22 January 2018

Ian Wilson

Gas Industry Company Ltd

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**8 December 2017 GTAC**

Dear Ian,

## INTRODUCTORY REMARKS

1. Methanex makes this submission in response to the Gas Industry Company’s (“GIC”) invitation to assist it in making an assessment as to whether the Gas Transmission Access Code (“GTAC”) as provided by First Gas Limited (“FGL”) on 8 December 2017, is materially better than the current terms and conditions of access and use of the gas transmission pipelines owned and operated by FGL.
2. Methanex is a major end-user of gas, with our gas use comprising approximately 45% of total gas demand in New Zealand. We are party to 3 interconnection agreements on the Maui pipeline, at Bertrand Road, Faull Road and Ngatimaru Road (Delivery). We are a shipper of gas on the Maui pipeline and we also have a number of other shippers supplying gas to our delivery points.
3. Given that Methanex is only a party to the Maui Pipeline Operating Code (“MPOC”), in addressing the GTAC we have focussed on assessing whether the proposed GTAC is materially better than the MPOC.
4. In making its assessment, GIC must consider the GTAC objectively and on a stand-alone basis against the status quo under each existing code as it applies to the existing participants to those codes (in the case of the MPOC, Shippers and Welded Parties). It would be contrary to the requirements of fairness for GIC to make a judgement that the degree to which the GTAC may be materially better to one code offsets it being materially worse under the other code. In short we consider the proper assessment of the GTAC is that it needs to be materially better to each existing code for GIC to support its adoption.
5. FGL has inherited two existing pipeline systems with long-established terms of access, including in respect to the Maui Pipeline, the integral role played by interconnected parties. We disagree with the “clean sheet” approach taken by FGL and the fundamental changes it has made to long-standing access terms, relationships and responsibilities. In the context that each of the current codes has proven generally fit for purpose for over a decade we believe that evolutionary changes, not the revolutionary redrawing of operational and commercial relationships proposed under GTAC, will generate incremental improvement and not risk unexpected consequences arising from radical and untested changes.
6. In our consideration of the GTAC we have been unable to identify any important provision of GTAC which stands out as materially better than the MPOC.
7. By contrast we have identified numerous aspects of the GTAC which we consider to be materially inferior to the corresponding provisions in the MPOC and instances where matters dealt with comprehensively in MPOC are either addressed in a cursory and incomplete manner, or ignored entirely. These aspects include:

* Exclusion of interconnection arrangements from the code
* Pricing
* The nominations and balancing regime
* Line pack and pressure management
* Allocation of peaking and swing flexibility and penalties for excessive peaking
* Metering
* Gas quality assurance
* Gas curtailment
* Liabilities
* Code change processes
* Confidentiality
* Assignment by FGL

1. In addition, Interconnection Agreement templates are addressed separately and are not part of the GTAC, and pricing methodologies, metering requirements and technical standards are not covered at all. This means that the GIC will be assessing a code and an operating regime that has material gaps in areas that are fundamental to the code and therefore critical to GIC’s assessment.

1. Methanex also wishes to draw attention to the numerous late mark-ups made to the GTAC as submitted to GIC for assessment. There are a considerable number of additional amendments that have been proposed by FGL in the final draft submitted to GIC, many of which have not been adequately consulted upon. At the last workshop held on 12 December there were still significant aspects of the GTAC that were either contentious or not fully understood by industry participants.
2. Methanex considers that the GTAC as presented is incomplete and cannot be considered to be materially better than the status quo.

### Context and Scope of GIC Assessment

1. Methanex has previously voiced its concerns over the amendment of the MPOC (Section 22.16) that introduced the mechanism for terminating MPOC and introducing a replacement code, based on satisfaction of a substantiative condition formulated by FGL. We consider applying the amendment proposed by FGL risks limiting the scope of GICs assessment process.
2. The replacement of an entire operating code, particularly in this case where two codes are being replaced by one code and the implications that has on fairness and equity for the participants under each of current codes, is not a situation specifically contemplated either by the Act nor by the Gas Policy Statement. Consequently we consider that GICs assessment needs to be wider in scope than the expressed provisions of Section 43ZN and ZO.
3. Methanex does not consider that GIC is limited by the explicit requirements of Section 22.16 nor do we consider it appropriate for GIC to constrain itself in that manner. We are concerned that GIC has expressed the substantive condition as the sole element in setting out the context for the assessment process in its guidance note[[1]](#footnote-2).
4. We make particular reference to GICs guidance paper, and submitters responses,[[2]](#footnote-3) as more comprehensively addressing the appropriate scope of its assessment. Although GIC has not referred to this paper in its guidance note we expect that it will be applied in its assessment.

## OVERARCHING ISSUES

### Code Design

1. The most significant departure from MPOC in the GTAC is the exclusion of interconnection arrangements. From the outset of the consultation process Methanex has opposed FGLs decision to divorce Interconnected Parties (“IP’s”) from the GTAC and instead insist on addressing Interconnection Agreements (“ICA’s”) as bilateral contracts separate from the code.
2. We recognise that ICAs are bilateral contracts under MPOC, just as are TSAs. The important distinction between MPOC and GTAC is that:

* In MPOC the rules and responsibilities that apply to interconnection are comprehensively incorporated within the code. As is the case for TSAs, ICAs under MPOC are simple form agreements. Individual ICAs only contain additional terms in order to address specific issues (mostly associated with addressing non-standard metering arrangements).
* In GTAC, IPs are substantially excluded and instead FGL contemplates individual ICAs each incorporating all the terms and conditions for each IP. The consequence is that Shippers on the Maui Pipeline are given responsibilities under the GTAC that are best performed by Interconnected Parties. During the process of drafting, FGL has re-introduced roles for Interconnected Parties (eg OBAs, curtailments, Over-flow) but in an inconsistent and piecemeal manner.

1. Under GTAC there is a limited and in many respects an uncertain contractual nexus between and among FGL, Shippers and IPs. The GTAC only substantively addresses the relationship between FGL and Shippers. We consider that interconnection arrangements are integral to any pipeline access code. Under GTAC they are restricted to one-to-one arrangements between FGL and each individual Interconnected Party, with no overarching codification of the terms of access.
2. Methanex does not agree with FGL portraying the establishment of individual bilateral contracts between FGL, as a monopoly provider, and individual Interconnected Parties, as being a set of negotiated arrangements. Those ICAs will not represent agreements negotiated between equals in a competitive environment and are more likely to be made on terms that are set by FGL. Codification allows for terms and conditions to be subject to industry consultation, standardisation, and GIC oversight.
3. By excluding ICAs from the GTAC, FGL will be able to establish terms and conditions in its favour without any oversight.

* No common conditions, or overarching rules and principles of behaviour and interactions
* Interconnection arrangements are not covered by the change request process, as they are under MPOC;
* It is not clear to Methanex that GIC will have an oversight role to ensure the terms of access for interconnected parties are fair and balanced.

1. The characteristics of the Maui Pipeline differ materially from the rest of the pipeline system:

* We consider the abandonment of the balancing and allocation mechanisms used on the Maui Pipeline to be a fundamental flaw in FGLs code design philosophy. We do not consider that partial and elective adoption of OBA arrangements on the Maui Pipeline is a workable substitute.
* Further, the specification given to OBA mechanisms in the GTAC is cursory and inconsistent, particularly in regard to articulating OBA Party rights and responsibilities, making it unlikely to be an attractive option for Interconnected Parties in any event.
* Point to point nomination by Shippers and deemed flow to nomination, together with operational balancing as the responsibility of Interconnected Parties has proven to be a safe, reliable and efficient arrangement on the Maui Pipeline for more than a decade. FGL has provided no justification for abandoning it. It could have retained the same arrangements for gas flows that remain within the Maui Pipeline, while addressing the particular aspects of concern to it for gas flows on other parts of the network.

1. Without the general application of OBAs on the Maui Pipeline, with Shippers left primarily responsible for scheduling and managing physical gas flows, the result will be less effective or efficient balancing, given that:

* Shippers are unlikely to exercise effective control over connected injection/offtake infrastructure or control of gas flows. Obligations placed upon them instead of Interconnected Parties will undermine the safe and reliable operation of gas infrastructure generally.[[3]](#footnote-4)

* There may be multiple Shippers nominating at a given Interconnection Point raising coordination issues in respect to gas scheduling that wouldn’t exist if the Interconnected Party was always involved.
* Interconnected Parties are best placed to manage physical flows. In respect to the Maui Pipeline in most cases the Interconnected Party is also the injecting party or the offtaking party/end-user. Even if this is not the case the IP is in control of the physical infrastructure at which gas enters or leaves the Maui Pipeline.

## Pricing

1. It is significant that when GIC is making its assessment of GTAC it will be in the absence of any material information on FGL pricing methodologies or on the impact on costs for individual customers and groups of customers. In particular, the extent to which there may be a significant redistribution of revenue proportions between the respective pipelines remains an unresolved issue and one that is fundamental to an assessment of fairness and equity.
2. The absence of definitive pricing information means that GIC is missing fundamental information by which to make a comparison of efficiency and fairness between GTAC and MPOC. When there is no information to base an objective assessment as to whether GTAC is materially better than MPOC, the only conclusion that GIC can reasonably reach in regard to pricing outcomes is that GTAC is not materially better than MPOC (or either code for that matter).

## OBAs under GTAC

1. Methanex considers FGLs approach to OBAs in the GTAC to be incomplete and inconsistent in terms of setting out the rights and responsibilities of OBA Parties. We go into more detail on some of the issues later in the submission but consider the following matters (and there may be others we have missed) are poorly addressed in respect of OBA Parties generally:
   * 1. OBA Parties are not entitled to Agreed Hourly Profiles even though they are exposed to the Hourly Overrun consequences of an unusually variable end-user profile and would be entirely reliant on potentially multiple Shippers each requesting and receiving Agreed Hourly Profiles;
     2. OBA Parties are not entitled to the benefit of the provisions of Section 5 even though they may be exposed to the consequences of inaccurate metering. The same issue applies to IPs generally who also have no rights under Section 5;
     3. OBA Parties have no rights to request confirmation that another IP is meeting its gas quality obligations;
     4. OBA Parties have no protections under Section 20.3 (Confidential Information); and
     5. OBA Parties are ignored by FGL in terms of the provision of Maintenance notices;

## ICA drafting supplied by FGL

1. Methanex considers that FGLs draft ICA templates should be disregarded by GIC in its assessment for the following reasons:

* The ICAs do not form any part of the GTAC, except in a cursory manner in section 7. Further, the ICA templates that have been drafted form no part of the GTAC and consequently the terms set out in those templates cannot not be relied upon in GIC’s assessment of the GTAC
* FGLs approach to consultation on the ICAs has been limited. The drafting of ICAs has lagged the GTAC drafting and FGL has not engaged significantly on ICAs during the consultation process. The last draft of the ICA was not provided until 22 December, two weeks after submission of the 8 December GTAC package, and those ICAs contain numerous late amendments from the previous drafts, made without any consultation whatsoever.
* Finally, and partially as a consequence of the limited engagement FGL has had with interconnected parties in regard to interconnection arrangements, there are numerous drafting and technical issues in those documents.

# OPERATIONAL MATTERS

|  |  |  |  |
| --- | --- | --- | --- |
|  | **GTAC Section** | **MPOC Section** | **Comments** |
|  | 2 – Transmission Services | 2 – Pipeline Services | Main issue for Methanex is associated with Target Taranaki Pressure obligations weakened in GTAC, as an element of wider concern regarding FGLs approach to managing line pack and pipeline pressure on the Maui Pipeline. |
|  | 3 – Transmission Products and Services | 13.2 Operational Profiles | Main issue for Methanex is associated with Agreed Hourly Profile provisions, as an element of wider concern regarding permissive and discriminatory access to free peaking services |
|  | 4 - Nominations | Section 8 – Nominations and Renominations  Section 9 – Scheduled Quantities  Section 15.2 – Curtailment | Contrasts discrete and well defined responsibilities for Shipper and Welded Party under MPOC with inconsistent and inefficient approach under GTAC.  Extra ID nomination cycles is inferior to MPOC curtailment provisions in terms of effectively addressing unexpected changes in gas flow to and from the pipeline |
|  | 5 – Energy Quantity Determination | 16 – Measurement and Testing | GTAC is inferior to MPOC provisions |
|  | 8 – Balancing | 3 – Balancing Actions  11 – Shipper Mismatch  12 – Operational Balancing | Lower level of commitment by FGL to participate in balancing actions when compared to MPOC  Linepack management issues under GTAC is a particular concern |
|  | 9 – Curtailment | 8 – Maintenance of Pipeline  15 – Interruptions | GTAC is inferior to MPOC provisions |
|  | 11 – Fees and Charges | 13 - Peaking  19 – Fees and Charges | Hourly Overrun Charges are inequitable and discriminatory and the structure proposed by FGL in the GTAC around peaking will encourage excessive peaking by some to the detriment of other users. |
|  | 12 – Gas Quality | 17 – Gas Specification | Under GTAC, FGL responsibilities are significantly diminished and IPs have poorly described obligations when compared with MPOC |

## Section 2 - Transmission Services

### Fundamental code design philosophy

Under MPOC “Every ICA and TSA will include only the terms and conditions of the Code and necessary individual information including any special terms and conditions.” (Section 2.1)

1. Under MPOC the rules governing the relationship between FGL and IPs, between Shippers and IPs, and among IPs, is comprehensively incorporated into a single code. By contrast, the GTAC is almost exclusively limited to a relationship between FGL and Shippers.
2. Under MPOC, the TSAs and ICAs are subject to all the terms and conditions of the underlying code on a consistent and standardised basis and contain individualised terms only to the extent necessary to reflect certain unique conditions of interconnection (mostly limited to addressing such as non-standard metering arrangements).
3. By contrast, FGL has departed from the fundamental concept of an integrated access code. ICAs will instead operate as individualised, stand-alone bilateral arrangements without the contractual nexus between and among the parties that exists under MPOC.[[4]](#footnote-5)
4. While FGL has supplied draft ICA templates in the package of documents it has supplied to GIC and industry participants they do not constitute schedules to the GTAC nor is it made clear to what degree FGL will be bound to follow those templates. The only codification of terms and conditions associated with ICAs is limited to Section 7 of the GTAC. We do not consider the provision of a partial subset of ICA contract parameters (which fall far short of a codification of roles and responsibilities) as set out in Section 7.13 of the GTAC is a reasonable substitute for a fully integrated Code.
5. Furthermore, establishing individualised bilateral contracts between FGL (as a monopoly provider) and each Interconnected Party cannot be described as a negotiated outcome between equals. This is one of the main reasons Methanex considers it necessary to substantially codify the terms of access for Interconnected Parties.
6. With terms and conditions for IPs excluded from the GTAC we consider that GIC in making its assessment must conclude that this is a materially inferior outcome when compared with MPOC.

### FGL commitment to maintaining Target Taranaki Pressure

1. In the GTAC, FGL has sought to significantly diminish its commitments to maintaining Target Taranaki Pressure (“TTP”). Under MPOC it is a core commitment by the TSP, in GTAC FGL proposes relegating it to a contract parameter in Receipt Point ICAs, despite it being an important issue for Shippers and all Interconnected Parties as a common standard.

***Table 1: Target Taranaki Pressure – comparison between MPOC and GTAC***

|  |  |  |
| --- | --- | --- |
|  | **MPOC Section 2** | **GTAC Section 7.13(e) and Section 8** |
|  | Maintaining TTP is a commitment by FGL to all Shippers and all IPs on the same standardised and consistent basis. | TTP is only a commitment between FGL and individual Receipt Point IPs. (per 7.13(e)) This is despite TTP commitments being of equal importance to all Shippers and Delivery Point IPs on the Maui Pipeline. |
|  | TTP is specifically defined as a pressure “sufficient to:   1. deliver Shippers’ Approved Nominations; and 2. provide, using reasonable endeavours, a reasonable quantity of Gas for use in a Contingency Event; and 3. provide, using reasonable endeavours, a reasonable quantity of Gas to allow for delivery within the relevant Peaking Limit and Daily Operational Imbalance Limit.” | In GTAC TTP is defined only as a quantity “between 42 and 48 bar gauge” without any reference to the purpose or objectives of maintaining the pressure range.  Methanex interprets this to mean that the particular pressure setting in that range is treated as a discretionary matter for FGL and without any responsibility by FGL to adhere to underlying purpose and objectives – such as those set out in MPOC (see also Section 3.1(a) of MPOC). |
|  | TTP shall be between 42 and 48 bar gauge [2.19] | “FGL will use reasonable endeavours to maintain …. between 42 and 48 bar gauge |
|  | Exceptions are allowed to as result of:   * Contingency Events * Force Majeure Events * Maintenance | In addition to the exceptions already established under MPOC, FGL has also added “subject to …the aggregate ERM of Shippers and/or OBA Parties” in section 7.13(e)  This proviso has been added without any qualification. Conceivably any non-zero ERM could form an exception or waiver to a commitment that has already been reduced by FGL to a reasonable endeavours obligation (and further limited to Receipt Point IPs). |
|  | TSP has a positive obligation to intervene and adjust Shipper nominations to maintain the TTP obligation, and a defined set of objectives in terms of its balancing actions (Section 2.20 and 3.1) | GTAC provides no similar obligations or objectives.  The operation of Section 8.5 significantly weakens FGL obligations to intervene to maintain line pack pressure within a conservative range. We elaborate on our concerns regarding FGLs approach to line pack/pressure management later in our submission. |

## Section 3 – Transmission Product and Zones

1. In regard to Section 3 of the GTAC, Methanex’ principle concern is with the Agreed Hourly Profile provision that effectively replaces the Operational Profile arrangement set out in Section 13 of the MPOC.
2. Under MPOC:

*Section 2.9:*

*“TSP will not enter into any contract to allow any Welded Party to exceed a Peaking Limit except in accordance with section 13.2.”*

*Section 13.2:*

*“At each Physical Welded Point, the Welded Party must act as a Reasonable and Prudent Operator to inject or offtake Gas at an Hourly rate during the Day within the Peaking Limit unless it has previously given TSP reasonable prior written notice of (and obtained TSP’s consent, not to be unreasonably withheld or delayed) when and the extent to which it will be exceeding the Peaking Limit or interrupting Gas flow at the Physical Welded Point for operational reasons (including Maintenance scheduled by the Welded Party). TSP will post the details of any such arrangement on the TSP IX in accordance with section 4.1.”*

1. We have repeated these two provisions to highlight:

* Under MPOC, peaking limits are an Interconnected Party obligation, without exception, reflecting that they are best placed to manage the flow of gas into and out of the Maui Pipeline, not Shippers. Accordingly Operational Profiles are issued exclusively to Interconnected Parties under MPOC.
* Peaking Limits are applied fairly and consistently in MPOC across both classes of Interconnected Party, 125% for all Delivery Points and 150% for all Receipt Points.
* The only exception allowed for exceeding the Peaking Limits set out in MPOC is for operational reasons. The intent being to allow a waiver only when it is necessary to address infrequent issues that occur upstream or downstream of the Maui Pipeline, typically associated with shut-down and start-up profiles of major gas injection or offtake infrastructure.

1. We continue to be concerned that the application of Agreed Hourly Profiles will be applied beyond the extraordinary operational circumstances contemplated in MPOC and to a wide variety of routine commercial reasons.
2. The permissiveness of the Agreed Hourly Profile arrangement under GTAC is further compounded by FGL contemplating that an AHP could be awarded for a period of up to 7 Days. Under MPOC operational profiles are only provided on a day-by-day basis, which is more appropriate to the underlying operational reasons that justify being provided such a profile.
3. We also believe that FGL has created a flaw in its application of MHQ when an Agreed Hourly Profile (”AHP”) is in place. In circumstances where an AHP applies MHQ becomes “the greater of: 1/16th of the relevant MDQ[[5]](#footnote-6), the Specific HDQ/DDQ (if applicable) and the transmission capacity for that Hour set out in the AHP;”.

In effect the provision of AHP, when combined with peaking tolerance proposed by FGL, operates as a free gas swing option. A party that has been approved an AHP can choose to operate to its nominated hourly profile, or any range of profiles that fit within the requirements of the peaking limits set out by FGL. This would allow the party to uplift gas in a profile that looks nothing like the AHP. This flexibility comes at no cost to the beneficiary (or any compensation to other users) but the increased uncertainty of uplift profile will increase the risks faced by other users in terms of pipeline pressure and linepack management.

1. Finally, we consider the operation of Section 3.31 of the GTAC not only reinforces the permissive application of AHPs, it obliges FGL to accept any request, whatever the reason, except where such approval would certainly cause serious adverse consequences. We consider the limited criteria for FGL declining an AHP, particularly given the “free option” nature of the arrangement, entirely unsatisfactory.

## Section 11 – Fees and Charges

1. In respect to Section 11 of the GTAC, Methanex is principally concerned with the mechanisms associated with Hourly Overrun Charges which we consider to be an operational matter rather than a strictly commercial issues.
2. Methanex is not philosophically opposed to a regime of penalty fees to incentivise parties to nominate accurately and take to nomination. Our primary opposition to the GTAC in respect to Fees and Charges rests on the inequitable treatment of peaking arrangements generally and the discriminatory application of Hourly Overrun Charges in particular.
3. Under MPOC:

* All Delivery Points have a consistent 125% peaking limit
* All Receipt Points have a consistent 150% peaking limit

1. Under GTAC, FGL departs from the consistent, conservative and non-discriminatory treatment applied in the MPOC in respect to peaking limits.
2. With the exception of Dedicated Delivery Points, FGL sets an MHQ of MDQ/16 (or 150% in terms used in MPOC) in respect to all Shipper nominations as its maximum obligation to flow gas in respect of a DNC[[6]](#footnote-7). However, all this means is that FGL is not obliged to flow gas at a greater rate but, except where Congestion is in effect, it does not prevent a Shipper or end-user exceeding the limit in practice and FGL permitting it. There is also no Hourly Overrun Charge attributable at non-Dedicated Delivery Points as an incentive to limit excessive peaking. We consider this represents a potential free ride for all end users downstream of non-Dedicated Delivery Points, some of whom are significant gas consumers, whose gas flows could readily be measured by (or on behalf) of FGL and hourly overrun charges applied accordingly.
3. In terms of Dedicated Delivery Points (“DDPs”), FGL is able to set a different Specific HDQ/DDQ at each particular DDP at its discretion. Our concern is that the Specific HDQ/DDQ will be set in a manner that gives a higher peaking tolerance to loads that are already peaky while at the same time restricting the tolerance for loads that are flatter, such as Methanex’. We consider this to be inequitable and will encourage excessive peaking, without any price mechanism to govern behaviour.
4. Methanex has also encountered conflicting responses from FGL in terms of the general level intended for Specific HDQ/DDQ. Methanex considers that MDQ/16 is already a very generous allowance in respect to Delivery Points generally (ie 150% vs MPOC allowance of 125%) and so Specific HDQ/DDQ in all cases should be less than 1/16. However, in presentations by FGL[[7]](#footnote-8) it has indicated that Specific HDQ/DQ could in certain circumstances be set at a higher level than 1/16 (150%). This compounds upon Methanex’ general concern regarding the potential discriminatory and inequitable approach that FGL may take under the GTAC in setting peaking limits and the impact that has on parties exposure to Hourly Overrun Charges at certain Delivery Points, as well as the added stresses on pipeline pressure and linepack management.
5. The 200 GJ limit on imposition of any penalty at DDPs has no reasonable basis. Firstly, a load of 200 GJ is not an inconsiderable amount and secondly those loads can be easily be measured by, or on behalf of, FGL so there is no particular justification for not exposing those parties to a peaking disincentive.
6. Finally, Section 11.13, as it relates to the rebate of Overrun Charges, is fundamentally flawed. FGL has determined to combine Daily Overrun/Underrun and Hourly Overrun into a single rebate pool. This is inequitable since it entitles all Shippers, including those on non-Dedicated Delivery Points, to a share of Hourly Overrun Charges despite those Shippers not having any exposure to it in the first place. Those Shippers gain a double benefit, not only does FGL give them a free ride on their individual peaking behaviour, they also receive an effective discount on their transmission costs paid by those who may actually have less peaky loads but are nevertheless exposed to Hourly Overrun Charges.

## Section 4 – Nominations

1. The processes for requesting and approving nominations, including the integral role of interconnected parties in approving nominations is comprehensively set out in Sections 8 and 9 of MPOC and has operated successfully for more than a decade by appropriately distinguishing and assigning responsibilities for making nominations and scheduling of gas flows to the parties best equipped to do so.
2. In regard to gas scheduling, under MPOC:
3. Interconnected Parties are responsible for approving and curtailing all Shipper nominations at their Interconnection Points for all nomination cycles; and
4. TSP is then required to curtail Shipper nominations to reconcile with the Interconnected Party’s Scheduled Quantities.
5. We consider that FGLs proposal of making OBAs available as an elective option will prove to be unworkable in practice.
6. The universality of OBAs in MPOC is an important factor. Making it an option will likely mean no individual IP will elect to operate under an OBA if they are not sure that other IPs will do the same.
7. This prospect is magnified as a consequence of the OBA provision in GTAC being under-specified, incomplete and inconsistent with comparable Shipper arrangements. Despite the general application of OBA principles in MPOC having proved successful, the application of OBAs under GTAC creates sufficient ambiguity and uncertainty to make it unlikely that any party would elect to be an OBA Party in practice.

***Table 2: Comparison – Nomination and Gas Scheduling***

|  | ***GTAC Section 4*** | ***MPOC Section 8 and 9*** |
| --- | --- | --- |

|  |  |  |
| --- | --- | --- |
| 4.1 | Receipt Points don’t need to have OBAs | OBA’s apply universally  Methanex considers it important that all Receipt Points operate under OBAs. Even more so than offtake, the flow of gas into the Maui Pipeline is best managed by injecting parties. |
| 4.12 | Gas scheduling by IPs and curtailment of Shipper nominations is only contemplated where an IP has elected to be an OBA Party.  There is no guarantee that there will be any involvement by IPs in assisting to balance gas flows even though they are generally in a better position to do so than Shippers who have less control of and less information on the status of gas flows. | The partial and uncertain application of OBA principles is not an issue in MPOC, it is applied universally.  MPOC recognises that IPs are the parties best placed to control and balance gas flows at interconnection points, which is where imbalances manifest themselves. |
| 4.14  4.15 | Having established a process for the partial application of Scheduled Quantities only when IPs are OBA Parties, First Gas’ analysis and response in sections 4.14 and 4.15 then gives no consideration of the effect of section 4.12 and 4.13 (OBA Party approval)  The definition of Nominated Quantity doesn’t assist either as it makes no reference to a quantity “approved or curtailed by an OBA Party” | IPs are responsible for confirming or curtailing all Shipper nominations at all interconnection points, and at all nominations cycles.  This is an important part of the gas scheduling process on the Maui Pipeline.  There is no confusion or inconsistency in the allocation of roles and responsibilities in MPOC. |

### Extra ID nomination cycles as alternative to Section 15.2 curtailment

1. Methanex considers that FGLs proposal to provide extra ID cycles to address physical gas constraints is inferior to MPOC’s Section 15.2 curtailment provision in terms of addressing the impact of gas curtailments on nominations and gas flows in the Maui Pipeline in an effective and time-critical manner.
2. Shippers are not generally best placed to identify or react to an emerging physical constraint. IPs are in a better position to do so, at least on the Maui Pipeline since they are to a large extent the injecting parties or large end users for which this mechanism is primarily intended.
3. Under the GTAC, having identified an issue (or more likely having been alerted to it by the relevant gas supplier or end user) the Shipper (and there may be multiple Shippers involved at the affected Interconnection Point) will need to make a request to FGL which will then need to be considered and approved (or rejected). If approved, a nominations round will then need be undertaken. This process will increase the time taken to address nominations and increases the risk that a response will not be quick enough to prevent significant pipeline imbalances emerging. It is also reliant upon FGL choosing to approve such a request.
4. A minimum of two hours is provided between FGL announcing an extra nominations cycle[[8]](#footnote-9) and the time that associated nominations take effect. Added to this is the time required to alert Shippers of an issue, for Shippers to request an additional cycle, and for FGL consider and approve the request. Assuming the existing ID cycle times in MPOC are retained the only period where an extra nominations cycle will likely have any practical use is between ID1 and ID2. As a worst case scenario involving a Pohokura trip with up to 10 TJ of imbalances accumulating each hour, the consequences of delaying curtailment/renominations would be serious. If pipeline pressure or line pack is close to the set limit, adjustments need to be made quickly to avoid the prospect of a critical contingency event.
5. By contrast, Section 15.2 of MPOC is triggered by the relevant Interconnected Party that is encountering the curtailment of physical flows. It has immediate effect with nominations curtailed to the extent needed to balance nominations to physical flows (subject to deemed flow):

* This mechanism has proven particularly effective at signalling events to all users of the Maui Pipeline and enabling the rapid and coordinated adjustment of nominations to match changes in physical flows.
* The party under MPOC that triggers a Section 15.2 curtailment must demonstrate that it was a justified (including validating a Force Majeure Event) so there has always been effective controls to ensure it is exercised appropriately.

***Table 3: Comparison between IP curtailment rights and extra ID cycles available to Shippers***

|  | ***MPOC Section 15.2 Curtailment*** | ***GTAC Section 4.18 Nominations*** |
| --- | --- | --- |
|  | Interconnected Parties are able in certain circumstances to curtail nominations with immediate effect. | Additional ID cycles may be available to address unforeseeable changes in gas flows into or out of the pipeline. The availability of these cycles is at FGL discretion and so does not provide a certain and definitive mechanism. |
|  | Does not require prior approval.  However, there must be a valid circumstance for the action and the IP needs to verify it was justified | Provision of an extra ID cycle requires a request and approval process.  Approval is at FGLs discretion rather than automatic under MPOC. |
|  | Occurs with immediate effect, nominations are curtailed pro-rata immediately. Shippers and IPs then coordinate to further adjust nominations if needed at the next ID cycle. | There is no prescription provided in the GTAC as to the timeframe within which FGL is required to consider such a request before confirming or declining it.  The likely delay/uncertainty in the process makes it of limited practical value.  Curtailment affecting a particular Interconnection Point may require the involvement of multiple Shippers, with the increased prospect for uncoordinated and potentially incomplete corrective action. |

## Section 5 – Energy Quantity Determination

1. As with a number of other provisions in MPOC, FGL has departed from provisions under MPOC that have proven acceptable to all parties for years and introduced a replacement provision that by objective measures is materially inferior to those in MPOC.

***Table 4 – Comparison of MPOC Section 16 with GTAC Section 5***

|  | ***MPOC Section 16*** | ***GTAC Section 5*** |
| --- | --- | --- |
|  | Metering requirements, including testing obligations, for all Metering Owners is fully prescribed in MPOC (Part 3, Schedule 1) [16.3 and 16.4] | There is no metering requirements schedule in the GTAC, and FGL has provided no other supporting documents that address metering requirements.  FGL has also not engaged in any consultation with industry participants and metering owners in particular regarding suitable metering requirements or possible changes that FGL may be considering. |
|  | In respect to metering not owned by FGL, an Interconnected Party can request a special test of any relevant Metering in order to confirm the accuracy of a meter [16.6] | Under the GTAC only a Shipper can request an unscheduled test at an interconnection point it uses.  IPs have no right to request such testing even though they are exposed to charges derived from metering information (including but not limited to circumstances where they have elected to be OBA Parties). |
|  | FGL will procure that the metering owner complies with such request [16.6] | For metering not owned by FGL its undertaking to procure testing is limited to “whatever contractual rights First Gas may have” [5.5(b)]  This is entirely unacceptable given the importance of accuracy at every point on the system, and particularly since metering information, accurate or otherwise, determines the charges and fees payable under the GTAC.  We would expect FGL to require that each IP complies with any reasonable request for metering testing but (a) that requirement is not set out in the code including in section 7.13 and (b) the fact that FGL has used the qualifying language in the first place contemplates that it may not necessarily impose such a requirement in all cases. |
|  | Metering Owner is not required to undertake such special testing more than once in a 60 day period [16.6(a)] | For unscheduled testing, whether or not the metering is owned by FGL or not, a test is not required to be undertaken more than once in a 9 month period.  The frequency proposed in the GTAC is unjustifiable given the pre-existing timeframe provided in MPOC that FGL currently operates to which recognises the potential for ongoing or recurring accuracy/reliability issues that may occur with respect to metering. |
|  | Where metering is found to be inaccurate, the metering owner will bear the costs of undertaking the test [16.6(c)] | For FGL owned metering, allocation of costs is prescribed and appropriate.  However, in the case of non-FGL metering, FGL ensures that it has no exposure to costs but provides no requirement for the metering owner to pay costs when its metering is found to be inaccurate [5.5(b)] |

## Section 8 – Balancing

1. One of the most concerning aspects to FGLs approach in the GTAC is that it seeks to diminish its role and responsibilities to undertake balancing actions to maintain the normal operation of the Maui Pipeline. It foresees its role in buying or selling gas only in the form of an emergency action when pipeline conditions are already likely to be under stress and heading towards a contingency event.
2. The GTAC places the onus for balancing gas flow on Shippers, parties which in comparison with IPs and FGL itself, are least capable of effectively balancing physical gas flows.

***Table 5: - MPOC Section 3 compared against GTAC provisions***

|  |  |  |
| --- | --- | --- |
|  | ***MPOC Section 3*** | ***GTAC Section 8*** |
|  | In undertaking Balancing Actions TSP has the following objectives:  (a) maintaining Line Pack and/or pressure on the Maui Pipeline within operational limits, or returning them towards the operating range within those limits;  (b) managing Line Pack, including to support the transportation of Approved Nominations | FGL contemplates the option of undertaking balancing actions, but with only a reasonable endeavours obligation to do so. [8.5]  Under GTAC, FGL only considers a balancing action when it “determines that a breach of an Acceptable Line Pack is likely” and in most instances only after the issuance of a High/Low Linepack Notice has failed to provide sufficient corrective action. [8.6]  This means that the line pack will already have been placed under considerable stress, then FGL will wait a further unspecified period of time before it contemplates corrective action of its own. [8.6b] This contrasts alarmingly with the more pro-active and conservative role contemplated in MPOC. |

1. Compounding upon the diminished role of IPs and FGL in balancing the pipeline, FGL further contemplates more aggressively utilising line pack under Section 8.5.

* Target Taranaki Pressure obligations are significantly relaxed, and the residual reasonable endeavours obligation is only between FGL and individual Receipt Point IPs.
* FGL will utilise Line Pack for the purposes of allowances for Specific HDQ/DDQ, Agreed Hourly Profiles and park and loan service, all of which are placed in priority ahead of its allocation of line pack for Running Mismatch Tolerance. We wish to point out that in doing so under section 8.5(b) FGL will prioritise selective allocations of line pack ahead of the allocation of Running Mismatch Tolerances. Out of those discretionary allocations FGL only contemplates placing a price on the park and loan service.
* Having embarked on more aggressively utilising Line Pack and relaxing the TTP requirement (ie 42 and 48 bar being prescribed boundaries under MPOC), FGL has proceeded to further compound matters with the definition of Acceptable Line Pack Limits. The FGL definition of acceptable Line Pack is simply a numeric range with no objective criteria (eg safety, reliability) on determining its bounds.
* We note that in its final mark-up FGL has deleted wording previously used in section 8.5[[9]](#footnote-10) that had provided some limited measure of comfort as to constraints on its discretion to alter the Acceptable Line Pack Limits.

1. It is also worth noting that MPOC Section 3.1 sets out specific objectives that TSP will address in determining when it should undertake balancing actions that are absent from the GTAC:
2. To maintain Line Pack and pipeline pressure within operational limits and returning them towards the operating range within those limits
3. To support the transportation of Approved Nominations

Although this is not an explicit set of obligations, it provides a set of objectives that establish benchmarks for RPO obligations in MPOC that are absent from GTAC.

## Section 9 – Curtailment

1. Methanex reinterates its view that Shippers are poorly placed in terms of responding to curtailment directions from FGL. They lack control of the relevant infrastructure or necessary information to act appropriately. Also, there will be circumstances where multiple Shippers nominate at a particular Interconnection Point through which gas flows needs to be curtailed. Curtailment in those circumstances will require the coordination of Shipper responses, whereas an Interconnection Point is always under the control and supervision of a single Interconnected Party.
2. In its initial drafting of the GTAC, FGL saw no role at all for Interconnection Parties in regard to Operational Flow Orders. It later addressed this fundamental flaw but in a partial and unsatisfactory manner.
3. Having established that it may issue OFOs to IPs at Dedicated Delivery Points FGL omits to address any of the related provisions that apply when an OFO is given to Shippers:

* The qualification in Section 9.6 enabling a Shipper to be able to manage the safe shut down of end user facilities is not extended to interconnected parties given OFOs under Section 9.7
* The Critical Contingency (section 9.11) and Failure to Comply (section 9.12) provisions only refer to Shippers.

1. A further gap in the FGL formulation of Section 9 is that while there is some contemplation that IPs at DDPs may be issued OFOs instead of Shippers, it is entirely silent on addressing curtailments at Receipt Points (as contemplated in section 9.1). It is just as important to manage gas inflows and even more certain than for Delivery Points that Receipt Point Interconnected Parties will be better placed than Shippers to address OFOs, given that in most cases they will be the same party as the injecting party and even if not in direct control of the physical flow of gas will have effective control of the interconnection infrastructure.

***Table 6: Comparison of Operational Flow Orders between MPOC and GTAC***

|  |  |  |
| --- | --- | --- |
|  | **MPOC Section 15.1** | **GTAC Section 9** |
|  | OFOs are issued by TSP exclusively to IPs (at Delivery Points and Receipt Points) | OFOs are issued to either Shippers or to IPs at Dedicated Delivery Points where it that the right to do so. |
|  | Sets out clear criteria under which TSP may issue an OFO: |  |
|  | 1. to prevent Non-Specification Gas from entering, or being taken from, the Maui Pipeline | Not covered, and an important omission.  FGL further diminishes its responsibilities in regard to limiting the impact of non-specification gas flowing into its pipeline through the operation of Section 12 (including the final limb to 12.3 and in 12.8) – we discuss the issue with Section 12 more fully elsewhere in this document. |
|  | 1. where Maintenance (other than Scheduled Maintenance) on the Maui Pipeline is required; or | Not covered |
|  | 1. where a Force Majeure Event occurs | Covered in Section 9.1(b) |
|  | 1. where a Contingency Event occurs | Analogous to the events covered by Section 9.1(a) and to some extent 9.1(c) |
|  | 1. where that Welded Party has an Excess Daily Imbalance or exceeds its Peaking Limit at a Welded Point and TSP considers that delivery of Gas to that Welded Party may impair TSP’s ability to deliver Gas to any other customer of TSP | Omitted from the GTAC |
|  | 1. to prevent Operational Imbalance occurring at Notional Welded Points, | Omitted, but the concept of a separately defined notional receipt/delivery point has been dispensed with in any case |

## Section 12 – Gas Quality

1. Our general observation of Section 12 is that it is mostly devoted to:
2. addressing notifications (but not remedial actions) should non-specifications gas flow
3. the conditions under which Shippers can request confirmation that injecting parties have adequate facilities (limited further by caveats in 12.6 and 12.7)
4. Limiting FGLs liability to those circumstances where it causes Gas to become non-specification gas.
5. As with other provisions in the GTAC it focusses on the rights and responsibilities of Shippers to the exclusion of Interconnected Parties. So in the case of Section 12, Interconnected Parties who may be affected by Non-Specification Gas have no rights or protections under Section 12.

* IPs have no rights to request proof of compliance of other Interconnected Parties with Section 12.2.
* There is no requirement upon FGL (or Shippers) to mitigate the loss that might be incurred by IPs; who have not caused the non-specification gas to flow under Section 12.3;
* There is no requirement of FGL to notify IPs under Section 12.4.

***Table 7: Comparison of Gas Quality provisions***

| ***MPOC Section 17*** | ***GTAC Section 12*** |
| --- | --- |
| 17.2  *“Each Direct Injecting Party shall:*   1. *ensure that all gas that it injects into the Maui Pipeline complies with the Gas Specification; and* 2. *monitor, in accordance with the Gas Specification, all such gas so as to demonstrate such compliance.”* | Section 12.2 repeats part (a) but part (b) differs materially.  In MPOC, the injecting party is required to monitor (and by inference continuously monitor) gas, whereas the requirement in GTAC is only for the Interconnected Party to demonstrate it has adequate facilities and processes when requested.  This is a considerably weaker obligation on Interconnected Parties, and by extension on FGL to procure compliance. |
| 17.6  *“As soon as reasonably practicable upon detecting or, in its reasonable opinion, suspecting that Non-Specification Gas is flowing, or is likely to flow, through a Welded Point, TSP shall notify all Welded Parties and Shippers of the same.”*  The MPOC provision clearly contemplates TSP monitoring (or procuring the monitoring of) gas composition which together with other provisions in Section 17 demonstrates a standard of care which would be associated with a transmission pipeline owner acting as an RPO. | By contrast, FGL has inserted section 12.8 into GTAC which has no analogue in the MPOC:  *“Nothing in this section 12 requires First Gas to monitor the quality of gas injected into the Transmission System. “*  Methanex is surprised that FGL would make such a qualification. It is very unlikely that as an RPO it would not actively monitor the composition of gas in any event, if only to protect its own assets and interests, so we have interpreted this provision as FGL seeking to further reduce its obligations and responsibilities to its customers in regard to gas quality. |
| 17.7(a):  *“Each Direct Injecting Party that injected the Non-Specification Gas shall:*   1. *immediately provide to TSP such information as is available to it in relation to the duration of the injection of Non-Specification Gas and the extent of the noncompliance with the Gas Specification and otherwise assist TSP to the maximum extent reasonably practicable to mitigate the effects of the Non-Specification Gas; and”* | MPOC Section 17.7 places obligations on the injecting party and FGL to take positive actions together to mitigate the effects of non-specification gas entering into its pipeline.  By contrast, there is no similar requirement in GTAC where FGL procures an obligation on injecting parties to remedy the matter in circumstances where non-specification gas actually flows into the pipelines. Sections 12.4 and 12.5 are limited to notification requirements.  We have underlined the phrase “assist TSP” to highlight the fundamental difference between the approach to addressing gas quality issues taken by the TSP under MPOC contrasting with the absence of any commitments by FGL (including in the case of section 12.8) under GTAC. |
| 17.7(b)  *“Each Direct Injecting Party that injected the Non-Specification Gas shall:*  *promptly take all steps reasonably practicable to prevent any repetition of such noncompliance with the Gas Specification”* | This obligation is missing in Section 12. |
| 17.9  *“Each Direct Injecting Party shall demonstrate that it has adequate facilities, systems and procedures in place to ensure that it is able to comply with section 17.2 upon receipt of, and within the time specified in, a reasonable written request to do so from:*   1. *TSP; or*      1. *a Welded Party, where that Welded Party has given TSP notice pursuant to section 17.11 and TSP has not complied with such notice.”* | Under 12.6, FGL includes the statement *“First Gas shall have no liability to the requesting Shipper in connection with the exercise by First Gas under this section 12.6, of its rights under section 12.2(b)”*  Methanex is unclear as to whether there is any consequences or protections for Shippers (and other IPs, injecting parties or end-users) if FGL for one reason or other does not exercise its rights, or an IP fails to comply adequately with a request. |
| 17.11  *“TSP shall exercise its rights under section 17.9(a) promptly upon receipt of a reasonable written request to do so from a Welded Party through whose Welded Point gas from the relevant Direct Injecting Party may flow. Subject to section 26.2, TSP shall allow that Welded Party to be present for any such demonstration.”*  Since Shippers are not exposed to physical gas under MPOC this is associated only with IPs | As it has done with regard to the frequency of unscheduled testing of metering FGL has adopted a “9 month frequency” qualification on requests for Section 17 compliance information [12.7]. This is completely unreasonable when a Shipper (or IP for that matter) has valid concerns about the compliance of a particular IP. There is no such frequency qualification in MPOC.  The Section 12.6 provision only applies to Shippers, it does not extend to Interconnected Parties (including OBA Parties), who have an equally valid right to have the compliance of other IPs with gas quality undertakings verified.  An IP that is concerned about or exposed to consequences of non-specification gas entering the system at another IP has no recourse at all under Section 12. |
| 17.16  *“In the event that Non-Specification Gas is injected into the Maui Pipeline and/or another Pipeline, as the case may be, TSP and each Welded Party shall co-operate to identify the Direct Injecting Party or Indirect Injecting Party responsible”* | There is no comparable provision in GTAC |
| 17.22/17.23  Back-to-Back indemnities (subject to the terms of Section 28) are provided in recognition that an affected party may not be able to claim damages directly from the party that has injected non-specification gas  As elsewhere it focusses on IPs not Shippers, Shipper not being responsible for physical gas under MPOC. This recognises that it is IPs, injecting parties and end-users that suffer the damages arising from injecting and delivering non-specification, not Shippers (except in the circumstances where a particular Shipper also happens to be the injecting party or end-user) | This mechanism is missing from GTAC.  FGL has introduced a Subrogated Claims provisions but this is an incomplete mechanism to assure parties that have incurred loss can “look-through” to the party that has caused the damage. |
| No equivalent provision in MPOC | **Section 12.10 and 12.11**  We consider it unlikely that FGL will “cause gas” to become non-spec. However, the more important issue that FGL fails to address is circumstances where it has contributed to a party’s Loss by failing to act as an RPO in any of its obligations in respect to the gas quality (including with respect to Section 12 obligations).  FGL most recent amendment in adding Section 12.11 reinforces this issue. |

# COMMERCIAL/GOVERNANCE MATTERS

|  |  |  |  |
| --- | --- | --- | --- |
|  | **GTAC Section** | **MPOC Section** | **Comment** |
|  | 7 – Additional Agreements | N/A | Interconnection Agreements:  Separation of IPs from the Code, cursory treatment of terms of access for Interconnected Parties which should be codified |
|  | 16 – Liabilities | 28 – Liabilities and Indemnities |  |
|  | 17 – Code Changes | 29 – Modifications | The Code Change process is more constrained in GTAC. It places severely restrictive timeframe obstacles on parties other than FGL being able to effectively lodge change requests. |
|  | 19 – Term and Termination | 22 - Termination | MPOC and associated agreements are considered be enduring agreements, reflecting the nature of a shared, monopoly owned, infrastructural asset.  Fixed contract terms in GTAC and associated agreements serve as “contract reopeners” in favour of FGL. |
|  | 20 – General and Legal | 24 – Confidentiality (and Schedule 4)  36 – Assignment | Under GTAC FGL has the ability to partially assign its interests, or assign to multiple third parties. |

## Section 7 – Additional Agreements

1. As far as Interconnection Agreements are concerned, we disagree with FGLs underlying philosophy that they should be treated as “additional to” and not fully integrated within the GTAC. Limiting the treatment of ICA to a set of cursory contract parameters in Section 7.13 is no substitute for the codification of conditions of the general terms of access and use of the pipeline by Interconnected Parties, such as is the case in MPOC.
2. However, in respect to Section 7.13 we wish to raise two specific issues:
3. Section 7.13(b) – Metering requirements:

* This is a particularly important criteria to specify, but FGL has provided no guidance in respect to obligations that would be imposed upon FGL and IPs in respect to metering requirements including monitoring obligations, testing requirements, data sharing, and treatment of pre-existing non-standard metering arrangements.

* We are also confused by the use of the term “monitoring rights” used in section 7.13(b). It is unclear what the phrase means but more importantly we would have expected the Interconnected Party’s “monitoring obligations” to be a more relevant parameter to specify.

* The monitoring issue raises the further concern that in its drafting of ICA templates FGL has made a general (and incorrect) presumption that it owns and controls the relevant facilities and metering at all Interconnection Points. As a consequence it has, for example, failed to address IP obligations where FGL does not own the metering[[10]](#footnote-11) in the ICA template, including for the purposes of procuring meter testing when a Shipper requests it under the GTAC, or procuring the provision of metering data for operational purposes (such as Section 5.5).

1. Section 7.13(g) – Information on outages:

* This parameter raises issues in respect to the mandatory publication of sensitive information that should justifiably be treated as confidential. In section 7.13(g) FGL makes no distinction at all. Outage disclosures are not a requirement in MPOC.
* The information that FGL requires to be published might extend to third party confidential information that an Interconnected Party would not be legally entitled to allow to be published. It is also not clear whether the term “outage” is associated only with the interconnection point itself, or extended to include upstream or downstream facilities.
* We also note that FGL has not imposed the same notification obligations on itself in respect to its own Maintenance activities covered in section 9:

1. FGL disclosure requirements only apply to scheduled Maintenance activities under section 9.1. It does not set out any disclosure obligations in section 9.3 when it refers to unscheduled Maintenance. There is no such limitation in section 7.13(g);
2. FGL is not required to provide reasons for its Maintenance outages;
3. FGL is required to provide information on the expected impact on pipeline capacity during scheduled Maintenance, but this disclosure is in no way analogous to an IP being required to disclose expected reductions in gas injection/offtake;
4. Further the disclosure requirements set out in 7.13(g) is a non-exclusive list, with FGL having the discretion to require additional disclosures if it so chooses.

Compounding matters, IPs have no specific protections from unwarranted or unjustified disclosures under Section 20.3 of GTAC or for that matter under the terms set out in the ICA templates which provides no confidentiality protection at all.

## Section 16 – Liability

1. The bulk of the liability provisions in section 16 of the GTAC are concerned with the liability arrangements between FGL and Shippers due to ICA’s (and accordingly Interconnected Parties) not being integrated into GTAC. To a substantial degree, the liability position of ICA’s/Interconnected Parties are dealt with by an extremely general and potentially ambiguous clause at 7.13(r) of the draft GTAC requiring that each ICA contain “liabilities provisions consistent with those in section 16”.
2. It is critical that any replacement code adequately deals with potential liability issues caused by the actions of an Interconnected Party. It is more likely than not that such actions could be the cause of the most substantial losses for other parties, particularly other interconnected parties, and any replacement code and its associated bilateral contracts need to provide the necessary nexus to ensure that liability can be sheeted home to the appropriate party where a serious breach occurs. This is because, more often than not, there will be a lack of contractual privity between the breaching party and the party that is harmed.
3. Given the integration of ICA’s into MPOC, section 28 of MPOC was able to deal with this in relatively straightforward manner by enabling the claiming party to effectively make its claim through TSP, with the defending party having the right, subject to certain conditions, to step into the shoes of TSP to defend the claim. While subject to the liability limitations and caps at clauses 28.2/28.3 and 28.4 respectively, under MPOC the key limitations are expressly excluded from the operation of the back to back indemnities that apply in relation to non-specification gas.
4. FGL have sought to overcome the difficulties that arise from not having ICA’s integrated into the code by extending the reach of the “Subrogated Claims” clauses in the code. Clause 16.11, which is intended to be the equivalent of clause 28.13 of MPOC enabling a defending party, whether a Shipper or IP, to step into the shoes of TSP to defend a claim brought by another Shipper or IP is fine, so far as it goes. However, in seeking to close the gap that has been created by FGL’s overall approach, an entirely new clause 16.12 has been added. This clause seeks to enable a party claiming against FGL, whether a Shipper or IP, to step into the shoes of FGL and pursue the corresponding FGL claim against the other Shipper or IP whose actions caused the loss. As noted above, to some degree this is FGL’s solution to the more elegant back-to-back indemnity for non-specification gas set out in clauses 17.22 and 17.23 of MPOC.
5. Methanex is extremely concerned that FGL’s proposed solution simply will not work and thereby create a situation where third parties (i.e. IPs) can cause substantial harm to other users of the pipeline with impunity – an adverse legal outcome and one which is clearly counter to a reliable and efficient operation. It is critical that these liability provisions operate as they are intended to operate. As currently drafted, we do not believe that to be the case.
6. Our key concerns are as follows:
7. By having two “subrogation” clauses potentially operating for the same claim, one for the defending party and one for the claiming party, one is confronted with the legal nonsense of both sides being able to step into the shoes of FGL. We struggle to see how that can possibly operate to produce an appropriate outcome.
8. In order for the FGL claim against the breaching party to sheet home, there must be a proper basis for an equivalent successful claim by the harmed party against FGL. FGL have sought to address this concern with the addition of clauses 16.12(c) (deeming a “Loss” incurred by the harmed Shipper to be a “Loss incurred by FGL) and 16.12(d) (deeming a breach of the breaching Shipper or IP to be a breach by FGL under the relevant TSA). However, due to other provisions that FGL have introduced to remove its liability, these patches fall short. By way of example, clause 12.11 provides that FGL has no liability in the event of delivery of non-specification gas – i.e. so while FGL has deemed to have breached the relevant TSA, it has no liability and if FGL has no liability then on what basis can it successfully bring an action against the breaching Shipper or IP? Also, while clause 16.12(c) deems the claiming Shipper or IP’s loss to be FGL’s loss, what is there to prevent the breaching Shipper or IP to invoke clause 16.2 and argue that while it may be a loss it is not a direct loss and consequently cannot be recovered.
9. Even if the above problems can be solved, we are still faced with the fundamental contractual disconnect of the proposed code as regards ICAs. In order to be confident that a harmed IC will be able to successfully recover losses caused by a breach by a Shipper or other IP of its contract with FGL, we are being asked to rely on as yet unfinalised back to back liability provisions in each ICA that are only required to be “consistent” with the, in our view currently flawed, liability provisions in section 16 of the proposed code. There can be little doubt that for all IPs that is a materially worse position than currently exists under MPOC.

## Section 17 – Code Changes

1. The code change mechanism in MPOC (Section 29) does not place any time or process constraints on parties lodging change request (including, importantly change requests made by Shippers or Interconnected Parties).
2. Under Section 17 of the GTAC FGL places strict time and process constraints on making change requests.
3. In our earlier submissions we identified that the formulation of timeframes did not give sufficient effective time for:
4. interested parties to adequately review proposed change requests; and
5. the Change Requestor to reasonably consider feedback that had been raised pursuant to section 17.7 before submitting its finalised Change Request.
6. FGL has amended the process it originally specified to enable the effective incorporation of information requests and responses contemplated in sections 17.5 and 17.7 into the process.
7. However, it remains the case that Change Requestors (other than FGL) can expect to have no more than three Business Days to incorporate industry feedback under section 17.7 into its proposed Change Request before it is required to lodge its finalised Change Request. This is an insufficient amount of time that particularly disadvantages non-FGL Change Requestors, a situation that is further exacerbated by FGL being able to take up two business days of the process before it is required to publish the information the Change Requestor needs in order to prepare its finalised Change Request.
8. Methanex has previously suggested a distinct timeline for the submission of the change request under Section 17.9 which commences from the date notification is made by FGL under 17.8 and provides the Change Requestor with a reasonable amount of additional time to lodge the finalised Change Request. Unfortunately FGL has elected to decline our suggestion and consequently we consider the provision will have a materially adverse effect on the ability of parties other than FGL proposing change requests.
9. Our further concern with the Code Change process generally is that with FGLs decision to exclude Interconnection Agreements from the GTAC, Interconnected Parties are not afforded the opportunity to address issues they have with terms of access through a code change process, something they are currently entitled to under MPOC.

## Section 19 – Term and Termination

1. The MPOC has no specified termination date and is intended to be an enduring Code. By contrast, FGL not only intends to impose fixed contract terms on TSAs and ICAs but on the Code itself, with the GTAC set to expire as a matter of course in September 2022 (after no more than four years of operation). As the codification of industry-wide arrangements in respect to permanent monopoly infrastructure, it makes no sense to have a fixed “sunset” date. It is not as if there is, or should be, any contemplation that the provision of monopoly gas transportation services would be withdrawn, even if ownership were to change or changes were made to the regulatory regime. To have termination of the underlying Code without any contemplation of a replacement, or providing continuity of services is unacceptable.
2. The change request regime is the appropriate mechanism to address amendments to the Code (including replacement of all its provisions). Methanex consider that the insertion of a fixed contract duration on the Code, and by extension on TSAs and ICAs will enables FGL to substantially renegotiate (dictate) the terms of renewal that would otherwise be subject to GIC oversight.[[11]](#footnote-12)

## Section 20 – General and Legal

### Confidential Information

1. Methanex considers that FGLs approach to confidentiality is cursory in the GTAC when compared with the provisions made for it in MPOC which not only has an entire section devoted to the requirements but also has a separate schedule (Schedule 4) devoted to the conduct of the TSP In disclosing and protecting confidential information that is absent in the GTAC. Methanex is not opposed to information transparency as a general principle but equally believes that justifiable reasons for keeping certain information confidential should not be ignored or dismissed.
2. Under MPOC, a party may identify information it reasonably considers to be confidential and it will be deemed to be confidential. By contrast, under Section 20.3(i) of the GTAC *“any other material a Party wishes to disclose to First Gas on the basis that it is Confidential Information and which First Gas agrees (prior to actual disclosure of the information) is Confidential Information.”* This removes the right for a party to determine that its information is confidential, which becomes a particular concern when it is required to disclose information, or needs to disclose information to reasonably pursue it rights or meets its obligations under the GTAC. There is no requirement for FGL to act reasonably in making its determination to disclose such information despite the disclosing party’s request for confidentiality.
3. In MPOC, an information recipient is required to keep disclosure to the minimum necessary (24.3) and ensure safeguards are in place to restrict further disclosure by third parties who are provided with confidential information (24.4). Both these safeguard provisions have been omitted from the GTAC.
4. MPOC also provides for a confidentiality audit (Section 24.6) which is omitted in GTAC meaning that a Party has no redress and FGL has no checks on unreasonable or unjustified disclosures.
5. Finally, in respect to ICAs, while Methanex has no particular issues with ICAs being treated as public documents, the disclosure presumption should not extend to other information sharing that may occur between an IP and FGL in connection with interconnection arrangements that should reasonably be considered confidential. In drafting the ICAs, FGL has given no consideration at all for confidentiality.
6. We also consider the operation of Section 7.13(g) in the GTAC in regard to disclosing outage information has serious confidentiality implications that are not addressed.
7. Disclosures of sensitive information relating to outages that may be required under the provisions of the GTAC may have serious detrimental implications on Methanex commercial position both in New Zealand and globally.

### Assignment (Section 20.14 to 20.18)

1. Under MPOC, the TSPs assignment rights and obligations are covered appropriately:

* TSP may only assign its whole interest in the Code (including associated agreements) and only to the same entity. This is to prevent partial assignment (such as contracting out) or the fragmentation of contractual obligations among multiplied entities.
* TSP must ensure that in its reasonable opinion the proposed assignee is capable of performing its obligations; and
* TSP must prior to such assignment obtain an enforceable covenant in that respect

1. GTAC has omitted the first requirement completely. Furthermore, the Assignment provision only addresses the assignment of TSAs and is silent in regard to a possible assignment of the Code itself, or the underlying ownership of transmission assets, either in whole or parts. This makes it possible under GTAC for FGL to partially contract out its obligations or dispose of selected parts of the pipeline infrastructure at its discretion. It is also completely silent in terms of assignment requirements in respect to ICAs.

# OTHER MATTERS

|  | **GTAC Reference** | **Comments** |
| --- | --- | --- |
|  |  |  |
|  | **Specific HDQ/DDQ**    The definition of Specific HDQ/DDQ in the GTAC states that FGL will set peaking limits:  *“having regard to striking a reasonable balance between the adverse effect of offtake with a higher Hourly to Daily ratio on Operational Capacity and the typical demand profile of the End-user”* | The setting of a case-by-case peaking limit contrasts starkly with the consistent application of peaking limits under MPOC.  Methanex does not consider it reasonable for FGL factor in a users demand profile to determine a peaking limit, as this will by definition discriminate in favour of peaky loads.  We are also concerned by the prospect of FGL setting Specific HDQ/DDQ at a level greater than 1/16 at selected DDPs. We consider this to be highly discriminatory and conflicts with FGL own statement of setting incentives “to ensure peaky loads pay more for their disproportionate effects”[[12]](#footnote-13) |
|  | **Contra proferentem** | We consider that FGL is overreaching by seeking to exclude the contra proferentum rule given the genuine ambiguities that exist in the GTAC, and the fact that as there is no such qualification in MPOC. |
|  | **Allocation Agreements** | Methanex considers the provision in the GTAC relating to OBA Parties to be flawed and incomplete, issues which have addressed in detail elsewhere in our submission. Given those concerns it is unlikely that Methanex would elect to be an OBA Party. Consequently its Delivery Points would be covered by Allocation Agreements. However, Methanex considers there also flaws in how FGL has addressed the establishment and operation of Allocation Agreements. |
|  | Section 6 | Having departed from a simple model of allocation on the Maui Pipeline, FGL has developed provisions which contain flaws in circumstances where parties might elect to operate under OBA principles.  Section 6.14 serves as an example of the drafting flaws that exist in the GTAC. It doesn’t make sense to us to require each Shipper at a particular Delivery Point to ensure the “allocation methodology is acceptable to the Interconnected Party”. The formulation of the provision should be that each Shipper is required to comply with the allocation methodology set out in the relevant Allocation Agreement, which should in all cases be determined by the Interconnected Party (standardised for all Shippers at a given Interconnection Point).   * The drafting of section 6.18 and 6.19 reinforces our concern that FGL hasn’t fully appreciated the gas supply arrangements on the Maui Pipeline. * As drafted Section 6.18 is meaningless. It is presumably intended to ensure that a Shipper does not monopolise supply to a particular end user. We assume this relates to a concern that a Shipper might gain exclusive access at a particular Delivery Point and perhaps this is a scenario contemplated by FGL in its drafting of section 6.14. However, Shippers don’t in practice exert any effective control over the flow of gas at Delivery Points, it is the Interconnected Party, so the requirement to prevent monopolisation of supply is misdirected. * Furthermore section 6.19, in addressing the competitive restraint implied by section 6.18, contemplates that at most two Shippers can supply gas to a particular End-user (Methanex for instance has a variable number of Shippers supplying it any given time, sometimes only one but often three or more Shippers supplying to an individual Delivery Point). |
|  | Schedule 4 | With regard to Schedule 4 of the GTAC,  Section 3.1(a)(i) requires that where a Dedicated Delivery Point has a single Shipper, the Allocation Agent must be FGL  Where there are multiple Shippers, section 3.1(a)(ii) allows Shippers to appoint the Allocation Agreement unilaterally without the consent of the Interconnected Party.  It should be the exclusive right of the Interconnected Party to appoint the Allocation Agent (or be the Allocation Agent).  It makes little sense for Shippers to determine the Allocation Agent given each particular Shipper may only nominate to a specific DDP on a periodic, temporary or discontinuous basis.  First Gas has also not addressed a situation where a Dedicated Delivery Point may at times have only one Shipper nominating to it and at other times multiple Shippers. This is a normal scenario at Methanex delivery points which FGL has failed to consider. |

Yours sincerely

Phil Watson

Methanex New Zealand Ltd

1. “Template for submissions on the 8 December 2017 GTAC and guidance for submitters” [↑](#footnote-ref-2)
2. [↑](#footnote-ref-3)
3. “Gas Industry Co’s proposed approach to GTAC assessment”, (gasindustry.co.nz/assets/Consultations/Uploads/GGNZ-Submission-on-GICs-Proposed-Approcah-to-GTAC-Assessment.pdf) In assessing “safe, reliable and efficient” operations we consider that GIC needs to take into account how the GTAC compares with MPOC not only in terms of FGL pipeline assets but also the connected upstream and downstream infrastructure. [↑](#footnote-ref-4)
4. As an example of how IPs are made materially worse off under FGLs proposed regime compared with MPOC is that common terms of access are neither standardised nor are they subject to code change request provisions available under the GTAC. [↑](#footnote-ref-5)
5. when an AHP applies the party not only gets the benefit of following the non-even profile it designates for itself, it also gets the benefit of an increased peaking tolerance around that profile by being able to utilise a **higher 1/16 limit** that would not otherwise be available to it. [↑](#footnote-ref-6)
6. The definition of MHQ refers to the maximum quantity of gas that FGL is “required to transport”. This does not act as a prohibition or require FGL to act to prevent exceedance. There is also no provision in the GTAC requiring Shipper to avoid exceeding MHQ. It is also unclear if and how FGL will monitor peaking at non-Dedicated Delivery Points. [↑](#footnote-ref-7)
7. *Includes presentation slides provided by FGL on 17 November 2017 (page 7)* [↑](#footnote-ref-8)
8. Timeframes provided under section 4.19 and 4.14. [↑](#footnote-ref-9)
9. The text “will determine limits which it considers sufficient for it to provide all DNC and Supplementary Capacity while complying with its Security Standard Criteria and any other obligations it has under this Code” has been deleted. [↑](#footnote-ref-10)
10. See section 4 of the ICA for Receipt Points template [↑](#footnote-ref-11)
11. We note the FGLs approach to ICAs means that FGL can amend those agreements unilaterally in any event, given that those agreements are not subject to the change request process set out in the GTAC and the level of consultation and oversight which follows. This is one of the reasons we disagree with FGLs decision to divorce IPs from the Code gives it a significant and unfair commercial advantage in respect of IPs. [↑](#footnote-ref-12)
12. FGL presentation slides 11 September 2017, page 15 conflicts with later statements in FGL presentation slides on 17 November 2017. FGL suggests providing certain Dedicated Delivery Points with more peaky loads with Specific HDQ/DDQ exceeding 1/16 (page 7) and providing the option of using AHPs to avoid costs of peaking that would otherwise be incurred (page 12), provides two ways for users with peaky loads to avoid any cost consequences of their peakiness. [↑](#footnote-ref-13)