



29 June 2017

Ben Gerritsen  
General Manager Customer and Regulation  
First Gas Limited  
By email

Dear Ben,

**RE: Preliminary Draft Code Changes to Transition from VTC and MPOC to GTAC (the "paper")**

We consider that a robust transition from the current codes to the new code would best serve the industry.

Greymouth Gas intends to continue to ship gas and to support the transition to the GTAC (if it stacks up). However, as we have been arguing since at least January 2017, it is important to begin with the end in mind. We hope that it is becoming clearer to industry that it is the *transitional conditions* that industry should be working towards to give effect to go-live of the GTAC, not just the negotiation of the GTAC itself.

The conclusions from matters set out in the appendices to this letter (which describe Greymouth Gas' views on the two change requests) are:

- The VTC should be extended for a further 2 years to minimise the risk of contractual hold-out if GTAC timeframes slip.
- The MPOC change request is lacking in terms of legal drafting, management of contractual risk, and completeness of the conditions – all of which are critical to the success of the change request, which cannot be amended once it is submitted.

We consider that the VTC change request should be progressed with urgency. However, given the importance of getting the drafting "right first time", we consider that the MPOC change request should subject to robust review by First Gas and that subsequent drafts should be workshopped with industry before being formally tabled to the GIC.

Yours sincerely

Chris Boxall  
Commercial Manager

## Appendix 1 – VTC Change Request Notification – VTC Extension

Greymouth Gas supports the extension of the VTC to 30 September 2018, but we think that the draft change request should go further, i.e.:

- 1) Technically, extensions to TSAs and GTAs should be progressed in parallel.

We expect this to be acceptable to First Gas.

- 2) Survival and continuing obligation provisions should be analysed further.

We generally accept First Gas' advice in the workshop that no other amendments are required for survival or other continuing obligation provisions. However, we query:

- How many Supplementary Agreements are there that could survive a 30 September 2018 termination date (refer to s2.7(e)(i) of the VTC), and how does First Gas propose to deal with them?
  - Whether s2.7(e)(i) has an incorrect reference to s2.20 instead of to s20.2?
- 3) The contractual risk that the VTC will still be required on / after 1 October 2018 should be managed now.

We generally accept points in the workshop that the VTC should not be indefinite, should not have a flexi go-live date (as it needs to align with a gas year), and that First Gas has provided a soft commitment to extend the VTC if required. We have considered the merit of formalising this soft commitment as a First Gas warranty in the code, but we do not favour this.

The best thing to do is to extend the VTC (and TSAs and GTAs) for two years (to 30 September 2019), so as to remove the contractual risks that i) there is no code in place if the GTAC doesn't go live on 1 October 2018, ii) in 2018 First Gas could leverage a code with a firm 30 September 2018 expiry to give effect to the GTAC and / or its conditions, and iii) in 2017 the previous risk leads to a sub-optimal GTAC negotiating environment.

A 2 year extension is simple and seems fairest for industry. It is what Vector did when the GITAWG process was underway, for much the same reasons.

If the GTAC is ready to go live on 1 October 2018, parties will know well ahead of time and the VTC can be amended to bring the expiry date forward. There is no risk of parties holding out to that process because a 75% majority is required to block it (in which case the GTAC shouldn't go ahead anyway) and the VTC would expire a year later in any case (and so a slightly longer window to adapt systems is not a strong driver for holding out on VTC termination).

## Appendix 2 – MPOC Change Request

Greymouth Gas supports the concept of terminating what is currently an indefinite code, but we do not support the proposal as currently drafted. Unlike the VTC change request process, MPOC amendments cannot be amended once underway. It is therefore crucial that the amendment is effectively drafted and fit for purpose before it is submitted to the GIC.

There are significant issues with the current drafting, which we outline below. We have also attached (as Appendix 3) a marked up version of the proposed amendment to illustrate some of these drafting issues.

- 1) The New Code definition does not properly define the new code.

The current definition of New Code lacks specificity and is internally inconsistent. It purports to use the term it is defining in its own definition. It could also be read as purporting to set out the precise terms of the new code before those terms have been agreed, by stating that the new code must include “the following provisions” rather than simply providing that the new code must include terms that provide for certain matters.

- 2) The New Code Date should not be its own condition precedent.

It will not be possible to identify the New Code Date until all other termination conditions are satisfied; therefore it is not appropriate to make the setting of the date itself a condition.

- 3) The New Code Date needs to work with the VTC change request.

The current drafting of s22.16(c) requires the VTC and all TSAs incorporating the VTC to terminate on the New Code Date. However, there seems to be consensus in industry that the VTC needs to terminate on 30 September of a year. The New Code Date should therefore be required to be 1 October in whatever year the conditions are satisfied – subject to a minimum lead time.

- 4) 40 Business Days is too short a lead time.

Although parties will be able to make some preparations before the GTAC is finalised, they will find it difficult to negotiate with shippers and end-users and would be reluctant to incur cost to amend systems and processes, until the GTAC is confirmed. In that regard, the reference to 40 Business Days in s22.16 is an unreasonably short timeframe. First Gas will also face difficulties because some of its key processes (pricing notifications) are required to commence on the 1<sup>st</sup> of June (for the forthcoming gas year). We recommend a lead time of at least 90 Business Days.

- 5) Vector Transmission Code is undefined.

The current drafting of s22.15(c) contains a reference to the Vector Transmission Code which, while used elsewhere in the MPOC, is itself currently undefined in the MPOC. It would then seem pointless to define the VTC twice, effectively. VTC should be defined properly, in the main interpretation section.

- 6) It should be mandatory, not optional, for First Gas to terminate ICAs and TSAs.

The current drafting of s22.16 says that First Gas *may* terminate ICAs and TSAs when the conditions are met. Industry has seen this before when, despite B2B conditions being met, MDL chose not to give effect to B2B. Termination should be compulsory.

- 7) The GIC test does not adequately address all-or-nothing risk.

The current drafting of s22.16(b) does address the risk of hold-outs, appropriately references the Gas Act and GPS objectives, and is to be assessed by the GIC who is best placed to do this.<sup>1</sup>

However, this condition requires the GIC to apply an all-or-nothing test on the new code. Industry has been here before, and this creates the risk that sub-optimal parts of the code will be approved because, on balance, the whole code is materially better than the current codes. While parties won't get every part of the new code exactly the way they want it, what should not be able to be compromised is complying with the Gas Act and GPS, and a key part of the new code being approved that is not materially better than the status quo. There is every risk that either of this could happen with the condition as currently drafted.

The two options that would best fix this risk (without affecting the hold-out solution) are:

- i) Unanimous approval by all parties with contracts that currently incorporate the codes on all headline parts of the new code, and if there is not, then that part (and only that part) is subject to the GIC's assessment.

This solution initially appeals because it would remove the risk that a 75% super majority may be able to push through something against a minority that does not accord with the Gas Act or GPS or is not materially better than the current code. It would also work because in the unlikely event that transparent negotiation resulted in unanimous agreement that didn't accord with the Gas Act and GPS, then GIC could regulate after the fact. However, we do not support this solution because it is complex and it could lead to different headline terms being given effect to in three different codes.

- ii) Retain the GIC all-or-nothing test, but require GIC to approve the new code only if each headline term individually is materially better than the status quo equivalent (and to not approve the new code if any one headline term is not materially better than the status quo equivalent). GIC could also do a more simple 'materially better' test on any headline term that has unanimous support from all parties with contracts that incorporate the current codes.

This solution appeals because it balances the hold-out risk and provides an efficient, effective means to solve the all-or-nothing risk. With each headline term required to be materially better than the status quo, then in the absence of unanimous agreement on the whole code itself, this should result in an outcome that a) incentivises the delivery of a new code, and b) is best aligned with the Gas Act and GPS objectives. We support this approach.

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<sup>1</sup> Provided it continues to manage its position with regard to actual or potential conflicts of interest.

8) The consultation process the GIC needs to go through is ambiguous.

The current drafting of s22.16(b) does not make it clear what 'appropriate consultation' is, because the process is not a change request process thus it would not be governed by First Gas' MoU with the GIC. It is not in First Gas or the industry's interests to get into a debate down the line over what was meant by "appropriate", so parameters should be set now. It seems sensible to define 'appropriate consultation' along the lines of:

- (a) The process that GIC would need to go through as if it was a change request,
- (b) Subject to First Gas and GIC agreeing a MoU for this purpose, and
- (c) Incorporating the solution outlined in 7) ii) above – including:
  - a. First Gas should table a proposed final new code well before all the conditions need to be satisfied,
  - b. Headline terms could be defined as: access, pricing, balancing, allocations, change request process, and everything else (as one),
  - c. If a new part emerges as a headline term somehow, then that shall be assessed on its own accord and not as part of the 'everything else' bundle, and
  - d. Parties should have two weeks to advise the GIC whether they support or do not support each headline term, with no written advice deemed to be support.

Given the drafting required, we have not attempted to draft this in Appendix 3 at this stage.

9) There may need to be a definition of VTC TSAs.

The current drafting of s22.16(c) doesn't define what a transmission services agreement is, so it is ambiguous what, exactly, needs to expire on the New Code Date. It probably includes part (a) of the definition of TSAs in the VTC, but does it include part (b)? And are there any wider transmission services agreements that incorporate the VTC, but are not defined as a TSA under the VTC? We also query what the story is with ICAs, and whether appropriate warranties are required to parties who are having these other agreements terminate.

Greymouth Gas proposes that a list of all contracts that need to be terminated is published by First Gas (if it can), to avoid confusion. We also request to know the position with regard to any Transmission Pricing Agreements in the industry.

10) The termination date of the VTC and TSAs is confusing.

The current drafting of s22.16(c) reads like in order for First Gas to terminate an MPOC ICA and TSA, then before the go-live date First Gas needs to terminate contracts that incorporate the VTC *on* the go-live date. Appendix 3 contains a suggested alternative to this clause.

11) The D+1 Agreement is problematic.

The D+1 Agreement will need to be terminated, either by there being no TSAs, or by First Gas following the process outlined in that agreement. Regardless, to give effect to termination, there needs to be a consultation process with a view to agreeing how to sort out both the interim and final wash-ups. This will need to work seamlessly with any new allocation process contained in the new code. This should be included in the conditions to satisfy.

12) The executable contracts to be provided to the parties are ambiguous.

The current drafting of s22.16(e) reads that in order for First Gas to terminate TSAs and ICAs, it has to deliver any contract capable of being executed that allows for access and connection. Technically this could reference a different code to that that will be assessed by the GIC, and a different code to that which parties are negotiating at the moment – reference to the New Code should be included.

13) Legislative change assessment should be a condition to be satisfied before the New Code Date can be set.

At the 22 June workshop, it was established that the Gas Governance (Critical Contingency Management) Regulations 2008 may need to be amended to provide for the new code to ensure continued compatibility of codified and legislated arrangements. GIC should, before the New Code Date can be notified, confirm if legislative amendments are required, and if confirmed, should ensure the required changes are enacted.

The Gas (Downstream Reconciliation Rules) 2008 may also need to be amended for the same reasons as above. Currently, these rules rely on doing monthly special allocations to replace the initial allocations under the rules, with those from the D+1 Agreement. This works largely because those special allocations have unanimous support *and* are intended to be of a temporary nature. If the new code requires these rules to give effect to allocations at shared gas gates, then the rules probably need amending. For example, if the new code passes the GIC's assessment, but one or two shippers are materially adversely affected by the new allocation methodology, then those shippers would be unlikely to support a special allocation to give effect to that methodology. The GIC would then need to apply its special allocation test under r51.2 of the rules which is unlikely to be met if it doesn't have unanimous support (despite not technically requiring it) because any replacement allocation methodology needs to be compared to the accuracy and unfairness of initial allocations, which, for shippers primarily with AG1 customers, is very accurate.<sup>2</sup> GIC should also, before the New Code Date can be notified, confirm if legislative amendments are required, and if confirmed, should ensure the required changes are enacted.

14) Commerce Commission assessment should be a new condition to be satisfied before the New Code Date can be set.

As outlined in Trustpower Limited's submission on the GTAC Emerging Views paper, they query whether the Commerce Commission needs to approve the new code under s58 of the Commerce Act 1986. Without analysing it, their argument seems compelling enough. It also makes sense because the GIC assessment is akin to a change request assessment in which the submitter of a change request usually warrants that the change request complies with the Commerce Act – yet there is no such equivalent warranty or test for implementation of the new code which is a large change within industry if not technically a change request. The Commerce Commission should, before the New Code Date can be notified, confirm whether or not it needs to approve the new code, and if so, approve it.

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<sup>2</sup> As an aside, this goes to the heart of why the whole D+1 supply chain needs to be made more robust if D+1 is to be retained.

### Appendix 3 – Suggested amendments to summary of proposed MPOC amendments

Section	Issue	Proposed Change	Rationale for Proposed Change
22.15 <u>to</u> <u>22.18</u>	[deleted]	<p>22.15 In section 22.16:</p> <p>(a) “<b>New Code</b>” means the set of terms and conditions meeting the requirements of section 22.16(a);</p> <p>(b) “<b>New Code Date</b>” means 0.00 hours on the new code date set out in the notice posted in accordance with section 22.16<del>(d)</del><u>17</u>;</p> <p><u>(c) “<b>Termination Conditions</b>” means all of the conditions (i.e. (a) through (f) inclusive) set out in section 22.16 that need to be met before sections 22.17 and 22.18 can be given effect to;</u></p> <p><u>(ed) “<b>VTC</b>” means the Vector Transmission Code as published on <a href="http://www.oatis.co.nz">www.oatis.co.nz</a>;</u></p> <p><u>(e) “<b>VTC Pipelines</b>” means the Transmission Pipelines governed by the VTC; and</u></p> <p><del>(f) “<b>VTC Shipper</b>” means a “Shipper” as that term is defined in the VTC.</del></p> <p>22.16 <del>TSP may terminate every ICA and TSA simultaneously with effect at 0:00 hours on the New Code Date subject to the following conditions being satisfied not later than 40 Business Days before the New Code Date</del><u>This Operating Code shall be terminated in accordance with sections 22.17 and 22.18, which refer to the following Termination Conditions:</u></p>	[deleted]

		<p>(a) TSP has published <del>the New Code</del> <u>a code</u> on the TSP IX which <u>is stated to replace this Operating Code and the VTC with effect from the New Code Date and which</u> includes <del>the following provisions</del> <u>terms which provide for:</u></p> <p>(i) <u>the continued transportation of gas through the Maui Pipeline and the VTC Pipelines by any Shipper or VTC Shipper who was a party to the MPOC or the VTC (as applicable) immediately prior to the New Code</u> <del>all Shippers using the Maui Pipeline, and VTC Shippers using the Transmission Pipelines governed by the VTC, may continue to transport gas through those pipelines;</del> and</p> <p>(ii) <u>the continued connection of all Welded Parties' Pipelines to the Maui Pipeline and of all interconnected parties' pipelines to the VTC Pipelines;</u>  <u>on and after the New Code Date;</u></p> <p>(b) following appropriate consultation, GIC has published a determination that the New Code is materially better than the current terms and conditions for access to and use of gas transmission pipelines having regard to the objectives in section 43ZN of the Gas Act 1992 and any objectives and outcomes the Minister has set in accordance with section 43ZO of the Gas Act 1992;</p> <p>(c) the VTC <u>has been amended to provide that the VTC and</u></p>	
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		<p><del>_____</del> all <del>transmission services</del> agreements incorporating the  <del>_____</del> VTC shall terminate on the New Code Date;</p> <p><del>_____</del> (d) <del>TSP has published the New Code Date on the TSP IX;</del>  <del>_____</del> and</p> <p>(de) TSP has delivered an executable contract, <u>which</u>  <u>incorporates the terms of the New Code and which is to</u>  <u>apply with effect from the New Code Date,</u> to:</p> <p>(i) each Shipper and VTC Shipper for it to continue  to transport Gas through the Maui Pipeline and  the <del>Transmission VTC</del> Pipelines <del>covered by the</del>  <del>_____</del> VTC;</p> <p>(ii) each Welded Party <u>and interconnected party</u> for  <del>_____</del> it to continue to connect its Pipeline(s) <u>or</u>  <u>pipelines</u> to the Maui Pipeline <u>and the VTC</u>  <u>Pipelines;</u> and</p> <p>(iii) emsTradeport to allow the Trading Platform to  continue functioning;  <del>_____</del> <del>on and after the New Code Date; and.</del></p> <p>(e) <u>GIC has advised TSP and industry whether or not any</u>  <u>amendments are required to be made to any regulations</u>  <u>and / or industry rules (including, for the avoidance of</u>  <u>doubt, the D+1 Agreement) for compatibility with the New</u>  <u>Code on and after the New Code Date, and if so, then all</u>  <u>these amendments have been made; and</u></p> <p>(f) <u>The Commerce Commission has advised TSP and</u></p>	
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		<p><u>industry whether or not the New Code is required to be assessed by it under the Commerce Act 1986 and / or whether it has any concerns in respect of the New Code and the same, and if either or both are true, then the Commerce Commission has assessed and approved the New Code and TSP has advised GIC and industry that the Commerce Commission's concerns (if any) have been addressed (as appropriate).</u></p> <p><u>22.17 Upon satisfaction of all the Termination Conditions, TSP shall publish on the TSP IX the date which is to be the New Code Date, such date to be the next 1 October that is no less than 90 Business Days after the last Termination Condition has been satisfied.</u></p> <p><u>22.18 Subject to section 22.17, TSP shall ensure that every ICA and TSA shall terminate simultaneously at 0:00 hours on the New Code Date, and every ICA and TSA and this Operating Code shall be deemed to be terminated with effect from the New Code Date.</u></p>	
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