12 May 2017

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Genesis Energy Limited

Ian Dempster

Gas Industry Company

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WELLINGTON

Dear Ian

Gas transmission access code – governance options

Genesis Energy Limited ("Genesis Energy") welcomes the opportunity to provide a submission to the Gas Industry Company ("GIC") on the report "Gas transmission access code - governance options" dated April 2017 ("the report").

Genesis Energy appreciates GIC seeking independent advice on the gas transmission access code ("GTAC") governance options and looks forward to continued engagement with GIC and First Gas on the proposed GTAC design.

As the largest retailer of residential gas in New Zealand, Genesis Energy represents the best interests of consumers, which means advocating for a GTAC that facilitates the delivery of gas in a safe, efficient and reliable manner.

Inherent in this is a suitable code-change process and we strongly believe that a robust governance framework is crucial to the success of any GTAC. Taking time now to carefully design the code-change process will ensure timely and efficient improvements can be made as needed further down the track.

In this submission, Genesis Energy:

- Supports recommendation 2.4 in the report, regarding who can propose code changes;
- Supports, with qualification, recommendation 3.4, regarding the process for code change proposals; and
- Opposes recommendation 4.4, regarding who decides on code change proposals, and offers an alternative recommendation.

We expand on these points below and attached as Appendix A to propose what we consider to be the most pragmatic means for making any changes that will be needed as the sector evolves, or to address issues that may be identified after the GTAC has been drafted.

Striking the right balance: progress, process and power

Progress vs. process

Genesis Energy considers the need to strike the right balance between progress and process: things don't just need to get done; they need to be done right. We agree the GTAC "cannot remain frozen in time" but proper process must be followed to ensure any changes are fit-for-purpose.

Therefore, we support the evolutionary process recommended for "normal" code changes, and the recommendations specific to code change proposals that fall outside the scope of normal - including urgent and manifestly uncontroversial code changes – provided:

- A 'black-out' period over the Christmas and New Year period is introduced, during which time normal code change proposals cannot be lodged; and
- Further clarification is provided of what criteria apply in the case of urgent or manifestly uncontroversial code changes.

Concentration of power

Genesis Energy has previously submitted that it is important that GIC plays a central role in the GTAC's development. While we stand by this sentiment, we are mindful that the concentration of too much power within one body is unwise and has the potential to create an environment where legal challenge becomes the only restraint on the decision-making powers.

For this reason, it is our view that there must be checks and balances in place that support the GIC's central role in the GTAC's development. Genesis Energy therefore recommends that the final decision on code change proposals should require a 75 per cent majority of signatories before implementation. While this may on the face of it appear to be an additional step we believe such a finalisation process will better represent the interests of consumers and ensure a robust decision can be reached. We recommend:

- GIC assesses code change proposals against Gas Act objectives, which are to be interpreted consistently;
- GIC makes a recommendation on whether a change proposal should be accepted, as per its assessment of the Gas Act objectives;
- Code signatories vote on whether the code change should pass;
- If a majority of code signatories votes in favour of a change (75 per cent or more), it becomes binding, unless;
- First Gas would be materially negatively impacted, which GIC would determine on a case-by-case basis.

The best way forward

Genesis Energy encourages GIC to continue to work closely with the industry on the code governance framework and does not underestimate the importance of getting this right to deliver the right results.

We suggest GIC considers our submission and others in conjunction with the comments received at the upcoming workshop (17 May). Further comment may also need to be sought on some of the suggestions we have offered, for example, how to consistently interpret and apply Gas Act objectives in the decision making process.

If you would like to discuss any of these matters further, please contact me on 09 951 9272.

Yours sincerely

Margie McCrone
Regulatory Advisor

Appendix A: Responses to Consultation Questions

QUESTION	COMMENT
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?	Agree.
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?	Agree, subject to the caveats provided below. As stated in the cover letter, Genesis Energy supports the evolutionary process for normal code changes. However, we suggest that there is a 'black-out' period initiated for normal code changes over the Christmas and New Year period annually, during which time no new changes can be lodged. From our perspective, over this period there is a risk that interested parties may lack the time and resource needed to respond to code-change proposals. This could see changes pushed through without sufficient oversight from stakeholders, resulting in code changes that lack support. Genesis Energy is also generally supportive of having criteria for change proposals that fall outside the ambit of normal – as per chapter 5 of the report - however we request further clarity is provided e.g. What would the recommended automatic lapse period be for an urgent code change? What is the limited veto power for First Gas?

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?	Do not agree, for the reasons provided in the cover letter and below. We have raised the concern that GIC could have too much power under the governance framework recommended in the report and that code signatories are better placed to act for the wider interest in making final decisions. We instead suggest GIC plays an important role in recommending whether a proposal should pass by assessing it against the objectives in section 43ZN of the Gas Act. How these objectives should be interpreted is important, and we strongly suggest guidance on interpretation is developed e.g. does 'efficient' - as referenced in the principal objective in s.43ZN (a) - account for economic efficiency? When GIC has made its recommendations, code signatories can vote on whether a code change is accepted. We propose that if 75 per cent or more of code signatories vote in favour of a proposal, it should pass, unless First Gas would be materially negatively impacted. The GIC again would play an important role in this instance, determining if in fact First Gas would be so impacted. We consider this to provide a robust process for deciding on future code changes. The GIC, of course, retains the power to regulate if it is not happy with final decisions made by the majority of code signatories.
Q4: Are there any other matters that you believe are relevant to code changes and need to be considered?	Yes. Genesis Energy sees value in having a 'Plan B': we recommend there is a review period included within the governance framework, where after a pre-defined period of time, the code-change process can be assessed on its merits and performance to-date.