
Gas Industry Co role in GTAC code changes

August 2019

1. Introduction and purpose

GTAC s17 sets out how changes to the GTAC can be made. There are four routes:

- A. Written agreement of all Interested Parties (ie First Gas, Shippers and Interconnected Parties with ICAs) (GTAC s17.2);
- B. A Corrections Amendments process (GTAC ss17.15-17.18);
- C. An Urgent Code Change (GTAC ss17.19-17.22); and
- D. A full Change Request process (GTAC ss17.3-17.14).

In relation to A, where the code would be amended by the agreement of all Interested Parties, Gas Industry Co would have no GTAC role. However, it could subsequently recommend regulation if, for example, it considered a change was contrary to a Gas Act or GPS objective.

The other routes to a revised GTAC are illustrated in Figures 1-4, and are briefly described below.

In relation to B, a Correction Amendment allows any Interested Party to propose the correction of an error or the updating of a reference to an external source (Figure 1). Providing no other Interested Party objects, the code would be modified after a minimum period of 20 Business Days (BDs). Gas Industry Co would be kept informed, but would have no GTAC role in relation to a Correction Amendment.

In relation to C, if First Gas believes a code amendment is necessary to respond to an unforeseen circumstance that threatens the integrity of, or the proper commercial operation of, the transmission system, it may notify Interested Parties and Gas Industry Co of that amendment (Figure 2). The GTAC would change on the next BD or later if specified. If Gas Industry Co considered the change to be manifestly unreasonable or contrary to the interest of users, it could revoke it at any time. Otherwise the change would continue until it automatically expires at the end of 6 months.

In relation to D, the full Change Request process, the Interested Parties have an opportunity to consider a Draft Change Request before it is finalised by the Change Requestor and submitted for Gas Industry Co's consideration. Together with other Interested Parties, First Gas has an opportunity to indicate that it does not support a Draft Change Request (GTAC s17.7). It may also indicate that it does not support a Change Request at the time it is first published (GTAC s17.10) (Figure 3). Gas Industry Co would receive a copy of the Draft Change Request, but

would not be actively involved in the process until it receives the finalised Change Request. It could take up to 45 BDs (ie over 2 months) after the Draft Change Request is submitted before the final Change Request is submitted. Gas Industry Co would then formally consult on the proposal and recommend to First Gas whether it should be adopted (Figure 5). Unless First Gas declines to approve the recommendation, the revised GTAC would be published within 2 BDs and go live then, or at a later date specified in the recommendation (Figure 4).

This paper describes Gas Industry Co's role in relation to D, the full Change Request process.

We note that GTAC s17.11 provides for Gas Industry Co to undertake "appropriate consultation with the Gas Industry". Gas Industry Co may elect to vary these guidelines or modify its process if it considers that changes are required to meet the GTAC requirement for appropriate consultation in the context of a particular change request.

Regarding First Gas rights to decline to approve a Recommended Change Request, First Gas sets out how it views its rights in a stakeholder memo dated 16 August 2018.¹ For the convenience of readers we include the relevant parts of that memo in Appendix B.

2. Gas Industry Co process

2.1 When Gas Industry Co's process occurs

Gas Industry Co's consideration of a Change Request occurs after the Interested Parties have considered a Draft Change Request (Figure 3) and ends when a final recommendation is submitted to First Gas (Figure 4).

Regarding Gas Industry Co's role, GTAC s17.11 provides that:

- following submission of a Change Request, Gas Industry Co will provide a written recommendation stating whether or not it approves that Change Request;
- the recommendation will follow "appropriate consultation with the Gas industry";
- the recommendation will consider (but not be limited to) "whether the proposed change better achieves the objectives set out in section 43ZN of the Gas Act 1992 and the objectives set out in Government Policy Statements on gas prepared under section 43ZO of the Gas Act 1992 than the current Code"; and
- Gas Industry Co may suggest further changes or actions it considers necessary.

2.2 Steps in Gas Industry Co's process

Figure 5 illustrates the process Gas Industry Co will follow to consider a Change Request. The steps are:

1. Gathering information about the Change Request

On receiving a Change Request (GTAC s17.9) and notice of whether First Gas supports the Change Request (GTAC s17.10), Gas Industry Co will advise the Change Requestor and First Gas if any additional information is required. If the Change Requestor can provide the information in the form of the Change Request Information Starter Pack (Appendix A), a

¹ This memo is available at: <https://www.gasindustry.co.nz/dmsdocument/6195>

prompt start should be possible.

Once Gas Industry Co has all the information it needs from First Gas and the Change Requestor, it will decide whether it needs to seek stakeholder views on the Change Request or can proceed directly to issuing and consulting on a Draft Recommendation.

In deciding whether to seek views on the Change Request at this stage, Gas Industry Co will consider a number of factors, including:

- (a) the nature of the proposed change – technical and non-controversial changes may not require extensive consultation prior to the Draft Recommendation;
- (b) whether the proposed change is likely to be of interest to the wider stakeholder community, or only Interested Parties – Interested Parties will already know about the proposed change, whereas some of the wider stakeholder group (end users, for example) would likely be unaware; and
- (c) whether there have been significant changes between the Draft Change Request and the Change Request – Interested Parties will already have had an opportunity to comment on the Draft Change Request, but a further opportunity for comment may be desirable if significant changes have been made to the Draft Change Request.

Once Gas Industry Co has decided whether or not to move directly to a Draft Recommendation, it will notify stakeholders of:

- (a) the consultation process it will follow;
- (b) an estimated timetable; and
- (c) where all the relevant information can be found.

Where Gas Industry Co decides to seek submissions on the Change Request, it will do so at this point. On consideration of the submissions it receives, it may also invite cross-submissions.

2. Developing and consulting on a Draft Recommendation

On consideration of all the information available to it, Gas Industry Co will develop and publish a Draft Recommendation setting out its analysis of the Change Request and any submissions and cross-submissions received. The analysis will primarily reference the objectives of the Gas Act and GPS.

Stakeholders will be invited to make submission on the Draft Recommendation. Cross-submissions may also be called for.

If information comes out of submissions that clearly indicates that our analysis of the proposed change is wrong, or that the proposal is unworkable, or that some narrow point requires attention, then we will decide on the most appropriate action. This may involve:

- (a) revising the Draft Recommendation;
- (b) declining to support the Change Request;
- (c) seeking further comment on a narrow point; or
- (d) taking other appropriate action.

3. Developing a Final Recommendation

On consideration of submissions on the Draft Recommendation and, if necessary, cross-submissions, Gas Industry Co will develop, publish, and notify First Gas of its Final Recommendation.

2.3 Workshops and working groups

Gas Industry Co may choose to use workshops and/or working groups to get a better understanding of issues or to solicit stakeholder views.

2.4 Criteria to be used by Gas Industry Co when assessing change requests

As provided for in GTAC s17.11, *"The GIC recommendation will consider (but not be limited to) whether the proposed change better achieves the objectives set out in section 43ZN of the Gas Act 1992 and the objectives set out in Government Policy Statements on gas prepared under section 43ZO of the Gas Act 1992 than the current Code."*

2.5 Further Code changes or actions by any Interested Party

GTAC s17.11 allows that a Gas Industry Co recommendation may *"suggest any further Code changes or actions by any Interested Party that it considers relevant"*. While Gas Industry Co cannot modify a Change Request, this provision permits it to make suggestions for the future. We think this is likely to be used only sparingly, but there may be times when it is useful way of capturing valuable suggestions made by submitters or ideas that come up in the course of the analysis that could otherwise be lost.

2.6 Duration of the GTAC change process

Before a Change Request is submitted to Gas Industry Co for consideration, a Draft Change Request will first be considered by the Interested Parties (Figure 3). This could take as little as 1 month but, as mentioned in the introduction, Interested Parties could deliberate on a Draft Change Request for over 2 months before a Change Request is submitted to Gas Industry Co.

Gas Industry Co normally allows 20 BDs for submissions on a Change Request unless the simplicity or complexity of the Change Request justifies a shorter or longer period. Previous experience of MPOC change requests suggests that Gas Industry Co's process could take around 2 months for a simple change request² and 6 months for a more complex one³. The GTAC role is similar to the MPOC role, so this previous experience should be a good guide.

From the above, the overall processing time from when a change is first proposed in a Draft Change Request to when it is finally accepted or rejected could be around 3 months for a simple change and 8 months for a complex one.

² For example, minor MPOC changes were proposed on 12 April 2013 and the Final Recommendation was published on 10 June 2013, about 2 months later.

³ For example, the MBB Change Request was received on 10 October 2017 and the Final Recommendation was published on 28 April 2015, about 6½ months later.

3. Legal

3.1 Independent decisions

Decisions on Gas Industry Co's Change Request recommendations will be made by Directors of Gas Industry Co who are not associated with Interested Parties.

3.2 Commerce Act

In making any recommendation supporting or not supporting a Change Request, Gas Industry Co will make no representation and give no assurance that the matters to which the recommendation relates comply with the Commerce Act or any other law. Stakeholders may choose to take their own advice in relation to Commerce Act or other legal issues.

3.3 Confidentiality

Gas Industry Co values openness and it assumes that information provided to it in relation to a Change Request consultation is not confidential unless the provider of the information expressly identifies it as confidential.

Where information is identified as confidential, Gas Industry Co would treat it as confidential and not disclose it to any third party, except if:

- Gas Industry Co is required by law to disclose the information;
- The information is already public knowledge or becomes public knowledge otherwise than by Gas Industry Co's own disclosure;
- The provider of the information consents to its disclosure; or
- In Gas Industry Co's reasonable opinion:
 - the information is essential or material to its decision; and
 - disclosure of the information would not result in any material detriment to the commercial position of the provider of the information.

If Gas Industry Co is obliged by law to disclose any confidential information provided to it, it would:

- Before disclosing it, give notice to the provider of the information and allow the provider to challenge that legal requirement, including by seeking equitable relief; and
- In any event, disclose the information only to the minimum extent necessary to comply with the relevant legal requirement.

4. Costs

As a general rule Gas Industry Co budgets a portion of its annual levy funding to meet any costs associated with code changes. That approach has never been queried by stakeholders and we believe it is preferable to, say, recovering costs from First Gas or the Change Requestor. In any case, the processing of each Change Request takes several months, which tends to limit the amount costs in any year.

However, previous code change arrangements have made provision for Gas Industry Co to recover costs to cater for exceptional circumstances. If such a circumstance did arise in relation to a GTAC Change Request, we would discuss the options with Interested Parties before proceeding.

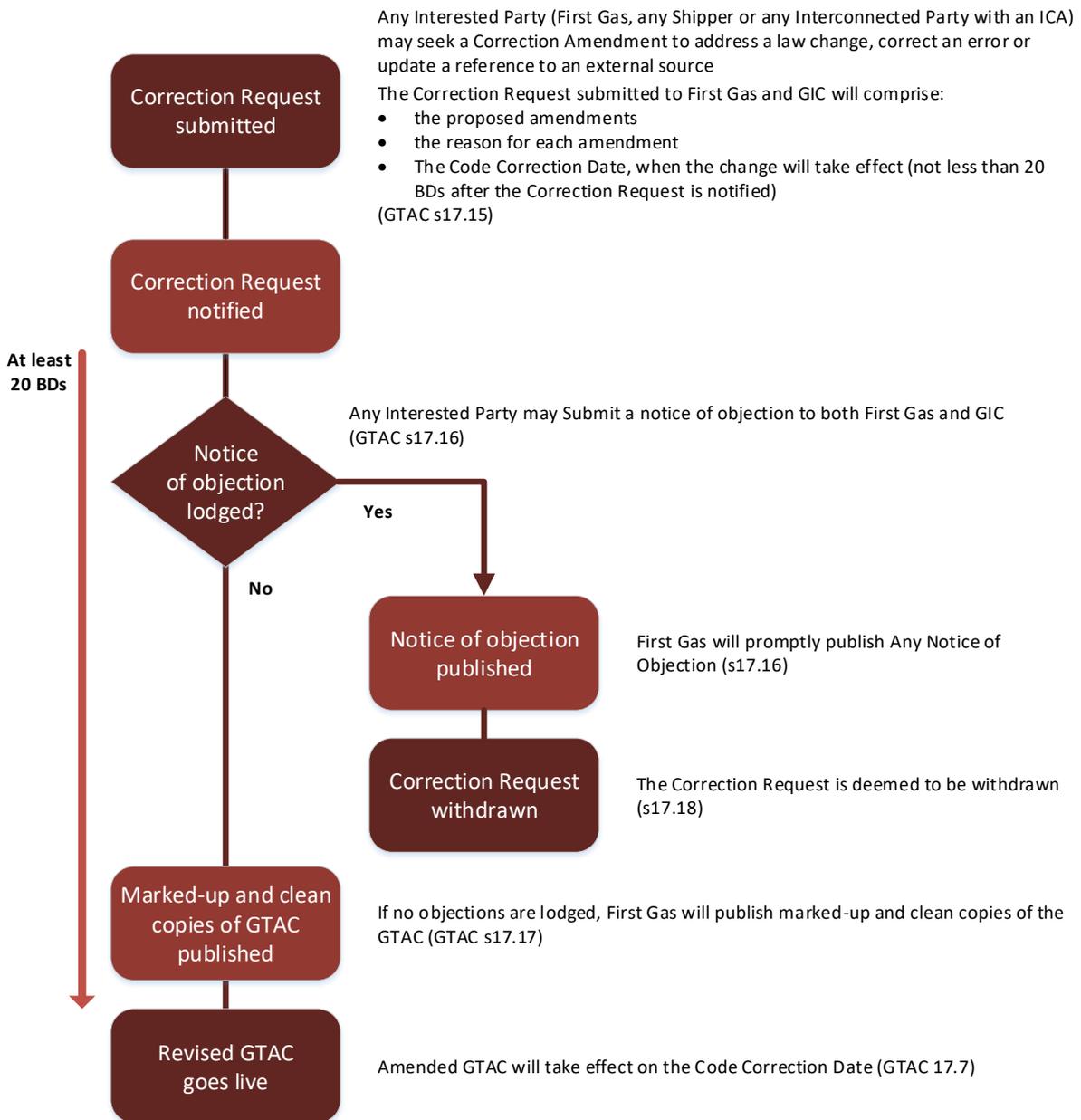


Figure 1 - GTAC Correction Amendment process

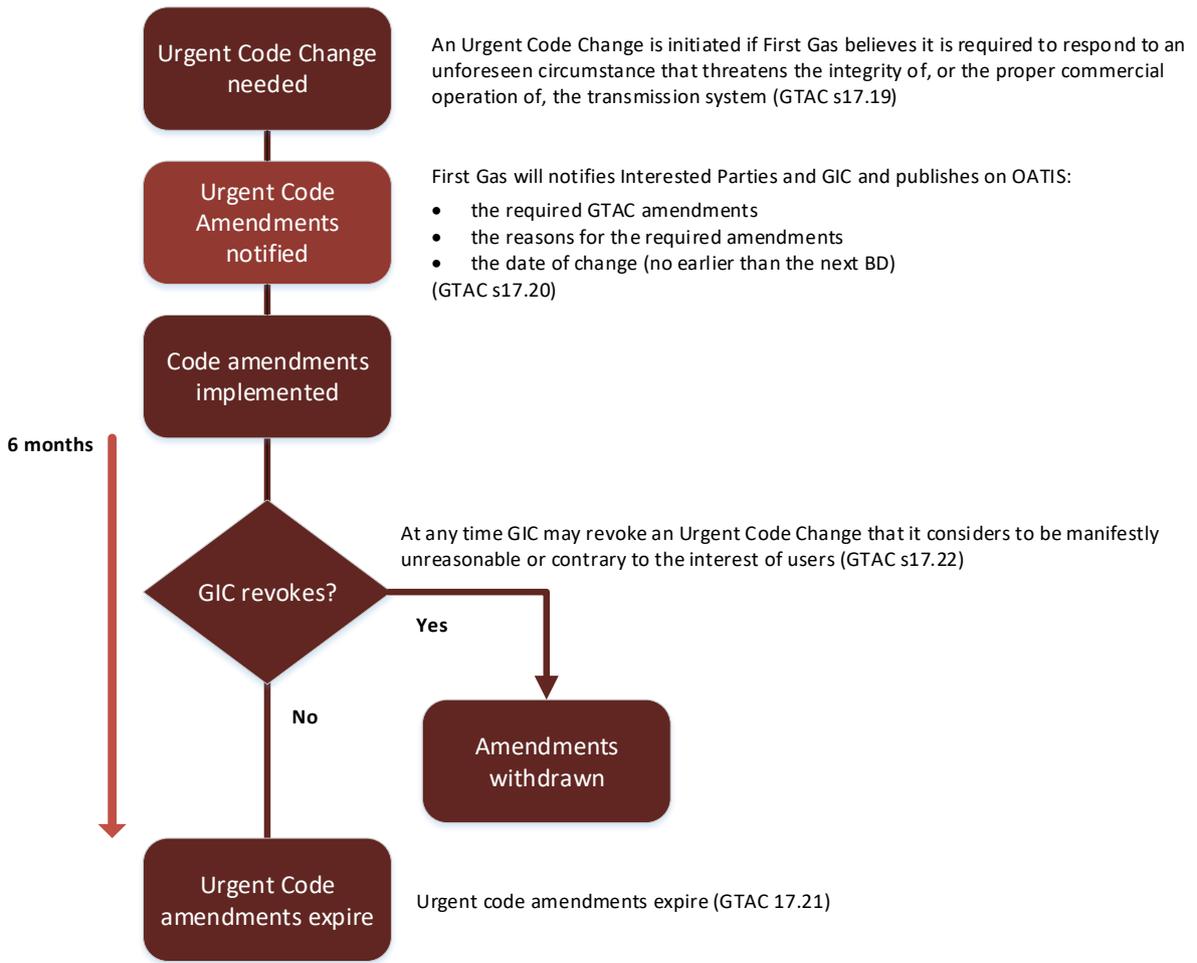


Figure 2 - GTAC Urgent Code Change process

GTAC Change Request process

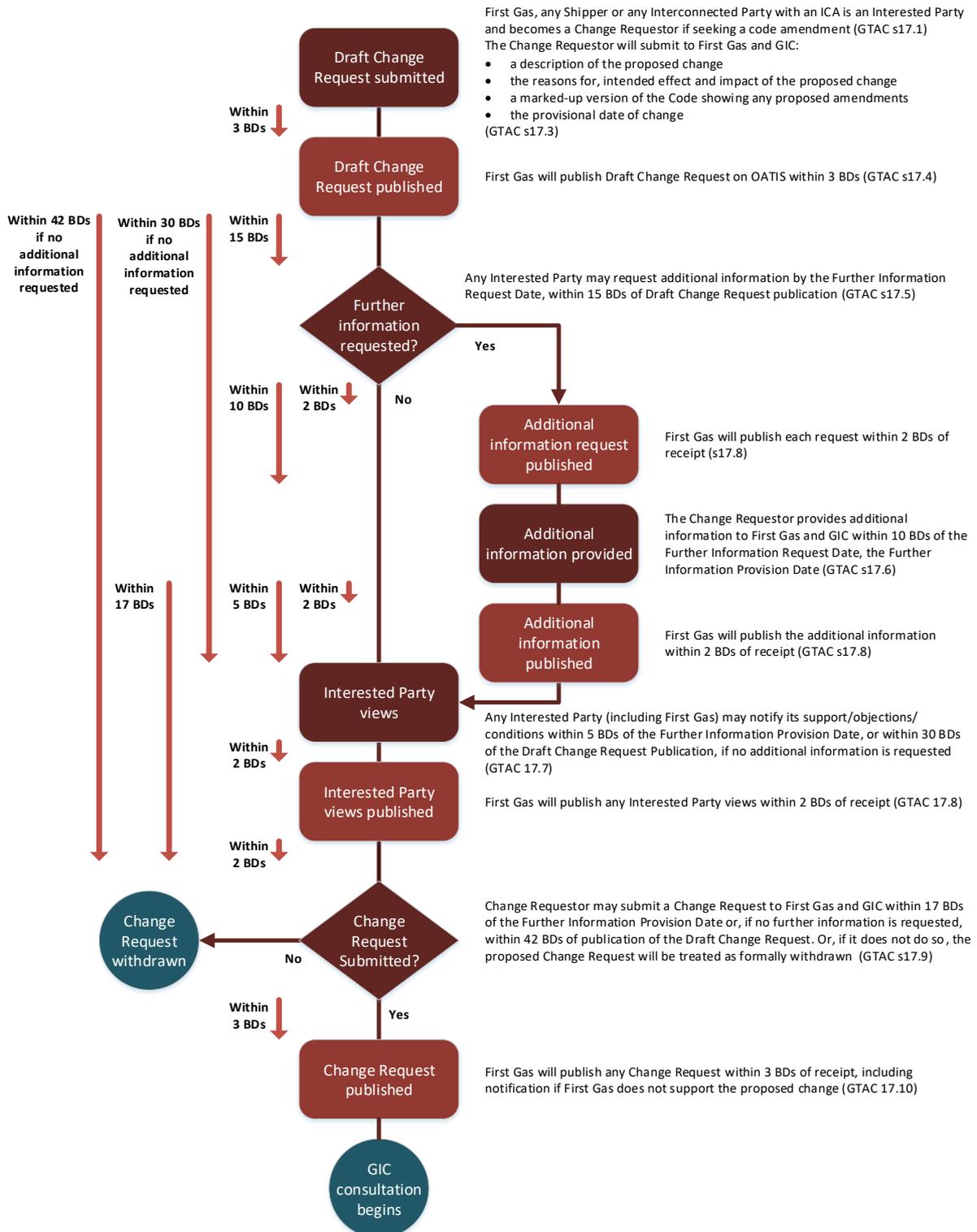


Figure 3 - GTAC Change Request process, pre-GIC consideration

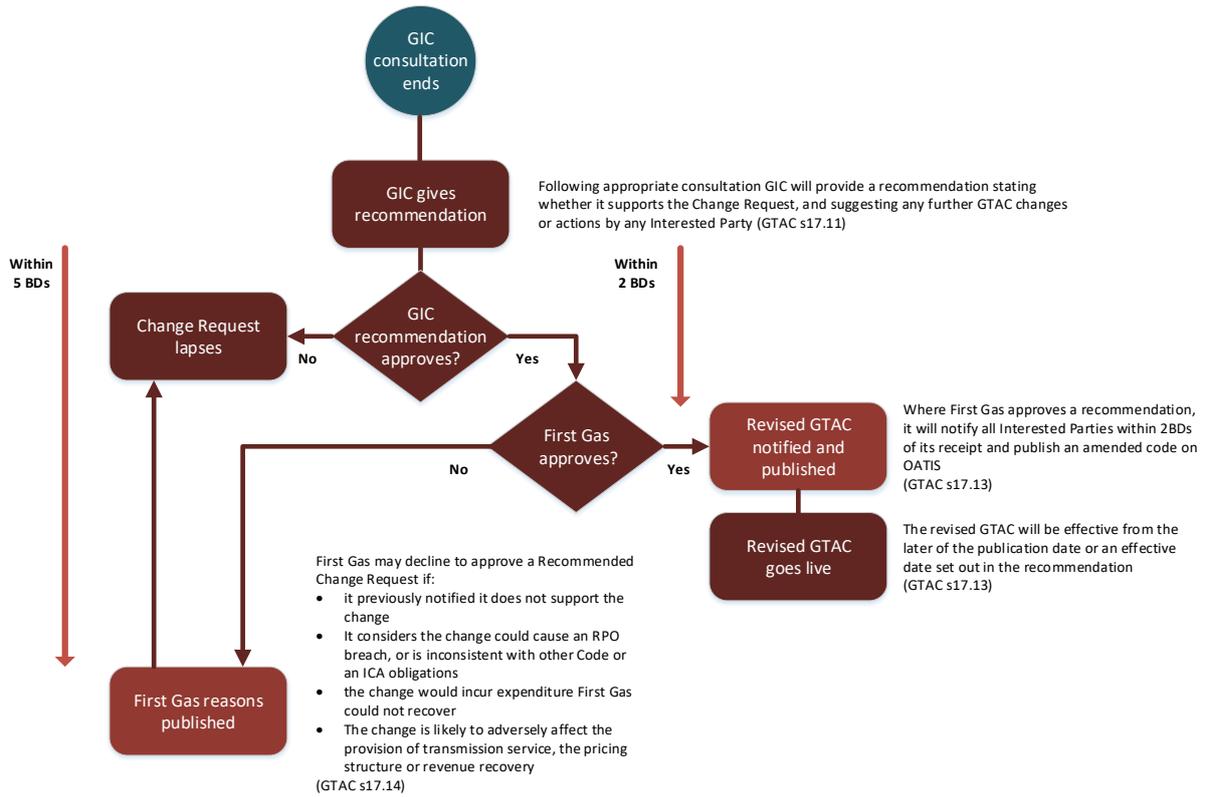


Figure 4 - GTAC Change Request process, post GIC recommendation

1.
Gathering
information about
the Change
Request

2.
Developing and
consulting on a
Draft
Recommendation

3.
Developing a
Final
Recommendation

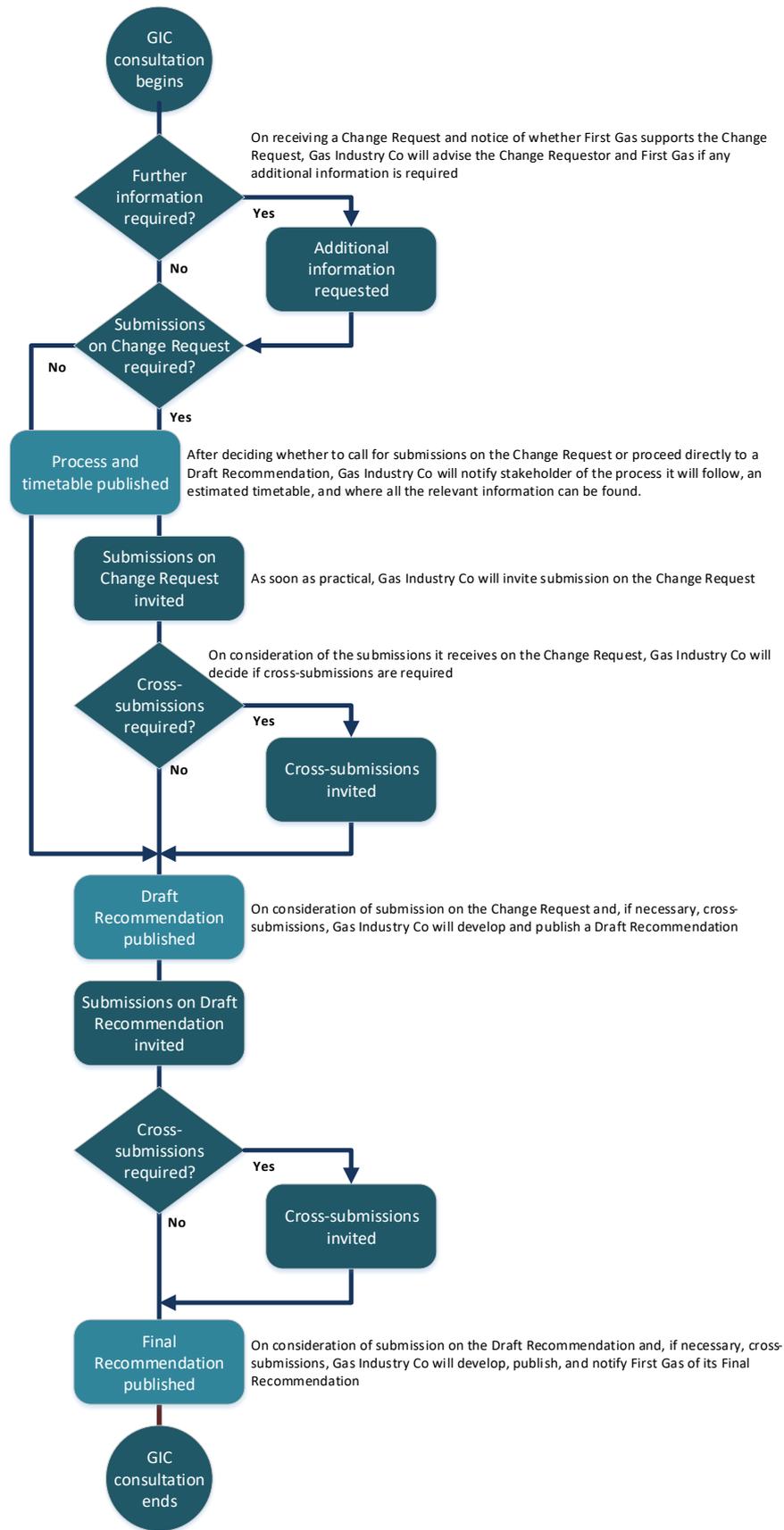


Figure 5 - GIC stakeholder consultation process

Appendix A Change Request Information Starter Pack (CRISP)

A prompt start to Gas Industry Co's process will be assisted if the Change Requestor submitting a Change Request under GTAC s17.9 provides Gas Industry Co with all of the information in this CRISP.

Information	Explanation
Name of Change Requestor	
Contact details of the Change Requestor's nominated contact person.	The nominated contact person must have the authority of the Change Proposer to respond any questions Gas Industry Co has in relation to the Change Request. The person's name, role, email address and phone number must be provided.
Marked up copy of the GTAC showing the proposed edits	
A description of the proposed change, its intended effect, and how it is expected to affect the operation of stakeholders in the gas supply chain.	This is where the Change Requester can set out its rationale for the proposed change.
A description of communications between the Change Requestor and Interested Parties in relation to the proposed changes, including copies of any relevant documents.	This may, for example, include requests for additional information on the Draft Change Request under GTAC s17.5. While Gas Industry Co will not be analysing the Draft Change Request, it will be interested to know how discussions leading to the submission of the Change Request have developed.
A description of communication between the Change Requestor and any other parties who it considers may be affected by the proposed change.	The GTAC does not require the Change Requestor to provide information to anyone other than Interested Parties in relation to a Draft Change Request. However, where matters have been discussed with other stakeholders, it would be helpful for Gas Industry Co to know about them.
Confirmation that the Change Requestor has considered whether any aspects of the Change Request might breach the Commerce Act.	It is the responsibility of the Interested Parties to assess their exposure to potential breaches of the Commerce Act. Gas Industry Co will not provide any view on that matter, but would like to know if the Change Requestor has considered such matters.
Any other information the Change Requestor believes is relevant to Gas Industry Co's consideration of the Change Request.	

Appendix B First Gas view of its GTAC right to decline to approve a Change Request

GTAC s17.14 sets out First Gas' rights to decline a Recommended Change Request:

7.14 First Gas may decline to approve a Recommended Change Request if it has previously given notice under section 17.7 that it does not support the proposed change and:

(a) it considers that the Change Request:

(i) could reasonably be expected to cause First Gas or another Interested Party to breach its obligation to act as a Reasonable and Prudent Operator; or

(ii) is inconsistent with other obligations under the Code or an Interconnection Agreement; or

(b) the proposed Code change would:

(i) require First Gas to incur expenditure it could not recover; or

(ii) be likely to adversely affect First Gas' current or future provision of transmission services, pricing structure or revenue recovery, provided that First Gas must publish its reasons on OATIS within 5 Business Days of receiving GIC's decision pursuant to section 17.11.

In a stakeholder memo dated 15 August 2016, First Gas set out its approach to using this veto right. We include the relevant text from the memo below. To avoid confusion, we have substituted references to "we" and "our" with "[First Gas]" and "[First Gas]'".

Timing

In order for First Gas to exercise its right of veto, [First Gas] would need to notify users that [First Gas] objected to the Code Change Request within 20 Business Days of the publication of the Draft Code Change Request. As per section 17.7 [First Gas] would need to include reasons for this objection.

If, following consultation with stakeholders and a positive GIC assessment of the Code Change Request, [First Gas] continued to object to the Code [First Gas] would need to object within 5 Business Days of the GIC decision and publish reasons for this objection.

Hence, any objection by First Gas will be informed by stakeholder consultation and the GIC analysis.

Grounds for veto

There are three grounds for veto: causing the Change Requestor or First Gas to breach the Reasonable and Prudent Operator (RPO) standard; imposing costs on First Gas that are not recoverable; and causing an adverse impact on transmission services. While [First Gas is] not able to foresee all possible situations where these veto rights would be in play, [First Gas] explains [its] views on the likely scope of these rights in the following sections.

Causing a breach of the RPO standard

The application of the RPO test will depend on the nature of the situation in question. It is therefore difficult to predict in advance what the specific situations might be. However, [First Gas] would assume that [its] right of veto would extend to situations where in the ordinary course of business First Gas or the Change Requestor acting in good faith would breach the RPO standard.

This could relate to unintended impacts of the change request on other users, which might involve a change to:

- the treatment of certain parties on the system that gave special treatment to those parties in breach of [First Gas'] obligations in s. 2.7 of the GTAC
- the operation of the transmission system that adversely affected other users – e.g. changes to TTP adversely affecting Receipt Point Interconnected Parties, or a change affecting [First Gas'] ability to meet TTP
- the provision of information to users where some users received information at different times than others which could give them a competitive advantage (excluding treatment of confidential information).

Alternatively, this could involve a change where the degree of skill, prudence and foresight practiced was diminished below ordinarily exercised by experienced operators in the same line of business. This could potentially involve changes to:

- technical standards that no longer meets industry norms
- information provision that does not allow judgement or foresight to be exercised appropriately
- terms that lead First Gas or the Change Requestor to breach another law or regulation.

[First Gas] believe[s] that this veto right safeguards the integrity of the obligation on all parties to act as an RPO by ensuring that no change causes the party to breach that standard.

Imposition of unrecoverable costs

The second ground for veto is where First Gas would incur expenditure that it could not recover. The Commerce Commission Input Methodologies (IMs) are important in understanding this point.

Capital expenditure that results in a commissioned asset is added to the First Gas Regulated Asset Base (RAB) and recovered through transmission fees to customers that reflect the regulated rate of return (currently 6.41%). If the costs impacts flowing from any change can be capitalised, then these costs are likely to be recoverable and not subject to the veto right.

While the timing of any investment in the regulatory cycle can affect this broad position (since the RAB is only reset for actual capital expenditure at each price-quality path reset), the financial impact of timing differences would only be material for very large investments.

[First Gas'] general philosophy is that since code changes will be subject to extensive customer consultation, any capital expenditure required following a change process should reflect a high priority use of capital.

In terms of operational expenditure under the IMs, First Gas can add forecast Pass Through and Recoverable Costs to [First Gas'] allowable transmission revenue. Such costs include:

- Pass Through Costs (s. 3.1.2) – rates and levies to a local authority, Commerce Commission Levies, GIC Levies, Electricity and Gas Complaints Commissioner Scheme costs or other costs that are outside the control of First Gas, come into effect during the DPP period and is appropriate to be passed through.
- Recoverable Costs (s. 3.1.3) – balancing charges, compressor fuel associated with Mokau, specific fees relating to meeting Commerce Commission requirements, capex wash-up adjustments, revenue cap wash-ups.

The veto right would not arise from cost impacts that are classified as passed-through or recoverable costs. In the event of any disagreement over regulatory treatment, [First Gas] would seek advice from the Commerce Commission (as previously done for balancing costs relating to MBB).

The remaining situation is if the Draft Change Request imposed operating costs that could not be recovered or passed through. [First Gas] would assess such cases at the time and would only exercise the veto where the costs were sufficiently large and certain. As discussed in relation to capital expenditure, the change process itself would provide an indication of the priority attached to the expenditure.

Adverse impact on transmission services

The final grounds for veto are that the Draft Change Request would be likely to adversely affect First Gas' current or future provision of transmission services, pricing structure or revenue recovery. It is difficult to describe exact circumstances that would lead to a veto on this ground. However, [First Gas] could anticipate that [it] would be concerned where a Draft Change Request:

- Made First Gas' recovery of revenue less certain to the extent that the 20% limit on the revenue cap wash-up was likely to be breached. This would involve a change that made forecasting transmission volumes inherently more difficult
- Changed the nature of transmission services such that First Gas was unable to provide the service and could not adapt its services to meet the standard
- Changed the balance of risk to an extent where First Gas was no longer able to operate the pipeline efficiently/safely if the Change Request were implemented.

These grounds would likely be cases where First Gas could not reasonably foresee a way to mitigate the impacts of any change that [First Gas] considered likely to have a material impact on current or future users of the transmission system. [First Gas] consider[s] it highly likely that any such concerns would be dealt with through engagement with the Change Requestor and the GIC through its evaluation process, with the veto right only acting as a last resort.

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's energy mix'.