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### Gas Industry Co's proposed approach to GTAC assessment

Dear Ian,

1. Thank you for the opportunity to provide feedback on your paper "Gas Industry Co's proposed approach to GTAC assessment" dated 2 August 2017 ("Proposed Approach") setting out GIC's initial view on how it might assess a formal GTAC proposal, if the MPOC Transition Change Request of 14 July 2017 ("TCR") is approved.
2. Regardless of whether the TCR is approved or not, we believe that the methodology and approach taken by GIC in assessing the GTAC when it is finally submitted by First Gas needs to be further clarified and formalised.
3. We believe the best means of achieving this outcome is for GIC to provide a comprehensive Terms of Reference which it will follow in assessing the GTAC. The Terms of Reference would build on the Proposed Approach and should be formalised in consultation with industry participants.
4. We consider the Proposed Approach to be a positive step by GIC to address concerns of industry participants. However we have concerns over a number of aspects of the Proposed Approach in the following areas:
  - a. Timeframes in the GTAC Assessment Process
  - b. Assessment Framework
  - c. Hierarchy of Gas Act and GPS Objectives

#### GTAC Assessment Process

5. Methanex believes that GIC has not allowed sufficient time in its proposed assessment process to adequately deal with the complexity and number of issues likely to arise in the course of that process, including the prospect there may be a range of dissenting views on the GTAC that First Gas ultimately submits to GIC that it will need to take into account.

6. In particular we consider that the proposed 15 working day window for submissions on GIC's Preliminary Assessment of the GTAC is unreasonably short. By comparison, at least 15 working days has been allowed for two submissions on the proposed TCR, on both draft and final recommendations. The matters that need to be addressed and scale of consequences are significantly greater in respect of the GTAC. In addition no opportunity is being given for submissions on the GTAC prior to the Preliminary Assessment.
7. We are not concerned only with the limited timeframe allowed for industry participants to respond to the Preliminary Assessment, but also the limited time GIC is giving itself to undertake the Preliminary Assessment and complete the Final Assessment. The proposed timeframe strikes us as overly-ambitious and one that fails to take cognisance of the real potential that significant and contentious changes could be made to the GTAC at the close of or even following the negotiation phase where there has been limited or no opportunity for the industry to reflect and react.
8. GIC's proposed timing appears to assume that changes to the GTAC between preliminary assessment and final assessment will be quite limited and straight-forward. While we support the overall goal of reaching an agreed code in a reasonable time frame, an artificial deadline of year-end should not be a determining factor as regards process, particularly when it carries with it the potential to undermine reaching a better outcome. In short GIC should be generous in its allocation of time to these key elements of the assessment process, ensuring that all parties have sufficient time to assess properly the implications of any changes and so put forward well-considered submissions (and cross-submissions).
9. Methanex has previously expressed its concerns regarding the wording of the TCR – specifically that the process of assessing the 'substantive condition' is inadequately defined and unduly restrictive. A key change sought by Methanex is that, in addition to being satisfied on the "materially better" test, GIC must also be satisfied that all material concerns of industry participants with the New Code have been addressed in a fair and reasonable manner. Accordingly the consultation and review process needs to provide sufficient opportunities (and time) for industry participants to identify their concerns to GIC and for GIC to come to a view as to whether those concerns have in fact been dealt with in a fair and reasonable manner. We believe this will need to occur at both the preliminary and final assessment stages.

#### **Assessment Framework**

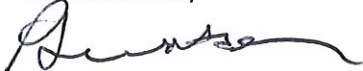
10. We consider that GIC's proposed "overall assessment" approach to the materially better standard carries with it a real risk of an unfair outcome for particular stakeholders or groups of stakeholders, where an element of the GTAC could be materially worse than the status quo but the GTAC is still approved by GIC due to perceived offsetting improvements in one or more other elements of the GTAC. In our view such an outcome would be at odds with the overall policy objective that GIC is required to pursue pursuant to section 43ZO of the Gas Act 1992 as set out in paragraph 9 of the current Government Policy Statement on Gas Governance. We suggest that in addition to the requirement that GIC determines the GTAC to be materially better on an "overall assessment" basis, GIC must also determine that no aspect of the GTAC is worse than existing arrangements.
11. We also seek clarification by GIC regarding how it intends to approach assessment of the associated "arrangements" that form part of the overall regime proposed by First Gas but which are not formally part of the GTAC. This includes the Interconnection Agreements and the yet-to-be-disclosed Gas Transmission Pricing Methodology. Methanex considers

that these arrangements are material in nature, integral to the operation of the pipeline system and need to be incorporated into GIC's assessment process to avoid a serious gap in GIC oversight of the code replacement process.

### Gas Act and GPS Objectives

12. In section 3.2 of the Proposed Approach GIC seeks to identify and adopt a hierarchy of objectives flowing from various provisions of the Gas Act 1992 and the GPS. Methanex believes GIC's reasoning on this matter is flawed and is particularly concerned that it appears a lower weighting has been attributed to "fairness" than should be the case in the context of implementation of a new pipeline code.
13. In considering a hierarchy or weighting of factors, GIC needs to bear in mind the context. In the context of assessing the impacts on industry participants of an entirely new code against the status quo, we would expect consideration of fairness to be a critical aspect that requires assessment. This relates to fairness of outcomes for individual industry participants, particularly in regard to changes in the allocation of costs and risks among individual participants, and between participants and First Gas, when compared against the status quo.
14. While section 43ZN(a) of the Gas Act is described as the principal objective of GIC, it is only the principal objective when recommending regulations to the Minister. Section 43ZN(a) does not speak, in a legislative sense, when GIC is considering something other than recommending regulations to the Minister. It is not the principal objective when exercising a non-regulatory function and should not be promoted to such status simply because it is reaffirmed as "the Government's objective" in the GPS (clause 8).
15. Importantly, the expanded objective set out in clause 9 of the GPS is "also the Government's objective". Critically this objective brings in considerations of fairness (of obvious and significant application in the present context) and environmental sustainability.
16. The wording of the GPS gives no weighting to these two objectives and so the starting point should be that the objectives are given equal weighting. It would have been a simple thing for the GPS to state that the clause 8 objective be the primary or principal objective, thus importing the weighting that applies in the regulatory context under the Gas Act. But it didn't and, in Methanex' view, there is a very good reason for that – namely when dealing with non-regulatory arrangements there is no further step above GIC in the approval process and so it is for GIC to take into account considerations of fairness and environmental sustainability with at least the same weighting as safety, efficiency and reliability.
17. Indeed while the GPS imports the objectives of the Gas Act into the GPS and thus into consideration of non-regulatory arrangements, it is the GPS rather than the Gas Act that sets the objectives and their weighting for such non-regulatory arrangements.

Yours sincerely



Phil Watson