



Analysis of Submissions

on

Gas Industry Co role in Gas Transmission Access
Code (GTAC) code changes

9 August 2019



GAS INDUSTRY COMPANY

Executive Summary

During the development of the Gas Transmission Access Code (GTAC), Gas Industry Co (GIC) informed stakeholders how we intend to perform our Code Change role. Our initial views were set out in a September 2017 paper¹ and in May 2019, when the GTAC design was complete, we issued a paper entitled "Gas Industry Co role in GTAC code changes" (the Code Change Role Paper) and invited comment. We received submissions on the paper from:

- First Gas Limited (First Gas);
- Nova Energy Limited (Nova);
- Trustpower Limited (Trustpower); and
- Vector Limited (Vector).

The Code Change Role Paper and submissions can be found on GIC's website at:

<https://www.gasindustry.co.nz/work-programmes/transmission-pipeline-access/developing/gtac-implementation/gas-industry-cos-gtac-code-change-role/>

Here we respond to those submissions and revise the Code Change Role Paper accordingly.

¹ The September 2017 paper, "Report on how GIC would perform GTAC Change Request Role", and submissions received on it, are available here: <https://www.gasindustry.co.nz/work-programmes/transmission-pipeline-access/developing/gtac-phase-1-development/report-on-how-gas-industry-co-would-perform-a-gtac-change-request-consultation-closed-22-september-2017/>

Contents

EXECUTIVE SUMMARY	2
CONTENTS	3
1. SUMMARY OF SUBMISSIONS	4
1.1 WHAT THE CODE CHANGE ROLE PAPER SAID	4
1.2 WHAT SUBMITTERS SAID	5
1.3 ANALYSIS OF MATTERS RAISED	6

1. Summary of Submissions

1.1 What the Code Change Role Paper said

Scope

GTAC s17 sets out four ways of changing the GTAC. The four processes are:

- A - By 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).

GIC is not involved in process A, B or C, except that we can revoke an Urgent Code Change at any time where we consider the change to be manifestly unreasonable or contrary to the interest of users.

A feature of the full Change Request process is that Interested Parties have time to consider a Draft Change Request before it is finalised by the Change Requestor and submitted to GIC for assessment. GIC would receive a copy of a Draft Change Request but only becomes actively involved in the process when it receives the finalised Change Request.

How GIC will process a Change Request

Following receipt of a Change Request, GIC will:

1. Obtain additional information, if necessary;
2. Develop and consult on a Draft Recommendation; and
3. Having considered submissions, publish a Final Recommendation.

Only GIC Directors who are not associated with Interested Parties will make decisions relating to a Change Request.

Criteria for assessment

GTAC s17.11 provides that, "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."

Confidentiality of submissions

A person submitting information to GIC may request confidentiality, but generally all information related to a proposed change is public.

Legality of change

GIC will make no representation on the legality of a change. Stakeholders can take their own advice in relation to Commerce Act or other legal issues.

Process duration

From the initial Draft Change Request proposal to publication of a Final Recommendation could take from three to eight months, depending on the complexity of the change.

Costs

In exceptional circumstances, such as GIC incurring additional third party costs associated with its assessment of a change request, GIC may wish to discuss its costs with Interested Parties before proceeding.

1.2 What submitters said

In summary:

First Gas

- Considers that the paper accurately described GIC's role and the change process timeframes;
- Agrees that, for complex/costly changes, GIC should discuss cost recovery with interested parties;
- Suggests some minor changes to the process diagrams; and
- Suggests referencing the First Gas paper on its right to decline a Change Request.

Nova

- Notes that the change process and timeframes were well discussed during the drafting of the GTAC; and
- Considers that the paper accurately reflects process/timelines.

Trustpower

- Generally supports GIC's proposed approach to processing Code Changes;
- Suggests that more detail is required on how GIC's Change Request decisions will only be made by GIC's independent Directors, free of any direct or indirect influence from industry Directors; and
- Suggests that GIC's process should allow for industry workshops and/or industry working groups as well as submissions, to ensure best outcomes.

Vector

- Finds that a 10-month timeframe to be too long, even for processing complex code changes and suggests 3 alternative options:
 - Option 1 (Vector's preferred option): GIC could operate a voting filter, only considering changes that don't have 75% Shipper support;
 - Option 2: Roll the Change Request drafting process into GIC's process rather than prior to it; or

- Option 3: Adopt the MPOC code change process.

1.3 Analysis of matters raised

Description of processes

In relation to the process diagram for the full Change Request process, First Gas suggests some changes to better illustrate the process.

Although we only have a substantive role in the full Change Request process, for completeness the Code Change Role Paper also contains process diagrams for the Corrections Amendments process and the Urgent Code Change process. We intend to keep the Code Change Role Paper “live” to help stakeholders understand how the GTAC code change arrangements work as well as how we will perform our code change role. So, we are grateful for any suggested improvements to the paper.

We thank First Gas for its suggestions and have updated the relevant process diagram (Figure 3 in the Code Change Role Paper).

Referencing a First Gas document on declining a Change Request

Given the Code Change Role Paper is intended to be a useful guide to the GTAC code change arrangements, we agree with First Gas’ suggestion that it should reference the document that sets out how First Gas views its rights to decline a Change Request. For the convenience of readers we have included this information in a new Appendix B.

The role of GIC’s Independent Directors

Trustpower submits that:

While we are supportive of the GIC’s intent that only those independent directors of the GIC will make decisions with respect to Rule Change Request, we are uncertain how the GIC Board will ensure that independent decision making is achieved in effect, given that the GIC Board also consists of a number of non-independent members.

We suggest that to provide greater comfort that independent decisions around GTAC code changes are made in practice, the GIC should provide further details around how it will ensure that:

- a) only independent directors are involved in any decision making around change requests; and
- b) those independent directors are not influenced (directly or indirectly) by directors who are associated with Interested Parties (that is those parties who have a contractual relationship with the Transmission Service Provider).

We understand Trustpower’s concern, but we believe that existing checks and balances are appropriate for managing the risk of undue influence from non-independent Directors. In particular:

- Directors are required to declare any conflicts of interest;
- It is a Board Subcommittee comprising only Independent Directors who consider and take decisions in respect of code changes.

We are confident that the above constraints are appropriate and effective. We note that Gas Industry Co's assessment role under the MPOC required us to take a number of contentious decisions and tested our governance arrangements. We believe that our track record indicates that these arrangements are robust, even in the face of contentious issues.

The role of workshops and working groups

Trustpower submits that:

... industry workshops and working groups are useful at any stage of a consultation process and [Trustpower] encourages the GIC and change proponents to consider the use of working groups and/or workshops both:

- a) prior to initiating the code change process, including when seeking to identify potential solutions to an identified issue, and
- b) throughout the various stages of the code process (as appropriate) as a way to ensuring best outcomes are achieved for all parties to the GTAC.

We agree that workshops and working groups can be effective in filtering issues, achieving a common understanding, and identifying solutions. However, our code change role is confined to reaching a view on a Change Request, following appropriate consultation. Nonetheless, within the scope of that role we believe that industry workshops and working groups could play a useful role in helping us to get a better understanding of issues or to solicit stakeholder views. While we still believe that written submissions on a Draft Recommendation are necessary to the integrity of the process, we have added a section to the document that acknowledges the potential use of these additional tools.

This also speaks to the comment in the First Gas submission: "Given that a range of potential changes could come through the code change process, we feel it is appropriate for the GIC to allow for flexibility in its processes".

Options for streamlining the change request process

Before considering Vector's suggestions for streamlining the proposed full change request process, it is helpful to revisit what the GTAC requires of GIC. GTAC s17.11 requires that GIC:

... after appropriate consultation with the Gas industry, will provide a written recommendation stating whether or not it approves that Change Request.

It is left to GIC to determine what an "appropriate consultation" would comprise and our answer to this was first signalled during the GTAC development process in our September 2017 "Report on how GIC would perform GTAC Change Request Role" and essentially confirmed in the Code Change Role Paper. In essence, it involves a continuation of the current MPOC practice of consulting on a Draft Recommendation before issuing a Final Recommendation.

However, whereas our approach to MPOC changes always begin with GIC calling for submissions on the Change Request itself (to inform the Draft Recommendation), our approach to GTAC changes allows for this step to be bypassed. The rationale for this is that the GTAC process includes a gestation period before a Change Request is submitted to GIC. During that period stakeholders would discuss the best design for the proposed change. Although not party to those

discussions, GIC would be aware of them², and could proceed directly to issuing a Draft Recommendation.

Consultation on the Draft Recommendation is a necessary step because its objective is different from that of the industry consultation processes under GTAC s17.3 to 17.9. While the GTAC consultation aims to design the best change, the GIC's consultation aims to test our analysis of whether that change would be an improvement against the objectives and outcomes in the Gas Act and the GPS. We encourage all stakeholders to submit their views on our analysis, not only those who are party to a contract that incorporates the GTAC.

In short, the part of the GTAC change process under GIC's control should be shorter than at present (under the MPOC), possibly involving only one round of consultation (on our Draft Recommendation). We regard this as a minimum requirement for "appropriate consultation".

Vector proposes three streamlining options:

Option 1: Incorporate the voting arrangements into the proposed GIC full change request process (as is used in the VTC).

Option 2: Roll the drafting process into the GIC's full change request process, rather than prior to a code change request being submitted to the GIC. This would ensure that stakeholders can consider a well-developed proposal during the first consultation, which can then be refined, as necessary, prior to the final consultation.

Option 3: Adopt the MPOC process where the GIC undertakes a consultation on a Code Change and approves or rejects it in its entirety, following an assessment of whether it is consistent with the Gas Act and GPS objectives.

We consider that all these options are outside the scope of GIC's code change role as currently prescribed. Each would require a change to the GTAC.

We understand that a voting arrangement was considered during the GTAC design process but rejected by First Gas, not least because of the difficulty in deciding who should be entitled to vote (ie only Shipper, or Shippers and Interconnected Parties).

Regarding voting, Vector notes that, although the GTAC does allow for a change to be adopted if all the signatories agree, there is no mechanism within the GTAC to determine how full support would be assessed, i.e. there is no voting mechanism. We agree, but we would expect full support would mean that all signatories of contracts that incorporate the GTAC would need to agree to the proposed change. While "agreement" could be defined in terms of 75% Shipper support, that would require a change to the GTAC.

Regarding option 2, we understand that providing a gestation period before a Change Request is submitted to GIC was seen by First Gas and most stakeholders as an improvement. It would be premature to discard this feature before it has been tested. In any case, it need not necessarily result in a longer process. As Vector itself observes, since the GTAC change request process allows for consultation during the drafting stage, GIC should not need to consult on it again. We agree. As noted above, we should be able to proceed directly to issuing a Draft Recommendation, in which case we would only hold one round of consultation – on the Draft Recommendation.

² Our assessment of a GTAC Change Request begins by the Change Requestor submitting a Change Request Information Starter Pack (CRISP) to GIC. One item to be included in that pack is "A description of communications between the Change Requestor and Interested Parties in relation to the proposed changes, including copies of any relevant documents."

Regarding option 3, again we think it would require a change to the GTAC before the new arrangements have been tested.