

# GTAC Workshop Block 2

23 August 2018

**Firstgas**

## Agenda Items

## Indicative Timing

### ***Workstream 3 – Nominations and Governance***

|     |                                     |                 |
|-----|-------------------------------------|-----------------|
| 3.4 | Termination                         | 9-11:00am       |
| 3.5 | Confidentiality                     | 11:00am-12:00pm |
|     | <b>Lunch</b>                        | 12-12:30pm      |
| 3.6 | Supplementary Agreements Governance | 12:30-1:30pm    |
| 3.7 | Change Requests                     | 1:30 – 3:00pm   |

### Discussion Objective

Determine changes to termination provisions required to resolve issues identified in FAP

### GTAC Reference

s. 19

### FAP Findings

- Parties should be able to remedy default rather than terminate (105)
- Termination if unpaid for 10 business days is unfair (105)
- Termination should depend on expiry or sale of all PRs (106)
- Term too short to be efficient (103)
- Continuity following termination (111)

### Supporting Material

Current GTAC drafting allows only limited ability to remedy default:

## GTAC Current

19.4 Either Party can terminate a TSA immediately on notice to the other Party, if:

- (a) Money unpaid >10 BD
- (b) Non-compliance with prudential requirements >60 BD
- (c) Default in any material covenants or obligations imposed not remedied within 20 BD of notice from the terminating party; or
- (d) Liquidation or winding up of the other Party; or
- (e) Composition, assignment or other arrangement with or for the benefit of that Party's creditors; or
- (f) FM Event occurs such that the other Party cannot perform its obligations for >6 months.

## GTAC Proposal

Allow for remedies as follows:

- (a) See next slide
- (b) Remedy within 20 BD of notice of default
- (c) Allows for remedy
- (d) Not required
- (e) Not required
- (f) Not required

BG11  
AO2

### First Gas Position:

- We agree with the FAP finding that there should be an opportunity to remedy default in appropriate circumstances
- We have already amended the GTAC to reflect this position

## Slide 4

---

**BG11**

the implication here is the non-compliance with prudentials also has a notice requirement and additional 20 BDs. Is that correct?

Ben Gerritsen, 19/08/2018

**AO2**

yes

Angela Ogier, 20/08/2018

Current GTAC drafting allows any party to terminate if any money remains unpaid for 10 days:

## GTAC Current

19.4 Either Party may terminate a TSA immediately on notice in writing to the other Party specifying the cause, if:

- (a) any money payable by the other Party under this Code remains unpaid (other than pursuant to *section 11.26*) for a period of 10 Business Days;

## GTAC Proposal

19.4 Either Party may terminate a TSA immediately on notice in writing to the other Party specifying the cause, if:

- (a) any money payable by the other Party under this Code remains unpaid **after its due date** (other than pursuant to *section 11.26*) for a period of **more than 10 Business Days and the other Party has not remedied that default within 20 Business Days of notice from the terminating Party**;

### First Gas Position:

- We agree with the FAP finding that there should be a remedy for default if monies are not paid
- This is supplemented by the ability of parties to dispute an invoice
- We have already amended the GTAC to reflect the above position

# Termination should depend on sale or expiry of PRs **Firstgas**

The FAP considered that termination should depend on sale and/or expiry of PRs:

## GTAC Current

- 19.3 A Shipper may give First Gas written notice to terminate its TSA at any time, and the termination date will be 2400 on the later of:
- the date for termination set out in the Shipper's notice of termination;
  - the expiry of all PRs held by the Shipper (if any);
  - the date the sale of all PRs held by the Shipper (if any) becomes effective; and
  - the date which is three months after the date First Gas receives the Shipper's notice of termination.

## GTAC Proposal

- 19.3 A Shipper may give First Gas written notice to terminate its TSA at any time, and the termination date will be 2400 on the later of:
- the date for termination set out in the Shipper's notice of termination;
  - Without limiting section 19.3(c)**, the expiry of all PRs held by the Shipper (if any);
  - the date the sale of all PRs held by the Shipper (if any) becomes effective **(or, if earlier, the date the relevant Shipper pays all amounts outstanding for the PRs to the end of the PR Term)**; and
  - the date which is three months after the date First Gas receives the Shipper's notice of termination.

### First Gas Position:

- We believe that the current wording of the GTAC allowed for the sale and/or expiry of PRs prior to termination
- We have clarified the position on payment of outstanding PRs as this will ensure Shippers do not suffer from another Shippers' exit and the exiting Shipper will be encouraged to sell PRs to remaining Shippers

The FAP considered that the term of the GTAC was too short to be efficient:

## GTAC Current

19.2 Term of Code

Subject to section 7.5 and section 7.14, the terms and conditions of this Code expire at 2400 on 30 September 2022

## GTAC Proposal

19.2 Term of Code

Subject to section 7.5 and section 7.14, the terms and conditions of this Code expire at 2400 on the date which is **10 Years after the date of this Code**

### First Gas Position:

- We want an enduring code that gives certainty to stakeholders to allow for business planning
- ICA terms may be longer than the code which allows for certainty of those connecting given that they can participate in code governance
- We do not feel the code should be evergreen as this runs the risk of ossification of the arrangements
- We want the code to change and develop with stakeholders' needs and therefore see an end date as useful in ensuring that the code evolves (i.e. mandating the need to reassess whether the GTAC arrangements continue to be the best way to govern the terms of using the transmission system)



The absence of provisions following termination has been raised as a concern, we propose to address this as follows:

## GTAC Proposal

### 19.2 Term of Code

Subject to section 7.5 and section 7.14, the terms and conditions of this Code expire at 2400 on the date which is 10 Years after the date of this Code. Not later than the date which is:

- (a) 8 Years after the date of this Code, First Gas will consider whether any changes ought to be made to this Code; and
- (b) 8 Years and six Months after the date of this Code, First Gas will initiate a Draft Change Request to:
  - (i) extend the term of the Code; and
  - (ii) propose any other changes to the Code it considers are appropriate having regard to its review work it undertook in relation to the Code pursuant to section 19.2(a),

and the provisions of section 17 shall apply accordingly.

### **First Gas Position:**

- We understand the value of providing a process for further arrangements following the GTAC
- While the 'materially better' test is appropriate for replacement of the MPOC and VTC (given the limitations of the two existing codes), this may not be the right test for subsequent changes
- The change request process can be used to govern the process for efficiency purposes as this still ensures independent assessment by the GIC

### Discussion Objective

Determine changes to confidentiality provisions required to resolve issues identified in FAP

### GTAC Reference

s. 20

### FAP Findings

- Should have ability for other parties to identify material as confidential (106)
- CA should be required for authorised disclosure (106)
- MPOC clearer on obligation on FG not to disclose confidential information (106)
- Shipper should have an ability to appoint an auditor (106)
- Link between confidentiality and termination
- Requirements to publish information

### Supporting Material

# Parties should be able to identify confidential information

The FAP considered that parties should be able to determine information that is confidential

## GTAC Current

20.3 Confidential Information means:

- (i) any other material a Party wishes to disclose to First Gas on the basis that it is confidential information and which First Gas agrees (prior to actual disclosure of the information to the other Party) is confidential information.

## GTAC Proposal

20.3 Confidential Information means:

- (i) any other material a Party wishes to disclose to the other Party on the basis that it is commercially sensitive Confidential Information and which the first-mentioned Party (acting reasonably) identifies in writing prior to actual disclosure of the information to the other Party is commercially sensitive Confidential Information (it being acknowledged that any such identification must relate to specific information provided to the other Party rather than general categories or types of information).

### First Gas Position:

- We believe the proposed changes create a balanced position that allows parties to identify confidential information
- The provision ensures that parties cannot categorise types of information, which allows for specificity in the treatment of information and encourages consultation between parties

# Requirement for a Confidentiality Agreement for authorised disclosure

The FAP considered that a requirement for a confidentiality agreement for authorised disclosure was reasonable

## GTAC Proposal

20.5 Where disclosure of Confidential Information is made by the relevant Party to any third party pursuant to section 20.10(c) or (i), the relevant Party is to ensure that appropriate steps are taken prior to any such disclosure to protect the confidentiality of any disclosed information consistent with the requirements of this section 20, including such third party entering into an appropriate form of confidentiality agreement or undertaking or otherwise being bound by appropriate professional obligations as to confidentiality.

### **First Gas Position:**

- We agree that authorised third party disclosure should be explicitly governed by appropriate confidentiality arrangements

The FAP considered MPOC was clearer on obligations to maintain specific information confidential

## MPOC (s. 24.2)

Confidential Information shall not be disclosed except:

- (a) For the TSO to give effect to the relevant TSA or ICA/deal with CC/FM Events;
- (b) For the WP to give effect to its TSA or ICA/deal with CC Events
- (c) to a gas transfer agent
- (d) to maintain safety and reliability of the NZ gas pipeline system
- (e) to WPs to confirm NQs and Approved NQs
- (f) to professional advisors/consultants;
- (g) to any intended transferee or assignees
- (h) to any bank or financial institution
- (i) to the Trading Hub for running the gas market
- (j) as required by law or the regulations of the stock exchange
- (k) by order of any court
- (l) Experts performing duties under the Code

## GTAC (s. 20.4)

Parties may use or disclose Confidential Information if:

- (a) information is in the public domain other than by breach of this Code
- (b) information was already known and was not then subject to any obligation of confidentiality;
- (c) professional advisor/consultants require it for work on the transmission system;
- (d) disclosure is necessary to maintain the safety and reliability of the Transmission System/give effect to a TSA, SA, ICA;
- (d) the Code or an ICA requires disclosure**
- (e) required by law (including rules of a recognised stock exchange) or order of a competent court;
- (f) the other Party has consented in writing;
- (g) the information is obtained from a third party who is believed to be under no obligation of confidentiality;
- (h) disclosure is to auditors
- (j) required pursuant dispute resolution under this Code.

### First Gas Position:

- We believe that the requirements are equivalent and no changes are required

AO1

**Slide 12**

---

**AO1**

check following feedback from David on EMSTradepoint interactions

Angela Ogier, 18/08/2018

The FAP considered that ability for a shipper to appoint an auditor to audit First Gas has merit

## GTAC Proposal

- Allow for Shippers and IPs to appoint a process auditor where they believe that First Gas has breached confidentiality obligations under the code
- First Gas will allow the auditor access to First Gas' records for this purpose, provided that:
  - The auditor is subject to confidentiality
  - The cost of the audit are borne by the party requesting the audit
- First Gas will be able to comment on the draft report of the auditor
- The auditor shall have due regard to First Gas' comments in their final report
- First Gas will publish the summary of the final report on OATIS
- First Gas will use reasonable endeavours to implement any recommendations made in the final report

### First Gas Position:

- We believe that the relationships between the parties under the MPOC and that under the GTAC are materially different as First Gas is not owned by the Maui Mining Companies
- We therefore believe the audit procedures under the MPOC are onerous and no longer required
- However, we understand that parties may wish to audit confidentiality procedures following breaches and believe that the proposed changes provide for this right

## Confidentiality and Termination

### Effects of Termination

- 19.6 Termination, suspension or expiry of a TSA shall not prejudice any rights or obligations of a Party that existed prior to termination, suspension or expiry.
- 19.7 The provisions of this Code shall continue in effect after expiry or termination of the relevant TSA to the extent they relate to an event or circumstance that occurred prior to the date of expiry or termination of that TSA.

***We believe that these provisions safeguard confidentiality following termination***

## Requirement to publish information

First Gas has certain rights under the Code to publish information

- 20.4 First Gas or the relevant Shipper (as applicable) may use or disclose Confidential Information to the extent that:
- (e) the Code, any Interconnection Agreement or any Existing Interconnection Agreement contemplates or requires the disclosure or provision of information (or information or analysis derived from such information) on OATIS or otherwise contemplates or requires the disclosure of such information;

***We believe that the proposed wording in section 20.4(e) safeguards this right to publish information and allows First Gas to meet its obligations***



### Discussion Objective

Resolve issues with SA governance and transparency raised in the FAP

### GTAC Reference

s. 7.1

### FAP Findings

- Checks and balances on entering into SAs (44)
- No requirement for FG to publish its analysis (163)
- Impacts of legacy SAs on MPOC parties

### Supporting Material

Data on current number of Agreements, termination, counterparties, confidentiality  
Summary of key terms and purpose

The FAP considered that there were limited checks and balances on First Gas entering into SAs

## GTAC (s. 7.1)

- 7.1 Any Shipper may at any time request First Gas to enter into a Supplementary Agreement. First Gas will promptly evaluate that request against any of the following criteria:
- (a) the amount of transmission capacity requested, including whether providing it would affect Available Operational Capacity to the extent of impeding or forestalling opportunities more beneficial to First Gas and other users of the Transmission System;
  - (b) whether the Shipper (or End-user) can demonstrate that it has a practical opportunity to bypass the Transmission System or use an alternative fuel that is cheaper than Gas;
  - (c) whether the Shipper (or End-user) can demonstrate that paying First Gas' standard transmission fees would be uneconomic; and
  - (d) whether the Shipper (or End-user) is the sole user of the relevant Delivery Point or other transmission assets and those assets would cease to be useful were the End-user to cease using Gas.

## Considerations

- SA are beneficial for stakeholders as they increase use of the transmission system and decrease fees for users
- First Gas is best placed to decide on SAs as we have knowledge of the system and have the greatest interest in the equity of revenue recovery
- There are times where an SA allows for system developments and new loads that would otherwise not have occurred.
- First Gas is not required to offer an SA
- SAs will be published on OATIS

## Proposal

- Publishing the information provided by the shippers and analysis underpinning the decision to offer an SA (or not) will add to transparency

### First Gas Position:

- We believe that the proposed change will give parties comfort over the decision making process relating to SAs

- SAs are for certain loads at certain delivery points
- SAs are often related to investment in the network and therefore price certainty should be maintained
- If the end-user changes shipper, the SA follows the end user

| Reason for Supplementary Agreement              | Number |
|---|--------|
| Physical bypass opportunity                     | 6      |
| End-user's alternative fuel opportunity         | 4      |
| Inflexibility of Reserved Capacity              | 8      |
| To access marginal capacity above firm limit    | 1      |
| To provide the end-user with capacity certainty | 2      |
| To improve First Gas' investment security       | 2      |
| To encourage a new use of gas                   | 1      |
| Total   | 24     |

## First Gas Position:

- We remain committed to honouring existing SAs as these underpin commercial arrangements of shippers. To change existing commercial arrangements could have a significant impact on the ability of shippers to service users. This would not benefit any party on the system.
- Ten agreements expire after the likely start date of the GTAC
- Currently SAs do not impact MPOC users. We are unable to conceive of impacts under the GTAC

### Discussion Objective

Address issues with Change Request process timeframes and review right of veto

### GTAC Reference

s. 7.1

### FAP Findings

- 5 business day deadline for additional information is unfair (26, 105)
- Draft change request timing does not give enough time for change requestor to review submissions (26, 105)

### Supporting Material

- Review of Change Request Timeframes
- First Gas right of veto

The FAP found that the timing of change requests did not give sufficient time for parties to review submissions

## GTAC (s. 17)

17.6 Change Requestor must provide additional information within 5 Business Days of request for further information

17.7 Submissions on Draft request are due 20 Business Days following submission of Draft Change Request

17.8 First Gas will publish submissions 2 Business Days after receipt

17.9 Change Requestor will finalise Change Request 25 Business Days after Draft Change Request submitted

## GTAC Proposal

Deadline for provision of information requested under 17.5 'as soon as reasonably practicable' but no later than 10 BD

Set timings from 17.6 onwards relative to further information agreed (if requested) in s. 17.6 rather than the submission of the Draft Change Request as follows:

- 17.7 - +5 BD from additional information being published
- 17.9 +5 Business Days from First Gas publishing submissions
- If no further information requested, timing driven from publication of Draft Change Request

Allow the Change Requestor to reasonably decline requests for further information where the scope of the request would unduly delay the process.

### First Gas Position:

- We believe the changes are practical solutions to potential issues with the timing to ensure all parties are informed while maintaining an expedient process

## GTAC (s.17)

First Gas may only withhold its consent if First Gas has given prior notice of not supporting a draft change, and it considers the change request would cause a party to breach its RPO obligation, or if First Gas is required to incur expenditure it could not recover, or be likely to adversely affect current or future provision of transmission services, pricing structure or revenue recovery

## MPOC (s.29)

First Gas may withhold its consent to a change request provided that it does not do so unreasonably. Specific grounds on which First Gas may withhold consent are: if First Gas required to incur capex, or opex that cannot be recovered, or materially adversely affect pipeline business or tariffs, or open access compatibility

## VTC (s.25)

First Gas may withhold its consent to a change request provided that it does not do so unreasonably. Specific grounds on which First Gas may withhold its consent are: if First Gas is required to incur capex, or opex that it cannot reasonably expect to recover, or be likely to adversely affect structure of transmission services, business structure, transmission revenue, or open access compatibility. First Gas may also withhold consent if it considers any shipper has not acted in good faith during the change process.

### **GIC Assessment**

*'First Gas' right to block a code change is tighter than in the VTC and MPOC'*

## GTAC Provision

17.14 *First Gas may decline to approve a Recommended Change Request if it has previously given notice under section 17.7 that it does not support the proposed change and:*

- (a) it considers that the Change Request would cause either the Change Requestor or First Gas to breach its obligation to act as a Reasonable and Prudent Operator; or*
- (b) the proposed Code change would:*
  - (i) require First Gas to incur expenditure it could not recover; or*
  - (ii) be likely to adversely affect First Gas' current or future provision of transmission services, pricing structure or revenue recovery,*

*provided that First Gas must publish its reasons on OATIS within 5 Business Days of receiving GIC's decision pursuant to section 17.11.*

## First Gas veto in practice

- Need to notify users within 20 Business Days of Draft Code Change Request that we object
- Need to include reasons for our objection (s. 17.7)
- If the GIC approved the Change Request we would have 5 Business Days to object and publish reasons for the objection
- The objection would be informed by stakeholder consultation and the GIC decision

### First Gas Position

- Stakeholders are informed of the potential for veto and why early in the process
- First Gas' eventual veto is informed by the GIC and stakeholder views

- First Gas to provide drafting mark-up on discussions by 28 August
- Submissions will be welcome through the GIC website
- All drafting issued following on from workshops to date and submissions received will be reviewed in the drafting workshops