



Shell New Zealand (2011) Ltd

ASB Tower, , Level 10

2 Hunter Street

PO Box 1873

Wellington 6140

New Zealand

Internet [www.shell.co.nz](http://www.shell.co.nz)

October 9 2017

Gas Industry Company  
95 Customhouse Quay  
WELLINGTON

Attn: Ian Wilson

Dear Ian,

***Gas Transmission Access Code Development (GTAC)– Draft Sept 2017***

We provide this submission to both the Gas Industry Company (GIC) and First Gas on the basis of information [posted on the GIC website](#) during September 2017.

**RPO Provisions**

We have noted the change to the Reasonable and Prudent Operator (RPO) definition. We have been seeking that the MPOC definition should be maintained, so that the operational standard requiring reference to "good practice recognised internationally" is maintained. We think this reference is important to ensure New Zealand gas industry learns from the experience of others given that it does not have detailed regulation governing its operation. We are also concerned about the attractiveness of New Zealand to international gas explorers if the gas system is not designed and developed in a way that can be easily recognised as workable by reference to systems elsewhere in the world.

This concern has now manifested as we now have a development where the proposed structural design of gas transmission arrangements is not in accord with the standard that might be expected to apply given the light-handed regulatory regime currently prevailing in New Zealand. As a result, there is a significant risk that these proposed arrangement will be inefficient (for the reasons set out in the following section).

**GTAC is not a Code**

While the current draft of GTAC is called a "Code" it is not a code, it is a transmission agreement for shippers. Producers and other interconnected parties injecting or taking gas from First Gas system are not parties to the GTAC and have no privity to enforce provisions within it. As it stands at present it is difficult to see how Shell as an interconnected party could actually seek enforcement of some very important provisions under the GTAC (such as protection from excessive backpressure s at its interconnection points). Moreover, it is not clear how this agreement enables the stakeholders in the gas industry to coordinate operation of the system efficiently.

The GTAC removes the simplicity of interconnecting parties and First Gas having operational requirements met directly under the ICA<sup>1</sup> alone (as per MPOC), and now will require Shippers to

---

<sup>1</sup> ICA means Interconnection Agreement

require their suppliers under revised gas contracts to require interconnecting parties to do operational things. This separation of operational relationships by inserting Shippers as intermediaries reduces efficiency and has the potential to significantly increase gas contracting complexity, and may require renegotiation of some existing gas contracts. Each gas buyer may want different standards of performance from their suppliers to meet their own interpretation of GTAC requirements.

In addition, there are and will be significant inefficiencies in creating multiple new types of standalone documents: the GTAC shipper agreement, delivery point ICAs, receipt point ICAs, “*Existing Interconnection Agreements*”, and “*Existing Supplementary Agreement*” as opposed to having one unifying New Code. A proper New Code would incorporate all the substantive terms of all these agreements in one document so as to avoid repetitions, drafting conflicts, and potential confusions as to who has responsibility for operational matters. Most importantly, a proper New Code will be able to be evolved as a system, a feature which will not be possible if substantive ancillary arrangements are not linked to the code change process.

Because of this significant structural problem as regards the proposed scheme surrounding the GTAC, it is not practical for us to provide a detailed marked draft. Given the current environment of “light-handed” regulation, we consider the GTAC should incorporate all substantive provisions for all gas arrangements of the entire transmission system, including injection and offtake points. To illustrate, see the attachment for the structural design intent of the MPOC presented to the industry during consultation in June 2004.

The large inefficiency imposed on the industry by this significant step backwards would constitute a failure to meet the *GIC’s Criterion*<sup>2</sup>, not least because the *GIC’s Criterion* requires a proper New Code for the transmission system, not simply a contract that is one of many, and that is a code in name only.

### **Prudentials and Mixed Gas Ownership at Interconnections**

A New Code needs to recognise that joint ventures with separate ownership of gas is a common feature of the industry. This has implications for the liability and prudential requirements of the New Code.

In regard to liabilities, if a welded point is operated by a joint venture, it is seldom that the operator of the venture is the seller (or buyer) of the gas. In these cases, the operator (in its capacity as Operator) has no financial rights in relation to the gas and so is not in a position to assume liabilities nor provide prudential assurances in relation to that gas. The liabilities for shortfall delivery or product quality must rest with the owners/sellers/buyers of the gas (rather than the Operator) and the prudential assurances also need to rest with the owners/sellers/buyers of the gas as appropriate.

In regard to prudential requirements, producers of gas seldom have credit ratings because they are seldom relevant for the upstream business. Upstream businesses are usually able to rely on the strength of their balance sheets and cash flow to support their obligations. By imposing a requirement to provide alternative prudentials such as letters of credits or bonds will unnecessarily increase the cost to producers and seldom improve the overall risk to First Gas. We suggest that a balance sheet test should be developed and become an acceptable prudential.

This issue is relevant for the *GIC’s Criterion* because if the New Code does not accommodate common upstream industry arrangements, it could result in difficulties in transition to new arrangements, and discourage future gas exploration initiatives.

### **Congestion and Priority Rights (PRs)**

In order to promote competition by removing the risk of capacity hoarding, and remove the risk of contractual congestion and price volatility, we consider that in offering PRs the GTAC should

---

<sup>2</sup> See Attachment Box 2

require that First Gas will offer PRs of not more than 70% of the prevailing amount of Available Operational Capacity.

We consider that the quantified specification of a limit to the proportion of capacity offered is important for a competitive wholesale market, and reliance of First Gas discretion to set a proportion is not commercially realistic.

Finally, thank you consideration of our submission, we look forward to a New Code being developed so that it will bring all major stakeholders of gas transmission functions to be governed under one umbrella agreement that will provide coherence across all gas functions and operations, and enable the industry to evolve all arrangements under proper oversight.

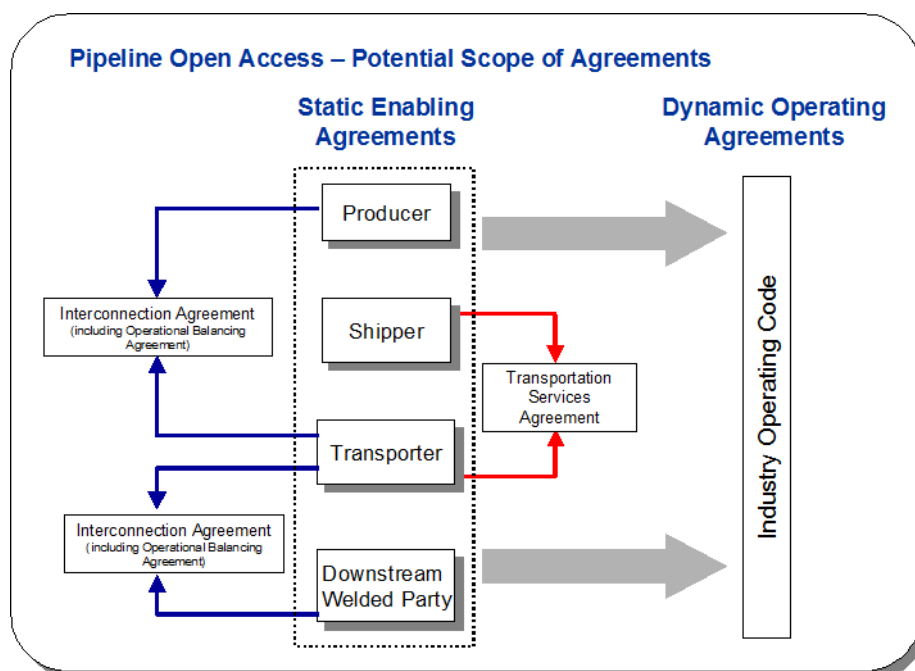
Yours sincerely,



Murray Jackson

## Attachment

### Box 1: Code Design Objectives for MPOC (June 2004)



At the time of designing MPOC, the goal was to develop an operating code that contained the detailed processes that would be common to all users was preferred given the status of NZ' s light-handed regulation. In this scheme, all substantive operational terms of transportation and interconnection agreements were codified in the MPOC, and the agreements themselves were limited to dealing with with counter-party specific details and technical arrangements at particular interconnection points.

The primary reason for this scheme was recognition that modification of processes were likely to be required as new experience was gained in the new system. It was recognised that it would be essential that a mechanism exists, with appropriate consultation among users, to smoothly modify processes without the need to re-open multiple contracts.

### Box 2: GIC's Criterion for GTAC Approval

The GIC has said in considering whether it will approve a new code, it will make a final determination on the basis as to whether *“the New Code is materially better than the current terms and conditions for access to and use of gas transmission pipelines having regard to the objectives in section 43ZN of the Gas Act 1992 and any objectives and outcomes the Minister has set in accordance with section 43ZO1 of the Gas Act 1992.”*

The Gas Industry Co. has outlined how it proposes to assess the GTAC against the principal objective of 43ZN(a)]; considering efficiency, reliability, and the ability to evolve the arrangements in response to changing market conditions in a timely fashion.