



Second Revised Draft Gas Transmission Access GTAC

A response to First Gas

24 November 2017



Trustpower Limited welcomes the opportunity to provide a response to First Gas on its second revised draft Gas Transmission Access Code (GTAC).

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1 Introduction and Background

1.1 Introduction

- 1.1.1 Trustpower Limited (**Trustpower**) welcomes the opportunity to provide a response to First Gas on its *Second Revised Draft Gas Transmission Access Code (the GTAC)*.
- 1.1.2 Trustpower entered the gas market in 2013 and has successfully grown its customer base to around 30,000 gas customers.
- 1.1.3 We are a multi-product retailer, participating in the electricity, gas and telecommunications industries in New Zealand, and have electricity generation assets in both New Zealand and Australia.
- 1.1.4 As a result we have extensive experience operating under a number of different market arrangements and a broad understanding of what is required to establish and maintain an efficient, competitive and confident gas market in New Zealand.

1.2 Background to this submission

- 1.2.1 In 2016 First Gas became the new transmission system owner of both the Maui and Vector pipelines.
- 1.2.2 To bring transmission access under one arrangement, First Gas has been working with industry over the last 18 months to develop a single new transmission code (the **GTAC**) that provides an end-to-end service.
- 1.2.3 Trustpower has been actively involved in the design of the arrangements for the GTAC during this period, through written submissions, one on one meetings with First Gas and attendance of industry workshops.
- 1.2.4 We note that this round of consultation constitutes just part of the ongoing development process for the new GTAC and is intended to capture our legal concerns with the proposed arrangements.

1.3 Trustpower's access requirements

- 1.3.1 Trustpower is seeking access to the gas transmission system on terms which are reasonable for an industry participant operating solely in the retail sector with a small market share.
- 1.3.2 First Gas has acknowledged that the needs of retail customers are different.
- 1.3.3 However we do not think GTAC offers us a suitable access product for serving this segment of the market.

2 Process to date

2.1 Concerns have been parked or disregarded

- 2.1.1 During the development process undertaken by First Gas to date, Trustpower has continued to raise substantive concerns around the proposed GTAC arrangements, including with respect to the governance and enforcement arrangements and Commerce Act risk that will be introduced.
- 2.1.2 We have also queried whether some of the commercial terms, such as the proposed Priority Right (**PR**) arrangements, are reasonable in the context of a small gas industry participant serving the retail market and competing against shippers with considerable market power.

- 2.1.3 These issues have largely not been addressed in the current version of the proposed GTAC. Some have been set aside for consideration at a later time. For example, the enforcement arrangements will be considered as part of the PR auction design in 2018.
- 2.1.4 We are disappointed at this response and with the comments First Gas made on our previous submission.
- 2.1.5 To clarify our position, we have provided a further response to First Gas based on its responses to our commercial concerns in the “*Summary of Mark-ups and submissions on September draft GTAC and responses*”¹ document as Appendix A.
- 2.1.6 The failure of First Gas to address these substantive issues has resulted in Trustpower losing faith that this process will provide it with reasonable access to the gas transmission system.
- 2.1.7 These concerns were reinforced by the discussion at the November workshops where it was identified that a number of the solutions we have proposed to issues within the GTAC may not have been considered First Gas². For example the timing of First Gas providing its veto in the code change process.

2.2 Sub-optimal consultation in final stages of development of the GTAC

- 2.2.1 The consultation process for the last stages of the development of the GTAC is in our view sub-optimal and will not afford shippers and other interested parties with an opportunity to review substantive changes that might be made prior to submission to the GIC.
- 2.2.2 There is only very limited time anticipated to be provided for review of the appropriateness of any changes following from the November workshops (as indicated in the email from First Gas on 23 November) and no contemplation of consulting on any material changes resulting from the current round of consultation.
- 2.2.3 We expect First Gas, at a minimum, to develop some arrangements for transition into the new GTAC. For example to implement the code change process in advance of the anticipated 1 October 2018 commencement.
- 2.2.4 These transition arrangements will require consultation with industry to ensure that they are fit for purpose.

3 Trustpower’s views on GTAC

3.1 Outcome of Trustpower’s legal review

- 3.1.1 As a result of these concerns we sought external legal advice on our “first order” issues. In the interests of transparency we have included a roadmap setting out this legal advice as Appendix B.
- 3.1.2 This review identified a number of issues which need to be addressed by both the Gas Industry Company (GIC) and First Gas. These relate to the following core questions :
1. Is the “materially better than status quo” test the correct threshold for the GIC to apply to an assessment of the GTAC?
 2. Is the current process reasonable?
 3. Is an industry agreement preferable to regulated terms and conditions?

¹ Refer to: <http://gasindustry.co.nz/work-programmes/transmission-pipeline-access/developing/second-revised-draft-gtac/>

² For example, we previously proposed drafting to ensure First Gas’s veto of any code change is provided early in the process (rather than right at the end) and to establish a contractual nexus between parties for disputes (other than the shipper and First Gas).

- 3.1.3 After working through these three questions with our legal advisers, we have now reached the point where we consider that:
- a) the correct test to be applied by the GIC when assessing the GTAC is whether the GTAC prescribes *reasonable terms and conditions of access* to the pipeline;
 - b) the access agreement proposed by First Gas will not provide reasonable access, partly because of the legal structure which has been adopted;
 - c) further “negotiation” with First Gas on the same structure appears unlikely to resolve our concerns;
 - d) gas governance rules or regulations developed by the GIC would be more likely to take into account market concentration in the gas sector when designing standard access products; and
 - e) gas governance rules or regulations would also provide more reasonable access terms as they would provide greater protection against the risk of monopoly behaviours, a more effective governance and compliance regime and default authorisation status under the Commerce Act.
- 3.1.4 In this circumstance, we think it is not reasonable, or consistent with the Government Policy Statement (**GPS**), that the industry is co-led through a lengthy consultation process to develop a GTAC, which is materially better than the Maui Pipeline Operating Code (**MPOC**) / Vector Transmission Code (**VTC**), only to find at the very end of the process there is a further step which it might fail, namely an assessment of whether the reasonable access terms threshold is met.

3.2 Open letter to GIC on our concerns

- 3.2.1 Our view, based on legal advice, is that the GIC’s primary purpose under the Gas Act and its constitution is to assess whether the proposed terms *provide reasonable access* rather than whether they offer an *incremental improvement towards meeting Gas Act and GPS objectives* compared with the current industry agreements.
- 3.2.2 Accordingly we have written an open letter to the GIC explaining our concerns and seeking a meeting to discuss how to alleviate our concerns that all shippers must be provided with access to the transmission pipeline network on reasonable terms and conditions.
- 3.2.3 A copy of this letter, which draws on our legal roadmap, is attached to this submission as Appendix C.

4 Submission on GTAC

- 4.1.1 The balance of this submission sets out the reasons why we think GTAC does not provide reasonable terms and conditions of access having regard to the objectives and outcomes in the Gas Act 1992 and GPS on Gas Governance 2008.

4.2 Approach to assessing GTAC

- 4.2.1 We think that the New Zealand market context is highly relevant to the assessment of whether any access arrangement will deliver on the objectives and outcomes set out in the Gas Act and GPS.
- 4.2.2 The GIC in its NZ Gas story has noted that “*the gas industry in New Zealand has a concentration of participants, many of them with interests at more than one level of the value chain*”³.

³ NZ Gas Story (December 2016), GIC, page 11.

4.2.3 The International Energy Agency⁴ recently noted that the upstream gas market in NZ continues to be “*small and concentrated, involving a small number of producers and wholesalers, relying on mainly bilateral contract arrangements.*”

4.2.4 It is vital that these structural issues are taken into account in designing the transmission access arrangements in order to ensure that the outcomes sought in the Gas Act and GPS are met.

4.2.5 We do not think this has been done, particularly in relation to the design of PRs and the rebate arrangements.

4.3 Priority Rights

4.3.1 In our view the proposed PR arrangements create:

a) Un-manageable risks for gas industry participants operating solely in the fixed price, variable volume retail market as they do not offer firm capacity at a known price. While these risks may exist under the current VTC arrangements, we do not consider it is reasonable to:

- enshrine a known design deficiency into the GTAC which distorts signals and is inconsistent with the CCM Regulations; and
- expose shippers of mass market customers to increased cost/risk exposure if they miss out on PRs given there is no way for them to manage the risks associated with congestion arising, i.e. mass market customers cannot curtail consumption in response to a signal that congestion is occurring.

b) Significant potential for gaming the PR auction process and outcomes by other industry participants. While these issues may yet be addressed within the auction design, neither the GIC or Shippers can be confident that the mechanisms for addressing pipeline congestion are reasonable at this time.

c) Limitations on competition for customers. There needs to be a link between PRs and a load created or else competition for these customers will be limited⁵. We consider it is not reasonable to establish arrangements that could limit competition within the gas market.

4.3.2 To remedy our concerns around the treatment of mass market, we have previously requested that First Gas makes available a standard product which provides default firm access to transmission for mass market customers at an appropriate cost. To date no such offer has been received by Trustpower.

4.4 Rebates

4.4.1 As raised at the 17 November workshop, we are troubled by the proposed rebate arrangements presented in the second draft of the GTAC, including with respect to the rebate of certain transmission charges.

4.4.2 While we appreciate that it would introduce a similar rebate methodology to that applied under the current MPOC and VTC, the change:

a) represents a significant amendment from the previous version of the GTAC;

⁴ Energy policies of IEA Countries, NZ review (2017), International Energy Agency, page 42.

⁵ For example, following an auction a customer could wish to switch to a new retailer, but that new retailer may not be able to acquire appropriate Priority Rights for that customer from its incumbent provider, or another Shipper in the area, and so not be able to secure the switch. We note this issue has been raised on a number of occasions by Greymouth Gas during the negotiation process.

- b) has been introduced at a late stage in the GTAC design process based on the recommendations of one (large) shipper during the last round of consultation and has had limited discussion with broader industry to date;
- c) would favour larger shippers through the return of monies each month on the basis of volumes transported; and
- d) distorts the incentives under the GTAC, including around ensuring accurate daily nominations and the need to procure Priority Rights.

4.4.3 We therefore do not think it is consistent with the objectives and outcomes sought in the Gas Act and GPS.

4.4.4 A more detailed overview of our concerns with the rebate arrangements is provided in Appendix C.

4.4.5 We welcome further discussion with First Gas around the implications of the propose rebate arrangements, and note there are potentially other distortions that will be introduced that need to be understood.

4.5 Level of discretion afforded to First Gas

4.5.1 We have also drawn attention to the fact that the levels of discretion afforded to the pipeline owner creates an ongoing opportunity to shift risk from the pipeline owner to shippers.

4.5.2 Concerns about the significant level of discretion afforded to First Gas under the GTAC are commonly held by all shippers, as captured in the email of common shipper concerns dated 8 November.

4.5.3 While at the 10 November workshop shippers and First Gas worked through the appropriateness of the discretion currently provided under a number of clauses of the GTAC, there will be no clarity provided as to how First Gas will take into account the feedback prior to the final GTAC going to the GIC for approval.

4.5.4 Likewise there is no certainty as to how those areas outside the current drafting of the GTAC which provide significant discretion to First Gas, i.e. the development arrangements for the PR auction, will be addressed.

4.5.5 As a result there still remains significant uncertainty as to whether the discretion afforded to First Gas under the GTAC will be reasonable.

5 Other elements of GTAC problematic

5.1.1 Our legal review has highlighted other elements of the GTAC do not support achievement of Gas Act objectives and outcomes

5.2 Legal vehicle is not fit for purpose

5.2.1 The GTAC is a bilateral agreement between each shipper and First Gas for access to the First Gas transmission pipeline. The GTAC becomes binding on shippers when they sign a Transmission Services Agreement (**TSA**).

5.2.2 This bilateral agreement structure puts the pipeline owner in a key role as the common counterparty.

5.2.3 However in our view, bilateral industry agreements are not the best option for an arrangement which involves multiple counterparties making common commitments.

5.3 The dispute resolution processes is inadequate for an access code

- 5.3.1 The “bilateral contract + incorporated common code” structure does not create a legal right to enforce the terms and conditions of the GTAC on other shippers.
- 5.3.2 There are a number areas of the GTAC where the actions of a party other than First Gas could affect a Shipper, i.e. another Shipper or Interconnected party. These include:
- a) PR Auctions;
 - b) The execution of PR holdings for delivery on a day;
 - c) The overrun of another Shipper⁶;
 - d) The rebates regime (explored earlier);
 - e) Compliance with prudential requirements;
 - f) The provision of accurate metering information for D+1/reconciliation;
 - g) Maintaining the quality of gas in the pipeline⁷; and
 - h) The requirements for transparency of information⁸.
- 5.3.3 Under the bilateral contract structure:
- a) any enforcement of the Code against another Shipper is dependent on First Gas who may not always have the incentives to take enforcement actions against its customers.⁹
 - b) the process for resolving disputes between First Gas and a Shipper requires resolution by an independent expert or arbitrator. This could be a very expensive and long-winded process against a determined pipeline owner.
- 5.3.4 Monitoring of behaviour by an independent entity that can take enforcement action is optimal to ensuring competitive outcomes eventuate given the market concentration issues described earlier
- 5.3.5 There is no provision for a low cost and effective compliance and monitoring regime under GTAC contract structure.

5.4 Rule change process does not guarantee reasonable terms of access

- 5.4.1 The code change process for the GTAC involves an assessment by the GIC against the objectives in the Act and the GPS.
- 5.4.2 The criteria does not include the outcome in the GPS that industry participants can access transmission pipelines on reasonable terms and conditions.
- 5.4.3 We also note that First Gas continues to maintain a right of veto and that our previous concerns around the timing of indicating that it will exercise this right have not been addressed.
- 5.4.4 As a result, we consider that the final GTAC is likely to be inferior to regulated access terms and this will continue over time.

⁶ For example another Shipper going into overrun could result in our nomination for transport of gas being displaced, forcing us to incur overrun fees.

⁷ A producer inserting non-specification gas could potentially have implications for customer’s appliances etc.

⁸ For example a gas producer not providing First Gas with information around planned and unplanned outages could result in asymmetric information being available and result in a Shipper incurring unnecessary expenses.

⁹ Previously the incentives pool under the VTC enabled a mechanism for redress if one Shipper’s actions impacted on another Shipper

5.5 The Commerce Act risks remain unaddressed

5.5.1 In addition we note that it is conceivable that one or more of the provisions in a gas access code such as GTAC addressing matters such as:

- a) the nominations process
- b) energy allocations
- c) balancing
- d) curtailment
- e) congestion management
- f) fees and charges
- g) code change process
- h) prudential requirements

could breach the restrictive trade practice provisions of the Commerce Act (sections 27 or 29) or involve costly and time consuming applications for authorisation of the arrangements before parties can sign the contract.

5.5.2 There is also a risk that shippers breach section 80 of the Commerce Act if they aid, abet, counsel or procure another person to contravene the Commerce Act or are knowingly concerned in or party to the contravention of the Commerce Act by another person.

5.5.3 These risks could be mitigated First Gas seeking authorisation of the GTAC on behalf of industry but First Gas has yet to offer to do this.

6 Concluding remarks

6.1.1 We think that finding a satisfactory solution to the first order issues raised in this response is critical to the success of GTAC. However we have found it challenging to find a forum when these issues are properly addressed.

6.1.2 This does not augur well for the establishment of a fit for purpose transmission access arrangements for a gas industry participant like Trustpower.

6.1.3 We request First Gas reconsiders our stated concerns, including with respect to the commercial terms and the governance and enforcement arrangements, and addresses these prior to formally submitting the GTAC to the GIC for approval.

6.1.4 We welcome further discussion with First Gas around remedies to the concerns we have outlined to date.

Appendix A – Further responses to First Gas on commercial issues

Statement by Trustpower	First Gas Response	Trustpower further response
We continue to consider that the proposed GTAC, as a whole, would not represent an improvement on the current arrangements outlined in the MPOC and VTC	It is unclear whether Trustpower has drawn this conclusion by weighing the benefits of the GTAC (such as removing the risk of hoarding reserved capacity) against the costs and risks that Trustpower has identified under the GTAC. That is the exercise that the GIC will undertake and we encourage stakeholders to consider the same exercise from their position	Trustpower is evaluating GTAC against the extent to which it provides reasonable terms and conditions of access for a gas industry participant with a small market share operating solely in the retail sector. We are seeking an access regime which “ <i>facilitates competition in the downstream gas market by minimising barriers to access to essential infrastructure for the long term benefit of end users.</i> ”
The workability of some core aspects of the new GTAC arrangements (particularly Priority Rights) have not been able to be demonstrated, and the design has not been considered fully	We accept that further design is required to operationalise aspects of the GTAC (including PRs, P&L, and other provisions). This reflects the status of the GTAC as a contract that defines the legal rights and obligations of First Gas and its counterparties. We do not think it is efficient to prescribe PR auction rules in the GTAC. However, we accept that parties desire greater certainty that PR will not be allocated via auction until acceptable rules have been developed and are published	We think the GPS objectives and outcomes require First Gas to offer a standard transmission service suitable for mass market consumers. Without the completion of the further design of PRs and other provisions it is not possible for us to confirm that the proposed arrangements will provide us with an acceptable transmission service product. Nor do we think the GIC will be able to assess that the objectives and outcomes in the GPS will be met. We understand that First Gas prefers a mirror bilateral contract to a multilateral contract. However First Gas’s response highlights the risks for shippers in its proposed approach. We need the ability to enforce the agreed access terms against other shippers as well as First Gas.
We consider that mass market end users need be excluded from the currently proposed arrangements or automatically assigned firm transport capacity upfront. Mass market customers cannot be expected to respond if	Disagree. This statement confuses the contractual right afforded by PRs (to be at the front of the queue for DNC) with the physical status afforded by the CCM Regulations (not to cease supply to mass market gas consumers). We see the position of a Shipper serving mass market customers that does not hold PRs under the GTAC as being comparable to a Shipper serving mass market customers that does not	We are pleased you acknowledge that mass market customers have different characteristics to other end users. We think these characteristics require a fairly priced firm capacity product.

Statement by Trustpower	First Gas Response	Trustpower further response
congestion arises – a point recognised clearly in the [CCM Regulations]	hold Reserved Capacity under the VTC (a situation which occurs frequently). The Shipper does not have a transmission product to supply its mass market customers, and so it pays overrun charges. Despite not having booked transmission capacity, in the event of an emergency or critical contingency those mass market customers are the last to be physically curtailed. We do agree that mass market customers have different characteristics than other end-users of the gas transmission system. However, we are not convinced that those characteristics render PRs unworkable for Shippers supplying mass market customers. Those characteristics will lead to a different willingness to pay for PRs, which PR auctions are designed to reveal	We are concerned that the PR auction will not give us this outcome. First Gas proposals may instead just introduce further opportunities to exercise market power to a different forum. This could result in excessive prices for PRs and/or an inability to protect against overrun costs.
The proposed arrangements constitute a significant change from the status quo (i.e. under the VTC), where gas transmission capacity is firm by default, to now being “un-firm”, unless Priority Rights are successfully purchased via an auction or secondary trades, in which case the capacity becomes “firmer”	Disagree. Unless a Delivery Point or Delivery Zone faces the likelihood of Congestion (a defined term in the GTAC), then DNC has the same level of firmness as reserved capacity as under the VTC. That is, it can only be curtailed in the event of emergency, force majeure or critical contingency. This goes to the efficient management of congestion – is it better to artificially constrain the available contractual capacity (as per a reserved capacity system), or allow full use of physical capacity but require prioritisation if capacity may be exceeded? The GTAC adopts the latter approach, which we believe is more efficient	A reserved capacity system better aligns with the interests of mass market consumers. The PR auction could then be used to ration the remaining capacity in times of congestion. This better aligns with the Critical Contingency Management Regulations.
What is it about the NZ gas transmission system that means a unique arrangement for access products is required?	Problems with reserved capacity systems are well documented outside NZ. Australia is currently trying to address the same inefficiencies that arise with reserved capacity, and is also taking a bespoke approach (in that case mandating un-nominated capacity to be auctioned day ahead). Rather than taking this approach, the GTAC DNC+PRs approach builds on the experience in NZ with daily transmission capacity being contracted via a nominations process under the MPOC. This approach also applies the	We accept each gas transmission system has unique features. However common to most systems is a standard access product for mass market consumers. GTAC’s DNC + PRs in the context of a highly concentrated industry does not give us comfort that suppliers of mass market consumers will be able to purchase firm capacity at fair and reasonable prices.

Statement by Trustpower	First Gas Response	Trustpower further response
	recommendations of the PEA process, which considered the specifics of NZ's gas industry arrangements in detail	
Why, under the current Priority Rights design, must households that use gas in congested areas be potentially exposed to unmanageable risk?	This question mischaracterises PRs. Households that use gas in congested parts of the network face no additional risk. Shippers that serve households have an additional product available to meet their customers' gas transport needs, and this adds cost in serving those customers. This added cost is by design and reflects the higher marginal value of using scarce transmission capacity	The response from First Gas does not address the main issue which is how can a gas retailer be confident that the price paid for firmer capacity under the proposed PR system is fair and reasonable to end users?
Would it be better to adjust the Priority Rights regime to just be a long-term investment signal rather than trying to also be an operational management tool (as is currently the case)?	Agree that PRs are not an operational management tool, and need to be clearly distinguished from curtailment. PRs simply put shippers at the front of the queue for DNC. Whether a shippers' customers actually flow gas, or are asked to curtail their demand in an emergency or critical contingency, bears no relationship with PRs. We have added greater clarity on how we will respond to congestion, including through investment, interruptible contracts, and PRs (see section 3.4). This aims to make the different tools clearer and more coherent. We have also moved provisions for First Gas to enter into interruptible contracts from section 10 to section 3. The purpose of this relocation is to clearly distinguish between process for contracting ahead of possible congestion (IL and PRs) from the processes for operationalising the priorities under those contracts in the event of congestion.	This response raises our concerns about the value of a PR
Why have market power mitigation arrangements not been included into the design to date?	The PR auction rules have not yet been developed. That process should consider evidence on whether market power problems would arise given the clear financial incentive on shippers not to acquire more PRs than the physical load they supply	There may be other financial incentives in play incentivise perverse behaviour. This is not just limited to the PR Auction.
Why do the proposed Priority Rights arrangements not better integrate with the existing	As noted above, PRs provide a mechanism for shippers to obtain contractual rights to capacity. They do not need to align with curtailment rules in an emergency or critical	Our concern was that the lack of available fairly priced PRs may trigger a critical contingency.

Statement by Trustpower	First Gas Response	Trustpower further response
arrangements for managing a critical contingency	contingency. Reserved capacity under the VTC does not integrate with the existing arrangements for managing a critical contingency	The integration and alignment of the arrangements is important from a design perspective.
There appears to be limited benefit (if any) to Shippers and end-users of the proposed new Priority Rights arrangements	<p>The main benefit we see from PRs is to enable Shippers and end-users to either:</p> <ul style="list-style-type: none"> • Gain greater certainty of their contractual rights to available capacity in congested areas if they are willing to pay at auction • Pay lower charges if they do not place a high value on using scarce capacity in congested areas. <p>The PR regime also places an obligation and incentive on First Gas to identify congestion ahead of time. This provides notice to Shippers and end users of possible or emerging system constraints</p>	<p>We see value in First Gas identifying and addressing congestion ahead of time. This is part of the standard transmission service. However we do not think PRs are needed to achieve this outcome.</p> <p>The greater certainty that First Gas refers to comes at the prospect of an uncapped cost. This is not consistent with an access product appropriate for supply of gas to the mass market.</p>
<p>We suggest the following objectives act as the primary goals for Priority Rights auctions:</p> <ul style="list-style-type: none"> • Promote workable competition... • Achieve transparency and efficiency in price discovery... • Transaction efficiency... • Promote the right balance of least cost and highest value outcomes 	<p>We agree that these are good objectives for PR auctions. We consider the best place to refine and record these objectives is in the auction rules that will seek to achieve these specific objectives. Some comfort can be taken from inserting an overarching objective for the GTAC referring to the Gas Act and GPS objectives (which include competition and efficiency) (section 1.2)</p>	<p>We agree that it is better to have a reference to Gas Act objectives than none. However this is not a substitute for the availability of a suitable access product for the mass market.</p> <p>We also note that the objectives are not binding on the other shippers under the proposed bilateral contract + common code approach.</p>
We continue to be of the view that ensuring workably competitive outcomes arises, through establishing appropriate market power mitigation arrangements	The most significant competition concern that we are aware of under the existing codes is grandfathering of reserved capacity under the VTC. Grandfathering is not a feature of the GTAC. The absence of other material concerns under the existing codes suggests that creating formal market power	<p>We at least appear to agree that market power could preclude access to PRs.</p> <p>We suspect there are other areas of GTAC were this could be a factor e.g the code change process.</p>

Statement by Trustpower	First Gas Response	Trustpower further response
<p>should be a core design element of the GTAC, particularly with respect to the proposed Priority Rights arrangements</p>	<p>mitigation mechanisms would be unnecessary. This is not surprising since infrastructure access contracts (like the GTAC) generally focus on non-discrimination to support competition upstream and downstream, rather than constraining the behaviour of industry participants.</p> <p>We see this concern as relating specifically to PRs (which is the only “market” process established under the GTAC). As noted above, the process for establishing PR auction rules should consider evidence on whether market power problems would arise given the clear financial incentive on shippers not to acquire more PRs than the physical load they supply. In the absence of such evidence, this seems like a solution looking for a problem</p>	<p>This suggests that regulated terms with oversight from an independent party might provide us with the protection we need.</p>
<p>We request that there is incorporated in the GTAC a new complaints mechanism, whereby Shippers and First Gas would be able to bring a complaint to the GIC, alleging breach of the TSA by other Shipper(s), Interconnected Party(s) that are an OBA Party, or First Gas... The GIC and the Rulings Panel would have the powers, rights and obligations as set out in the Gas Regulations in determining/settling a complaint</p>	<p>We consider that the dispute resolution provisions in the GTAC provide an effective avenue for parties (including First Gas) to bring a complaint and have that adjudicated by an independent party (a suitably qualified expert or an arbitrator). If the complaint is of a broader nature, parties are also able to advise the GIC and potentially have the issue reviewed (for example, if the issue is detracting from Gas Act objectives).</p>	<p>We disagree. There are a number of actions of shippers which could increase the risks and costs of transmission access for us and there needs to be a direct remedy for those actions.</p> <p>Advising the GIC of an issue and “potentially having it reviewed” does not constitute reasonable terms of access.</p>
<p>Information from receipt point interconnects on planned and unplanned outages should be available on OATIS</p>	<p>Agree that this is desirable and that greater information would support competition. We have added this to list of matters in section 7 that will be provided for in ICAs (particularly at receipt points)</p>	<p>We support the inclusion of information transparency provisions relating to planned and unplanned production facility outages into the GTAC and consider these are important for ensuring asymmetric information doesn’t arise.</p>
<p>We consider that a multiparty contract is not the most efficient</p>	<p>We agree that it may not be possible for parties to have access to all of the information needed to make the best</p>	<p>Regulated requirements for transparency of information would give us the protection we need from market power.</p>

Statement by Trustpower	First Gas Response	Trustpower further response
<p>mechanism for achieving greater transparency of the broader gas market and recommend that the GIC and MBIE progress a regulated solution to ensuring transparency of information through a GBB</p>	<p>decisions simply by relying on the GTAC. However, the GTAC does increase the information that will be available (for example by requiring full disclosure of agreements and running mismatch positions). We intend to increase the accessibility and presentation of information with the launch of the new IT system that will administer the GTAC. In our view, the best time to consider whether regulation is required will be once the new IT system has been developed and the new information portal is available</p>	
<p>We are concerned with the significant discretion that is afforded to First Gas as the TSO and limited level of design detail that is provided in places... our preference is for a more prescriptive GTAC to be developed as this will provide greater certainty to Shippers and other interconnected parties around how the new arrangements will operate in practice</p>	<p>We understand that shifting away from the prescriptive drafting in the current codes to a principles-based approach creates nervousness. However, we continue to see significant benefits for the industry in allowing greater flexibility for First Gas as the system operator to respond to different situations in the most appropriate and efficient way. As noted above, we have added a provision to the GTAC to clarify that the objectives of the Gas Act and GPS will guide the approach to interpreting GTAC provisions, and the exercise of discretion by First Gas under the GTAC (section 1.2).</p>	<p>We have previously explained our concerns with the proposed rule change process. These concerns, in combination with the levels of discretion currently proposed in GTAC do not give us comfort that we will receive reasonable terms of access to transmission pipelines.</p>

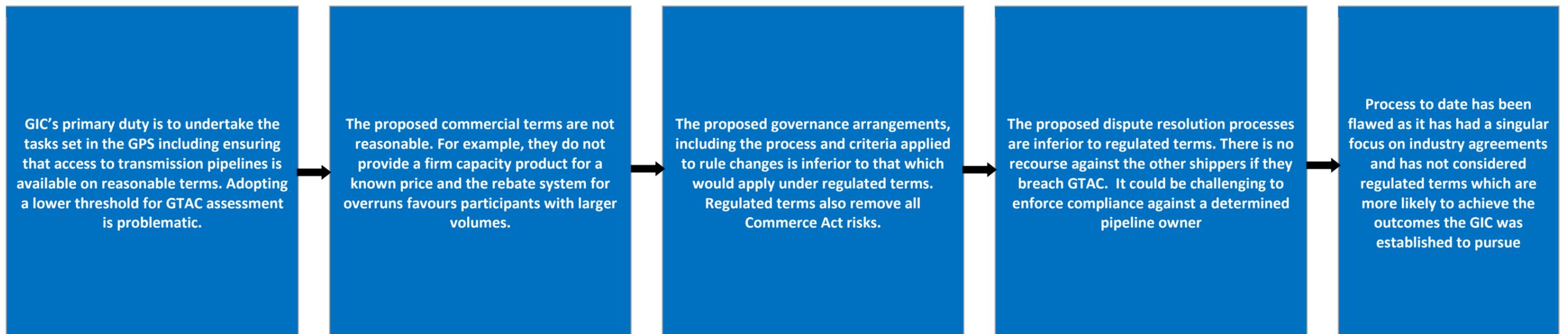
Appendix B - Legal review of GTAC

Gas Industry Co (GIC) is the approved industry body under the Gas Act 1992 (the Act). First Gas is the owner and operator of the transmission pipelines previously owned by Vector and Maui Development Limited. GIC and First Gas are co-leading a process to amalgamate the Maui Pipeline Operating Code (MPOC) and the Vector Transmission Code (VTC) into a single Gas Transmission Access Code (GTAC). This will become binding on individual shippers by virtue of bilateral transmission services agreements (TSAs) with First Gas. The process to date has included release of two draft versions of GTAC and the finalisation of an MPOC rule change. The MPOC rule change provides that transition from MPOC/VTC to GTAC can occur if GIC determines the new GTAC is materially better than the current terms of access to gas transmission pipelines having regard to the objectives and outcomes in the Act and in the April 2008 Government Policy Statement on Gas Governance (GPS).

Trustpower has previously raised substantive issues about the governance, enforcement, Commerce Act risk of GTAC. It has also queried whether some of the commercial terms, such as the proposed priority rights (PRs) that apply at times of pipeline congestion are reasonable, in the context of a gas industry participant serving the retail market that competes against shippers with considerable market power. These issues have largely been not addressed or parked for consideration at a later time. Instead, First Gas intends to proceed with a timeline which would have GIC issue a preliminary assessment of the GTAC before Christmas.

Trustpower's governance and commercial issues raises three legal questions (1) Is "materially better than status quo" the correct threshold for the GIC to apply to an assessment of GTAC? (2) Is an industry agreement preferable to a regulated terms and conditions? (3) Is the current process reasonable?

GIC is required to pursue certain tasks set in the GPS including recommending arrangements that prescribe reasonable terms and conditions of access to pipelines. This is its primary role. It also has power under its constitution to facilitate industry agreements but there is no requirement to do this under the Act. Trustpower does not think the current industry agreement proposed by First Gas contains reasonable access terms. It notes that regulated access terms would provide greater protection against risk of monopoly behaviours, a more effective governance and compliance regime and "authorisation" status under the Commerce Act. It follows that the GIC and First Gas's single focus on an industry agreement process is misguided. Further, Trustpower is concerned that the GIC's role in co-leading this process may make it difficult for it to impartially undertake the primary duties entrusted to it under its constitution, the Act and the GPS.



Appendix C - Open letter to GIC

“Open letter – Trustpower’s concerns about the ability of the current GTAC proposal to provide access to the gas transmission network on reasonable terms.” 24 November 2017.

[attached as a separate document]

Appendix D – Implications of the proposed rebate methodology

This appendix looks only at the proposal to rebate certain transmission charges, primarily over and under-runs.

The proposed rebates of the over and under-run charges clearly tilts the GTAC to favour larger shippers, and will dilute the signal for some shippers to purchase Priority Rights to avoid the over-run charge.

We understand that First Gas is not able to retain any revenue from the rebates under the Commerce Commission's allowable revenue cap, and that currently under the VTC these charges are returned to consumers two years later as a reduction on the Capacity Reservation fee.

The current proposal in the GTAC will return this revenue, each month, to shippers based on their level of Daily Nominated Capacity (DNC) on the entire gas system. The implication of this is that a large shipper will receive a larger share of the rebate each month. At first glance this appears "fair", however the signal that this provides across the gas transmission system distorts the intent of GTAC. A shipper with a small proportion of their load in a congested area will have a lower willingness to pay for Priority Rights than a shipper with a larger proportion of this load in the congested area.

Consider a world of two shippers, with the same risk appetite, with two regions, and only one type of customer. Both shippers have the same total load, but Shipper A has 25% of their load in a congested region, and Shipper B has 75% of their load in the congested region.

Shipper A with more load in the un-congested area, will receive more of the rebate, as they will have less DNC curtailed. This will result in a lower willingness to pay for PR's in the congested area as they will receive a larger share of the total over run rebate.

- Shipper A will receive 75% of the rebate for load outside the congested area, plus a share of the rebate applied to their DNC not curtailed in the congested area.
- Shipper B will receive 25% of the rebate for load outside the congested area, plus a share of the rebate applied to their DNC not curtailed in the congested area.

Shipper A will take comfort that they will receive most of the rebate, since they will have the highest amount of non-curtailed DNC. Even if they are fully reduced to zero in the congested area, they will receive 75% of the rebate, as opposed to Shipper B who facing curtailment, could receive as little as 25% of the rebate, despite having the same total load. Since Shipper B has proportionately more rebate at risk, they will place a higher value on Priority Rights than Shipper A.

This will result in the parties not purchasing PRs up to the value of capacity for their customers, as larger shippers are able to socialise the costs they would then be exposed to across their larger, more diverse base.

By washing up the rebates each month, the seasonal smoothing currently applied to rebates refunds is removed, providing greater certainty to shippers as to the amount of rebate they will receive back each month, and creating a potential for gaming. Interestingly a shipper may have the means to reduce load in a congested area, but because of the monthly rebate will be dis-incentivised to reduce consumption, which is clearly a perverse signal.

Likewise the means by which this money is returned to consumers will become less clear and there will be an incentive for shippers to retain the rebate. Currently rebates are through the transmission fee, whereas under the current proposal, the rebate will be paid directly to the shipper, who will decide how much rebate to give to each consumer.

Interestingly a shipper may have the means to reduce load in a congested area, but because of the monthly rebate will be dis-incentivised to reduce consumption, which is clearly a perverse signal.