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TRUSTPOWER SUBMISSION: TRANSITION CHANGE REQUEST - MPOC

1 Introduction and overview

- 1.1.1 Trustpower Limited (**Trustpower**) thanks the Gas Industry Company (**GIC**) for the opportunity to submit on the proposed changes to the Maui Pipeline Operating Code (**MPOC**) to enable the transition to the new single access code, the Gas Transmission Access Code (**GTAC**).
- 1.1.2 The proposed transition arrangement would enable the MPOC to be terminated when certain conditions are met. Those conditions must be assessed as being met 40 Business Days prior to the commencement of the new arrangements and are as follows:
- a) Substantive conditions –The GIC to assess whether the GTAC is materially better at meeting the requirements of the Gas Act and Government Policy Statement on Gas (**GPS**) than the current terms and conditions for access. This process will include appropriate consultation, with Shippers and welded parties being asked whether they support the transition; and
 - b) Procedural conditions:
 - First Gas to have published the GTAC and for the GTAC to make provision for all Shippers to continue to transport gas and for welded parties to continue to connect to the pipeline;
 - The Vector Transmission Code (**VTC**), and all transmission service agreements incorporating the VTC, to terminate on the date the GTAC commences operation;
 - First Gas to have provided formal notice of the date the GTAC commences operation on the TSP IX;
 - First Gas to have provided certification that the new information technology and other systems required to implement the GTAC are ready to put into production when the GTAC commences operation; and
 - First Gas to have provided executable contracts to operate under the GTAC, to all parties requiring them, including Shippers, Welded parties and emsTradepoint. The contracts need to enable the parties to continue operating as normal on and after the commencement of the GTAC.

2 Trustpower's views

2.1.1 We appreciate the opportunity to provide feedback on First Gas's proposed changes to allow the MPOC to be terminated when the new GTAC commences operation.

2.1.2 While we still have reservations regarding the new GTAC¹, we are generally supportive of the proposed changes to the MPOC to enable the transition to occur. However, there are additional refinements to the proposed transitional arrangements, as contained within the MPOC, that we consider are required to ensure:

- a) the objectives of the transition process² can be effectively achieved; and
- b) a robust and transparent decision making framework is applied when determining whether the substantive conditions have been met.

Given the inherent restrictions of the MPOC change process, we recommend that First Gas withdraws its change request and resubmits an updated proposal into the formal MPOC change process.

2.1.3 We also consider that, in advance of the next stages of the GTAC development process, two separate Memorandum of Understanding (**MoU**) should be established that cover:

- a) how the substantive conditions will be assessed³; and
- b) how the GIC will ensure independent decision making.

2.1.4 We acknowledge that the MoU could be used to provide the refinements to the transitional arrangements we have identified and avoid the need to resubmit an updated proposal into the formal MPOC change process (refer to paragraph 2.1.2). This would however be a second best solution, as the MoU would not be legally binding on either party, and as a result it would not provide certainty that a robust and transparent decision making framework will be applied. For example, we have recommended that the substantive conditions are further expanded to provide a more comprehensive substantive test (refer to section 2.3), however this would need to occur within the MPOC to ensure no potential issues around the hierarchy between the substantive conditions are created.

2.1.5 Our suggestions regarding the establishment of MoU's are outlined further in section 2.2. The remainder of our submission outlines the specific refinements we have identified (sections 2.3. – 2.5), along with our comments on the drafting of the proposed amendments (section 2.6).

2.2 Establishment of MoU's

2.2.1 We consider there would be value in establishing a specific MoU between First Gas and the GIC regarding how the GIC will undertake its assessment of whether the substantive conditions are met. This should cover matters such as how the GIC will define materiality (refer to section 2.4) and how consultation with industry will be taken into account (refer to paragraph 2.3.4).

¹ We continue to consider that the proposed Priority Rights arrangements (as proposed to be amended at the 19 July workshop) will create a barrier to entry and increase complexity for participants. As a result we do not agree with the assessment of the GTAC provided by First Gas in paragraph 4.2 of the proposal.

² The stated objectives of the transition process are 1) a seamless transfer, 2) certainty and 3) ability to influence, without creating the risk of hold-out.

³ We note that the preparatory work released by the GIC on 2 August regarding how it will undertake the GTAC assessment would provide a natural starting point for the MoU.

2.2.2 The MoU between First Gas and the GIC regarding independent decision making, as recommended by Concept Consulting in its Final Report⁴, should also be established prior to the GIC undertaking its assessment. This would provide transparency to all parties that only independent directors are involved in deciding that the substantive conditions have been met. Note that while a MoU may not entirely address all the concerns we have regarding the potential lack of independence of the GIC, we consider it is a pragmatic solution for this point in time.

2.3 Expansion and clarification of substantive conditions

2.3.1 We continue to be of the view that the substantive conditions should be expanded. The stated focus shouldn't entirely be on whether the GTAC is materially better than the current terms and conditions for access, having regard for the Gas Act objectives and GPS.

2.3.2 We consider that it is important to capture within the revised MPOC, the other important aspects of decision making that are largely already covered by the GIC in its "*proposed approach to GTAC assessment*". This will ensure that sufficient weight is applied to these aspects when making a final decision that the substantive condition has been met.

2.3.3 Other important factors that should also be specified as forming part of the substantive conditions to be met, including ensuring that:

- a) material concerns raised during consultation have been appropriately considered and addressed to industry's satisfaction;
- b) risks are not transferred to parties who are not best placed to manage those risks; and
- c) a robust consultation process has been undertaken.

2.3.4 An assessment of the costs and benefits of the proposal, and any reasonable alternatives that have been presented, should also be undertaken by the GIC. We note that undertaking a qualitative cost-benefit assessment is captured in section 3.1 of the GIC's recently released "*proposed approach to GTAC assessment*". However we consider that the requirement that the cost-benefit assessment presents a net benefit to the gas industry overall should be expressly incorporated as a substantive condition to ensure sufficient weight is applied to the outcomes when the GIC completes its assessment.

2.3.5 We also consider that as currently drafted the requirement for the GIC's process to include "*appropriate consultation, with Shippers and Welded Parties being asked whether they support the transition*" is vague and provides no guidance as to how the GIC will take into account the views expressed during the consultation process. For example if a number of Shippers state that they do not support the transition to the new arrangements, then how will the GIC take this into account in assessing whether the substantive conditions have been met? Likewise what if substantive issues are raised during consultation that are not addressed at all in the GTAC? We consider the consultation requirement needs to be better clarified in the proposed drafting.

2.3.6 Broadening the scope of the substantive conditions to be assessed by the GIC and clarifying how views expressed during consultation will be taken into account, would enhance the integrity and robustness of the decision making framework for determining when to transition to the new arrangements. It will also provide comfort to interested parties that their material concerns have been considered in developing the GTAC.

⁴ The MoU should be between First Gas and the GIC and document the role of the independent directors of the GIC as decision makers and the procedural framework that will use. For further details refer to <http://gasindustry.co.nz/work-programmes/transmission-pipeline-access/developing/gas-transmission-access-code-governance-options/>

- 2.3.7 As an alternative, these matters could be covered within the MoU between First Gas and the GIC (refer to paragraph 2.2.1). This would in effect achieve a similar robust decision making criterion being applied by the GIC. Our preference would however be for the additional requirements for the GIC's assessment to be embodied within the MPOC rather than a MoU, which despite being a formal agreement is unlikely to be legally binding and could result in hierarchical issues between the stated substantive requirements arising.

2.4 Definition of materiality and transparency of assessment of substantive conditions

- 2.4.1 We note that the concept of "materiality" is highly subjective. We support the GIC's clarification of exactly how it will interpret this requirement in its recently released "*proposed approach to GTAC assessment*".
- 2.4.2 We consider there should be complete transparency of the outcomes of the GIC's assessment of the substantive conditions, including any refinements made by First Gas following feedback from the GIC.
- 2.4.3 We also consider that if substantive changes are required by First Gas following the GIC's feedback then further consultation with industry should be undertaken.

2.5 Refinement to procedural condition relating to IT implementation

- 2.5.1 The requirement for First Gas to provide certification that the new information technology (IT) systems are ready to put into production was a sensible inclusion as a procedural condition. However, in our view, it needs to be more explicitly recognised that participants need a reasonable period for user testing and training⁵.
- 2.5.2 We note that concerns around the timeframes for participants to implement new IT systems was shared by a number of submitters during the consultation on the preliminary draft code changes, including Contact Energy, Genesis Energy and Vector. These concerns appear to have been largely ignored to date.
- 2.5.3 Participants need to be given an opportunity to ensure they can physically operate under the new arrangements prior to their commencement. Not including user testing and training as a procedural condition would be a serious oversight that could have potentially significant ramifications for the overall success of implementing the new GTAC. It is likely to be a longer, more risky process for participants to adapt existing systems to be able to operate under the new arrangements, than for First Gas implementing a new system. We note that allowing testing of key operational processes required to implement a change is specified in the Government's Expectations for good regulatory practice⁶.
- 2.5.4 It is important that the IT system adopted by First Gas should not limit the future development of the gas industry. The IT system should be sufficiently adaptable to be able to incorporate a congestion management solution in the future. There is significant risk in implementing an IT system that does not allow efficient future evolutionary changes to occur. We consider that "picking a pathway" now for the development of the industry's access arrangement should not preclude a different pathway being chosen in the future.

⁵ We acknowledge that the requirements for user testing and training may need to be specified in a manner which would avoid hold-out by participants; i.e. that a reasonable period for user testing and training has been provided as opposed to all users have successfully completed their testing and training.

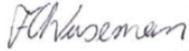
⁶ <http://www.treasury.govt.nz/regulation/informationreleases/pdfs/good-reg-practice.pdf>

2.6 Specific comments on proposed drafting changes

- 2.6.1 For new clause 22.16(d) the “and” at the end of the clause should be removed and inserted at the end of new clause 22.16(e).

For any questions relating to the material in this submission, please contact me on 07 572 9888.

Regards,

A handwritten signature in black ink, appearing to read "F. Wiseman".

Fiona Wiseman
Senior Advisor, Strategy and Regulation