

Liabilities - GTAC sections 12 and 16

Firstgas

8 August 2018

- First Gas acknowledges concerns raised in FAP and in prior industry submissions
- Proposed approach is to keep consistent with approach in existing codes:
 - to address concerns First Gas has sought to change existing responsibilities/liability allocations
 - consistent with broader approach of having regard to VTC approach (which is itself based on the MPOC approach)
 - current arrangements are well understood and commonly used in the past (including in ICAs)
- New subrogation concept is removed
- Deeming parties to be non-RPOs is removed
- Back to back non-specification gas indemnity included
- Liability caps adjusted upward to reflect historical inflation adjustments
- Consistent approach between GTAC and ICAs

FAP Findings

Interaction between the GTAC (TSAs) and ICAs.

GTAC s7 requires the liability arrangements in GTAC s16 to be reflected in ICAs. We think that approach does not take into account differences in the obligations that apply to Shippers and Interconnected Parties. Some of the obligations that apply to Interconnected Parties will require exclusions and limits on liability that are different to s16 of the GTAC

Proposed approach

- Liabilities sections to be set out in full in Schedules 5 and 6 of the GTAC (and therefore will be incorporated in full into each new ICA).
- Liabilities section in each new ICA to mirror the liabilities section in the GTAC. Required differences to be recognised as per the FAP comments.

FAP Findings

GTAC s1.1. definition of “*Reasonable and Prudent Operator*”

Reference to “having due consideration to other users of the Transmission System” may increase the scope for dispute given the vagueness of that concept.

Proposal

- Retain current RPO definition, but address the comment that the last part of the definition is vague
- Specifically refer to other Shippers and Interconnected Parties who use the transmission system to inject, convey or receive gas
- Considered appropriate for Shippers and ICA parties to have regard to the position of other Shippers and ICA parties given nature of the system

FAP Findings

GTAC section 12.11

Unless it can be shown that First Gas caused gas to become Non-Specification Gas, we think that GTAC s12.11 effectively excludes any liability that First Gas may have for loss that a Shipper suffers in relation to the taking of Non-Specification Gas (whether the RPO standard has been breached or not).

Proposal

- Delete section 12.11 GTAC
- Reflect back to back indemnity concept raised by submitters prior to GTAC final assessment
- RP ICA parties give indemnity where inject non-specification gas
- First Gas gives indemnity where Shipper takes non-specification gas at a DP (irrespective of whether First Gas is the causer).
- Subject to limitations in the liabilities section.
- Reflects the approach used in the current VTC (which is based off the MPOC approach)

FAP Findings

GTAC ss16.4 and 16.5 “*Capped Liability*”

The liability caps under the GTAC appear to be adopted from the MPOC and the VTC. However, that does not take into account the fact that the caps in the MPOC and VTC have been adjusted for inflation on an annual basis since the commencement of those codes.

Proposal

- Starting monetary caps in section 16.4 to be increased to current inflation adjusted levels
- \$10m becomes \$12.5m
- \$30m becomes \$37.5m
- Payments of charges and fees specified in the GTAC not to be the subject of the liability caps

FAP Findings

GTAC s16.2 “*Limitation of a Party’s Liability*”

This does not carve out liability for the injection of Non-Specification Gas (or other relevant liabilities) from the general exclusion of liability to third parties.

Proposal

- Re-instate in section 16.2 of the GTAC the exception for payments by First Gas under the non-specification gas indemnity in section 12
- Same approach as taken in the VTC (which was based off the MPOC approach)

FAP Findings

GTAC s16.12 “*Subrogated Claims*”

Concerns as to effectiveness of new provision. In any event, not an improvement on current codes

Proposal

- Section 16.12 deleted in full
- Consistent with approach used in VTC and MPOC
- First Gas provides shipper indemnity for non-specification gas (irrespective of whether First Gas is the causer)

FAP Findings

MPOC s14 and s12.4 *“Incentives Pool”* and VTC s8 *“Balancing and Peaking Pool”*.

There is no equivalent to the liquidated damages mechanism in the MPOC and the VTC if a Shipper or Welded Party is unable to offtake gas due to the actions of another Shipper or Welded Party. This risk remains under the GTAC, but the equivalent mechanism for a Shipper or Interconnected Party to recover loss under the GTAC is unclear.

Proposal

- These pools not used in practice. Add complexity to the codes for no or negligible benefit given not used
- Appropriate structures and incentive payments have been (or will be) included in the GTAC after industry discussion
- Clear curtailment and OFO procedures, with ability for First Gas to enforce as required
- First Gas considers overall balance of GTAC on this issue is appropriate

FAP Findings

GTAC s16.1 and various references

There are various references to “*reasonable endeavours*” and “*to the fullest extent practicable*” in the context of the obligation to mitigate loss. This looks to be a consistency issue arising from the adoption of the VTC drafting for some provisions, while new drafting has been inserted for others.

Proposal

- Use consistent terminology
- Base on the current language used in the corresponding provisions of the current codes

FAP Findings

GTAC ss16.1, 9.12(b), 11.9(b), 12.2, 12.10 and ICAs

The use of the RPO standard has been modified in the GTAC when compared to the MPOC and the VTC. Under the MPOC and the VTC the need to establish a breach to the standard of an RPO was only avoided in the case of the provisions regarding Non-Specification Gas (which is not the case under the GTAC), not other provisions. We think that exclusions from the need to establish a breach of the RPO standard should be reconsidered.

Proposal

- Deemed non-RPO concept removed
- Specified breaches constitute failure to act as an RPO – precisely the same language as used in MPOC for injection of non-specification gas
- Not a broad RPO failure concept – limited to the specific provision concerned (as per MPOC)
- To apply to breach of OFO and overflow provisions given seriousness of consequences of breach (HSE, pipeline integrity). Will improve position of First Gas (and indirectly other “innocent” users) to recover from breaching party.
- Consistent approach adopted in ICAs