

Gas Industry Co's proposed approach to GTAC assessment

1. Introduction and purpose

1.1 Purpose of this paper

In the context of the *GTAC* development, and the current 14 July 2017 *MPOC Transition Change Request (TCR)* submitted by First Gas, stakeholders have asked Gas Industry Co what process we would follow and how we would assess whether the *GTAC* was 'materially better' or not. The purpose of this paper is to set out our initial view on how we might assess a formal *GTAC* proposal, in the event that the *TCR* is approved.

We welcome any stakeholder feedback, either as part of the stakeholder's submission on the *TCR* (to the extent relevant) or separately.

1.2 Background to this paper

One of Gas Industry Co's roles in co-leading the *GTAC* development is:

... testing proposals against Gas Act and GPS¹ objectives...

s5.2(2)f, *Gas Transmission Access Single Code Options Paper - Part 1 (SCOP1)*, 13 September 2016 (footnote added)

We also anticipated that:

As well as ensuring that a regulatory back-stop is available, we see Gas Industry Co's involvement in the code development process as providing industry with an independent assessment of First Gas' proposed new access regime.

s5.2, *SCOP1*

In addition, changes to the MPOC proposed by First Gas as part of the *TCR* would (if implemented) require Gas Industry Co to assess the *GTAC* as one of the conditions of terminating and replacing the MPOC and its associated Interconnection Agreements (ICAs) and Transmission Services Agreements (TSAs). Specifically, if the *TCR* is supported by Gas Industry Co and implemented, the MPOC will prescribe one of the termination conditions² as:

... **following an appropriate consultation process** which includes GIC publishing a draft determination and asking each Shipper and Welded Party whether it supports the New Code, **GIC has published a final 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 43ZO¹ of the Gas Act 1992;

¹ Gas Act s43ZO empowers the Minister to set objectives and outcomes that the Government wants the industry body to pursue. The current statement of such objectives and outcomes is the April 2008 Government Policy Statement on Gas Governance (GPS), available at: [file:///C:/Users/ianw.GAS/Downloads/GPS-2008%20\(4\).pdf](file:///C:/Users/ianw.GAS/Downloads/GPS-2008%20(4).pdf)

² The other conditions necessary for termination are essentially that First Gas has published the new *GTAC*, offered pipeline users new contracts, simultaneously terminated the VTC TSAs, and certified that the IT systems are ready.

MPOC s22.16(b), as proposed by the *TCR* (emphasis and footnote added)

Stakeholders should note that this possible MPOC role is separate from and does not affect Gas Industry Co's power under section 43F(2)(c) of the Gas Act to recommend to the Minister regulations or rules prescribing '*reasonable terms and conditions for access to, and use of, transmission or distribution pipelines*', should that ever be necessary. In particular, there are additional requirements that apply to the making of a recommendation of rules and regulations that would need to be completed before Gas Industry Co could make a recommendation to the Minister. However, no such recommendation is being proposed at this stage.

At a *GTAC* workshop on 19 July, stakeholders asked us what process we would follow and how we would assess whether the *GTAC* was 'materially better' or not.

We think this is a reasonable question, and that providing guidance at this point could be useful to stakeholders in their ultimate assessment of the *GTAC* and also in considering the *TCR*. This guidance may also be useful to First Gas and other industry stakeholders as they interact to shape a proposed *GTAC*.

With these considerations in mind, we determined it would be appropriate to issue this note, setting out our preliminary views on how we would assess a formal *GTAC* proposal **if** we are ultimately asked to assess it in the manner currently proposed under the *TCR*. We do note though that:

1. we may continue to develop our view on how we would assess a formal *GTAC* proposal, including to take into account any feedback from stakeholders in response to this note; and
2. this note, of necessity, assumes that the *TCR* is approved – however, such approval is of course subject to a separate MPOC assessment process (and this note should not be seen as indicating any view by us as to whether or not the *TCR* will be approved).

We welcome any stakeholder feedback on this note.

2. Proposed *GTAC* assessment process

We have considered whether there are any aspects of the *GTAC* assessment that would require a consultation process different to what our stakeholders are familiar with. While the *GTAC* assessment has a few unusual features, which we discuss below, we think that the kind of consultation process used for MPOC Change Requests will be suitable.

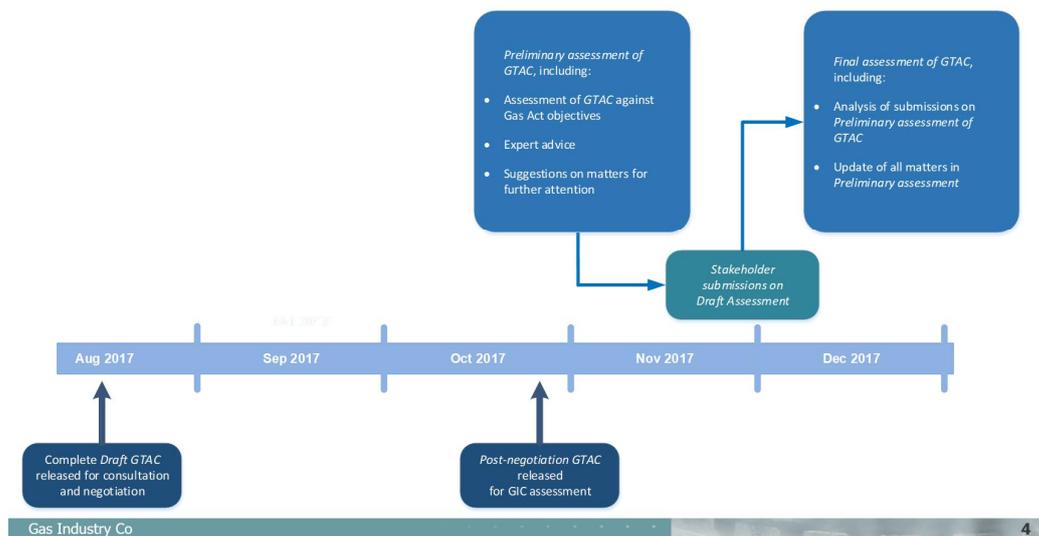
An important difference to the MPOC Change Request process is that Gas Industry Co is likely to be familiar with the material prior to the *Post-negotiation GTAC* being submitted to us, which First Gas expects to do around the end of October. We have attended all the *GTAC* workshops to date, and we expect to be kept abreast of the negotiations that will follow once First Gas issues a complete draft of the *GTAC* early in August. So at this stage we expect to be able to issue a *Preliminary assessment of the GTAC* early in November.

Another important difference to the MPOC Change Request process is that stakeholders will also be very familiar with the material prior to seeing our *Preliminary assessment of the GTAC*. Parties to the MPOC and VTC will have been involved in the negotiation process, and other stakeholders will, like us, have been exposed to previous drafts, consultations and workshops (see Appendix A for a timeline of the key communications to date). In short, stakeholders will have had ample opportunity to become familiar with the subject matter before being invited to submit on our *Preliminary assessment of the GTAC*.

While the *GTAC* is much broader than the matters typically addressed in an MPOC Change Request, we consider that a 15 working day window for submissions is likely to be reasonable. This is because submitter concerns at that point are likely to involve a re-iteration or amplification of issues that have already been identified. Having said that, we will not decide on the submission timeframe until we have received and reviewed a formal *GTAC* proposal.

After considering submissions (and cross-submissions should they be necessary) we would then issue a *Final assessment of the GTAC*. If no cross-submissions are called for, and no unforeseen issues or complexity arises, it should be possible do this by the end of the calendar year. This was the process illustrated in our 'Next Steps' presentation at Workshop #8, and reproduced below.

GTAC assessment process timeline



Note that we anticipate that our *Preliminary assessment of the GTAC* may provide 'suggestions on matters for further attention'. This is a recognition that the *GTAC* may not be perfect, and if we find aspects that could be improved during our analysis it would be helpful to refer these back to the parties so that they have the opportunity to deal with them if they wish to.

3. Proposed *GTAC* assessment framework

3.1 Overview

If First Gas' change request is approved, Gas Industry Co's assessment will consider how the proposed new access arrangements (as per the *GTAC*) compare to the current terms and conditions for access to and use of gas transmission pipelines under existing access arrangements (as per the MPOC and VTC) with reference to the Gas Act and GPS objectives.

To facilitate a robust assessment, each element of the regime will be considered, for example:

1. The standard services offered (comparing, for example, such matters as barriers to entry and the potential for undue discrimination);
2. Congestion management (comparing, for example, the potential for contractual and physical congestion and how these are managed);

3. Balancing arrangements (comparing, for example, the efficiency of balancing arrangements including the costs and risks for users and the pipeline owner); and
4. Pricing (comparing, for example, the potential for undue discrimination and price shocks).

Expert advice will be sought where necessary.

Once these aspects have been considered, we will make an overall assessment as to whether, when viewed as a whole, the New Code is materially better than the existing arrangements. Unless each and every element of the regime is clearly materially better than current arrangements this assessment will involve some judgment as to the overall effect.

We do not believe it would be feasible to robustly estimate costs and benefits in numerical terms, but they will be considered at a high level in qualitative terms.

3.2 Gas Act and GPS objectives

In the table below we list the Gas Act and GPS objectives and provide an indication of some of the key issues that could be relevant to each in terms of transmission access. To avoid duplication, we have grouped the Gas Act and GPS sections together where they cover the same or very similar material.

We consider that the Gas Act and GPS establish the following hierarchy of Gas Act objectives and GPS objectives:

1. The principal objective in section 43ZN(a) of the Gas Act – ‘to ensure that gas is delivered to existing and new customers in a safe, efficient and reliable manner’ - should be given more weight than other objectives under the Gas Act and GPS. We think this is self-evident from its position as the ‘principal objective’. Paragraph 8 of the GPS preserves the position of the principal objective in respect of non-regulatory arrangements by requiring Gas Industry Co to apply the principal objective to all of its work.
2. The remaining objectives in section 43ZN(b) of the Gas Act should be given less weight than the principal objective, but should be given greater significance than the objectives and outcomes in the GPS. That is because:
 - (a) section 43ZO of the Gas Act describes the GPS objectives as matters for the industry body to ‘pursue’ and that Gas Industry Co must have ‘regard’ to those objectives when recommending regulations, whereas section 43ZN of the Gas Act and paragraph 12 of the GPS require Gas Industry Co to apply the Gas Act objectives to all recommendations of regulations and non-regulatory arrangements.
 - (b) the objectives in section 43ZN of the Gas Act have been expressly stated in primary legislation, whereas the power to determine GPS objectives is delegated to the Minister.
3. The GPS outcomes of ‘fairness’ and ‘environmental sustainability’ are the most important GPS objectives. We base this on the fact that the Government has chosen to include these objectives in an overall objective for the gas industry to ‘ensure that gas is delivered to existing and new customers in a safe, efficient, fair, reliable and environmentally sustainable manner’. Paragraph 9 of the GPS requires Gas Industry Co to take account fairness and environmental sustainability in all of its recommendations.
4. We consider that the other objectives in the GPS, to the extent that they are not otherwise duplicated by objectives in the Gas Act, to be of lower significance than the Gas Act objectives and the ‘fairness’ and ‘environmental sustainability’ objectives in the GPS.

In the table, we have cast the net widely when considering what matters may be relevant.

Table 1 Applicability of Gas Act and GPS objectives to transmission access

Reference	What is required and how it could be relevant
Gas Act Objective s43ZN(a) Principal Objective	'... to ensure that gas is delivered to existing and new customers in a safe, efficient, and reliable manner'
Gas Act s43ZO/current GPS Item 8	'It is the Government's objective that when recommending rules, regulations or non-regulatory arrangements Gas Industry Co. applies this policy objective [43ZN(a)] to all its work.'
Relevance to transmission access	<p>Our analysis will give particular attention to the 'principal objective'.</p> <p>The safety element of the objective requires consideration of the arrangements for maintaining gas quality and, where applicable, odorant levels.</p> <p>The efficiency element of the objective requires consideration of matters such as:</p> <ul style="list-style-type: none"> • operating and transactions costs • efficient use of available capacity, particularly at times of capacity scarcity • competition among system users and in related markets • the facilitation of efficient investment • the equal and open availability of information • ability to evolve the arrangements in response to changing market conditions in a timely fashion <p>The reliability element of the objective requires consideration of how the access arrangements might affect the frequency of curtailment, Force Majeure events and critical contingencies.</p>
Gas Act Objective 43ZN(b)(i)	'The facilitation and promotion of the ongoing supply of gas to meet New Zealand's energy needs, by providing access to essential infrastructure and competitive market arrangements'
Relevance to transmission access	This requires consideration of how access arrangements may affect the ease of gas trading, bilaterally and through the emsTradeport market.
Gas Act Objective 43ZN(b)(ii)	'...barriers to competition in the gas industry are minimised'
Gas Act s43ZO/current GPS Item 12(b)	'Competition is facilitated in upstream and downstream gas markets by minimising barriers to access to essential infrastructure to the long-term benefit of end users;'
Relevance to transmission access	<p>This requires consideration of whether:</p> <ul style="list-style-type: none"> • The TSAs and ICAs together with the <i>GTAC</i> impose any unreasonable barriers to the entry of competitors • Checks and balances are in place to prevent incumbent pipeline users introducing changes to deter the entry of competitors and

	<p>prevent collusion</p> <ul style="list-style-type: none"> • Undue information asymmetries could affect competition • Gaming opportunities could provide a means of reducing competition
Gas Act Objective 43ZN(b)(iii)	'incentives for investment in gas processing facilities, transmission, and distribution are maintained or enhanced'
Relevance to transmission access	This requires consideration of how any congestion management arrangements affect incentives for timely investment.
Gas Act Objective 43ZN(b)(iv)	'delivered gas costs and prices are subject to sustained downward pressure'
Gas Act s43ZO/current GPS Items 12(a) and 12(c)	<p>'Energy and other resources used to deliver gas to consumers are used efficiently;'</p> <p>'The full costs of producing and transporting gas are signalled to consumers;'</p>
Relevance to transmission access	<p>This will require an assessment of efficient allocation of risks and responsibilities between First Gas and shippers, including how the arrangements will affect:</p> <ul style="list-style-type: none"> • First Gas' operating costs (including IT) • The costs of shippers, producers and end-users, including industry transaction costs • Upstream and downstream competition – as this can affect costs and prices
Gas Act Objective 43ZN(b)(v)	'risks relating to security of supply, including transport arrangements, are properly and efficiently managed by all parties'
Relevance to transmission access	<p>This requires consideration of:</p> <ul style="list-style-type: none"> • How congestion risk is managed • How Force Majeure events are managed • The interface with Critical Contingency Regulations
Gas Act Objective 43ZN(b)(vi)	'consistency with the Government's gas safety regime is maintained'
Relevance to transmission access	As for the Principal Objective, this requires consideration of arrangements for maintaining gas quality and, where applicable, odorant levels.
Gas Act s43ZO/current GPS Items 9 and 10	<p>'It is also the Government's objective that Gas Industry Co takes account of fairness and environmental sustainability in all its recommendations. To this end, the Government's objective for the entire gas industry is as follows:</p> <p>To ensure that gas is delivered to existing and new customers in a safe, efficient, fair, reliable and environmentally sustainable manner.'</p>

	<p>'It is against this objective that Gas Industry Co. must have regard when making recommendations for rules, regulations or non-regulatory arrangements for any part of the gas industry and against which it must report. (emphasis added)</p>
<p>Relevance to transmission access</p>	<p>Fairness and environmental sustainability are not referred to under s43ZN. While we think it unlikely that environmental sustainability will be affected by transmission access arrangements, we believe that fairness is relevant, and would require consideration of:</p> <ul style="list-style-type: none"> • Whether there is equal access to services offered • In what situations pipeline users can obtain non-standard arrangements • Whether the price of a service reasonably reflects its value • The extent of any price shocks • The degree to which new costs or risks are placed on particular parties • The fairness of governance arrangements in relation to code changes and disputes
<p>Gas Act s43ZO/current GPS Item 12(d)</p>	<p>'The quality of gas services where those services include a trade-off between quality and price, as far as possible, reflect customers' preferences;'</p>
<p>Relevance to transmission access</p>	<p>This requires consideration of the extent to which customers are able to access arrangements that suit their needs at a price that is reasonable</p>
<p>Gas Act s43ZO/current GPS Item 12(e)</p>	<p>'The gas sector contributes to achieving the Government's climate change objectives as set out in the New Zealand Energy Strategy, or any other document the Minister of Energy may specify from time to time, by minimising gas losses and promoting demand-side management and energy efficiency.'</p>
<p>Relevance to transmission access</p>	<p>We think that Government's climate change outcomes are unlikely to be significantly affected by transmission access terms and conditions.</p>

3.3 The 'materially better' standard

Some stakeholders have requested Gas Industry Co's interpretation of the 'materially better' standard in the MPOC change request application. If the TCR is approved, we interpret the 'materially better' assessment to require Gas Industry Co to look at the benefits of moving to a single *GTAC* and the costs of achieving that simplicity, including any administrative burden on participants.

In doing so, we would be looking to see whether there is an overall material improvement. This would not require that the *GTAC* is, necessarily, materially better in each and every respect. For example, there may be aspects of the *GTAC* which largely replicate the existing arrangements. These parts would not be 'materially better' – they would be the same as the current

arrangements. However, while our analysis would consider each element of the regime (as described in s3.1), our final assessment of whether the *GTAC* is 'materially better' would be an overall assessment.

To us 'materially better' means more than just 'better': we would be looking for a significant improvement. We consider that trying to put more precision on the meaning will not be productive. In coming to that view we have considered the High Court decision following the 22 December 2010 publication by the Commerce Commission of the Input Methodologies (IMs) applicable to electricity, gas and airport companies under Part 4 of the Commerce Act 1986.³

The High Court decision stated 'materially better' is a higher standard than 'simply better':

The use of the phrase "materially better", in contrast to the word "better", does obviously introduce some hierarchy: materially better is clearly intended to be a higher standard than simply better... We do not think an exhaustive analysis of the phrase "materially better" is called for, nor that suggesting a range of synonyms for that phrase is of any great assistance to us in our task...

s158, High Court, Clifford J, 11 December 2013

Beyond that, the Court noted that decision-makers need to take account of context, among other factors.

4. Feedback

If you wish to comment on any of the matters discussed here, please submit your comments on our website [here](#). Comments are invited by 5.00pm on Wednesday 16 August 2017. Comments can be made as part of submissions on the *TCR* or separately.

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³ *Wellington International Airport Ltd and others v Commerce Commission [2013] NZHC 3289 (11 December 2013)*. In these proceedings various parties, including Powerco Ltd and Vector Ltd, appealed against several of the IMs the Commission had determined.

Appendix A Timeline of key *GTAC* communications

Key communication	Author	Date
<i>Memorandum on Single Code Development Process</i>	First Gas	12 August 2016
Stakeholder workshop #1		24 August 2016
<i>Single Code Options Paper (SCOP1)</i>	GIC	13 September 2016
Stakeholder workshop #2		20 September 2016
Stakeholder workshop #3		9 November 2016
<i>SCOP1 Analysis of Submissions</i>	GIC	23 November 2016
<i>Single Code Options Paper (SCOP2)</i>	First Gas	28 November 2016
Stakeholder workshop #4		5 December 2016
<i>SCOP2 Analysis of Submissions</i>	GIC	27 January 2017
<i>GTAC Development: Proposed Decisions and Next Steps</i>	First Gas	17 February 2017
Stakeholder workshop #5		28 February 2017
<i>GTAC Governance Options</i>	Concept Consulting	20 April 2017
<i>Emerging Views on Detailed Design (EV Paper)</i>	First Gas	12 May 2017
Stakeholder workshop #6		17 May 2017
<i>Information Paper - Initial Summary of GTAC IT Risks</i>	GIC	7 June 2017
<i>Information Paper - Preliminary Draft Code Changes</i>	First Gas	12 June 2017
<i>GTAC Governance Options Final Advice to GIC</i>	Concept Consulting	12 June 2017
Stakeholder workshop #7		22 June 2017
<i>EV Paper Analysis of Submissions</i>	GIC	13 July 2017
<i>MPOC Transition Change Request (TCR)</i>	FG	14 July 2017
Stakeholder workshop #8		19 July 2017

ABOUT GAS INDUSTRY CO.

Gas Industry Co is the gas industry body and co-regulator under the Gas Act. Its role is to:

- develop arrangements, including regulations where appropriate, which improve:
 - the operation of gas markets;
 - access to infrastructure; and
 - consumer outcomes;
- develop these arrangements with the principal objective to ensure that gas is delivered to existing and new customers in a safe, efficient, reliable, fair and environmentally sustainable manner; and
- oversee compliance with, and review such arrangements.

Gas Industry Co is required to have regard to the Government's policy objectives for the gas sector, and to report on the achievement of those objectives and on the state of the New Zealand gas industry.

Gas Industry Co's corporate strategy is to 'optimise the contribution of gas to New Zealand'.