

Subject **Gas (Downstream Reconciliation) Rules 2008**
 Guideline note rule 47 – force majeure event and annual UFG factor

Version **1.0**

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1. Introduction

- 1.1 Rule 47 of the Gas (Downstream Reconciliation) Rules 2008 ('the Rules') provides that where a force majeure event has occurred, Gas Industry Co as the industry body must determine a fair and representative annual UFG factor for the affected gas gate(s) to be applied during the relevant gas year.
- 1.2 The purpose of this guideline note is to assist allocation participants in understanding the processes that will be adopted by Gas Industry Co to give effect to rule 47. This guideline note addresses two matters:
- (a) The circumstances under which the allocation agent may notify Gas Industry Co that a force majeure event has occurred, and the information to be provided with the notification; and
 - (b) The approach Gas Industry Co intends to adopt in determining a fair and representative annual UFG factor.
- 1.3 This note is explanatory in nature and is not legally binding. It needs to be read in conjunction with the Rules and the general approach set out in this note in no way reduces the requirement upon allocation participants to know and comply with their obligations under the Rules.

2. Background

- 2.1 Rule 47 defines a force majeure event as an event or circumstance:
- (a) beyond the reasonable control of an allocation participant and that was not reasonably foreseeable in the circumstances; and

- (b) which substantially affects the information relied on to determine the annual UFG factor in rule 46 so that it no longer will result in a fair and representative calculation of the annual UFG factor for a particular gas gate.
- 2.2 Where the allocation agent considers that a force majeure event has occurred, it may give notice to Gas Industry Co but it must do so at least 10 business days prior to determining and publishing the annual UFG factors in accordance with rule 46.4.2.¹
- 2.3 On receiving notice of a force majeure event from the allocation agent, under rule 47.3 Gas Industry Co must, after consultation with affected allocation participants, determine the annual UFG factor to be applied for the gas gate for the upcoming gas year. Gas Industry Co must determine an annual UFG factor which it considers will result in a fair and representative calculation of the annual UFG factor for that gas gate.
- 2.4 Gas Industry Co's determination must be notified to the allocation agent, which then publishes the annual UFG factor in the normal way but with a notation that it has been determined by Gas Industry Co.

3. Determining and notifying a force majeure event

- 3.1 Calculation of the annual UFG factor relies on aggregate gas injection information and consumption information for a gas gate over a prior 12 month period.² Accordingly, there is the potential for unforeseen events or circumstances, outside the reasonable control of allocation participants, which are so significant that the injection or consumption information provided will be distorted and an unrepresentative annual UFG factor for the relevant upcoming gas year will result.
- 3.2 Gas Industry Co has identified the following examples of exceptional events or circumstances which may constitute a force majeure event:
- (a) Unforeseen rupture of a distribution system, which materially distorts UFG on the distribution system (eg caused by third parties such as heavy machinery contractors, or by natural disasters such as earthquakes or flooding);
 - (b) Other significant malfunctions of the distribution system and/or its connection(s) with the transmission system that had not previously been discovered, which materially distort UFG on the distribution system (eg leakage at an interconnection point or on the distribution system);
 - (c) Oil or water contamination of part of the transmission or distribution system such that incorrect metering data at the gas gate and/or consumer installations materially distorts UFG on the distribution system;

¹ Under rule 46, annual UFG factors are required to be published by the allocation agent on the first business day of July each year. Therefore, for the 2009/10 gas year, the allocation agent must give notice of any force majeure event by 17 June 2009.

² For the 2009/10 gas year, the prior 12 month period is the 12 months ended 30 September 2008 – see rule 79.2.2. For all future gas years, the prior 12 month period is the 12 months up to and including February of the previous gas year – see rule 46.3.

- (d) The inability of the allocation agent to access information required for calculating the annual AUFG factor;
 - (e) A permanent loss of data required by the allocation agent to calculate annual UFG factors, such that the annual UFG factor for a distribution system would be materially distorted;
 - (f) The discovery of ICPs which were allocated to the wrong gas gate or the discovery of orphan installations (ICPs with no retailer), the existence of which are likely to have impacted on the AUFG for the particular year; and
 - (g) The declaration of a critical contingency during the particular year.
- 3.3 Before the allocation agent notifies Gas Industry Co that it considers a force majeure event has occurred, the allocation agent must be of the opinion that the event or circumstance has substantially affected the information relied on to determine the annual UFG factor, so that it will no longer result in a fair and representative calculation of the annual UFG factor for a particular gas gate. In particular, the effects of the types of events set out in paragraph 3.2 above may have already been remedied through the provision of corrected injection or consumption information for an interim, final or special allocation ie the annual UFG factor will now be fair and representative following the data corrections. In these situations, a force majeure event for the purposes of the Rules will not have occurred and is not to be notified by the allocation agent under rule 47.
- 3.4 In assessing whether an event or circumstance has substantially affected the information relied on to calculate the annual UFG factor at a gas gate, Gas Industry Co considers that the allocation agent should take account of the following criteria:
- (a) The event or circumstance has resulted in an annual UFG factor at a gas gate that differs by +/- 0.01 from the annual UFG factor that would have otherwise been calculated ie based on the remaining unaffected data in the relevant 12-month period or, if no such information is available, the best information available to the allocation agent (eg the previous gas year's annual UFG factor);
 - (b) The event or circumstance has resulted in an additional or reduced level of UFG of more than 1,000 GJ at a gas gate for each consumption period in the affected period ie based on the remaining unaffected data in the relevant 12-month period or, if no such information is available, the best information available to the allocation agent (eg the previous gas year's UFG data); and
 - (c) Any other matters that, in the particular circumstances surrounding the event or circumstance, are so significant as to substantially affect the information relied on to calculate the annual UFG factor so that a fair and representative calculation of the annual UFG factor is no longer possible in the allocation agent's opinion.

- 3.5 When forming its opinion on whether it considers a force majeure event has occurred, the allocation agent should also seek information surrounding the event or circumstance from affected allocation participants. In most cases, Gas Industry Co expects affected allocation participants will have already notified the allocation agent and Gas Industry Co of the occurrence of a potential force majeure event. Such information sought would be additional to that held by the allocation agent and would relate to the actual quantitative impact of the event or circumstance to the extent possible (eg estimated/corrected injection quantities from the transmission system owner). Where the impact of the event or circumstance is not known (or will not be known prior to the deadline for publishing the annual UFG factor), the allocation agent is expected to estimate the impact either by comparison with existing historical data for the affected gas gate, other gas gates which are considered to have similar characteristics, or through such other means as the allocation agent considers to be most appropriate.
- 3.6 In general, the allocation agent should give notice to Gas Industry Co as soon as practicable after the completion of the February allocations that it considers a force majeure event has occurred ie on completion of the final allocation in February, the 12 months of data needed to calculate the annual UFG factor is available. As noted above, the latest date for a notification is 10 business days before 1 July each year.
- 3.7 It will be satisfactory for notifications from the allocation agent to Gas Industry Co to be in the form of an email addressed to downstreamreconciliation@gasindustry.co.nz. Notifications should contain the following information:
- (a) The gas gate(s) affected by the force majeure event;
 - (b) The nature and cause of the force majeure event;
 - (c) The size and nature of the substantial effect on the calculation of the annual UFG factor and, to the extent possible, the allocation participants who would be affected. To the extent that the information is not available, the allocation agent is to provide its best estimate of that information;
 - (d) To the extent possible, a preliminary view from the allocation agent on an annual UFG factor (or range) that it considers would be a fair and representative calculation of the annual UFG factor at the affected gas gate(s).
- 3.8 It is possible, but unlikely, that circumstances will exist where the allocation agent may not be able to notify Gas Industry Co of a force majeure event before the required deadline of ten business days prior to determining and publishing the annual UFG factor. In such situations, a late notice is non-compliant with the requirements of rule 47.2 and Gas Industry Co is generally unable to exercise its discretion to determine a fair and representative UFG factor under rule 47.3. However, Gas Industry Co will consider whether other potential steps are needed at gas gates affected by the force majeure event. One possible option may be the use of the exemption provisions in the Rules.

4. Determining and publishing the annual UFG factor as a result of a force majeure event

- 4.1 Having received notification of a force majeure event from the allocation agent, rule 47.3 sets out the process to be followed by Gas Industry Co in determining and notifying a fair and representative annual UFG factor for an affected gas gate. Details of the process are as follows:
- (a) The determination must be made as soon as is practicable. In general, Gas Industry Co will aim to complete the process, including notifying the allocation agent, within 10 business days or, in any event, two business days prior to the deadline for publication of the annual UFG factor on 1 July;
 - (b) To the extent reasonably practicable in the time available, consultation with affected allocation participants is required before the annual UFG factor is determined. Gas Industry Co will generally take a broad view of which allocation participants might be affected and this will usually mean all of the retailers at the affected gas gate and the relevant transmission system operator. Gas Industry Co will generally aim to initiate the consultation process within two business days of receiving notice of a force majeure event and the consultation period will usually be between one and two weeks, depending on how much time is available. Consultation will generally be done by email;
 - (c) The information provided to affected allocation participants for consultation will include the information provided by the allocation agent in the notification to Gas Industry Co (excluding any information that has been identified as confidential or commercially sensitive);
 - (d) The information sought from allocation participants will generally relate to additional information on: the nature and extent of the effects of the force majeure event on the annual UFG factor; particular impacts on individual allocation participants of the 'unfair and unrepresentative' annual UFG factor; the correct quantities to use for the calculation of the annual UFG factor if that information can be provided; and the most appropriate method of estimation to use if actual quantities cannot be provided; and
 - (e) The determination by Gas Industry Co will be notified to the allocation agent as required by rule 47.3.1, but the notification will be copied to all those affected allocation participants that were consulted. The notification will be by email.
- 4.2 Rule 47.3.2 requires Gas Industry Co to determine an annual UFG factor which it considers will result in a fair and representative calculation of the annual UFG factor for that gas gate for the gas year. The approach that Gas Industry Co will adopt in order to achieve this will be as follows:

- (a) Where corrected gas injection and consumption information is available, that information will be included in the relevant 12-month period used to determine the annual UFG factor;
- (b) Where 'estimated corrected' gas injection and consumption information has been provided by affected allocation participants and Gas Industry Co considers that it is reasonably accurate, that information will be included in the relevant 12-month period used to determine the annual UFG factor;
- (c) Where corrected or 'estimated corrected' gas injection and consumption information is not available or is considered to be inaccurate, the annual UFG factor calculation will be based on the remaining unaffected data in the relevant 12-month period; or
- (d) If, for each of the above options, insufficient information is available and/or none of the above options are considered to result in a fair and representative annual UFG factor, Gas Industry Co will determine an annual UFG factor based on its own methodology, taking into account the views of the allocation agent and affected allocation participants (eg adjusting the previous year's annual UFG factor based on the best information available to Gas Industry Co).