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TRUSTPOWER RESPONSE ON ACTION ITEMS – GTAC NEGOTIATION PROCESS

- 1.1.1 Trustpower Limited (**Trustpower**) continues to be actively involved in the design by First Gas of a new Gas Transmission Access Code (**GTAC**) to replace the current Maui Pipeline Operating Code (**MPOC**) and Vector Transmission Code (**VTC**)
- 1.1.2 We fully support the development of open and compatible transmission access arrangements across both pipeline networks.
- 1.1.3 The design process for the GTAC has been ongoing for at least the last 18 months and has involved industry workshops on a number of aspects of the proposed new arrangements.
- 1.1.4 The most recent workshops were held in November 2017 and resulted in First Gas agreeing to consider the following matters further:
 - a) Relationship between interconnection agreements and the GTAC (Action Item A);
 - b) Agreed hourly profiles (Action Item B);
 - c) ERM and Overrun-Underrun charges (Action Item C);
 - d) Liability provisions (Action Item D); and
 - e) Incorporation of D+1 allocations under the GTAC (Action Item E).
- 1.1.5 First Gas has now considered Action Items A-E and progressively released some further amendments to the GTAC for consideration.

2 Trustpower's views

- 2.1.1 Our concerns regarding the ability of the second revised draft of the GTAC to provide access to the gas transmission network on reasonable terms were outlined in our previous response to First Gas and an open letter to the Gas Industry Company (**GIC**), both dated 24 November 2017.
- 2.1.2 As part of those communications we raised concerns that the legal vehicle is not fit for purpose as a bilateral industry agreement is not the best option for an arrangement which involves multiple counterparties making common commitments.
- 2.1.3 Concerns around the lack of contractual nexus between all counterparties were also discussed at the industry workshops in November and captured by Action Item D.
- 2.1.4 We are pleased that First Gas has further considered the lack of a contractual nexus being established within the GTAC given the issues raised by industry to date, however we have some initial concerns around the proposed solution for claims between counterparties.

- 2.1.5 More generally, we consider that we have not been provided with sufficient time to give due consideration to all aspect of the proposed refinements put forward by First Gas following its consideration of the Action Items.
- 2.1.6 Our initial concerns regarding the liability provisions (Action Item D) are outlined in section 2.2 below, along with our broader concerns around the current consultation process in section 2.3.
- 2.1.7 We do not provide any comment on the remaining Action Items (A, B, C and E) due to time restrictions.

2.2 Liability provisions (Action Item D)


- 2.2.1 We are pleased First Gas has acknowledged that the lack of contractual nexus between shippers (or interconnected parties) who are trading in reliance of other shippers (or interconnected parties) complying with its proposed access code is problematic.
- 2.2.2 Unfortunately we think its solution is too complex and arguably may not work because of the lack of either:
 - a) a contractual nexus between the affected shipper (or third party) and the defaulting shipper (or interconnected party); or
 - b) an indemnity from First Gas to the affected shipper (or third party) which is independent of First Gas ability to claim against the defaulting shipper (or interconnected party).
- 2.2.3 This means that even in the case of large claims there is likely to be considerable debate about whether a claim can be made. It also means that it is very unlikely that it will be economic for a small participant to bring a claim.
- 2.2.4 The combination of claim cost and uncertainty means that market participants will not have the desired level of confidence that the access code provisions will be appropriately monitored and enforced.

2.3 Consultation process

- 2.3.1 Our concerns around the timeframes for consultation¹ being allowed by First Gas for this stage in the process were outlined in our email dated 29 November 2017.
- 2.3.2 The current truncated consultation process, which allows less than a week to consider substantive changes to the contract, reinforces our broader concerns with the consultation processes being adopted in these latter stages of designing the GTAC.
- 2.3.3 Shippers and other interested parties are not being provided with adequate opportunity to sufficiently review and consider changes to the contract terms that First Gas will be presenting to the GIC for approval. As a result we consider there is a risk of unintended consequences arising under the GTAC.

For any questions relating to the material in this submission, please contact me directly on 027 549 9330.

Regards,



FIONA WISEMAN

SENIOR ADVISOR, STRATEGY AND REGULATION

¹ We do not consider the current processes for developing the GTAC are a negotiation but rather a consultation being undertaken by First Gas.