



8 August 2017

Ian Dempster
Acting CEO
Gas Industry Company Limited
By electronic upload

Dear Ian,

RE: Maui Pipeline Operating Code (“MPOC”) Transition Change Request dated 14 July 2017 (“TCR”)

Greymouth Gas New Zealand Limited recommends that Gas Industry Company Limited (“GIC”) declines the TCR and directs First Gas Limited (“FGL”) to:

- Create, at a workshop with MPOC and Vector Transmission Code (“VTC”) signatories, a new change request that properly:
 - o Addresses all material issues raised in the TCR (including from the draft TCR consultation); and
 - o Achieves the stated purpose of the TCR; and
- Consult and submit that new change request to the GIC.

Greymouth Gas supports the underlying reasons for the TCR – that is, the transition to a combined set of transmission access arrangements (“GTAC”) to replace both the MPOC and the VTC.

However, Greymouth Gas does not believe that the TCR as drafted will achieve its purpose and therefore Greymouth Gas does not support it. The TCR fails in respect of three broad areas, described below. For further detail, please refer to Greymouth Gas’ submission on the draft GTAC Transitional Arrangements dated 29 June 2017 and available on the GIC’s website.

1. Consultation With Industry

GIC is to assess the GTAC, which will effectively restructure the downstream gas industry, by applying a mechanism set out in the TCR. GIC’s release of its proposed approach to GTAC assessment dated 2 August 2017 (“**the paper**”)¹ is helpful and Greymouth Gas appreciates the time extension for this submission to consider how the paper might impact on the TCR. However:

- The GTAC will not be introduced as a change request to the MPOC, thus the current MoU between GIC and FGL does not apply. Despite the paper, there remains no contractual nexus for GIC to perform the role required of it for assessing the GTAC,

¹ Greymouth Gas will comment more generally on the paper as part of the paper’s consultation process.

should the TCR be approved. Further, the GTAC will affect signatories to both the MPOC and the VTC, so it would be appropriate to have a mechanism that recognises this, rather than an extension or mirror of the current MPOC arrangements. We recommend that the paper be used as the basis for an MoU between GIC and all signatories to both codes.

- While we broadly agree with the paper that GTAC assessment consultation should be similar to an MPOC change request consultation, Greymouth Gas considers that “appropriate consultation” should be debated amongst signatories with a view to including further requirements before the process is established. Notwithstanding this, when assessing the TCR on its own accord, the TCR is deficient in so far as “GIC publishing a draft determination and asking each Shipper whether it supports the New Code” is not “appropriate consultation” when what is being consulted on is a wholly new set of transmission access arrangements to apply to the entire gas industry. Strictly interpreted, the TCR would mean the GTAC would not require any further input from industry participants until FGL puts it to GIC for review. That is not in the best interests of the industry, the GTAC process or the Gas Act.
- We appreciate that the paper opines on what “materially better” is, i.e. on what the test is that the GTAC is ultimately aiming to pass. This makes the TCR read better on this point and the mechanism now seems appropriate. However, Greymouth Gas disagrees that the materially better test should be applied to the GTAC in aggregate because that could mean that parts of the new code are worse than the status quo. We doubt that would be acceptable, although we accept that some parts of the GTAC may be the same as the status quo or may have no equivalent in the new arrangements.

Greymouth Gas considers the TCR should require a recipe for an (and attach a draft) MoU between GIC and at least FGL, if not all VTC and MPOC signatories, setting out the GIC’s role, establishing an appropriate consultation process (including consultation with industry on the MoU), requiring some party to confirm compliance with the Commerce Act, and setting out the basis on which GIC would make a determination regarding the GTAC, including a process for achieving industry support for the new arrangements.

2. *Seamless Transition*

There are issues of substance with the TCR, as follows:

- *The termination of the MPOC and its associated contracts should be mandatory upon adoption of the new code.* Proposed clause 22.16 provides FGL “may” terminate the ICAs and TSAs. If FGL is able to opt out of implementing the new code (as MDL did with back-to-back balancing), this would undermine the whole process.
- *40 Business Days is too short a lead-time for industry to make necessary changes to their processes and systems to implement the new arrangements.* While it may be possible to anticipate the form of the new arrangements before they are finalised, it is commercially unrealistic to expect parties to begin changing their systems, processes, and commercial arrangements before they know that all the new code’s conditions will be satisfied.

3. *Drafting Matters*

It is essential that the TCR is properly drafted to ensure that the transition to new arrangements is not delayed or prevented because a transitional provision cannot be properly complied with due to drafting errors. A lack of attention to detail at this stage in the process undermines confidence in the quality and effectiveness of the new code. Technical issues include:

- *It is impossible to satisfy the VTC termination condition.* Clause 22.16(c) effectively provides that TSP may terminate every ICA and TSA simultaneously with effect at 0:00 hours on the New Code Date subject to the following conditions being satisfied **not later than** 40 Business Days before the New Code Date:...the VTC and all transmission services agreements incorporating the VTC shall terminate **on** the New Code Date. The VTC cannot be terminated on the New Code Date in order to satisfy a condition that must be satisfied 40 Business Days before the New Code Date. What this clause should provide is that, at least 40 Business Days before the New Code Date, the VTC should have been amended to provide for the termination of all its TSAs with effect from the New Code Date.
- *New TSAs and ICAs are not required to incorporate the new code.* Clause 22.16(f) requires the delivery of executable contracts to all shippers and welded parties to enable them to continue shipping and connection after the new code date. However, there is no requirement that those contracts incorporate the terms of the new code. This should be specified to ensure all parties are subject to the new code.
- *The New Code definition does not properly define the new code.* The definition of New Code in clause 22.16(a) includes reference to the New Code itself. The term being defined should not be used to define itself.
- *The New Code Date should not be one of the termination conditions.* It will not be possible to identify the New Code Date until all other conditions in clause 22.16 have been satisfied. It is therefore not appropriate to make the setting of the date itself a condition – rather, it should be a separate provision from the termination conditions.
- *Clause 22.16(a) purports to predetermine provisions of the new code.* The clause states that the new code must include the “following provisions”. On a strict interpretation, that would require the new code to contain those exact provisions. Better drafting would provide that the new code must include provisions which *provide* for those matters.

It is disappointing that, although they were raised in Greymouth Gas' submission on FGL's draft proposed change request, none of these points were addressed before the TCR was submitted to GIC. Greymouth Gas believes that to ensure the integrity of the transition process, the GIC should arrange for a proper legal drafting review of the TCR before making its determination.

Greymouth Gas cannot see how the GIC, acting as good guardian of our industry, can approve an MPOC change request that does not work, is not efficient, and is not fit for purpose.

Despite the points raised above, Greymouth Gas believes the existing form and structure of the TCR is sound and will be a good starting point for a collaborative rework of the change request.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Chris Boxall', followed by a long horizontal line extending to the right.

Chris Boxall
Commercial Manager