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OMV Upstream

**Submission on Draft Statement of Proposal: Gas Production and Storage Facility Outage Information**

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OMV New Zealand Limited welcomes the opportunity to make a submission on the GIC consultation document *Draft Statement of Proposal: Gas Production and Storage Facility Outage Information (SOP)*.

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OMV remains of the view that the current Upstream Gas Outage Information Disclosure Code 2020 (the Code) adequately addresses the regulatory objective *that arrangements are in place that ensure the effective and timely availability of gas production and storage outage information for all gas and related market participants* and therefore regulation is not justified.

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We recognise the concerns around compliance and enforcement that are articulated in the SOP. However, we suggest that the business incentives for upstream producers to maintain good compliance with code are under-appreciated, particularly in the cost benefit analysis. This is evidenced by our actions and those of other upstream producers over the last two years.

OMV questions the assertion made in the Cost Benefit Analysis (CBA) that "market stress" may impact behaviour in the future. To the contrary, in response to recent market stress, OMV has exceeded Code disclosure requirements.

We recognise that the SOP identifies a number of areas where the Code could be improved and appreciate the work done to date. OMV proposes that a third option be considered in the SOP, namely, a version of the Code that addresses the concerns raised in the SOP. Inclusion of this option in the SOP assessment would further the GIC's aim of complying with section 43N of the Gas Act.

We note that the Code will shortly be due for its twelve month review and suggest that producers be given the opportunity to review the Code to determine what ideas from the SOP could be implemented in a new version of the Code.

Finally, if regulation were to eventuate, we are supportive of the great extent to which the proposed regulation builds on the work of the Code.

Please see our detailed feedback attached to this letter.



Yours sincerely

A handwritten signature in blue ink, appearing to be 'PT', written over the printed name.

**Patrick Teagle**

Head of Commercial and Legal, OMV New Zealand

# Draft Statement of Proposal: Gas Production and Storage Facility Outage Information

Submission prepared by: OMV, Dylan Reid

Question	Comment
<p>Q1 Do you agree with the regulatory definition? Please provide reasons supporting your views.</p>	<p>Since April 2019, when OMV first submitted on the GIC's information disclosure consultation, OMV has consistently supported enhanced disclosure arrangements for upstream production outages.</p> <p>OMV was a member of the group of upstream producers who developed the Upstream Outage Information Disclosure Code 2020 to advance this aim.</p> <p>OMV has also acted unilaterally to inform the market by disclosing outage information prior to the Code coming in to force and disclosing additional information about the unexpected decline in Pohokura production capacity in 2021.</p> <p>Consistent with our previous submissions and actions OMV supports the proposed regulatory objective:</p> <p><i>That arrangements are in place that ensure the effective and timely availability of gas production and storage outage information for all gas and related market participants.</i></p>
<p>Q2 Do you agree with the information disclosure options for gas production and storage facility outage information that have been identified? Please provide reasons for your views.</p>	<p>OMV supports the two options for achieving the regulatory objective. Namely, continuation of the Code or regulating rules for disclosure. However, OMV prefers the voluntary regime as the case for regulation has not been sufficiently made.</p>
<p>Q3 Are there other options that you think should be considered in this process?</p>	<p>A third option needs to be added to the options analysis.</p> <p>This option would seek to amend the Code so that the concerns raised in the draft SOP are addressed in a voluntary code framework rather than via regulation.</p>
<p>Q4 Do you agree with our assessment of the Upstream Gas Outage Information Disclosure Code 2020 as an option for achieving the regulatory objective? Please provide supporting arguments for your</p>	<p>OMV offers the following comments on the GIC assessment of the Code.</p> <p><b>5.2 Coverage and Structure</b></p> <p>The GIC is concerned that voluntary codes are "less likely to be effective where the impact of performance, or non-performance, can have a material impact beyond the signatories of the Code."</p>

	<p>views.</p> <p>Because of the strong incentives on upstream producers to comply with the Code, OMV is of the view that this is a case where voluntary arrangements are likely to be sufficient.</p> <p>One of the upstream industry's primary business drivers is maintaining its societal "License to Operate". It is this sense of responsibility that has prompted OMV to implement the existing disclosure requirements which we will continue to support. Ensuring that the upstream industry is and is seen to be a responsible partner for the extraction of the crown's resources is core to our interests. We note that this business driver for continued compliance is absent from the cost benefit analysis (CBA).</p> <p>The reputational concern that will also drive continued compliance with the rules is a shared concern that the industry, gas market and gas itself is seen as a reliable source of energy. This is particular important in the current period when gas' role in the energy transition is still the subject of intense interest (reference the Minister's recent questions on this topic and the Climate Change Commissions various recommendations in relation to gas). The CBA mischaracterizes the upstream parties' reputational concerns as one of individual "brand reputation" (pg. 12).</p> <p>The incentives for upstream players to take advantage of assymetric shutdown information for short term, low volume gaming of the domestic gas market doesn't seem credible when weighed against the risk of acting against the primary business drivers mentioned above.</p> <p>We note that the authors of the CBA did not talk to any upstream operators in the process of producing their report.</p> <p><b>5.3 Outage Definitions</b></p> <p>The GIC is concerned about the visibility and verification of the base production level against which outages are measured.</p> <p>OMV sees that third party review and/or audit rights could be an effective way of assuring baseline production levels against which outages are measured. The GIC is concerned that a third party reviewer may receive false information from producers. However, there appears to be no basis for this concern and even if the concern was valid involving the GIC does not appear to solve the issue.</p> <p>We are of the view that the Code already provides for gas produced and shipped on private pipelines to be included as production, and would support any proposals to clarify that intent.</p>
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	<p>However, the exclusion of gas used on site for the production of the export gas is appropriate because the gas is not available for sale to third parties. Including this own-use gas in disclosures is potentially misleading and would overestimate the quantity of gas available to the market.</p> <p><b>5.4 Information that should be disclosed</b> OMV supports the assessment that the Code prescribes the right level of information disclosure.</p> <p><b>5.5 Timing of Disclosures</b> The GIC assumes that customers are notified of material changes to planned and unplanned outages outside of the notification windows specified in the Code. This is not necessarily the case. However, the code already caters for this scenario; such a disclosure to customers would trigger a disclosure to the market pursuant to clause 14.2, which was included in the Code precisely to address issues of information asymmetry.</p> <p>Clause 14.2 of the Code: Where a gas producer is required or is expected to disclose to any contract counterparty information about an outage pursuant to any contractual requirement or expectation that exceeds the requirements of this Code as to content or timing or both, it shall ensure the disclosures it makes pursuant to clauses 15 or 16, as the case may be, are: (a) as timely as those made to the contract counterparty; and (b) contain at least the information required to be disclosed by this Code, but not necessarily specific operational, technical or other information required by the contract counterparty.</p> <p>Where the Code specifies market updates that are made at regular and predictable intervals in place of the less clear guidance to update “as soon as reasonably practicable” we see benefits to the clear schedule of updates. For example beyond six months it is possible that outage timings change frequently as planning for the work is matured, if disclosure were to be triggered by the requirement to update “as soon as reasonably practicable” it is quite possible that multiple updates would be required that are of little use to participants.</p> <p><b>5.6 Confidential Information</b> The concern about confidentiality provisions overriding the ability of upstream producers to disclose is overstated.</p> <p>It would be unusual for a customer to impose (and a seller to accept) a confidentiality requirement where by the customer governs what the seller can do with their own field information.</p>
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	<p>Prior to the Code upstream joint ventures may have been subject to Confidentiality Agreements that prevented them sharing Joint Venture information. By signing the Code the upstream producers have already agreed that the required information can be shared.</p> <p>It is notable that the Electricity Authority has taken a cautious approach that seeks to establish the extent to which exceptions (including confidentiality) are being used as a reason for non-disclosure before proposing more stringent regulatory intervention.</p> <p><b>5.7 Liability</b> The GIC considers that the liability exclusions in the Code weaken the code. OMV would be interested in the GIC's view as to the appropriate liability regime for a voluntary code.</p> <p><b>5.8 Information Standard</b> OMV supports the assessment that the standard of a Reasonable and Prudent Operator is appropriate.</p> <p><b>5.9 Review Process</b> The GIC identifies a number of issues with the review process within the Code:</p> <ul style="list-style-type: none"> <li>- Ability for the reviewer to access the required information</li> <li>- Neutrality of the reviewer</li> <li>- Frequency of the reviews</li> </ul> <p>The Code could be adapted to address all these issues (the suggested third option in our answer to question 3).</p> <p>Note that external parties need not have access to the detailed data themselves in order to lodge a complaint (and would not have access to such information under the proposed regulatory option either).</p> <p><b>5.10 Compliance and enforcement arrangements</b> Of the four elements of strong compliance noted by the GIC, the first could be addressed via amendments to the Code implemented as an outcome to the 12 month review process without resorting to regulation (see 5.9 above). This would enable the second element of strong compliance: holding parties to account for complying with their obligations to report to the standard of a reasonable and prudent operator.</p> <p>With regard to items 3 and 4, we see that the consequences of insufficient disclosure have already been recognized by the producers and they have acted accordingly to improve disclosure.</p>
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		<p>As discussed above, there are sound business reasons why disclosure is in the interests of upstream producers i.e. maintaining the upstream license to operate and confidence in the gas market more than outweigh any short term trading benefits that might be perceived to be available through outage information asymmetries in the gas market.</p> <p>We see no basis for the assertions in the CBA that the currently perceived good disclosure performance will deteriorate in times of market tension. In fact the evidence to date is the opposite, OMV has gone beyond the requirements of the code in response to market tension.</p>
Q5	Do you agree with the design of this regulatory option? Are there parts of design that require amendment? Please provide supporting information in your response.	<p>While we don't see a case for the regulatory option, if a regulatory option were to be justified then it is good that the regulatory option includes many elements of the Code.</p> <p><b>6.2 Approaches to information disclosure</b> OMV supports the rules based approach proposed by the GIC.</p> <p><b>6.3.3 Outage Definitions</b> In general OMV supports the proposed outage definitions. But make the following comments:</p> <ul style="list-style-type: none"> <li>- Gas consumed in the production of sales gas should be excluded from the disclosure as it does not represent gas that is available for sale to the market</li> </ul> <p><b>6.3.4 Information that should be disclosed</b> OMV would supports the adoption of the Code disclosure information requirements.</p> <p><b>6.3.5 Timing of disclosures</b> OMV would support the adoption of most of the Code disclosure information requirements. However, the extension of the "as soon as reasonably practicable" criteria to planned outages beyond 6 months in the future and for ongoing short term outages beyond two weeks potentially results in disclosure overload.</p> <p>To deal with any potential information asymmetries, we would propose something similar to clause 14.2 of the Code.</p> <p><b>6.3.6 Confidential Information</b> OMV supports the GIC proposal that there should be no exclusions from the disclosure requirements for reasons of commercial confidentiality.</p> <p><b>6.3.7 Information required for monitoring</b> OMV understands the perceived need for the forward-looking information requested but sees that this should be provided once per year for an annual review, not provided on an ongoing basis as proposed.</p>

		<p><b>6.3.8 Confirmation of Information Quality</b></p> <p>The concept of a director's certificate on the surface seems analogous to the Electricity Authority's new thermal disclosure rules where senior management or director sign-off is required. However, in that case the director is certifying something over which the EA has no visibility e.g. that they have disclosed all uses of exclusions to the requirements to disclose.</p> <p>In the context of gas outage disclosure and the proposed regulatory option, the GIC will be able to see compliance from the data obtained and a director's certificate would appear to be in excess of requirements.</p>
Q6	<p>Do you agree with our conclusion that the most practicable means for implementing information disclosure arrangements for gas production and storage facility outage information is to implement them within a framework of regulations (and/or rules) under the Gas Act? Please provide supporting arguments in your response.</p>	<p>As mentioned above, we are of the view that the existing code is working and that regulation is not required to give confidence that the regulatory objective is being met. This is particularly true if the Code were to be enhanced following its 12 month review.</p> <p>However, if regulation were to be the outcome of this draft SOP, it is unclear what the alternative to the use of the existing compliance regulations would be. However, it seems pragmatic to make use of the regulations and processes that are already in place.</p>