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METHANEX NEW ZEALAND LIMITED
SUBMISSION ON
OPTIONS PAPER: WHOLESALE LEVY ASSURANCE

Dear Ian

Methanex welcomes the opportunity to make a submission to the Gas Industry Company in response to the *“Options Paper: Wholesale Levy Assurance”* issued on 14 September 2016.

We agree that it is timely for the GIC to examine ways in which it can increase assurance that the full amount of wholesale levies are being paid and each liable party is paying what it should. However, after assessing the options we have drawn somewhat different conclusions from the GIC as to the preferred solution.

“Do you agree that the current arrangements do not provide adequate assurance that wholesale levy payers are meeting their respective obligations and that changes need to be made to provide adequate assurance that wholesale levy returns and payments are accurate?”

As a self-assessment regime, just as is the case with normal tax returns, we consider the existing arrangement to be the most cost-efficient model and do not consider it to be systemically flawed. Methanex supports the GIC gaining access to additional information from gas producers (as the term is defined in the Gas Act) and/or pipeline owners, in order to verify payments, together with a discretionary right to audit returns where it has concerns. We consider that this would be the best means of resolving the assurance issue.

“Do you consider there are any other efficient, low-cost options to address the shortcomings of the current methodology in the Levy Regulations?”

Methanex doesn't have any other options to propose.

“Do you agree with the analysis of each of the four options?”

Option 1:

Placing a requirement on gas producers to furnish sales volumes would enable GIC to readily verify returns without making any change to the underlying self-assessment model, or require shifting the responsibility for paying the GIC levy from the “first purchaser” to the Shipper, which may have significant flow-on consequences. We don’t consider that Option 1 will create more work for GIC or levy payers than if GIC were to embark on calculating and issuing invoices based on transmission billing, and addressing the complications that will likely arise with Option 3.

Option 2:

We are surprised that GIC does not have stronger audit rights and does not seek to have those rights where they are not currently available to it. While it may require a change to the Gas Act, the Act is overdue an update in any case.¹ With the intention of implementing the changes for the FY 2018 year there is time to introduce amendments to the Act, perhaps not immediately but within a short period following the start of the billing year.² The only caveat we have is that the audit provision proposed should be a discretionary instrument used by exception in order to investigate concerns rather than imposing mandatory periodic audits on all participants (this being no different from the IRD approach to auditing tax returns).

Our view is that retaining the self-assessment regime with Option 1 in combination with a lighter-handed version of Option 2 is the preferred approach, even if it does require changes to the Act to accommodate the audit rights.

Option 3:

Option 3 presents three challenges that should be considered further before GIC makes a final decision on which option or options to proceed with:

Changing who is responsible for paying the Levy:

Option 3 changes the point of responsibility from the “first purchaser” to the Shipper, which will require a further allocation to ensure that the party paying the wholesale levy now remains the party ultimately paying under Option 3.

The proposal may also interfere with existing contractual arrangements that allocate the wholesale levy between Seller and Buyer. GIC states that contracts “almost universally” allow for the pass-through of levies. From experience we can state that this is not always the case and Option 3 may require amendments to be made to a number of existing gas contracts. Where those amendments can’t be agreed, GIC will need to make accommodations in circumstances where the Shipper is simply that and is not the beneficial consumer of gas but is unable to pass costs on to the party who is. We recommend the GIC investigates these aspects more thoroughly before making a decision.

¹ The definition of “gas wholesaler” is one obvious example of a term in the Gas Act that needs to be amended.

² We wouldn’t expect the GIC to have any need or grounds to undertake an audit immediately in any case.

Extensive changes needed to Levy Regulations

The GIC has indicated that it needs to give careful thought to the drafting changes needed to the Levy Regulations to support Option 3. We consider that the changes necessary to accommodate Option 3 will be more extensive than those required for either Option 1 or Option 2, and will add regulatory hazard to industry participants.

Costs imposed on industry participants by Option 3:

We expect that in calculating and issuing invoices GIC will incur additional costs, likely to be similar to the costs arising from implementing Option 1. GIC makes the comment that the levy payer will no longer need to expend time and effort in preparing levy returns. Methanex does not find the current process particularly onerous and expects that a similar or greater level of effort would be needed to verify the GIC invoices under Option 3. Shippers will also need to invest further resources into interrogating the GIC invoices and where necessary undertake their own investigation and cost-recovery processes to ensure that they are paying what they should as the “first purchaser” and passing the costs on where they aren’t.

Gas supplied through private pipelines:

Option 3 does not address the mechanism for assessing levies on gas supplied through private pipelines. The arrangements on these pipelines vary widely and in some cases there may be no discrete transmission charge or the charges might be billed to the gas supplier and bundled in the gas charge. In those cases the gas supplier or gas purchaser, not the pipeline owner, will need to be approached for information in those circumstances. In most cases this will mean that there is no fundamental difference in the provision of information compared with the existing self-assessment regime.

Before selecting Option 3 as its preferred option we recommend the GIC investigate further the costs and potential issues that may result from what we consider to be a substantial change in the way the GIC levy is collected, and an increase in the complexity of the process. In particular, we would like the GIC to test its assumption that retention of the self-assessment regime in combination with Option 1 and Option 2, either separately or together, is not a lower cost or more practicable solution to the underlying assurance issue.

Option 4

Option 4 is essentially based on charging the “consumer”, at least as far as gas transmission is concerned, and is actually a more appropriate mechanism for recovering the wholesale levy from those who ultimately benefit from the gas than is the case with the status quo or under Option 3.

However, Option 4 will also be far more complicated to operate than the other options, particularly if GIC is undertaking the assessment and invoicing. We also expect it would require more substantial changes to the Levy Regulations than any of the other options. From the perspective of a direct connect consumer it is the most rational approach but the issue of wash ups on downstream reconciliation volumes is a particular problem with this option.

“Do you agree with the analysis that option 3 addresses the problem at low cost and provides an appropriate set of check and balances”

- We support retention of the self-assessment regime complemented by the introduction of Option 1 and Option 2, provided that in respect to Option 2, the audit right is used on a discretionary and exceptional basis when the data collected from producers does not tally with levy returns. We consider this approach is analogous to the way the IRD operates for tax collection generally.
- We are not fundamentally opposed to Option 3 but we consider that the GIC has underestimated the costs associated with this option and the complexity of issues that will need to be addressed. These issues include separately assessing the liability on private pipelines, avoiding any double counting of gas volumes, having a process to handle disputes and ensuring that the same participants who are liable for the wholesale levy under the current regime remain liable under Option 3. If GIC is to proceed with Option 3 we believe considerable consultation will be necessary to ensure that all the issues associated with the proposal are considered and appropriately addressed.
- We agree that, on balance, Option 4 is not a suitable option.

“Do you agree that it would be desirable to amend regulations 18 and 20 of the CCM Regulations to align with any changed levy regulations?”

“Do you agree that such an amendment to regulations 18 and 20 would be minor and technical?”

We note that, although somewhat inconsistent with the wording in Section 5 of the Levy Regulations, Section 17 of the CCM Regulations is perhaps a more concise definition of the party who should be liable for paying a wholesale levy. In any event there is need for consistency so changes to the CCM Regulations make sense in any event, even if Option 3 is not selected, including amending Section 17(3), or alternatively amending the Levy Regulations, to align the definition of who should be responsible for paying the wholesale levy (and CCM-related charges) and who should collect the levy.

The GIC has not elaborated on what specific changes would be made so it is not possible for us to respond directly to the questions raised without considering the proposed amendments. However, we fully support amendments being made to the CCM Regulations to achieve alignment with the Levy Regulations.

Yours sincerely



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