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Andrew Knight
Chief Executive
Gas Industry Co

By email: consultations@gasindustry.co.nz

Support for regulated approach to Gas Information Disclosure

Haast Energy Trading (Haast) welcomes the opportunity to submit on the GIC consultation paper "Draft Statement of Proposal: Gas Production and Storage Facility Outage Information", 16 December 2020.

We support the GIC proposal to introduce regulated information disclosure requirements under the Gas Act, and the proposed amendments to the Gas Governance (Compliance) Regulations 2008.

We consider the GIC's problem definition, analysis of the current voluntary Upstream Gas Outage Information Disclosure Code 2020, and assessment of the benefits of introducing regulated disclosure requirements (including the Sapere CBA paper) to be sound and robust.

We agree with the GIC that there are "deficiencies" with the voluntary Upstream Gas Outage Information Disclosure Code 2020. We also agree "The lack of meaningful compliance and enforcement framework is a key issue" and supports the GIC conclusion that the voluntary Code "does not satisfy the regulatory objective". We note Todd Energy previously acknowledged "A key criticism of a voluntary disclosure code is the lack of "teeth" of such a code, having no regulated penalties for non-compliance" and there is a "need for a mechanism for compliance".[1]

Consistent with the GIC views, our respective submissions to the GIC "Support for the GIC's Gas Information Disclosure problem definition" (13 November 2019) and to PEPANZ "Response to the Upstream Gas Outage Information Disclosure Code consultation" (3 November 2019) detailed problems and deficiencies with the voluntary approach.

While we support a regulated approach, we appreciate the steps PEPANZ and its members have taken to improve information disclosure, with the development and introduction of the voluntary Code. As reflected in the draft SOP the voluntary Code has been a useful starting point for the development of regulated arrangements.[2]

Design features of a robust Information Disclosure Regime

We have the following comments on the GIC's draft Statement of Proposal (SOP):

- **Director certification:** We welcome that the GIC has adopted our director certification recommendation.
- **Confidentiality:** We also welcome that disclosure requirements must be complied with irrespective of whether gas producers or gas storage owners are subject to confidentiality arrangements in their

[1] Similarly, PEPANZ had committed that "… in our current work to devise an industry-led solution we are actively considering how compliance can be ensured in the context of a voluntary industry-led regime" but it seems this did not lead anywhere.
[2] In assessing the extent the voluntary Code arrangements are using for informing the new regulated arrangements, the GIC should be mindful the voluntary arrangements were developed exclusively by gas producers with very limited stakeholder involvement – we reflected this in our submission to PEPANZ noting stakeholders had only been given 11 working days to respond to the proposals, and there was no consultation during the Code development process.

agreements. For the avoidance of doubt, this requirement should apply regardless of whether: (i) the other party to the contract is a gas market participant or not; and (ii) there is a pre-existing contractual confidentiality obligation. The regulated disclosure requirements should over-ride any contractual arrangements.

- **The coverage thresholds are too high and should be more tightly specified:** Both the 20 and 50 TJ per gas day thresholds for disclosure are far too high. These thresholds should not simply be transplanted from the voluntary Code. While Haast agrees "disclosure obligations should not be placed on production and storage facilities who are of a small size and are unlikely to have a market impact if an outage occurs at that facility", Haast considers the thresholds should be set no higher than 10 TJ for any planned or unplanned reduction in production or maximum gas production capacity.

- **The coverage thresholds should be on an aggregated basis:** In addition, Haast is concerned about the potential for Gas Producers to fall below the thresholds, and not have to disclose anything, if they had several small, related, outages which individually were below the threshold but in aggregate exceeded it e.g. 2 closely related facilities cut 12 TJ per day. It would be better if the reduction threshold was applied in relation to each "Gas Producer", to capture all of their facilities.

- **'Catch-all' disclosure requirement should be added for disclosure of outage information when it is material to the market:** While we agree with the GIC that "a specific, rules-based, approach is the appropriate form for … information disclosure", this could also be complemented by a principles-based 'catch-all' requirement, similar to the test applied in electricity, that information should be disclosed that a participant expects or ought reasonably to expect may have a material impact on prices.[3] We consider a test that prices "may" be impacted would address the concerns the GIC has that it would be "difficult to infer the market "price" response from a particular outage event".

- **Information Disclosure should occur at the same time information is being made available to customers etc:** Timely disclosure of information on planned and unplanned issues is critical. An issue we presently face is information asymmetries due to some market participants receiving information either before other market participants or other markets don't receive at all. As PEPANZ previously conceded it "is less than ideal" different consumers were receiving different information on the duration of the Pohokura outages.[4] Haast considers the information disclosure requirements should clarify that "as soon as reasonably practical" includes that information should be disclosed at the same time as it is released to any customer or other market participant.

Concluding remarks

Todd Energy previously acknowledged that "A key criticism of a voluntary disclosure code is the lack of "teeth" of such a code, having no regulated penalties for non-compliance. Gas producers are aware of the need for a mechanism for compliance and this is being addressed". We agree.

We support introduction of mandatory Information Disclosure and any legislative changes which may be needed. In our joint submission with Electric Kiwi to the Electricity Price Review we noted support for toughening rules on disclosing wholesale market information:[5]

[3] The variation from the electricity arrangements is that we consider the threshold should be that there "may" be an impact on prices given the difficulty in establishing surety that prices will be impacted.
[4] https://www.gasindustry.co.nz/assets/Consultations/Uploads/Submission-PEPANZ.pdf
[5] Haast Energy and Electric Kiwi, Electricity Price Review – Options Paper, 22 March 2019.

> "The information disclosure issues highlighted in the recent UTS decision expose the failure of the current regime starkly. We believe the behaviour of Genesis detailed in section 9 of the UTS decision is deeply undesirable. The trader aggressively purchased contracts while in possession of detailed non-public information on the Pohokura gas outage …"

It is clear – based on submissions to the Electricity Price Review, the GIC and MBIE that there is substantial wide-spread support for broader, mandatory, disclosure requirements.[6] We look forward to the opportunity to submit on the final SOP.

Yours sincerely,

Phillip Anderson
Managing Director
Haast Energy
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[6] Out of the 22 stakeholders that provided submissions or cross-submissions to the GIC in 2019, only Greymouth, OMV, PEPANZ, and Todd supported retention of voluntary arrangements. Mandatory arrangements were explicitly supported by Contact, the Electricity Authority, emsTradepoint, Energy Link, First Gas, Flick, Fonterra, Haast, Mercury, Trustpower, Transpower, and Vector.