

Nova Energy Submission

Gas Transmission Access Code – governance options

12 May 2017.

Question	Feedback
Q1: The report recommends that code changes could be proposed by parties bound by the terms of the code, gas users and gas market operators. Do you agree with the reasoning and recommendation?	Nova agrees with the proposal, but on the condition that the final decision remains with the parties who have the commercial responsibility of operating within the terms of the Code. Parties other than those that are required to be a party to the new arrangement may have a useful contribution to make, but are not directly accountable for day-to-day management of gas being injected, transported or drawn off the transmission system or for compliance with the new Code requirements.
Q2: The report recommends that code changes should be consulted on and refined through a process similar to the current VTC process. Do you agree with the reasoning and recommendation?	Yes. Nova Energy believes that code changes can always be improved through engagement by parties with different perspectives on an issue, and even changed radically if alternative solutions can be found to the issues being addressed. The GIC can also be actively involved in helping refine proposals if it is not also the final arbiter of adoption of changes to the Code.
Q3: The report recommends that proposed code changes should be assessed against the Gas Act s43ZN criteria, and that Gas Industry Co is best placed to make that assessment. Do you agree with the reasoning and recommendation?	Not directly. The purpose of Gas Act s43ZN is to provide guidance for the GIC, but there is no direct basis for that to determine the commercial relationship between the gas transmission owner and shippers. While many overseas jurisdictions may opt for a regulator to determine Code changes, there are also many instances of industries where regulation plays a minimal role in determining access arrangements. For instance, New Zealand does not have a regulator determine detailed access arrangements for Rail, Ports, or Airports. These are left for commercial operators to deal with. The GIC itself is not empowered to set regulations and should address proposed Code changes on an advisory basis only, to ensure best process is followed. It is Nova's view therefore that Code change decision process should be performed accordingly to a voting process with parties entitled to vote if they are signatories to the new code.

	<p>Detail as to the structure of the decision process and voting rights is a level of detail that would have to be worked through in due course.</p> <p>The Gas Act criteria contained within S43ZN of the Gas Act still remain relevant in the context of an appeal process within the new code governance provisions and also as a protection for consumers should industry participants vote through changes which are assessed to be have an anti-competitive affect. In such cases the GIC would have the ability to regulate.</p> <p>Should the proposal to use the GIC as the decision maker on Code changes proceed, then the process should also include provision for appealing decisions to a higher authority such as the courts. Note that regulators such as the Electricity Authority have some characteristics that the GIC does not that influence governance structure, for example:</p> <ul style="list-style-type: none"> - The Official Information Act process does not apply to the GIC - The GIC Board has non-independent Directors; and - The Judicial Review process is only available in the case of regulatory bodies exercising statutory rights.
<p>Q4: Are there any other matters that you believe are relevant to code changes and need to be considered?</p>	<p>With respect to the use of Veto rights by the TSP, Nova believes that there should be rights of appeal in such circumstances. The nature of the appeal process will depend on the circumstances and that may well be a general contractual right involving the Courts. There should also be the additional protection for consumers through the ability of the GIC to recommend regulations to the Minister.</p>