



10 May 2017

Ian Dempster
Acting Chief Executive
Gas Industry Company Limited
By email

Dear Ian,

RE: Gas transmission access code – governance options April 2017

This letter is Greymouth Gas New Zealand Limited's (GGNZ) feedback to Gas Industry Company Limited (GIC) on the above (the paper), following the invitation for comment in GIC's news bulletin of 20 April 2017.

The paper by Concept Consulting Group Limited (Concept):

- a) Is a great idea – it cuts to the chase on the high-level direction vis-à-vis a tricky issue;
- b) Is well written – and at a level of succinctness too infrequently seen; and
- c) Sets forth a good process for consultation – i.e. baseline written document, public submissions, then public debate before a mandate towards finalisation is achieved (or not).

As things currently stand, a similar process to c) above has yet to be formally tabled to industry on the remaining headline issues: capacity products, transmission pricing, and balancing / allocation. GGNZ queries whether such a paper / process could be repeated by Concept (or another party, or First Gas Limited) on these remaining headline issues. This would then funnel industry towards a mandate (or not) on some more detail.

Please refer to the attached appendix for GGNZ comment on the detail of the paper.

Yours sincerely

Chris Boxall
Commercial Manager

Cc Ben Gerritsen, General Manager Customer and Regulation, First Gas Limited

SUBMISSIONS TEMPLATE

Gas Transmission Access Code – governance options

All feedback is welcome, but it would be helpful if submitters could consider and respond to the questions below.

Submitters are also free to include any further comments in their responses. **Feedback is invited by 12 May 2017.**

Question	Feedback
<p>Q1: The report recommends that code changes could be proposed by parties bound by the terms of the code, gas users and gas market operators. Do you agree with the reasoning and recommendation?</p>	<p>No – Concept seems to conclude that option 2 is favourable based on paragraph 2 of page 7 of the paper – i.e. basically that option 3 is too broad. However, there is really no difference between a gas user and the wider public because a large subset of the public are gas users or could quickly / cheaply become a gas user if they wanted to pursue a particular issue. Based on this reasoning (and that gas market operators should be covered under option 1), then option 2 should also be ruled out if option 3 is ruled out.</p> <p>GGNZ broadly agrees with Concept along the lines that any affected party should be able to have their say on the development of the industry. However, GIC and First Gas should not lose sight of the fact that the code is an agreement between the signatories to it (some of whom are losing change request voting rights as part of this process), and not the wider gas industry or the general public as represented by gas users. If change requests are to be proposed by industry members other than signatories to the code, there should be some process for ensuring that those proposed change requests are appropriate and relevant to the code. The involvement of the GIC could assist here.</p> <p>GGNZ therefore proposes an alternative for consideration, as follows:</p> <ul style="list-style-type: none">- GTAC signatories (including First Gas) can propose code changes.- Parties who are not GTAC signatories but who have a written and current Interconnection Agreement with First Gas can propose code changes.- The GIC can propose code changes (subject to some conditions as discussed in the next paragraphs).- No other party can propose code changes.- Proposal rights only apply to eligible parties, and not to related parties. <p>The logic is:</p>

	<ul style="list-style-type: none"> i) The priority of GTAC signatories is preserved, ii) Gas users are incentivised to sign up to the GTAC if they want an easier path for influencing industry development, iii) Any party unable to propose a code change itself has a new avenue via the GIC (in addition to retaining the status quo avenue via its gas retailer), iv) The GIC can filter out general proposals that are unworthy of consideration and the GIC can propose any proposal which in its view has merit in being debated, and v) GIC can ring-fence itself physically or contractually to manage the conflict of it also ruling on a proposal that it has tabled, should it be called to eventually do so. <p>A potential issue with this approach is that the GIC could use this avenue to progress regulatory changes – and that too much power would vest with it. If this is of concern (and it may be a valid concern), then either:</p> <ul style="list-style-type: none"> • GIC could only propose a code change that in turn is proposed to it by a third party (so as not to progress its own agenda – and to separate its regulatory and co-regulatory powers), • GIC cannot propose a code change but FGL should be mandated to propose a code change proposed to it by a party not signed up to the code if it considers, acting reasonably, that there is merit in industry considering the proposal, or • GIC could propose any change, but any change proposed by it needs to go to an outsourced / independent party to rule on.
<p>Q2: The report recommends that code changes should be consulted on and refined through a process similar to the current VTC process. Do you agree with the reasoning and recommendation?</p>	<p>Yes – this was also the conclusion reached during the GITAWG process (albeit just for the ex-Vector transmission pipelines). However, the logic still holds true for the new code work for the reasons outlined in the paper.</p>
<p>Q3: The report recommends that proposed code changes should be assessed against the Gas Act s43ZN criteria, and that Gas Industry Co is best placed to make that assessment. Do you agree with the reasoning and recommendation?</p>	<p>No – re Gas Act criteria. GGNZ agrees with the reference to s43ZN of the Gas Act, but we favour also including the GPS. Concept seems to conclude against the GPS based on the last paragraph of page 18 of the paper – i.e. it duplicates the principal objective and decision making criteria needs to be stable over time. However, the GPS includes items not covered by the primary objective (e.g. re climate change) and criteria should be adaptive to reflect the changing industry. In addition, the GPS is made pursuant to the Gas Act and expressly says (paraphrasing) that it sets out the objectives / outcomes that the government wants GIC to</p>

	<p>pursue. Historically, this has been interpreted to extend beyond the regulatory and into the GIC's co-regulatory role. On balance, the arguments favour the GPS being included in the criteria.</p> <p>In addition to the above, it is perhaps worthwhile debating whether the code's own five objectives should either be the criteria or form part of it. If it is the former, then there would need to be a way of tying up the code with the Gas Act / GPS to ensure the code doesn't drift away from central government expectations.</p> <p>Yes – re GIC making the assessment. GGNZ agrees with this recommendation from a quick look at the costs, benefits and alternatives (on the back of agreeing with question 2 above).</p> <p>As an aside, GGNZ thinks that the reasoning used to get to the conclusion is flawed. I.e. GIC is not independent because a) GIC having a majority of independent board members does not necessarily prove that the company itself is independent, and b) GIC clearly has an actual or potential interest in what it is called upon to approve, and it could use this as a way to further its own objectives in addition to the government's objectives. This issue is inherent to the co-regulatory structure and should not be a barrier to a pragmatic code change process, as long as the position is front-footed. The proposal should therefore refer to Industry Body, rather than Independent Body. This would also work much better for industry optics.</p> <p>As a further aside, it is good to see on GIC's website and in the paper that GIC commissioned Concept to do the paper. This is the proper way to manage the potential conflict of interest in that the GIC (probably) pays Concept, and Concept recommends GIC has a role. It looks a bit funny, but the paper stacks up regardless and the transparency is commendable.</p>
<p>Q4: Are there any other matters that you believe are relevant to code changes and need to be considered?</p>	<p>Yes – as follows:</p> <ul style="list-style-type: none"> a) GGNZ agrees with Concept's recommendation on urgent change provisions required to give effect to urgent legislation. b) Industry will need to debate whether other changes (not required by legislation) should be able to be fast-tracked. The concept sounds good, although recent VTC history has highlighted some risks with it like missing a short window to comment can lock a party out of subsequent voting. Loopholes could be fixed if the concept is supported.

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- c) GGNZ agrees with Concept's recommendation on manifestly uncontroversial code changes. The GIC or submitting party should also be able to make minor changes to change requests that are quite advanced in the process, e.g. for previously missed spelling mistakes or logic errors (without having to restart the process).
 - d) GGNZ agrees with Concept's recommendation on administration of code change processes.
 - e) GGNZ agrees with Concept's recommendation on limited veto for TSP provided that the detail is debated. There is a risk that (in any given period) the Commerce Commission's price path decision will make TSP highly reluctant to consider what it might otherwise have been open to considering. For example, the Commerce Commission seems to exclude items from the price-quality determination where such aspects of quality are already provided for in other legislation – e.g. gas safety and measurement which places some obligations with gas retailers even though TSP is best placed to control the obligations. The risk therefore is that an individual gas retailer may have reduced an HSE risk as low as reasonably practicable, but that the supply chain has not if TSP does not want to incur costs to fund an initiative that should ordinarily stack up. GGNZ therefore considers that the intention and context of the Commerce Commission's price-quality determination should be considered in addition to the written determination itself.
 - f) To promote an efficient and proactive code change process, GGNZ also considers that any actual or potential use of TSP veto should be tabled early on in the code change process (to allow for submissions and for the GIC to rule on it), rather than as currently the case where it could be tabled at the end of the process (and then potentially subject to dispute).
 - g) Industry should debate whether or not multi-issue change requests are allowed. There will be times where multi-issue proposals are sensible and efficient, but other times where it could include a single issue detrimental to industry that is clearly not required and / or is attempting to be approved on the back of a proposal that has an overall net benefit. Perhaps GIC should be able to approve all or part of a proposal.
 - h) Assuming that GIC will not be a code signatory, then the new code should provide the
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mandate for an MoU between GIC and FGL. That mandate should include things like: timings, what the criteria is, detail on applying the criteria, how / when to use a cost-benefit analysis, how to handle qualitative and quantitative analysis, consultation process, transparency of legal opinions and ToRs, the circumstances when GIC can propose a change request and how this impacts on its role as approver etc. FGL should be required to direct GIC to obtain a cost-benefit analysis on a material issue where 'x' % of code signatories want one. Ultimately, the MoU should not contain anything material that hasn't been able to be debated / instructed / constructed within the code itself. The MoU should also be changed to the mandate set out in the code changes.

- i) Industry should debate whether the party making the proposal, or whether the GIC, is to ensure that the proposed change complies with the Commerce Act and other legal requirements. The status quo under the MPOC does not make sense for the new code – i.e. to rely on the proposing party's opinion and for GIC to simply accept this at face value. It might make more sense for the GIC to sign off on this (via internal or external legal opinion) as part of its approval process.
 - j) Industry should debate whether or not the code should provide for the GIC's decisions to be able to be disputed or reviewed.
 - k) The timing / detail of the change process in the code should also be reviewed as part of giving effect to question 2).
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