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GAS TRANSMISSION ACCESS CODE

NOTES ON ACTION ITEMS A - D

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1 Agenda Item A – Interrelationship between ICAs and the GTAC

- a) The draft changes marked-up improve the connection between the ICAs and GTAC. In particular the reference in 7.12 that no party shall receive a preferred status.
- b) Parties connected to the Maui Pipeline, and therefore connected under the terms of the MPOC, do not have ICA's extending beyond the termination of the MPOC. Acceptance of the GTAC should therefore be conditional on all parties connected under the MPOC receiving the right to adopt ICA's on conditions no worse than any ICA's for the Vector pipeline that may extend beyond the expiry of the VTC. Without such an undertaking, clause 7.12 is meaningless.
- c) We note that there are other changes to be made in response to earlier submissions.

2 Agenda Item B – Agreed Hourly Profiles

- a) The application of Hourly Profiles as proposed is only workable if:
 - i the ID cycles are frequent enough to manage changes (as per Nova's submission of 24 November); and
 - ii there is sufficient leeway in the MHQ for intra-day variation in hourly demand.
- b) There is no reason given why the sum of hourly quantities under an AHP should have to match or default to the DNC for the day. Surely the point of the AHP is to ensure that gas can be delivered to all parties over the day within the available Operational Capacity, thereby avoiding the (unlikely) scenario where every Shipper wishes to take delivery of gas during one small period of the day. In which case there seems no reason why the total quantities over 24 hours under an AHP should not exceed the DNC. There appears to be confusion arising in the GTAC between DNC, which is a provision for pipeline capacity, and the concept of a Daily Nominated Quantity, or DNQ, which is not actually used, but we see DNC applied as if it were DNQ.
- c) The "Specific HDQ/DDQ" is defined as a ratio that is determined for a year. Presumably it is some quantity greater than 1/16th but there is no indication of what basis will be used to determine this number. HDQ and DDQ are hourly and daily quantities that would seem to have little relevance to a fixed ratio set annually.
- d) Under the definition of MHQ (a) (ii) refers to the "Specific HDQ/DDQ" but not how this ratio is applied. Presumably it is intended to be applied as a set fraction of MDQ?
- e) Also, MHQ (a) (ii) also refers to 'transmission capacity for that Hour set out in the AHP'. Presumably that is the maximum available Operational Capacity for each hour in accordance with Clause 2.3? That is not clear.

- f) Section MHQ (a) (iii) “Specific HDQ/DDQ” is applied as a ratio of the Daily Delivery Quantity (DDQ). Applying that as a ratio of the DDQ does not make sense. Surely MHQ should default to a fixed fraction of the MDQ not DDQ. If the DDQ is comparatively very small on a day it makes no sense that the MHQ should be equally small.

3 Agenda Item C – ERM and Overrun/Underrun Charges

- a) Rather than referring to a ‘Congested Delivery Point’ the only time that the higher value of ‘F’ should apply is when there is congestion at a Delivery Point. Applying and overrun/underrun charge of 10x at any other time is excessively punitive.
- b) Nova is confident that an overrun charge of 2x is adequate, and no underrun charge need apply, i.e. ‘F-2’. If First Gas increases the value of F at some point in the future there seems no reason why it cannot reduce the value again with as little as 5 – 10 Business Days’ notice, not 60 days as proposed.

4 Agenda Item D – Liability provisions

- a) Nova is not convinced that First Gas’ revised liability clause provides Shippers and Interconnected Parties with the ability to recover direct losses from other Shippers or Interconnected Parties.
- b) We understand the intent of the changes is to provide Shippers and Interconnected Parties with the right to claim loss against other Shippers/Interconnected Parties when those parties cause loss and vice versa. Two likely instances of such loss are:
 - i shipping of off-spec gas causing damage and interruption to plant; and
 - ii taking another Shipper’s allocation of gas, causing that Shipper to default on its supply obligations to its customers and/or loss of revenue/profit.
- c) We need to better understand Nova’s position for claims of the first kind of loss, particularly for the purposes of insurance. A claim with respect to the second kind of loss appears to be expressly excluded by 16.2, however Nova would like to see this kind of loss being included and capped; otherwise if one party takes another’s gas allocation that party is fined by First Gas, but the party that suffers the under supply receives no relief.
- d) Specific issues:
 - i Clause 16 appears to be ineffective as a regime for Shippers/Interconnected Parties to claim loss against other Shippers/Interconnected Parties because it is framed through First Gas, and therefore limited to loss suffered by First Gas. For example: Shipper A ships off-spec gas and causes Shipper B’s plant damage (assuming Shipper B had plant or that this clause is extended to Interconnected Parties and Shipper B is an Interconnected Party). When First Gas makes a claim, or when Shipper B steps into First Gas’ shoes to make a claim, it can only claim for First Gas’ loss, which is loss of expected revenue from Shipper B and therefore excluded anyway.
 - ii Similarly, the effectiveness of this clause for claims between Shippers/Interconnected Parties appears to be constrained by the requirement in clause 16.1 that loss must be caused by First Gas doing or not doing something which is a failure to act as an RPO. So if Shipper A ships off-spec gas and causes Shipper B’s plant damage – if regardless of that event First Gas has acted as an RPO, no claim can be made by Shipper B against First Gas (and indirectly Shipper A); so no claim can be made at all.
 - iii The challenge appears to be that a regime is required to get over the Privity issues; and allow a Shipper/Interconnected Party to claim against another Shipper/Interconnected Party for loss suffered by that party. The questions arise therefore: Does the GTAC need

to be a multilateral agreement? Does First Gas need to assume liability for such loss to Shippers/Interconnected Parties capped at what it can recover from the other Shippers/Interconnected Parties and otherwise capped at the relevant limits?

- iv If a Shipper/Interconnected Party was to take up a claim in First Gas' name under 16.12, would that Shipper/Interconnected Party be arguing in First Gas' name that First Gas failed to act as an RPO in order to get over the RPO hurdle in 16.1 and make a claim?
 - v We also note that there is a conflict between 16.11(c) and 16.12(a), in that the "Claiming Party" and "Defending Party" can respectively pursue and defend a claim in First Gas' name.
- e) From Nova's perspective, the proposed Code changes do not appear to be a workable regime for Shippers/Interconnected Parties to claim loss against other Shippers/Interconnected Parties; but we would be happy to accept an independent view from a recognized law firm.