16 August 2021

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Haast Energy Trading

Support for SOP: regulated Gas Production and Storage Facility Outage Information Disclosure

Haast Energy Trading (Haast) welcomes the opportunity to submit in support of the GIC "Statement of Proposal: Gas Production and Storage Facility Outage Information", 20 July 2021. We also appreciate the clear and transparent manner in which the GIC has engaged in response to our previous submission points.

We reiterate our support for the GIC proposal to introduce regulated information disclosure requirements.

We agree with the GIC's reasons why a regulated approach is superior to a voluntary approach, including the current voluntary Upstream Gas Outage Information Disclosure Code 2020 e.g. we agree with the GIC that "An improvement in efficiency outcomes requires information to be available to all relevant parties, all the time and on a consistent basis. The lack of a meaningful compliance and enforcement framework in the Code, as well as the other issues identified above, means that this outcome is not assured under this framework" and "The fact that there is a risk that information transparency and symmetry may not be consistently achieved implies that fairness outcomes may not be delivered over time".

Our previous submissions have detailed the shortcomings of the voluntary Code arrangements.[1]

We also agree with the commentary Sapere has provided in response to submissions on its CBA.

Commentrary on the design features of the draft Information Disclosure Regime

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

- **Regulatory objective:** We didn't previously comment on the regulatory objective, but consider the key elements of the objective should be to improve market transparency and reduce information asymmetries. The statement "That arrangements are in place that ensure the effective and timely availability of material gas production and storage outage information for all gas and related market participants" reflect design characteristics of the GIC proposal rather than an objective per se.[2]

- **Director certification:** We agree that while "There may also be an additional cost associated with the requirement of a director's certification" and "Compared to the status quo, the additional costs of compliance are small given that compliance with the disclosure code is already happening".

[1] For example, our 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.

[2] Our recent submission to the Electricity Authority in relation to Wholesale Market Information Disclosure details why "material" may not be the most appropriate disclosure threshold option, which reinforces that it should not be embedded in the objective statement: Electric Kiwi and Haast, Wholesale market information disclosure reforms welcomed but should go further and address all the matters raised by the Rulings Panel, 21 July 2021.

- **Confidentiality:** We reiterate our support for disclosure requirements to override confidentiality arrangements that gas producers or gas storage owners may have in their contractual agreements. We also reiterate, "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 GIC's approach to confidentiality aligns with the Electricity Price Review Panel position on this matter, as cited in the consultation paper.

  We also acknowledge the provision that parties' disclosure obligations apply regardless of any duty of confidence owed to a third party is a positive feature of the Upstream Disclosure Code.

  In contrast, the matter of confidentiality and its potential to be used as a 'shield' against disclosure is an issue which remains unresolved in electricity. This is a matter we have discussed in detail in response to the Electricity Authority's consultation on a "Permanent change to definition of disclosed information".[3] The problem is highlighted by the situation where the Rulings Panel found Genesis did not have to disclose information in relation to the Pohokura outages on the grounds that a GSA was entered into between OMV and Genesis and "Genesis is a participant. OMV is not". The Rulings Panel found that "even if the information was "disclosure information" it was subject to a confidentiality agreement and that clause 13.2A(2)(c) of the Code applied" and the "confidentiality exclusion to the disclosure requirement in clause 13.2A(1) would apply had there been an obligation to disclose".[4]

  Given the above, we welcome OMV's support for the GIC's proposal that there should be no exclusions from the disclosure requirements for reasons of commercial confidentiality.

- **Information Disclosure should occur at the same time information is being made available to customers etc:** We welcome that the GIC has modified its proposals in response to our previous submission and "have added a requirement that all planned outage disclosures made to production or storage owners' customers should be issued publicly at the same time".

- **Setting the coverage thresholds:** While the GIC has not adopted our TJ threshold recommendations, we support the GIC "preference … for this parameter to be set outside regulation if this is possible" and that the GIC "would review this parameter after the first year of the operation of these arrangements". We agree this has the benefit that it "would enable the threshold to be modified if it was considered to be set at in inappropriate level".

- **'Catch-all' disclosure requirement should be added for disclosure of outage information when it is material to the market:** One element of our previous submission the GIC does not appear to have engaged with is our submission point that the GIC's "specific, rules-based, approach … for information disclsoure" 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 to impact on prices.[5]

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[3] Electric Kiwi and Haast, Wholesale market information disclosure reforms welcomed but should go further and address all the matters raised by the Rulings Panel, 21 July 2021.

[4] Rulings Panel, Haast Energy Trading Limited v Genesis Energy Limited decision, 28 January 2021.

[5] Our most recent submission to the Electricity Authority on Wholesale Market Information Disclosure (WMID) discusses options for improving the way that the current WMID requirements formulate this 'catch-all' test.

The Electricity Authority has proposed that disclosure information, in relation to a participant, includes "information that … the participant expects, or ought reasonably to expect, if made available to the public, ~~will~~ is likely to have a material impact on prices in the wholesale market".

We agree the Electricity Authority that:[6]

> The adoption of standards are useful where bright-line tests are not practical: precise rules are appropriate where it is possible to stipulate required behaviour in advance, but standards are necessary where it is not practical to specificy a behaviour in advance (or where the application of the rule may depend on the circumstances, and the market regulator must determine after the event whether the behaviour met the rule). ...

The above commentary on standards versus principles is consistent with road safety rules. There are rules that can be hard-wired, and provide a high degree of certainty, such as speed and alcohol limits, but these can't capture every aspect of dangerous driving, so they are combined with principles-based rules or 'catch-alls' such as the requirement for "Drivers not to be reckless or dangerous".[7] The principles-based prohibition on reckless and dangerous driving complements, rather than substitutes for, speed and alcohol limits.

We agree with Sapere "a clear standard is necessary (in the same manner that the road code prohibits dangerous driving without attempting to identify all possible forms of driving dangerously)".[8]

Sapere has similarly commented many rules "are expressed in general or imprecise terms. Economists refer to imprecise rules as "standards". Precise rules are used where it is possible to stipulate efficient behaviour in advance. Standards are used where it is not feasible to specify behaviour in advance, or where the application of the rule may depend on the circumstances, and the interpreting body must determine after the event whether the behaviour met the intent of the rule. …"[9]

Electricity Authority concerns about information availability

We note the recent comments from the Electricity Authority copied below,[10] and expect this is a matter that the Electricity Authority, GIC and MBIE are or will liaise on to ensure there are no unnecessary gaps in electricity-gas market information disclsoure requirements and powers:

43. However, the Authority is limited in its ability to require information of a standard that is needed to resolve any ambiguity regarding gas available for thermal generation, unless that information is held by electricity generators. That is, the Authority is entirely reliant on anecdotal information and the good will of gas sector players for information critical to

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security of supply analysis. The Authority has legislative tools available to compel electricity participants to provide any information necessary to support its monitoring functions; no such tools exist for the gas sector. As New Zealand transitions to 100% renewable generation, information on the gas sector will be increasingly important for the Authority manage, monitor and understand market impacts and security of supply.

As an alternative, we have proposed the Electricity Authority rephrase the requirement to something like "the participant expects, or ought reasonably to expect, [may][is likely to] inform views or expectations about prices in the wholesale market". The "may" formulation is our preferred option.

[6] Electricity Authority, MINISTERIAL BRIEFING Electricity Authority: HSOTC Compliance Investigations, 16 April 2021.

[7] Section 7, Land Transport Act 1998.

[8] Kieran Murray and Toby Stevenson, Sapare, Cross submission comments: draft decision of the Electricity Authority: alleged UTS on 26 March 2011, 19 May 2011.

[9] Sapere, Kieran Murray, Claimed undesirable trading situation, 26 March 2011, 6 April 2011.

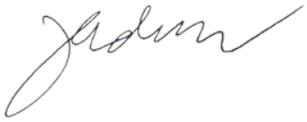
[10] Electricity Authority, MINISTERIAL BRIEFING, Dry Year Risk Update: Spot market review and other related Authority initiatives, 14 June 2021.

Concluding remarks

We reiterate our support for introduction of mandatory Information Disclosure. In our joint submission with Electric Kiwi to the Electricity Price Review we noted support for toughening rules on disclosing wholesale market information:[11]

> "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 …"

Yours sincerely,



Phillip Anderson
Managing Director
Haast Energy
[redacted]

[11] Haast Energy and Electric Kiwi, Electricity Price Review – Options Paper, 22 March 2019.