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TRUSTPOWER SUBMISSION: PRELIMINARY DRAFT CODE CHANGES TO TRANSITION FROM VTC AND MPOC TO GTAC

1 Introduction and overview

- 1.1.1 Trustpower Limited (**Trustpower**) thanks the Gas Industry Company (**GIC**) and First Gas for the opportunity to submit on the proposed transition process from the Vector Transmission Code (**VTC**) and Maui Pipeline Operating Code (**MPOC**) to the new single access code, the Gas Transmission Access Code (**GTAC**).
- 1.1.2 The transition arrangements propose changes to the MPOC and VTC as follows:
- a) Extension of the expiry date for the VTC and its associated agreements until 30 September 2018 (currently the VTC is set to expire on 30 September 2017); and
 - b) Inclusion of a termination provision into the MPOC, subject to specified conditions having been met as follows:
 - i. Substantive conditions – An assessment that the GTAC is materially better at meeting the requirements of the Gas Act and Government Policy Statement on Gas (**GPS**) than the VTC/MPOC. Note that First Gas proposes that the assessment that the substantive conditions have been met is carried out by the GIC; and
 - ii. Procedural conditions - By 2 months before the proposed transition date:
 - The GTAC has been published;
 - Formal notice of the transition date has been provided;
 - The GTAC makes provision for all Shippers to continue to transport gas and for current interconnected parties to continue to connect to the pipeline;
 - Executable contracts needed for operation under the GTAC have been provided to all parties requiring them; and
 - The MPOC and the VTC are set to terminate at the time the GTAC comes into force. Note that the GTAC is intended to commence on 30 September 2018, to coincide with when the VTC will expire.

2 Trustpower's views

- 2.1.1 We appreciate the opportunity to provide feedback on First Gas's proposed transitional arrangements for moving to the GTAC, including the draft Code change requests for the relevant amendments to the VTC and MPOC.
- 2.1.2 First Gas has undertaken a significant amount of work in considering the potential transitional arrangements for the new GTAC. We commend First Gas for this approach and for recognising that implementing a seamless transitional arrangement, which is well understood by all parties in advance, is vital to the overall success of the new single GTAC.
- 2.1.3 We are generally supportive of the transitional arrangements proposed by First Gas. There are however a number of additional refinements which are required to ensure that:
- a) the objectives of the transition process¹ can be effectively achieved; and
 - b) a robust and transparent decision making framework is applied when determining whether the substantive conditions have been met.
- 2.1.4 The remainder of our submission outlines the specific refinements we have identified.

2.2 Important to ensure independent assessment that substantive conditions are fulfilled

- 2.2.1 We support having an independent decision making body assess that the substantive conditions have been fulfilled. This would be preferable to implementing voting arrangements, which would create a risk of disenfranchisement.
- 2.2.2 We are strongly of the view that all gas market participants need to have a voice in this important process to ensure the independent decision maker is aware of their views prior to making a decision.
- 2.2.3 We consider that the GIC is best placed to undertake the review of whether the substantive conditions have been met, however, as outlined in our previous submission on the governance arrangements for the GTAC, we have some concerns whether the GIC is independent given its Board includes industry members².
- 2.2.4 Prior to the GIC undertaking the assessment, a Memorandum of Understanding (**MoU**) should be established between First Gas and the GIC regarding independent decision making, as recommended by Concept Consulting in its Final Report³. This would provide transparency to all parties that only those independent directors are involved in deciding that the substantive conditions have been met. Note that while a MoU may not entirely address all the concerns we have regarding the perceived independence of the GIC, we consider it is a pragmatic solution for this point in time.

2.3 Broader scope of substantive conditions and transparency of decision making required

- 2.3.1 We suggest that the substantive conditions should be specified more broadly than is currently proposed, i.e. the focus shouldn't entirely be on whether the GTAC is materially better than the current terms and conditions for access, having regard for the Gas Act objectives and GPS. Other important factors, such as ensuring that material concerns raised during consultation have been addressed, that risks are not transferred to parties who cannot manage those risks, and that a

¹ The stated objectives of the transition process are 1) a seamless transfer, 2) certainty and 3) ability to influence, without creating the risk of hold-out.

² Refer to: <http://gasindustry.co.nz/assets/Consultations/Uploads/GTAC-Governance-Arrangements-v1.0.pdf>

³ The MoU should be between First Gas and the GIC and document the role of the independent directors of the GIC as decision makers and the procedural framework that will use. For further details refer to <http://gasindustry.co.nz/work-programmes/transmission-pipeline-access/developing/gas-transmission-access-code-governance-options/>

robust consultation process has been undertaken, should also be specified as forming part of the substantive conditions to be met.

- 2.3.2 Likewise a comprehensive assessment of the costs and benefits of the proposal, and any reasonable alternatives that have been presented, should be undertaken. The requirement that the cost-benefit assessment presents a net benefit to the gas industry overall should be incorporated as a substantive condition.
- 2.3.3 Broadening the scope of the substantive conditions to be assessed by the GIC would enhance the integrity of the process for determining when to transition to the new arrangements by implementing a robust decision making framework. It will also provide comfort to interested parties that their material concerns have been addressed in developing the GTAC.
- 2.3.4 Finally, we consider there should be complete transparency of the outcomes of the GICs assessment of the substantive conditions, including any refinements made by First Gas (explored in paragraph 2.5.4 below).

2.4 Definition of “materiality” and basis for assessment require clarification

- 2.4.1 We note that the concept of “materiality” is highly subjective. We support the GIC in clarifying exactly how it will interpret this requirement in advance so that interested parties can be aware of the exact test that will be applied.
- 2.4.2 We also note that it is not entirely clear whether the basis for assessment is the entire new GTAC, or whether the assessment will occur at a more disaggregated level, i.e. balancing, congestion management, pricing, etc. We support the GIC in applying the test at the more disaggregated level as this would enable a greater level of certainty that the new arrangements are materially better and ensure that any subtleties are captured through the assessment.
- 2.4.3 For example, if the governance arrangements are considered to be materially better, but the new balancing arrangements are not, then if the assessment was undertaken for the entire GTAC then it’s possible that the GIC would determine that “on balance” the arrangements are materially better. However, if the assessment is at a more disaggregated level, then the issues causing the balancing arrangements to not be “materially better” would need to be addressed in order for the GIC to determine the substantive conditions have been met.
- 2.4.4 A related matter is whether First Gas will be able to make refinements to the proposed GTAC following the GIC’s assessment of the substantive conditions, i.e. to ensure the proposed GTAC meets the substantive conditions. We support First Gas including a feedback and amendment loop into the proposed process as it would enhance the efficiency of the process and ensure the best outcome for the gas market is achieved. We note that if substantive changes are required following the GIC’s feedback then a reasonable further consultation period with industry must be held.

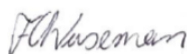
2.5 Additional matters to be incorporated as procedural conditions

- 2.5.1 We consider that ensuring sufficient time for the IT related aspects of the project should be specified as a procedural condition. These aspects are captured in the timeline for fulfilling the substantive and procedural conditions, but has not been outlined as an explicit procedural conditions. We recommend that the following be specified as procedural conditions:
 - a) The IT systems required by First Gas have been implemented and are stable; and

- b) A reasonable period for user testing and training has been provided⁴.
- 2.5.2 Participants need to be given an opportunity to ensure they can physically operate under the new arrangements prior to their commencement. Not including user testing and training as a procedural condition would be a serious oversight that could have potentially significant ramifications for the overall success of implementing the new GTAC. We note that allowing testing of key operational processes required to implement a change is specified in the Government's Expectations for good regulatory practice⁵.
- 2.5.3 Similarly, we consider that the downstream reconciliation arrangements and critical contingency arrangements need to have been reviewed and updated, as required, to ensure that they will operate effectively under the new arrangement. We note that the commencement of market based balancing was not optimal; shippers were only able to receive accurate information that was vital to their operating decisions months after implementation. To avoid these types of unanticipated outcomes, the review of other important related processes should be captured as a procedural condition.
- 2.5.4 Finally, if commencement on 1 October 2018 is considered to be not possible, then we support the GIC and First Gas working directly with industry to determine the next steps. We recognise that a one year extension would be the most likely solution to enable sufficient time for the arrangements to be developed, however we are supportive of other potential options that would result in a shorter delay (one or two months) being considered as well.

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

Regards,



Fiona Wiseman
Senior Advisor, Strategy and Regulation

⁴ We acknowledge that the requirements for user testing and training may need to be specified in a manner which would avoid hold-out by participants; i.e. that a reasonable period for user testing and training has been provided as opposed to all users have successfully completed their testing and training.

⁵ <http://www.treasury.govt.nz/regulation/informationreleases/pdfs/good-reg-practice.pdf>