is reasonably practicable for it to disclose.

A gas producer or storage facility owner is not required to make disclosure information publicly available if the information is insufficiently definite to warrant being made readily available to the public.

Outage information (both planned and unplanned) that is provided to a customer (irrespective of whether this is required under a contractual commitment or a voluntary disclosure) must be disclosed publicly at the same time. This information must include the disclosure information listed above.

Additional disclosure

Nothing prevents a gas producer or storage owner from disclosing more information than the set of information defined in these arrangements.

Confidential Information

The disclosure requirements must be complied with irrespective of whether gas producers or gas storage owners are subject to confidentiality arrangements in their agreements.

Information required for monitoring

A gas production facility owner must provide Gas Industry Co with:

- An estimate of daily production for each field for the upcoming 12 months from 1 April in each year. The information must be provided to Gas Industry Co within 10 working days of this date.
- Actual daily total production for each field for the year immediately preceding 1 April in each year. The information must be provided to Gas Industry Co within 10 working days of this date.

With 10 working days of the commencement of the rules, each gas production facility owner must provide Gas Industry Co with estimated daily production for the period from the commencement of the rules to the following 31 March.

For these purposes, gas production includes all gas exported from a gas processing facility.

A gas storage facility owner must provide Gas Industry Co with:

- Expected changes in a facility's daily aggregate withdrawal capacity for the following year from 1 April in each year. The information must be provided to Gas Industry Co within 10 working days of this date.
- Daily actual aggregate withdrawal information for the year immediately preceding 1 April in each year. The information must be provided to Gas Industry Co within 10 working days of this date.
- Daily aggregate gas withdrawal nominations information for the year immediately preceding 1 April in each year. The information must be provided to Gas Industry Co within 10 working days of this date.

With 10 working days of the commencement of the rules, each gas storage facility owner must provide Gas Industry Co with expected changes in a facility's daily withdrawal capacity for the period from the commencement of the rules to the following 31 March.

Nothing prevents a gas producer or storage facility owner from disclosing information on a more regular basis than the minimum requirements outlined above.

Confirmation of information quality

Gas production facility owners and gas storage facility owners must provide information under the rules to the standard of a reasonable and prudent operator. For these arrangements, a Reasonable and Prudent Operator means, in relation to the performance of obligations by a gas producer or gas storage owner, the application of that degree of diligence, prudence and foresight exercised by experienced gas producers or storage owners under the same or similar circumstances and conditions.

An annual certification by a senior manager of the gas producer or gas storage owner that it has complied with its obligations under the rules over the previous year is required.

Compliance and enforcement arrangements

The rules for the disclosure of information regarding gas production and gas storage facility outages are subject to the compliance framework in the Gas Governance (Compliance) Regulations 2008.

Gas Industry Co is making a separate recommendation to the Minister of Energy and Resources for amendments to the Compliance Regulations.

Information Platform

Parties disclosing information under these arrangements must publish this information using an information platform developed and hosted by Gas Industry Co.



5. Recommendation

Gas Industry Co recommends to the Minister of Energy and Resources, under sections 43F(2)(e), 43F(2)(f) and 43Q of the Gas Act 1992, the making of new gas governance rules for the disclosure of gas production and storage facility outage information, as set out in Section 4 of this paper.



Appendix A – List of consulted stakeholders

Electricity Authority

Major Energy Users Group (MEUG)

Firstgas Limited, Flexgas (owner and operator of the Ahuroa Gas Storage Facility) is an affiliate of Firstgas

Energy Resources Aotearoa (ERA), formerly known as Petroleum Exploration and Production Association of New Zealand (PEPANZ)

Beach Energy Limited

Transpower Limited

Mercury Limited

Meridian Energy Limited

Energy Link Ltd

Greymouth Gas New Zealand Limited

OMV New Zealand Limited

Todd Energy Limited and Nova Energy Limited

Trustpower Limited

Genesis Energy Limited

Contact Energy Limited

Vector Limited

Major Gas Users Group (MGUG)

New Zealand Steel Limited

Fonterra Co-operative Group Limited

Methanex New Zealand Limited

emsTradepoint Limited

Haast Energy Trading Limited

Flick Energy Ltd

Transpower



Appendix B – Assessment framework

We have assessed the options for addressing the regulatory objective against the Government’s policy objectives for the sector to identify problems relating to limited gas production and storage facility outage information. These objectives are identified in the Gas Act 1992 (Gas Act) and the Government Policy Statement on Gas Governance (2008) (GPS).

Relevant Gas Act and GPS objectives and outcomes are listed in Table . GPS outcomes that are unlikely to be relevant to information disclosure outcomes are not included in the table.

Table 2 Assessment criteria

Criterion	Objective/Outcome	Text
1	Gas Act s43ZN(a)	the principal objective is to ensure that gas is delivered to existing and new customers in a safe, efficient, and reliable manner
2	Gas Act s43ZN(b)(i)	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
3	Gas Act s43ZN(b)(ii)	barriers to competition in the gas industry are minimised
4	Gas Act s43ZN(b)(iii)	incentives for investment in gas processing facilities, transmission, and distribution are maintained or enhanced
5	Gas Act s43ZN(b)(iv)	delivered gas costs and prices are subject to sustained downward pressure
6	Gas Act 43ZN(b)(v)	risks relating to security of supply, including transport arrangements, are properly and efficiently managed by all parties
7	Gas Act s43ZN(b)(vi)	consistency with the Government's gas safety regime is maintained
8	GPS Item 12(a)	energy and other resources used to deliver gas to consumers are used efficiently
9	GPS Item 12(b)	competition is facilitated in upstream and downstream gas markets by minimising barriers to access to essential infrastructure to the long-term benefit of end-users
10	GPS Item 12(c)	the full costs of producing and transporting gas are signalled to consumers
11	GPS Item 12(d)	the quality of gas services where those services include a trade-off between quality and price, as far as possible, reflect customers' preferences
12	GPS Item 12(e)	the gas sector contributes to achieving the Government's climate change objectives as set out in the New Zealand Energy Strategy, or any other document the Minister of Energy may specify from time to time, by minimising gas losses and promoting demand-side management and energy efficiency
13	GPS Item 9	it is also the Government's objective that Gas Industry Co takes account of fairness and environmental sustainability in all its recommendations. To this end, the Government's objective for the entire gas industry is as follows: To

		ensure that gas is delivered to existing and new customers in a safe, efficient, fair, reliable and environmentally sustainable manner
14	GPS Item 13 point 1	pursue: An efficient market structure for the provision of gas metering, pipeline and energy services
15	GPS Item 13 point 2	pursue: Efficient arrangements for the short-term trading of gas
16	GPS Item 13 point 3	pursue: gas governance arrangements are supported by appropriate compliance and dispute resolution processes.
17	GPS Item 13 point 4	good information is publicly available on the performance and present state of the gas sector

These criteria can be mapped against the five outcome categories listed in Table 3. These outcome categories are identified in the GPS, listed as criterion 13 in the previous table.

Table 3 Assessment categories

	Efficiency	Fairness	Reliability	Environment	Safety
Gas Act	Criterion 1 Criterion 2 Criterion 3 Criterion 4 Criterion 5		Criterion 1 Criterion 2 Criterion 6		Criterion 1 Criterion 7
GPS Objective	Criterion 8 Criterion 9 Criterion 10 Criterion 11	Criterion 13		Criterion 8 Criterion 12 Criterion 13	
GPS Outcome	Criterion 14 Criterion 15 Criterion 16 Criterion 17				

About Gas Industry Co

Gas Industry Co is the gas industry body and co-regulator under the Gas Act.

Its role is to:

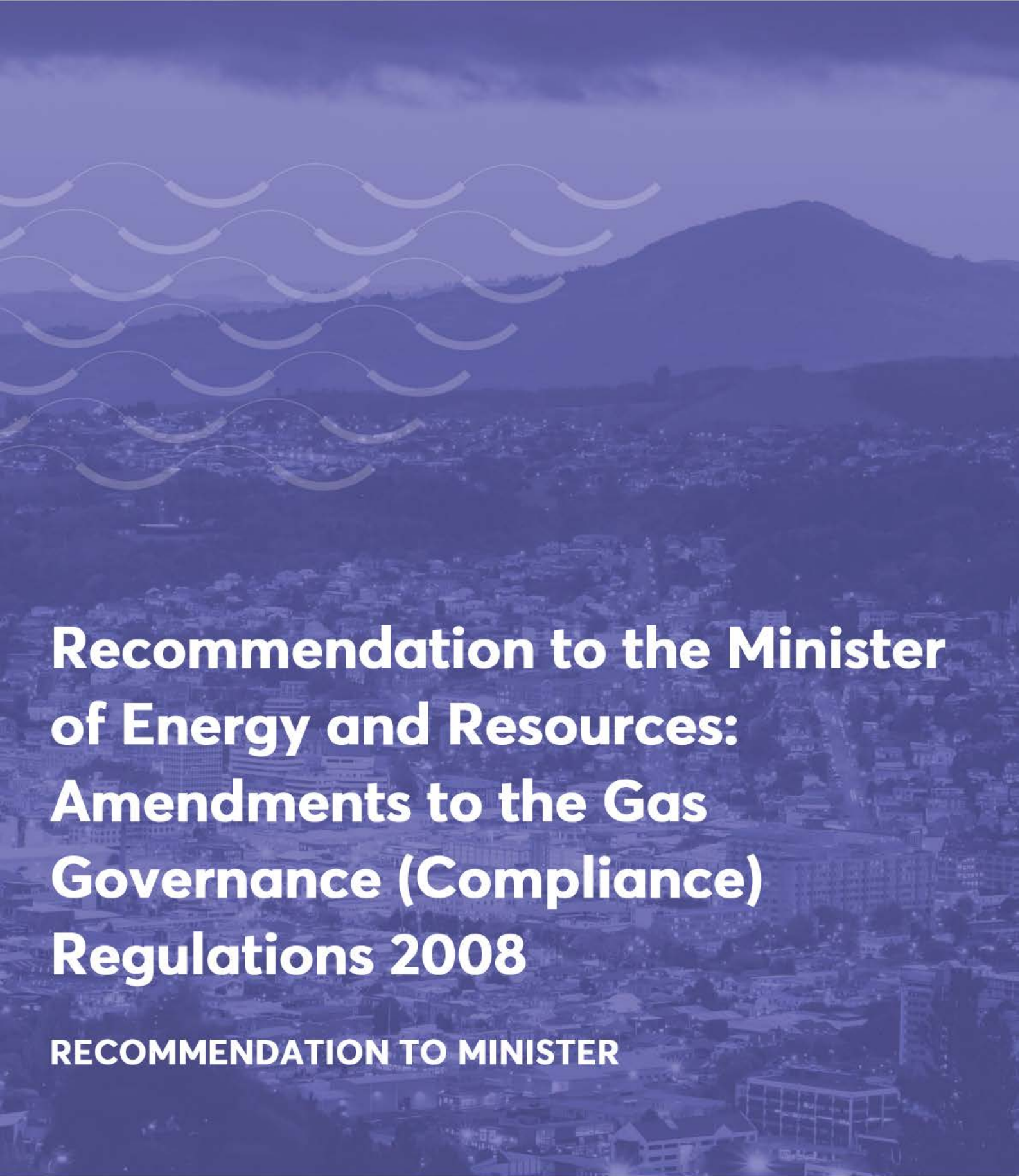
- Develop arrangements, including regulations where appropriate, which improve:
 - the operation of gas markets;
 - access to infrastructure; and
 - consumer outcomes;
- Develop these arrangements with the principal objective to ensure that gas is delivered to existing and new customers in a safe, efficient, reliable, fair, and environmentally sustainable manner; and
- Oversee compliance with, and review such arrangements.

Gas Industry Co is required to have regard to the Government's policy objectives for the gas sector, and to report on the achievement of those objectives and on the state of the New Zealand gas industry.

ENQUIRIES:

info@gasindustry.co.nz

**Annex Two: GIC’s recommendation for amendments to the Gas
Governance (Compliance) Regulations 2008**



Recommendation to the Minister of Energy and Resources: Amendments to the Gas Governance (Compliance) Regulations 2008

RECOMMENDATION TO MINISTER

18 February 2022



Gas Industry Co.

Executive Summary



Gas Industry Co's Recommendation to the Minister of Energy and Resources: Information Disclosure Arrangements for Gas Production and Storage Facility Outages is recommending rules providing for the disclosure of gas production and storage facility outage information (the proposed Rules). The proposed Rules will provide for the disclosure of planned and unplanned outages of gas production and gas storage facilities over a specified threshold and monitoring of compliance with these disclosure obligations.

This recommendation relates to the Gas Governance (Compliance) Regulations 2008 (Compliance Regulations), an existing gas governance arrangement.

Gas Industry Co is recommending that the Minister of Energy and Resources recommends that the Governor General, by Order in Council, make amendments to the Compliance Regulations, so that the compliance framework in the Compliance Regulations applies to the proposed Rules. The amendments will achieve the regulatory objective of establishing an efficient and effective compliance and enforcement regime to ensure the integrity of the information disclosure framework.

The proposed amendments in this recommendation:

1. amend the Compliance Regulations to include references to the proposed Rules;
2. provide for breaches of the proposed Rules to be processed and determined in the same manner as other breaches that fall within the scope of the Compliance Regulations.



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1. Purpose and background

1.1 Purpose

This recommendation accompanies Gas Industry Co's *Recommendation to the Minister of Energy and Resources: Information Disclosure Arrangements for Gas Production and Storage Facility Outages* providing for information disclosure rules for gas production and storage facility outages (the proposed Rules).¹

The purpose of this recommendation is to recommend that the Minister amends the Gas Governance (Compliance) Regulations 2008 to provide for monitoring and enforcement of the proposed Rules.

1.2 Background

Gas Governance (Compliance) Regulations 2008

Following extensive consultation with the industry, on 31 May 2007 Gas Industry Co recommended to the Minister of Energy the making of regulations by Order in Council to establish a compliance and enforcement regime to support the Gas (Switching Arrangements) Rules 2008 and the Gas (Downstream Reconciliation) Rules 2008. The regime comprises:

1. A Market Administrator which has responsibility for receiving notices of reported breaches of gas governance regulations rules, attending to administrative tasks, determining the materiality of breaches, and attempting to resolve any immaterial breach with the agreement of the parties. The Market Administrator role is currently performed by Gas Industry Co.
2. An Investigator who investigates material or unresolved immaterial breaches, endeavours to settle the matter, and refers settlements and unresolved breaches to the Rulings Panel.
3. A one member Rulings Panel which approves or rejects settlements, determines unresolved breaches, and orders remedies.

In 2008, the Gas Governance (Compliance) Regulations (Compliance Regulations) were amended to include breaches of the Gas Governance (Critical Contingency Management) Regulations 2008 within the scope of the Compliance Regulations.

The proposed Rules

Gas production outages related to the Pohokura field in 2018 led to concerns across the gas industry and wider energy sector regarding information transparency and asymmetry in the wholesale gas market. The Minister requested that Gas Industry Co investigate the current information disclosure requirements and consider whether they are adequate. In response to this request, Gas Industry Co established a workstream to progress issues related to information availability in the wholesale gas sector.

¹ The proposed Rules are outlined in Gas Industry Co's *Recommendation to the Minister of Energy and Resources: Information Disclosure Arrangements for Gas Production and Storage Facility Outages* dated 18 February 2022

The initial phase of the workstream focussed on understanding the scope of information issues in the gas sector. This involved:

1. Gas Industry Co meeting with industry stakeholders to understand their perspectives.
2. A workshop for interested parties to share their views with Gas Industry Co and other workshop participants.
3. Development of the *Options for Information Disclosure in the Wholesale Gas Sector*² discussion paper ("Options paper") on information issues in the gas sector for consultation. Gas Industry Co received thirty-three submissions and cross submissions on this paper from a wide range of parties spanning the New Zealand energy sector.
4. Development of the *Information Disclosure: Problem Assessment paper*³ ("Problem Assessment paper") which identified and assessed ten separate information areas or "information elements" where we considered there may be information transparency or asymmetry issues. The information elements were assessed against the Government's policy objectives for the gas sector (as set out in the Gas Act 1992 and the Government Policy Statement on Gas Governance 2008). Amongst other matters, the paper concluded that gas production and storage facility outage information should be disclosed publicly. Gas Industry Co received thirty submissions and cross-submissions on the paper. In these submissions, there were no parties that disagreed that this information should be disclosed in some form. Several parties submitted that this information element was the most important area that needed to be addressed. We concluded that work on gas production and storage facility outage information disclosure should be prioritised, and that it should be advanced to a statement of proposal (SOP).

The SOP assessed options to address the identified gaps in gas production and storage facility outage information disclosure. Given the range of issues associated with the disclosure of this information, Gas Industry Co developed the SOP in two stages. The first stage consisted of a draft SOP (*Draft Statement of Proposal: Gas Production and Storage Facility Outage Information, "Draft SOP"*)⁴ which identified the problem and the associated regulatory objective and assessed options for achieving this objective. This assessment included an evaluation of the Upstream Disclosure Code, the design and assessment of a regulatory option (including a cost benefit analysis of both options) and our recommended option. We received sixteen submissions on the Draft SOP.

The Draft SOP was followed by a final SOP that incorporated stakeholder feedback on the Draft SOP (*Statement of Proposal: Gas Production and Storage Facility Outage Information, "Final SOP"*).⁵ The Final SOP was released for a further round of consultation.

The Final SOP recommended the proposed Rules to:

1. Identify the gas production and storage facilities that are required to disclose outage information.

² Options for Information Disclosure in the Wholesale Gas Sector, <https://www.gasindustry.co.nz/work-programmes/gas-sector-information-disclosure/consultation/document/6480>

³ Information Disclosure: Problem Assessment, <https://www.gasindustry.co.nz/work-programmes/gas-sector-information-disclosure/problem-assessment-october-2019/document/6634>

⁴ Draft Statement of Proposal: Gas Production and Storage Facility Outage Information, available at <https://www.gasindustry.co.nz/work-programmes/gas-sector-information-disclosure/consultation-2/document/7154>

⁵ Statement of Proposal: Gas Production and Storage Facility Outage Information, available at <https://www.gasindustry.co.nz/work-programmes/gas-sector-information-disclosure/consultation-3/document/7299>

2. Define the planned and unplanned gas production and storage facility outages that are covered by the proposed Rules
3. Provide a description of the information that should be disclosed and the quality of that information
4. Specify requirements regarding the timing of disclosures
5. Require disclosing parties to provide information to Gas Industry Co to enable it to monitor compliance with the proposed Rules

The Final SOP also contained a statement of proposal for proposed amendments to the Compliance Regulations. This followed the SOP's conclusion that lack of a meaningful compliance and enforcement framework is a key issue leading to Gas Industry Co's conclusion that the current, industry-led, Upstream Disclosure Code does not satisfactorily achieve the regulatory objective. The purpose of these proposed amendments is to establish an efficient and effective compliance and enforcement regime to ensure the integrity of the information disclosure framework.

We received nine submissions on the Final SOP.

This recommendation paper follows the Final SOP and includes a discussion of stakeholder feedback on the compliance and enforcement framework for the proposed Rules in section [3.6](#).



2. Process to amend regulations

2.1 Power to regulate compliance and enforcement arrangements

Section 43F of the Gas Act 1992 provides the Governor General, on the recommendation of the Minister of Energy and Resources, with the power to make regulations for the following purposes:

Arrangements relating to outages and other security of supply risks

- (e) *providing, in relation to wholesale or any other markets for gas, for arrangements relating to outages and other security of supply risks, including imposing requirements in connection with those matters on any industry participant or consumer (other than a domestic consumer):*

Information disclosure for whole gas industry

- (f) *providing for the provision and disclosure of data and information by any industry participant or consumer (other than a domestic consumer).*

Gas Industry Co's *Recommendation to the Minister of Energy and Resources: Information Disclosure Arrangements for Gas Production and Storage Facility Outages* recommends the making of rules providing for information disclosure for gas production and storage facility outages with reference to the powers in section 43F(2)(e), 43(2)(f) and 43Q of the Gas Act⁶

In addition to the regulation making powers in section 43F, section 43G of the Gas Act provides the Governor General, on the recommendation of the Minister of Energy and Resources, with the power to make regulations for the following purpose:

Enforcement of gas governance regulations

- (k) *providing for compliance with gas governance regulations and rules to be monitored and enforced by the industry body or the Commission or any other person or court, and the powers and procedures of that person or court:*

Gas Industry Co considers that the Minister is empowered to make the proposed amendments to the Compliance Regulations contained in this recommendation under section 43G(2)(k). Gas Industry Co notes that the Compliance Regulations were made in reliance on section 43G, 43S and 43T of the Gas Act. Gas Industry Co proposes that the existing Compliance Regulations that were made under section 43G and the supplementary empowering provisions in sections 43S and 43T would apply to the proposed Rules.

2.2 Requirements when recommending regulations

Section 43L(1) of the Act requires the body recommending gas governance regulations to the Minister to:

1. undertake an assessment under section 43N of the Act; and
2. consult with persons that the recommending body thinks are representative of the interests of persons likely to be substantially affected by the proposed regulations; and

⁶ Section 43Q of the Gas Act 1992 provides that the Minister may make a rule for any of the purposes for which a gas governance regulation may be made.

3. give those persons the opportunity to make submissions;
4. consider those submissions.

A summary of the consultation undertaken by Gas Industry Co is set out in sections 1.2 and 3.6 of this recommendation.

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

1. seek to identify all reasonably practicable options for achieving the objective of the regulation;
2. assess those options by considering—
 - (a) the benefits and costs of each option
 - (b) the extent to which the objective would be promoted or achieved by each option
 - (c) any other matters that the industry body considers relevant;
3. ensure that the objective of the regulation is unlikely to be satisfactorily achieved by any reasonably practicable means other than the making of the regulation (for example, by education, information, or voluntary compliance);
4. prepare a statement of the proposal for the purpose of consultation under section 43L(1).

Section 43N(2) requires that the statement of proposal referred to in section 43N(1)(d) must contain:

1. a detailed statement of the proposal;
2. a statement of the reasons for the proposal;
3. an assessment of the reasonably practicable options, including the proposal;
4. other information that the industry body or the Commission considers relevant.

Gas Industry Co considers that it has complied with the requirements of sections 43L and 43N of the Act.

2.3 Rules or regulations

Section 43Q of the Act empowers the Minister to make a rule for all or any of the purposes for which a gas governance regulation may be made. In deciding whether to make a rule rather than a regulation, the Minister must have regard to:

1. the importance of the rule, including whether the rule has a material effect on the rights and interests of individuals;
2. the subject matter of the rule, including whether the rule contains detailed or technical matters rather than matters of general principle;
3. the application of the rule, including whether the rule applies principally to a particular group (eg, industry participants) rather than the general public;
4. the expertise and rule-making procedures of the recommending body.

Gas Industry Co considers that the proposed amendments should be made by gas governance regulations for the following reasons:

1. The proposal is an amendment to existing gas governance regulations

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2. The amendments have an impact on the rights of individuals, address matters of general principle.



3. Problem Assessment

3.1 Introduction

In this section, the form of a compliance and enforcement regime to support the proposed Rules is discussed. This section summarises the analysis in the Problem Assessment paper and Final SOP.

This assessment incorporates feedback that stakeholders have provided Gas Industry Co at the various stages of this work programme. A list of stakeholders that have been consulted is attached as Appendix A.

3.2 Problem Assessment

Gas Industry Co's *Recommendation to the Minister of Energy and Resources: Information Disclosure Arrangements for Gas Production and Storage Facility Outages* concluded that:

1. There are implications for efficiency and fairness in both the gas sector and related energy markets arising from limited publicly available information regarding gas production and storage outages. Limited and asymmetric information is also inconsistent with the Government's policy outcome for good, publicly available information on the present state of the gas sector (GPS Item 13 point 4).
2. The options for achieving the regulatory objective of effective and timely availability of material gas production and storage outage information for all gas and related market participants consist of disclosure of gas production and storage facility outage information under the *Upstream Gas Outage Information Disclosure Code 2020* (the industry's Upstream Disclosure Code) or rules or regulations under the Gas Act.
3. The Upstream Disclosure Code does not satisfactorily achieve the regulatory objective largely due to the absence of a meaningful compliance and enforcement framework in the Code.
4. The regulatory objective would be satisfactorily achieved by implementing information disclosure arrangements for gas production and storage facility outage information within a framework of regulations or rules under the Gas Act. This option addresses the compliance and enforcement issues identified with the Upstream Disclosure Code and should ensure that gas production and storage facility outage information is available to all interested parties on a timely basis.

The assessment undertaken in the *Recommendation to the Minister of Energy and Resources: Information Disclosure Arrangements for Gas Production and Storage Facility Outages* concluded that a compliance and enforcement regime is necessary to achieve the regulatory objective. Accordingly, the objective of this paper is to provide the Minister with a recommendation on the appropriate form of such compliance and enforcement arrangements. The objective of this paper is consistent with the outcome in the Government Policy Statement on Gas Governance 2008 (GPS) of gas governance arrangements being supported by appropriate compliance processes.

3.3 Regulatory objective

Gas Industry Co's approach to developing governance arrangements under the Gas Act requires the development of a regulatory objective. In the Final SOP, we proposed the following regulatory objective for a compliance and enforcement regime for the proposed Rules:

to establish an efficient and effective compliance and enforcement regime to ensure the integrity of the information disclosure framework

3.4 Options for achieving the objective

Section 43N of the Gas Act requires Gas Industry Co to identify and assess reasonably practicable options for addressing the regulatory objective.

The following options for achieving this objective were identified in the Final SOP:

1. A voluntary multilateral arrangement.
2. A regulated compliance and enforcement arrangement.

A multilateral arrangement would require parties impacted by the information disclosure framework to reach an agreement on an enforcement framework. In the Final SOP, we noted that such arrangement is unlikely to satisfactorily achieve the regulatory objective for the following reasons:

1. The difficulty in reaching consensus on the terms of a multilateral compliance arrangement.
2. Remedies are likely to be limited to a contractual claim, which may effectively limit compliance action being taken (and therefore the incentives for compliance).
3. The diverse nature of parties who would need to be included within the scope of the multilateral arrangement. Given that compliance with disclosure requirements may have an impact beyond the parties making disclosure, parties receiving information would need to be a party to the arrangement.
4. Parties cannot be compelled to join the multilateral arrangement.

The Final SOP noted that there is a wide range of potential options for a regulated compliance arrangement based on the empowering provisions in the Gas Act. The options were explored in detail as part of the development of the Compliance Regulations.⁷ That analysis concluded that the Compliance Regulations should lead to good levels of compliance, provide a high level of transparency around process and minimise transaction costs as far as possible.

The Compliance Regulations are also a fit-for-purpose mechanism for addressing breaches of the proposed Rules for the following reasons:

1. Any participant or other person may raise a breach of the proposed Rules.
2. The Compliance Regulations contain a tiered process for resolving breaches of the proposed Rules based on severity.
3. There is a requirement to cooperate with an investigation for the purpose of monitoring and enforcing the proposed Rules, including a requirement to make information available requested for the purpose of the investigation.

⁷ See Compliance and Enforcement Arrangements in the New Zealand Gas Industry, 12 April 2006 available at <https://www.gasindustry.co.nz/work-programmes/compliance/background/original-development-2006-2008/options-for-compliance-and-enforcement-arrangements-in-the-new-zealand-gas-industry/>

4. The Rulings Panel has the power to make a variety of orders including compliance directions, compensation orders and civil pecuniary penalties.

For that reason, we consider that the amendment to the Compliance Regulations to make the proposed Rules subject to the compliance framework in the Compliance Regulations to be the only reasonably practicable option for achieving the regulatory objective.

3.5 Cost-benefit analysis

Section 43N requires Gas Industry Co to consider the costs and benefits of each of the reasonably practicable options when recommending regulations or rules to the Minister of Energy and Resources.

In the Final SOP, we noted that the benefits of a compliance regime are linked to ensuring that the benefits of the arrangements that it enforces are achieved. The benefits of effective and timely availability of information regarding production and storage outages have been discussed in the *Recommendation to the Minister of Energy and Resources: Information Disclosure Arrangements for Gas Production and Storage Facility Outages*, including the cost-benefit analysis conducted by Sapere Research Group. That analysis concluded that a regulated set of arrangements is likely to be closer to the goal of information being disclosed where the economic benefits of disclosure outweigh the costs.

As the establishment and ongoing costs of administering the compliance regime under the Compliance Regulations have already been incurred, the incremental cost of adding the information disclosure regulations will include any additional workload for the Market Administrator, the Investigator and the Rulings Panel. While forecasting compliance activity is difficult, we do not believe it will be necessary to appoint additional personnel to any of the above functions. We would also expect any additional costs for industry participants to be low given the existence of the Upstream Disclosure Code.

3.6 Consultation and stakeholder feedback

Gas Industry Co consulted on the proposed amendments to the Compliance Regulations in our Draft SOP and Final SOP.

As we would expect, most submissions focussed on whether information disclosure regulations for gas production and storage facility outages were necessary or appropriate given the existence of the Upstream Disclosure Code. These submissions are considered in detail in our *Recommendation to the Minister of Energy and Resources: Information Disclosure Arrangements for Gas Production and Storage Facility Outages*.

In terms of the focus of this recommendation, the form of a compliance and enforcement regime to support the proposed Rules, there were no specific comments or concerns raised made regarding the appropriateness of the Compliance Regulations as the compliance framework that applies to the proposed Rules.



4. Statement of Proposal

4.1 Introduction

As noted above, we consider that the regulatory objective is likely to be satisfactorily achieved through an amendment to the Compliance Regulations to make the proposed Rules subject to the compliance framework in the Compliance Regulations.

In the Final SOP, we noted that the proposed Rules could be made subject to the compliance framework in the Compliance Regulations with little difficulty.

This section summarises aspects of the Compliance Regulations that may need to be amended make the proposed Rules subject to the compliance framework in the Compliance Regulations.

4.2 Summary of amendments to the Compliance Regulations

We believe that making the proposed Rules subject to the compliance framework in the Compliance Regulations can be achieved through a limited number of amendments to the drafting of the Compliance Regulations.

We recommend:

1. Inclusion of the proposed Rules within the scope of the Compliance Regulations through an amendment to regulation 3 of the Compliance Regulations.
2. An amendment to the definition of "rules" in regulation 4 of the Compliance Regulations to include the proposed Rules.

We note that it may also be desirable to include the parties who have obligations under the proposed Rules in the definition of a "participant" in regulation 4 of the Compliance Regulations as that has been the case for other gas governance rules and regulations.

We also recommend making consequential amendments to the Compliance Regulations consistent with the policy of making compliance with the proposed Rules subject to the process in the Compliance Regulations.

Unlike previous gas governance rules and regulations, the proposed Rules do not propose the appointment of new service providers to which additional breach reporting obligations should apply.



5. Recommendation

Gas Industry Co recommends to the Minister of Energy and Resources, under section 43G(2)(k) of the Gas Act 1992, amending the Gas Governance (Compliance) Regulations 2008 as set out in section 4 of this recommendation.

Appendix A – Consulted stakeholders



Electricity Authority

Major Energy Users Group (MEUG)

Firstgas Limited, Flexgas (owner and operator of the Ahuroa Gas Storage Facility) is an affiliate of Firstgas

Energy Resources Aotearoa (ERA), formerly known as Petroleum Exploration and Production Association of New Zealand (PEPANZ)

Beach Energy Limited

Transpower Limited

Mercury Limited

Meridian Energy Limited

Energy Link Ltd

Greymouth Gas New Zealand Limited

OMV New Zealand Limited

Todd Energy Limited and Nova Energy Limited

Trustpower Limited

Genesis Energy Limited

Contact Energy Limited

Vector Limited

Major Gas Users Group (MGUG)

New Zealand Steel Limited

Fonterra Co-operative Group Limited

Methanex New Zealand Limited

emsTradepoint Limited

Haast Energy Trading Limited

Flick Energy Ltd

Transpower

About Gas Industry Co

Gas Industry Co is the gas industry body and co-regulator under the Gas Act.

Its role is to:

- Develop arrangements, including regulations where appropriate, which improve:
 - the operation of gas markets;
 - access to infrastructure; and
 - consumer outcomes;
- Develop these arrangements with the principal objective to ensure that gas is delivered to existing and new customers in a safe, efficient, reliable, fair, and environmentally sustainable manner; and
- Oversee compliance with, and review such arrangements.

Gas Industry Co is required to have regard to the Government's policy objectives for the gas sector, and to report on the achievement of those objectives and on the state of the New Zealand gas industry.

ENQUIRIES:

info@gasindustry.co.nz

Annex Three: GIC’s compliance with regulation-making requirements under the Gas Act 1992

Requirement	Notes	Whether satisfied
<p>Has consultation been carried out in accordance with section 43L?</p>	<p>Before making a recommendation for any gas governance regulations, the recommending body must undertake an assessment under section 43N (see below) and:</p> <ul style="list-style-type: none"> • consult with persons that the recommending body thinks are representative of the interests of persons likely to be substantially affected by the proposed regulations; • give those persons the opportunity to make submissions; and • consider those submissions. 	<p>Yes.</p> <p>GIC has consulted with persons that are representative of the interests of those likely to be substantially affected by the proposed recommendations.</p> <p>In GIC’s final recommendation, it has taken into consideration the submissions it received from major gas production and storage facilities, major industrial gas users, electricity distributors and retailers, and representative bodies of energy producers and users. GIC’s final recommendation lists 24 different stakeholders that it consulted with.²</p> <p>Consultation has occurred through four separate processes:</p> <ul style="list-style-type: none"> • In March 2019, GIC released an options paper <i>Options for Information Disclosure in the Wholesale Gas Sector</i>. The paper set out a proposed problem statement and discussed the importance of information for the operation of a well-functioning market. GIC received submissions from 22 parties spanning a wide range of the New Zealand energy sector. These submissions were used to determine whether there is an issue with the disclosure of information and, if there is an issue, the extent of it and appropriate option to address it.

² The consultees are the Electricity Authority, Major Energy Users Group, Firstgas Limited, Energy Resources Aotearoa, Beach Energy Limited, Transpower Limited, Mercury Limited, Meridian Energy Limited, Energy Link Ltd, Greymouth Gas New Zealand Limited, OMV New Zealand Limited, Todd Energy Limited and Nova Energy Limited, Trustpower Limited, Genesis Energy Limited, Contact Energy Limited, Vector Limited, Major Gas Users Group, New Zealand Steel Limited, Fonterra Co-operative Group Limited, Methanex New Zealand Limited, emsTradeport Limited, Haast Energy Trading Limited, Flick Energy Ltd, and Transpower.

		<ul style="list-style-type: none"> • In December 2019, GIC released a problem assessment paper <i>Information Disclosure: Problem Assessment</i>. This paper identified several information areas with potential asymmetry or transparency issues, and assessed these areas against the Government’s policy objectives for the gas sector as described in the Gas Act and the Government Policy Statement on Gas Governance 2008 (GPS). It received 19 submissions. • In December 2020, GIC released <i>Draft Statement of Proposal: Gas Production and Storage Facility Outage Information</i> for consultation and received 16 submissions. • Submissions received on the <i>Draft Statement of Proposal</i> informed a final round of consultation in January 2021 on the Statement of Proposal. It received 9 submissions.
<p>Has an assessment been carried out in accordance with section 43N?</p> <p>Has a statement of proposal been prepared in accordance with section 43N?</p>	<p>Before making a recommendation to the Minister for a gas governance regulation, the industry body or the Commission must—</p> <ul style="list-style-type: none"> • seek to identify all reasonably practicable options for achieving the objective of the regulation; • assess those options by considering— <ul style="list-style-type: none"> ○ the benefits and costs of each option; ○ the extent to which the objective would be promoted or achieved by each option; and, ○ any other matters that the industry body or the Commission considers relevant. • ensure that the objective of the regulation is unlikely to be satisfactorily achieved by any reasonably practicable means other than 	<p>Yes. See Section 3 (pages 14 to 24) of GIC’s <i>Recommendation to the Minister of Energy and Resources: Information Disclosure Arrangements for Gas Production and Storage Facility Outages</i> (Annex One).</p> <p>GIC’s options paper from March 2019 identified three broad approaches to addressing the problem of insufficient information disclosure:</p> <ul style="list-style-type: none"> • A principles-based approach, which would focus on achieving an outcome rather than setting detailed rules for parties. Under this approach, producers, transmission owners and major users would disclose any information they hold that they expect would have a material impact on wholesale prices if the information was made public. • A specific or rules-based approach where producers, transmission owners and major users would be required to comply with specific regulations or rules for the type of information to be disclosed.

	<p>the making of the regulation (for example, by education, information, or voluntary compliance); and,</p> <ul style="list-style-type: none"> • prepare a statement of the proposal for the purpose of consultation under section 43L(1). <p>The statement of the proposal must contain—</p> <ul style="list-style-type: none"> • a detailed statement of the proposal; • a statement of the reasons for the proposal; • an assessment of the reasonably practicable options, including the proposal, identified under subsection (1); and • other information that the industry body or the Commission considers relevant. 	<ul style="list-style-type: none"> • A voluntary industry-led arrangement where parties voluntarily disclose information under a protocol. <p>Between this first options paper and consultation on a first draft of GIC's Statement of Proposal, gas producers and storage facility owners developed the Upstream Gas Outage Information Disclosure Code (the Code) in 2020. GIC's Statement of Proposal therefore identified two options for outage information disclosure:</p> <ul style="list-style-type: none"> • A voluntary option with disclosure of gas production and storage facility outage information under the industry-led Code; OR • A regulated option with rules or regulations under the Gas Act for the disclosure of gas production and storage facility outage information. <p>To support its consultation on the draft and final Statement of Proposal, GIC instructed Sapere Research Group to undertake a cost benefit analysis of the options. It identified a net benefit of the regulated option compared with the voluntary option as follows:</p> <p><i>Costs</i></p> <ul style="list-style-type: none"> • As parties are already complying with the Code, the additional costs of compliance with a regulated approach are considered small. • The regulator will incur some costs (considered insignificant) to develop and operate the regulated option. • The regulated approach is unlikely to reduce innovation incentives or facilitate collusion in the market. <p><i>Benefits</i></p>
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		<ul style="list-style-type: none"> • Better security of supply outcomes in both the gas and electricity markets through better co-ordination of gas production, electricity generation, gas transmission, electricity transmission and major plant outages. • The regulated option would lead to more efficient wholesale gas, wholesale electricity, and bilateral contract prices. Wholesale prices would be lower than otherwise, as would risk premiums in fixed price contracts. • The regulated option would be more effective than the voluntary industry-led Code as gas and electricity market participants can rely on the quality of the information disclosed. • A more reliable gas outage regime would encourage rather than discourage new participants in both the gas and electricity markets. <p>Both drafts of GIC’s Statement of Proposal can be found here: https://www.gasindustry.co.nz/our-work/work-programmes/information-disclosure/</p>
<p>If there is a Government policy or statement (as allowed for in section 43ZO), has the industry body considered the objectives and outcomes outlined in such a policy or statement (see section 43M)?</p>	<p>Objectives which are to be applied to all work are:</p> <ul style="list-style-type: none"> • To ensure that gas is delivered to existing and new customers in a safe, efficient, fair, reliable and environmentally sustainable manner; • The objectives set out in section 43ZN; • Energy and other resources used to deliver gas to consumers are used efficiently; • Competition is facilitated in upstream and downstream gas markets by minimising barriers to access to essential infrastructure to the long-term benefit of end users; 	<p>Yes. See Section 3 (pages 14 to 24) of GIC’s <i>Recommendation to the Minister of Energy and Resources: Information Disclosure Arrangements for Gas Production and Storage Facility Outages</i>.</p> <p>GIC has identified the implications of limited production and storage facility outage information disclosure on safety, efficiency, fairness, reliability and environmental sustainability in the gas market. Its conclusions, informed by submissions, were as follows:</p> <ul style="list-style-type: none"> • Safety: Submissions did not identify safety impacts from a lack of information regarding gas production and storage facility outages.

	<ul style="list-style-type: none"> • The full costs of producing and transporting gas are signalled to consumers; • The quality of gas services where those services include a trade-off between quality and price, as far as possible, reflect customers' preferences; and • The gas sector contributes to achieving the Government's climate change objectives as set out in the New Zealand Energy Strategy, or any other document the Minister of Energy and Resources may specify from time to time, by minimising gas losses and promoting demand-side management and energy efficiency. 	<ul style="list-style-type: none"> • Efficiency: Submissions and GIC identified efficiency implications for several parts of the gas market and associated markets. For example, the downstream gas sector, which includes major users, commented that lack of information on outages severely affected their operations and ability to make effective business decisions. The electricity system operator commented that lack of information on gas supply makes it more difficult to manage outages on the electricity network, which could lead to potential gaps in security of supply forecasting. • Fairness: Many submitters noted the asymmetry in information across the various parties, with some having greater access to gas production facility information than others. • Reliability: Downstream parties noted the increased uncertainty regarding the reliability of gas supply, affecting their business decisions and potentially leading to inefficient outcomes. • Environmental Sustainability: There were limited submissions on this aspect. <p>From this analysis and submissions, GIC proposed the following regulatory objective specific to its consideration of recommending regulations for gas production and outage information disclosure: that arrangements are in place that ensure the effective and timely availability of material gas production and storage outage information for all gas and related market participants.</p>
<p>Has the recommendation been published in accordance with section 43O?</p>	<p>The GIC must, no later than 10 working days after it gives a recommendation to the Minister for a gas governance regulation, publicise—</p> <ul style="list-style-type: none"> • that recommendation; and • the assessment completed under section 43N. 	<p>GIC's assessment, Statement and Proposal, and recommendations to you have been published within 10 working days of their submission. All of the information is available at their website here: https://www.gasindustry.co.nz/our-work/work-programmes/information-disclosure/#recommendation-to-minister</p>

