

1 June 2018

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Draft Terms of Reference – Independent Facilitator for GTAC workshops

1 Introduction and Background

- 1.1.1 Trustpower Limited (**Trustpower**) thanks the Gas Industry Co (**GIC**) for the opportunity to submit on its Draft Terms of reference – Independent Facilitator for Gas Transmission Access Code (GTAC) workshops (**ToR**).
- 1.1.2 We note the GIC’s recently released final assessment of the proposed GTAC submitted by First Gas in December 2017 found that the “materially better” threshold had not been reached.
- 1.1.3 Trustpower raised a number of significant concerns throughout the initial negotiation that the proposed GTAC would not provide transmission access on terms that would be fair and reasonable to a Shipper operating solely at the retail level. These are well documented in our previous submissions.

2 Trustpower’s views

- 2.1.1 Our preference continues to be that the GIC develop a regulated solution for transmission access to ensure reasonable terms and conditions of access are established.
- 2.1.2 We acknowledge that there is general support for the industry to re-engage via a further series of workshops to the address key issues with the GTAC identified by the GIC’s final assessment and industry submissions, but also note an unwillingness for this process to extend beyond October this year.
- 2.1.3 We are uncertain whether First Gas and other stakeholders will support an access code that more satisfactorily addresses the barriers to competition, particularly with regards to mass market, and governance issues we have been raising throughout the negotiation.
- 2.1.4 While we will continue to engage in the ongoing negotiation process in good faith, we have concerns that the facilitated process will not achieve fair and reasonable terms and conditions for access, particularly for Shippers operating solely at the retail level or other new entrants.
- 2.1.5 This is because the negotiation will most likely continue to be dominated by First Gas as a monopoly transmission service provider.
- 2.1.6 Our specific views on the ToR and facilitated negotiation process follow.

Consensus decisions

- 2.1.7 It is uncertain whether documented consensus decisions will be binding. For example, during the first round of negotiation Trustpower understood that First Gas had agreed to make changes to the GTAC during a number of workshops only to find that on reflection First Gas had decided to not make the changes (with little rationale provided). It is unclear how the facilitated process will avoid these issues arising.
- 2.1.8 It is also unclear how “consensus decisions” will be determined (refer to paragraph 8(b) of the ToR). Will the facilitator be responsible for interpreting (somewhat subjectively) when a “consensus” has been reached? Or will a high standard of 100% agreement of workshops participants be required? What if an existing Shipper is not in attendance at a workshop?
- 2.1.9 At a minimum, the facilitator should ensure that any dissenting views of parties on “consensus decisions” are clearly documented during workshops. The paragraph 8 of the ToR should be updated to capture this requirement.
- 2.1.10 Of greater importance is the question of how consensus decisions that may not meet the GIC’s test will be treated. For example, if all existing shippers agree a change with First Gas but new entrants do not as it’s a barrier to entry, will a consensus have been reached (keeping in mind the workshop will be dominated by incumbents)?
- 2.1.11 The facilitated process will require the GIC to provide direction to all parties involved in the negotiation as to whether a “consensus decision” would be likely to meet the materially better standard.
- 2.1.12 We anticipate this could be difficult at times for the GIC given its desire to remain independent in the process. If this is the case then the views of potential new entrants or smaller participants (who may not necessarily always have a voice in the room) will not potentially be accounted for in developing the GTAC (or drowned out by the vast majority).
- 2.1.13 Regardless, the correct test should be that reasonable terms and conditions of access are established, not that the GTAC meets the materially better standard¹.
- 2.1.14 We consider it is unlikely that this “reasonable terms and conditions” test will be met through this new process as a number of the issues that would need to be addressed will potentially not be on the work programme as they are existing issues under the MPOC and/or VTC.

Regulated solution required

- 2.1.15 In our view the only solution to making sure the interests of smaller participants and new entrants are adequately taken into account and that reasonable terms and conditions for access are established, is for the GIC to develop a regulated transmission access arrangement.
- 2.1.16 We once again ask the GIC “*how long do we have to wait*” for gas industry participants and new entrants to be able to access transmission pipelines on reasonable terms and conditions.

For any questions relating to the material in this submission, please contact me on 027 549 9330.

Regards,



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¹ Our views on this matter have been extensively outlined to date.