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TRUSTPOWER SUBMISSION: REPORT ON HOW GIC WOULD PERFORM A GTAC CHANGE REQUEST ROLE

1 Introduction and overview

- 1.1.1 Trustpower Limited (**Trustpower**) thanks the Gas Industry Company (**GIC**) for the opportunity to submit on its report on how the GIC would perform a Gas Transmission Access Code (**GTAC**) Change Request role (**the Report**).
- 1.1.2 The Report describes how the GIC would perform its role as an independent decision maker within the code development process specified in the most recent GTAC.
- 1.1.3 The Report notes that the GIC would issue a Guidance Note formally setting out its approach for undertaking its role as an independent decision maker with respect to code changes, if this feature remains in the final GTAC that is implemented.

2 Trustpower's views

- 2.1.1 We are generally supportive of the GIC's proposed approach for performing a GTAC Change Request role.
- 2.1.2 We consider that:
 - a) Being clear on the GIC's role in the decision making process, prior to the commencement of the new arrangements, will ensure consistency with the Government's expectations for good regulatory practice¹; and
 - b) It is important to clarify, up front, how the GIC Board will ensure independent decision making is achieved, given that it consists of a number of non-independent members. It is vital that if independent decision making is to be adopted, rather than a vote based decision making arrangement, the arrangements work to support independent decisions actually being made in effect. *Note that Trustpower has some reservations as to whether the GIC Board's current composition can work to provide independent decisions in practice.*
- 2.1.3 Further details of our views with respect to independent decision making are outlined in section 2.2 below. Our views on enabling any stakeholder to express views on a Change Request are outlined in section 2.3. Section 2.4 outlines our suggestions for further potential clarifications to be incorporated into the Guidance Note to ensure all components of effective decision making

¹ Refer to <http://www.treasury.govt.nz/regulation/informationreleases/pdfs/good-reg-practice.pdf>

are accounted for, including the use of working groups, industry workshops and cost benefit assessments (CBAs).

2.2 Ensuring Independent Decisions

2.2.1 We generally support the GIC's proposed approach of clarifying that only those independent directors of the GIC will make decisions with respect to Change Requests.

2.2.2 While this approach may not entirely address all the concerns we have regarding the perceived independence of the GIC², we consider it is a pragmatic solution for this point in time. We also note that it is consistent with the recommendation by Concept Consulting in its Final Report, that a Memorandum of Understanding (MoU) should be established between First Gas and the GIC regarding independent decision making.

2.2.3 We do however consider that further details should be included into the Guidance Note around how the GIC will ensure that:

- a) Only independent directors are involved in any decision making around Change Requests; and
- b) Those independent directors are not influenced (directly or indirectly) by directors who are associated with Interested Parties (that is those parties who have a contractual relationship with the Transmission Service Provider).

Specifying these arrangements in the Guidance Note may supplant the need for a MoU to be established and will ensure greater transparency around how the GIC Board ensures independent decision making is achieved.

2.2.4 In addition to the recommendation in paragraph 2.2.3, we suggest that a review of the whether the arrangements to support independent decision making by the GIC Board are adequate should be undertaken by MBIE (or another independent party) within 2 years of the commencement of the GTAC. This would provide an opportunity to identify and address any inadequacies in the GIC Board's decision making arrangements.

2.2.5 Further details of Trustpower's views around the importance of independent decision making were outlined in our submission on the GTAC governance options³.

2.3 Call for submissions on a Change Request

2.3.1 We strongly support the GIC's stated intention of seeking the views from any stakeholder, not just Interested Parties.

2.3.2 This is a sensible inclusion which will ensure prospective new Shippers and end-users who may be impacted by a change are afforded a right to express their views and have these taken into account by the GIC when making any decision to approve a Change Request. For example, it overcomes the issue we raised previously where a prospective Shipper may not be able to join the GTAC unless a change to the GTAC is made.

² Refer to: <http://gasindustry.co.nz/work-programmes/transmission-pipeline-access/developing/gas-transmission-access-code-governance-options/>

³ Refer to <http://gasindustry.co.nz/work-programmes/transmission-pipeline-access/developing/gas-transmission-access-code-governance-options/>

2.4 Tools used by GIC to analyse Change Requests

2.4.1 The additional tools used by the GIC in undertaking its role as an independent decision maker under the GTAC play an important role in ensuring best practice regulatory decision making⁴. These include the use of:

- a) Working groups and industry workshops - to ensure a sound consultation process is undertaken; and
- b) A CBA - to ensure decision making adequately accounts for all the impacts of a proposed change.

2.4.2 We strongly support the GIC in using these additional tools when assessing Change Requests. This is consistent with the statement made in section 3.7 of the Report, *“The analysis will be made primarily with reference to the objectives of the Gas Act and GPS (as amended or replaced), however GIC may consider other matters it believes to be relevant”*. We however consider there is value in the Guidance Note being explicit around the additional tools that may be used by the GIC.

Value of using Working Groups and Workshops

2.4.3 Trustpower is a strong supporter of the development of code changes through a collaborative working group process and productive industry workshops, both:

- a) Before formal consultation on the specific drafting and regulatory impact analysis; and
- b) During formal consultation as specific matters arise which would benefit from collective industry consideration, including on any associated refinements to the drafting.

2.4.4 In our view working groups and workshops provide an opportunity for:

- a) The change proponent to explain its views and proposed approach;
- b) Stakeholders to understand the interests and perspectives (including areas of common ground as well as differences) of others;
- c) Stakeholders to explore the operational complexities of the matters being considered and identify appropriate solutions (if any) to identified issues; and
- d) Stakeholders to evolve their views in response to group interaction.

2.4.5 Our preference would be for a working group step prior to formal consultation to have been included expressly into the GTAC code change process, along with a reference to the use of industry workshops as required. While we acknowledge that this is outside of the scope of the current consultation, we recommend that the GIC recognises the important role of a working group and workshops more generally as part of its Guidance Note.

Value of using CBA’s

2.4.6 Concept Consulting’s original advice on the governance options for the GTAC⁵, outlines the importance of the decision making authority being provided to those who have the best information and incentives to make decisions that are in the wider interest⁶. This will ensure that:

- a) Code change proposals with net benefits proceed; and

⁴ This is reinforced by the Governments expectations for regulatory agencies to provide advice and assurance of the robustness of the proposed change and implementation support. Refer to page 4: <http://www.treasury.govt.nz/regulation/informationreleases/pdfs/good-reg-practice.pdf>

⁵ Refer to <http://gasindustry.co.nz/work-programmes/transmission-pipeline-access/developing/gas-transmission-access-code-governance-options/>

⁶ The aspect of the decision maker having incentives to make decisions that are in the wider interest also supports the importance of clarifying how the GIC Board will ensure independent decision making is achieved in practice. Refer to section 2.2 for further details of our views regarding this matter.

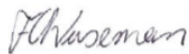
b) Code change proposals with net costs will not proceed.

Concept Consulting also outlines the importance of ensuring a predictable and consistent framework for decision making.

2.4.7 We consider that the use of CBA's (both qualitative and quantitative) are importance aspects in ensuring that predictable, consistent decisions that are in the wider interest can be achieved under the GTAC governance arrangements. We recommend that the GIC captures this important role more generally as part of its Guidance Note, along with details as to when a quantitative CBA would be used and the consultation processes that will be used to inform a CBA.

For any questions relating to the material in this submission, please contact me on 07 572 9888.

Regards,



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