

16 July 2020

Submission on the Gas (Information Disclosure and Penalties) Amendment Bill

Economic Development, Science and Innovation Committee
Submitted online

PEPANZ Submission: Gas (Information Disclosure and Penalties) Amendment Bill

Introduction

1. The Petroleum Exploration and Production Association of New Zealand ("PEPANZ") represents private sector companies holding petroleum exploration and mining permits, service companies and individuals working in the upstream petroleum industry.
2. This document constitutes PEPANZ's submission on the Gas (Information Disclosure and Penalties) Amendment Bill. Submissions are due on 16 July 2020. PEPANZ submitted on the policy consultation in June 2019.¹

Executive summary

3. With the caveats outlined below, we accept and can support the overall direction of this Bill.
4. If the full suite of proposed powers is retained:
 - regulations should only ever be made where industry-led solutions cannot resolve issues; and
 - the Bill should be amended to include a principle that commercially sensitive material should not be required for disclosure unless there is a substantial public interest reason or market rationale for requiring it (and where the benefits of forced disclosure are demonstrated to outweigh the costs of disclosure to regulated parties).
5. We support the Gas Act's status quo co-regulatory model and presumption in favour of industry-led solutions, and this should remain the framework for regulating the gas market including under the new regulation-making powers.
6. PEPANZ agrees that information is important for well-functioning markets, and this is why natural gas producers have responded to public concerns by recently devising and acceding to a code requiring disclosure to the market.
7. The regulation-making powers in this Bill are wide-ranging and PEPANZ would prefer to see more analysis to demonstrate that they are all genuinely needed. The list of information that can be required to be disclosed seems to give the regulator unnecessary access to the private commercial arrangements of companies. Regulation-making powers, even if never used, create cost for the commercial sector. This cost arises because risk has a price, and companies will factor in the risk associated with regulations being made in the future (especially if it is

¹ <https://www.pepanz.com/dmsdocument/108>

anticipated that regulations may require the disclosure of, for example, commercially sensitive information).

8. PEPANZ does not support the regulation-making powers in relation to petroleum field data or contracts (including pricing), and considers that publication of such information (beyond what is already disclosed) is not appropriate on the grounds of commercial sensitivity.

Submission

A well-functioning gas market is important

9. PEPANZ agrees that information about outages is important for a well-functioning gas market. The problem statement in the Bill's regulatory impact statement says:

There is an ongoing decline of reserves at New Zealand's offshore gas production fields. These fields have provided the historical flex in supply capability for the gas market – particularly the Maui field. Reduced supply side flexibility has particularly highlighted the need for fit-for-purpose arrangements to ensure that the gas market operates efficiently.

Efficient market operation helps ensure that the prices paid by consumers are fair and subject to downward pressure to the extent possible, and that long-term security of supply of both the electricity and gas markets is maintained in the face of reducing supply flexibility.²

10. As the regulatory impact statement alludes to, gas supply is becoming more concentrated amongst fewer players, and the regulatory settings for petroleum exploration means that the system is now closed and only contracting.
11. Fit-for-purpose arrangements are certainly important as is efficient market operation. In a normal market supply can meet demand, however this is becoming more challenging in New Zealand as, due to several fields approaching the end of their 2P life, supply is becoming more concentrated on fewer key fields. Although information can be useful, mere data cannot ultimately be a replacement for molecules of gas.
12. We do however accept that information about gas outages can ensure major users can respond appropriately and manage price impacts for the market as a whole. It should be incumbent on the government to demonstrate that the benefits of regulated public disclosure of private information outweigh the costs to the private holders of that information.
13. While agreeing that (all things equal) more information is better than less, the presumption should not automatically be in favour of regulation given the transaction costs, economic costs and potentially unintended consequences to regulated parties.

Industry is already collaborating to address government and market concerns

14. We draw the committee's attention to Upstream Gas Outage Information Disclosure Code 2020, which will increase information and transparency around any gas outages. The Code was developed by PEPANZ and gas producers through an independently facilitated process in response to concerns from government and stakeholders about information regarding outages. It provides for a public platform with information on unplanned and planned outages at gas production facilities and storage facilities in New Zealand. The code demonstrates that under current arrangements the sector can work together collaboratively to resolve issues.
15. It is worth stating that regulation-making powers will provide an incentive for the industry to volunteer solutions and to abide by the outage code which has recently been developed. As stated in the regulatory impact statement in para 44, "... the ability to regulate is likely to provide a modest incentive to the gas industry to consider what non-regulatory solutions could be put in place to avoid regulation".

² paras 19-20 <https://www.mbie.govt.nz/dmsdocument/7309-gas-act-1992-information-disclosure-and-penalties-regulatory-impact-summary>

The Bill's provisions may be unnecessarily broad, thereby creating cost.

16. The Bill's proposed enabling provision is very broad in terms of what can be required. It allows the following to be required:
 - volume, price, or other market information;
 - forecasts of supply or demand;
 - information about actual or potential outages;
 - information about risks to security of supply;
 - information about an industry participant or a consumer (other than a domestic consumer) that has, or may have, a significant impact on other industry participants or consumers; and
 - information to help other industry participants or consumers (other than domestic consumers) to make informed decisions in connection with the gas industry.
17. PEPANZ does not support the regulation-making powers in relation to petroleum field data or contracts (including pricing), and considers that publication of such information (beyond what is already disclosed) is not appropriate on the grounds of commercial sensitivity.
18. A range of information is already made available by gas producers relating to pricing and traded volumes, gas production and consumption, gas forecasts, permit data, field deliverability and gas reserves/resources. If the regulation-making powers are added through this Bill, it will be important for the regulator to work with the energy sector to understand the status quo before recommending regulatory interventions.
19. If the Committee recommends that the Bill includes these regulation-making powers, it should note that (even if regulations are not ultimately made) these provisions do have a cost, as companies must factor in the risk associated with regulations being made (especially if they require the disclosure of commercially sensitive information).
20. This view differs from that presented in the regulatory impact statement, which says that "the introduction of a new empowering provision into the Gas act does not in itself create any real cost for regulated parties"³. The fact that cost is inherent in regulatory powers leads to an important implication – namely that *powers should only be created where they are truly necessary and will be exercised*. The creation of regulation-making powers *simply so they can be exercised in future if desired* is not in our view best practice as it conveys to the executive powers that may not be in fact required and which, through their creation and delegation, creates cost and uncertainty for the commercial sector.

PEPANZ supports the Bill on the proviso that industry-led solutions are sought before making regulations

21. Although preferring to see greater analysis and a stronger ex-ante case for the full suite of regulation-making powers proposed, PEPANZ can accept and support the overall direction of this Bill.
22. If the full suite of proposed powers is retained in the Bill:
 - regulations should only ever be made where industry-led solutions cannot resolve issues; and
 - the Bill should be amended to include a principle that commercially sensitive material should not be required for disclosure unless there is a substantial public interest reason or market rationale for requiring it.

³ para 57 iBid.