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| <b>Subject</b> | <b>Gas Governance (Compliance) Regulations 2008<br/>Market Administrator Guideline note rule 37 – materiality of rule 37.2<br/>breaches (Downstream Reconciliation)</b> |
| <b>Version</b> | <b>1.0</b>  |
| <b>Date</b>    | <b>10 November 2010</b>   |

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## **Introduction**

1. This guideline note is published under regulation 19(2) of the Gas Governance (Compliance) Regulations 2008 (the Regulations) which states the market administrator may publish guidelines to illustrate how it is weighting and applying the factors to be taken into account when determining whether or not an alleged breach raises a material issue.
2. The purpose of this note is to provide participants with guidelines on how the market administrator will weight and apply the factors to be taken into account when determining materiality of breaches of rule 37.2 of the Gas (Downstream Reconciliation) Rules 2008 (the Rules).
3. This note should be read in conjunction with the Rules and the general approach set out in this note in no way reduces the requirement upon participants to know and comply with their obligations under the Rules. Terms that are defined in the Gas Act 1992 (the Act) or the Rules or the Regulations but not in this document have the same meaning as in the Act or the Rules or the Regulations (as applicable). If there is any conflict between this guideline paper and the Act or the Rules or the Regulations (as applicable), the Act, Rules or Regulations shall prevail.
4. The guidelines in this note may be amended from time to time. The guidelines outlined in this note in no way fetter the market administrator's discretion to make any materiality determination in respect of a breach.

## **Calculation of accuracy by allocation agent**

5. There are two steps that the allocation agent performs in calculating the accuracy of consumption information provided by retailers at each gas gate:

- (i) Subtract:  $I - F = \text{volume difference}$ , where  
 $I = [\text{sum of groups 3 to 6 volume submitted at initial}]$ ; and  
 $F = [\text{sum of groups 3 to 6 submitted at final}]$
  - (ii) Divide:  $\text{volume difference} / F$ , to determine the percentage difference
6. Positive percentage differences that are greater than the percentage of error determined by Gas Industry Co, and negative percentage differences that are less than the negative percentage of error, are alleged as breaches of rule 37.2 by the allocation agent.

### **Determination of materiality by the market administrator**

7. The market administrator determines materiality of breaches after taking into account the factors listed in regulation 19(1) of the Regulations.
8. The market administrator's view, assisted by analysis undertaken by Gas Industry Co, is that breaches where the absolute value of the volume differences are less than 200 gigajoules (the volume threshold) should not be determined material or referred to the Investigator. The market administrator will determine these breaches not material in the absence of circumstances that justify departure from this general approach (see the section below), taking into account all the factors that the market administrator must consider under regulation 19(1).
9. The Allocation Agent is required by the Regulations to allege breaches of the Rules where it becomes aware of such breaches. The drafting of rule 37 is such that the Allocation Agent is unable to apply any discretion as regards materiality of consumption submissions that falls outside of the percentage threshold set under rule 37.3. This means that the Allocation Agent must allege all such breaches to the market administrator.
10. The market administrator has requested that the allocation agent indicate to it all the rule 37.2 breaches under the volume threshold each time the allocation agent reports rule 37.2 breaches to the market administrator. Breaches under the volume threshold will then be treated in an abridged version of the regular determination process, as set out in the following paragraphs.
11. The market administrator will still need to advise participants of the breaches under the volume threshold but will not request further information about those breaches. Nevertheless, a participant will still have 5 business days after the market administrator notifies it of the breach to inform the market administrator that it considers that it is affected by the alleged breach and wishes to become a party to the breach notice. The participant should provide details to the market administrator of how it is affected by the breach.
12. After those 5 business days have passed, the market administrator will consider the breach not material unless circumstances surrounding the breach have been raised that justify a departure from this general approach.

13. For breaches of rule 37.2 that are above the volume threshold, the market administrator will request information from participants in the usual manner.

### **Circumstances arising that justify departure from approach**

14. If there is something uncharacteristic or unusual about a rule 37.2 breach which is under the threshold, then the market administrator may choose to request further information about that breach. Examples could include if the breach was alleged by a person other than the allocation agent or there are indications that the breach was caused by something other than an estimation methodology that otherwise complies with the Rules.
15. If it would be appropriate, taking into account the factors listed in regulation 19(1) of the Regulations and given the circumstances, the market administrator may make a material determination in respect of the breach.

### **Referral to the Investigator of breaches under threshold**

16. The process outlined in this note does not remove a participant's ability to refer a rule 37.2 breach that is under the threshold to the Investigator in accordance with the regulations.
17. A participant may refer any breach to the Investigator directly if:
  - (i) the market administrator has determined not to take any action on the alleged breach (refer to regulation 24(1)(a) of the Regulations); or
  - (ii) the market administrator has not been able to informally resolve the alleged breach by agreement within 35 business days after the alleged breach was notified to participants by the market administrator (refer to regulation 24(1)(b) of the Regulations).

### **Determinations**

18. The market administrator will publish determinations on rule 37.2 breaches in the same manner that it publishes determinations on other rule breaches. Publication occurs on the Gas Industry Co website. In addition, the party in breach and any parties joined to the breach are notified of that breach's determination by email.