

4 March 2021

Andrew Knight
Chief Executive
Gas Industry Company
Level 8, The Todd Building
95 Customhouse Quay
Wellington 6143
By email: info@gasindustry.govt.nz

Dear Andrew

Draft Statement of Proposal: Gas Production and Storage Facility Outage Information (SOP) - Industry led Gas Outage Information Disclosure Code June 2020 (Code)

Todd Energy (Todd) supports the stated objective of the GIC; for there to be arrangements in place to ensure the effective and timely availability of gas production and storage outage information for all gas and related market participants. Todd has published its production outages on the GIC hosted platform since June 2020 and will continue to do so under the Code. This has been a useful disclosure tool, aiding market transparency and reducing asymmetry of information.

Given that disclosure of outages by gas producers is already occurring under the Code, Todd does not agree with GIC's suggestion that the most practical means to implement information disclosure arrangements is to implement them within the framework of regulations under the Gas Act.

There is a statutory obligation requiring the GIC to consider non-regulatory solutions to meet the objectives of a proposed regulation before seeking to regulate.¹

Todd appreciates the GIC's recognition of the Code as a major improvement. In the SOP, the GIC in general supports the parameters and thresholds set out in the Code triggering disclosures. It identifies certain minor mechanical improvements that could be made. This is gratifying considering that gas producers put considerable time and effort into making sure that a thorough and effective framework was established by virtue of the Code.

The key criticism by the GIC of the Code is the apparent lack of compliance and enforcement mechanisms. Todd's response is:

- (a) The GIC is obliged to consider non-regulatory solutions, the essence of having a non-regulatory solution means enforcement must be upheld by individual participants rather than through a regulated enforcement mechanism.

¹ Gas Act 1992, section 43N(c) the GIC is required to "Ensure that the regulatory objective is unlikely to be satisfactorily achieved by any reasonably practicable means other than the making of regulation".

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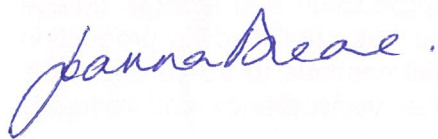
- (b) The GIC's reason for wishing to regulate prior to a failure of the Code through non-compliance is that "At that point, a regulated solution may be the only alternative, but the lead times in implementing this option are long". Todd does not believe this is a good reason, the non-regulated solution should be given a chance to work (so far there have been no compliance problems); and
- (c) Todd supports the adoption of the mechanical changes to the Code identified by the GIC (refer to Todd's further submission attached) and would support the GIC taking a role in monitoring compliance. These are simple solutions that can be carried out without adding new regulations.

The gas producers², through PEPANZ, invited the GIC to take up a role in monitoring compliance of the Code when it was in the process of being developed. The GIC declined, in order to remain independent of the process. Now that the Code is operational Todd would support the GIC taking a more active role in monitoring and overseeing the Code. In summary, Todd does not consider that regulating the Code, or a variation of it, is necessary.

Please see our submission attached which provides further details in relation to the above issues.

If there are any questions relating to Todd's submissions, please contact Catherine Ongley in the first instance: congley@toddenery.co.nz. Please also note that as of 5 March Mark Macfarlane replaces me as CEO of Todd Energy and should be copied on all correspondence.

Yours sincerely



Joanna Breare
Vice President NZ Upstream Energy
CEO Todd Energy Limited

² Todd Energy Limited, OMV New Zealand Limited, Beach Energy Limited, Flexgas Limited and Greymouth Gas New Zealand Limited.

Appendix C - Questions

Draft Statement of Proposal: Gas Production and Storage Facility Outage Information

Submission prepared by: Todd Energy Limited (Todd)

Contact person: Catherine Ongley congley@toddenenergy.co.nz

Question		Comment
Q1	Do you agree with the regulatory definition? Please provide reasons supporting your views.	<p>Yes, Todd agrees with the Regulatory Objective: “That arrangements are in place that ensure the effective and timely availability of gas production and storage outage information for all gas and related market participants”.</p> <p>Todd does not consider that any further regulation of market participants is required to meet that objective. A non-regulatory solution is in place.</p>
Q2	Do you agree with the information disclosure options for gas production and storage facility outage information that have been identified? Please provide reasons for your views.	Yes, Todd agrees with the information disclosure regimes that have been identified. Todd considers the disclosure of gas production and storage facility outage information under the industry led Upstream Gas Outage Information Disclosure Code 2020 (the Code), to be the preferred option.
Q3	Are there other options that you think should be considered in this process?	No
Q4	Do you agree with our assessment of the Upstream Gas Outage Information Disclosure Code 2020 as an option for achieving the regulatory objective? Please provide supporting arguments for your views.	<p>Yes, the Code is suitable for achieving the regulatory objective. The Code does not need to be regulated as it is already being complied with by all the gas producer signatories.</p> <p>The SOP includes a cost benefit analysis (CBA) supporting the view that the net benefits of a regulated regime would be greater than the net benefits of the Code. Todd would also like to highlight concerns around the methodology adopted in the CBA, namely:</p> <p>a) The analysis appears to be premised on interviews with a number of interested parties, however no upstream producer was included in this process;</p>

Question	Comment
	<p>b) Todd considers the underpinning assumption of the analysis – namely that a voluntary code is the equivalent of no code and therefore the counterfactual to a reliable, enforceable regime of information disclosure is no information disclosure – to be fundamentally flawed. The presence of regulation does not guarantee that all parties will comply and likewise an industry led code does not mean parties will breach the code. As such, the CBA should not be relied upon.</p> <p>Response to the particular comments on the Code:</p> <ul style="list-style-type: none"> <p>The GIC notes that there is no time period outlined in the planned gas production facility outage definition.</p> <p>Todd agrees that the time period for storage planned outages was inadvertently left out of the definition. This can be amended by Code participants.</p> <p>The GIC is interested in understanding whether the 20Tj/day threshold is a reasonable setting, noting that for some production facilities, normal day to day supply variability can be 20Tj/day or more.</p> <p>Todd considers the 20Tj/day threshold to be reasonable as this threshold ensures that major outages are disclosed to the market, however minor planned maintenance activities such as compressor servicing and minor unplanned plant upsets doesn't require disclosure. If such minor planned/unplanned maintenance activities were included, the risk is that the disclosure platform would be flooded with distracting and unnecessary information. It is also worth noting that 20TJ represents under 5% of New Zealand's daily average gas production and is approximately the amount of gas required to run a 100MW gas peaker for a day. 100MW represents approximately 1% of New Zealand's installed generation capacity, and less than the daily variability in output from wind generation.</p> <p>Apart from the threshold size, the other key part of this definition is the benchmark that a production reduction associated with an outage is measured against. The GIC's concern is that a producer's forecast of expected gas production is private information, not visible to any other party, so it makes it difficult for external parties, or other signatories to the Code to monitor compliance. The GIC suggests an alternative approach – use current, known production information for the benchmark.</p> <p>The fact that private information is used by gas producers is only problematic because it is considered to make monitoring compliance difficult. Todd does not believe the problem really exists because a compliance breach would become clear if there is a material outage by a gas producer which is not disclosed.</p>

Question	Comment
	<p>The use of known (private) production information was considered by the gas producers during the Code drafting process. Potential difficulties with the alternate approach – the use of historic information – were identified. For example, take the case of a well coming online within the 14-day timeframe. The use of historic information would probably not capture a subsequent outage, because the new well could replace production from the outage. When there is an outage that occurs which materially impacts gas supply, then market participants will know that a material outage has occurred. A material outage will trigger a compliance concern. At that time participants can review whether the relevant gas producer has complied with the Code.</p> <p>That said, Todd does not object to introducing a historic based benchmark.</p> <ul style="list-style-type: none"> • The threshold and benchmark components of this part of the definition are based on gas that is nominated for shipping on the transmission pipeline. The issue is that for some production facilities, sales nominations may not necessarily include all gas produced from the facility (gas may be shipped over private pipelines or used on site and it is not captured under the nomination framework) so the threshold may not reflect the total change in production caused by an outage which could lead to under reporting and the nominations based benchmark may be an incomplete measure of what production would have been if the outage had not occurred. <p>The gas producers discussed this when drafting the Code and considered that the key information relevant to downstream participants was the nominations for shipping on the transmission pipeline. Gas producers did not wish to provide distracting information. For example, in the past Todd has reinjected at MMPS, if there was an outage Todd may have turned off the reinjection facility. This is not information that is relevant to market participants.</p> <p>In relation to gas supplied to Methanex, it was considered prudent not to provide this information on a public information platform as Methanex considers this information commercially sensitive in terms of the global market for methanol.</p> <ul style="list-style-type: none"> • 12-hour maximum period for the initial notification appears to be reasonable however, the GIC welcomes views on the length of the reporting window. <p>Gas producers considered a 12 hour maximum period to be appropriate because in some cases it may be difficult to disclose sooner for example if the outage occurred at 5am where a production station would be likely to be operating with a skeleton night crew and the crew in could all be engaged on remediation of the outage. A reporting obligation could distract crew from urgent operational matters. In summary, the 12-hour maximum was a common sense approach given the practicalities.</p>

Question	Comment
	<ul style="list-style-type: none"> <li data-bbox="757 92 2013 256"> <p>• The GIC is concerned that the daily and two-weekly notification requirements do not include an obligation for parties to report a material change to the market as soon as reasonably practicable (e.g. if there is an unplanned outage that extends beyond two weeks, a material change may not be updated until the next two weekly update). Parties can disclose outside the prescribed times, but it's not a requirement.</p> <p>Gas producers discussed this in the context of long-term outages for example the 2018 Pohokura outage. In that situation, after 2 weeks it would have been difficult to define what material changes were required to be reported. If a requirement to disclose every material change was in place at the time, this would have caused concern for gas producers because of the difficulty in assessing when an obligation to disclose occurred. At the time options for remediation were being raised and assessed, some of the options that initially seemed viable were eventually discarded. Therefore, an obligation to disclose material change could have imposed an obligation that was difficult to ascertain and which could have resulted in inaccurate and unnecessary and potentially misleading information being disclosed. It would have also caused compliance costs for having to continually assess the frequently changing situation for "materiality". Todd considers that the way the Code is currently drafted allows producers to disclose sensible e.g. firm plans for remediation versus options which are being assessed.</p> <p>Note the statement at clause 4.6 of the Code: "Nothing in this Code imposes any restriction on a gas producer in terms of the timing or scale of, or decisions made in relation to, an outage."</p> <li data-bbox="757 871 2013 1254"> <p>• The GIC considers that the quarterly update is reasonable, with material changes in the first six months to be notified as soon as reasonably practicable. However, in the latter six months, changes are to be notified on a more timetabled basis rather than when knowledge of the change is first acquired. Parties may disclose outside the prescribed times, but it is not a requirement.</p> <p>This is a similar issue to the above, a year out things may change due to various factors (e.g. staffing/resourcing, availability of parts, subcontractor availability, financial expenditure planning) etc. A year out from the planned outage, the window for the outage can move many times, this is not useful information to market participants. During the 6 months leading up to the planned outage the timeframe is likely to firm up sufficiently for information to become useful and relevant.</p> <li data-bbox="757 1294 2013 1541"> <p>• The GIC is concerned that the Code may not be effective at overriding confidentiality agreements in current gas contracts and a producer's ability to disclose under the code may be restricted.</p> <p>Todd has not been prevented from disclosing any information under the Code due to the confidentiality provisions of its gas supply contracts. Thermal generators are required to disclose their fuel supply situation irrespective of confidentiality provisions which provides additional visibility.</p>

Question	Comment
	<ul style="list-style-type: none"> <li data-bbox="757 124 1989 220"> <p>• There is no liability for a party who does not disclose under the Code. The scope is limited to claims between parties to the Code and pursuing compensation is likely to be costly and risky for parties so the risk of enforcement action is likely to also be weak.</p> <p>When drafting the Code, gas producers considered that incentives for compliance included, for example, reputational risk and ‘threat’ of regulation.</p> <p>This has proven to be effective, as gas producers have been fully compliant with the Code.</p> <p>Todd is confused by the GIC’s reference to claims. The Code includes a “No liability” clause (clause 8). Todd does not consider that either existing Code participants or downstream market participants should be able to claim damages for a breach of the Code.</p> <p>The intent of the Code was to try to deal with asymmetrical information, it was not intended to provide a remedy of damages or compensation to any Code participant or third party.</p> <li data-bbox="757 598 1989 912"> <p>• To be effective in monitoring parties’ compliance with the Code, the reviewer needs access to information referred to in the outage definitions. However, it is not clear what access the reviewer will have to information that is referred to in the outage definitions. There is also the issue that the information is private company information, so it’s harder for the reviewer to verify accuracy.</p> <p>If there is a material outage that affects the market, then someone will notice it. If it’s not a material outage, then there’s no real issue. Todd does not object to the GIC taking a compliance monitoring role under the Code. Todd would be happy to provide all reasonable information to the GIC.</p> <li data-bbox="757 970 1989 1520"> <p>• A party may raise an issue with the GIC, but then the GIC has no particular powers (such as enforcement) under the Code to do anything about the issue. The GIC’s enforcement mechanism is limited to initiating a review to consider implementation of gas governance regulations for production and storage information disclosure which is a time consuming response and parties may view the cost of such review as low relative to the commercial benefits that may accrue from not reporting commercially valuable information.</p> <p>The GIC has noted that to conduct a review is a “time consuming response”. Under the Gas Act the GIC is required to wait and see whether an industry led solution is working. The GIC seems to imply that there is a risk that gas producers might ‘game’ the disclosure protocols when the benefit of not disclosing is more beneficial than the consequences of disclosing. Gas producers have not shown any sign of non-compliance. The Code is drafted so that gas producers formally accede to the Code, following which participation is required unless and until a formal notice of withdrawal has been affected. The gas producers’ when discussing and drafting the Code considered that would signal to the market and to the GIC the failure of the Code. This provides a deterrent from non-compliance.</p>

Question		Comment
		<p>Todd's position is that it is inappropriate for the GIC to peremptorily regulate a disclosure regime before there is any signal that the Code has failed. A signal that the industry led solution has failed would for example be that the market observes a material outage which was not disclosed by a gas producer, or that a Code participant is removed from the Code. Under section 43N the GIC is required to identify all reasonably practicable options for achieving the objective of the regulation before turning to regulate the industry. In addition to these signals of non-compliance, Todd would be open to providing the GIC with further ability to track the participants' compliance with the Code and publicly call out non-compliances and welcomes discussions around this.</p>
Q5	<p>Do you agree with the design of this regulatory option? Are there parts of design that require amendment? Please provide supporting information in your response.</p>	<p>Yes. The design does not appear to be any different than what is already outlined in the Code, except for minor amendments.</p>
Q6	<p>Do you agree with our conclusion that the most practicable means for implementing information disclosure arrangements for gas production and storage facility outage information is to implement them within a framework of regulations (and/or rules) under the Gas Act? Please provide supporting arguments in your response.</p>	<p>No. In accordance with section 43N of the Gas Act 1992 ("the Act") the GIC is under a statutory obligation to identify "<i>all reasonably practicable options for achieving the objective of the regulation</i>" before it seeks to regulate and such options must be "<i>unlikely to satisfactorily achieve the objectives of the regulation by any reasonably practicable means other than by the making of the regulation</i>". The GIC has proposed that the regulatory objective is "<i>that arrangements are in place that ensure the effective and timely availability of gas production and storage outage information for all gas and related market participants</i>". The GIC itself notes that "<i>the Code has led to a major improvement in both the quantity and quality of information that gas producers are sharing and the Code will work until it doesn't</i>". These statements highlight that the Code is satisfactorily achieving the objectives of the regulation.</p>