

MEMORANDUM

TO: GTAC Stakeholders
FROM: First Gas
DATE: 27 August 2018
RE: Block 3 Outputs – 1 Liabilities

This memo describes details of the proposed liabilities provisions in the GTAC. These proposed terms follow on from discussions on this topic at the workshop on 8 August 2018 and in more detail at the workshop on Tuesday 22 August 2018.

The proposed liabilities drafting changes described in this memo are reflected in the Second Interim version of the GTAC which accompanies this memo. The changes made are referenced below. Stakeholders will have an opportunity to comment on these provisions during the Drafting Feedback workshops on September 4 to 6. Stakeholders will be able to formally submit on these provisions once the GTAC is issued for consultation in mid-September.

Final Assessment Paper (FAP) findings

The findings of the FAP relating to liabilities were summarised in the GTAC work programme as follows:

- Differences between liability arrangements (183)
- Including “having due consideration to other users of the Transmission System” (183)
- Liability for non-spec gas excluded and inconsistent with 12.3 (183)
- Liability caps imported without adjustment for inflation. (183)
- Not clear if charges included within caps (183)
- Deeming non RPO for injection of non-spec gas and non-compliance with OFOs (184)
- Concerns expressed about subrogated claims provisions (16.12) and exclusion of liability for third party losses in context of non-spec gas (16.2) (184)
- Inability to take action on behalf of another party and First Gas in relation to the same event
- No equivalent mechanism to the MPOC Incentives Pool and BPP (184)
- Loss mitigation concept expressed in an inconsistent way

Positions reached

The following positions were reached during the workshop. The way these points have been addressed is given in the table below.

Item	Addressed by
There was broad agreement on linkages and interactions between ICAs and TSAs on liability	The liability and gas specification provisions are to be included in full as common and essential terms in Schedule 5 and Schedule 6.
Having regard to other users in the definition of Reasonable and Prudent Operator was felt to be important by stakeholders. First Gas to consider if 'due' or appropriate regard should be used in the wording of the definition.	<p>The consensus was that it was right that users should have regard to other users when using the transmission system.</p> <p>It was not considered significant whether the reference was to "due regard" or "appropriate regard".</p> <p>First Gas to retain the currently proposed definition consistent with the discussion consensus.</p>
Escalation of liability caps was accepted.	The liability caps in 16.4 have been adjusted for inflation.
Reinstatement in section 16.2 of the exception for payments by First Gas under the non-specification gas indemnity in section 12 was accepted	The exception in section 16.2 for payments by First Gas under the non-specification gas indemnity in section 12 has been reinstated. A corresponding provision to be included in the RP ICA.
Section 16.8 'or' should be changed to 'and'.	The reference to "or" in section 16.8 of the ICAs has been changed to "and" such that it is consistent with the GTAC.
First Gas to harmonise language around the 'fullest extent reasonably practicable' in section 16.1 and other parts of the GTAC	The language relating to the mitigation obligation in the GTAC and ICAs have been harmonised using the language ('to the fullest extent reasonably practicable') from the VTC. The typo in section 11.10 where this language is used has been corrected.

Points raised during discussion

Item	Addressed by
<p>First Gas to consider the indemnity in Section 12.11 being offered to the Shipper rather than the Delivery Point IP.</p>	<p>The discussion consensus was that it is appropriate for the indemnity for non-specification gas to be provided to the shipper. This is consistent with the approach currently adopted in the VTC. No further drafting changes are proposed.</p>
<p>Users should reflect on whether the section 16 limitations are appropriate.</p>	<p>Stakeholders to feed back on this point at the drafting workshop on 4 to 6 September.</p>
<p>First Gas to consider whether there should be compensation for parties where they are unable to take/inject gas due to overtaking/overinjection by other users.</p>	<p>First Gas has considered the appropriateness of compensating shippers for loss if they do not receive gas or are unable to inject. We note that stakeholders were satisfied that First Gas has adequate tools in place to manage the injection and receipt of gas for users of the transmission system.</p> <p>In addition, there is express provision for parties not able to receive or inject gas in a curtailment situation to be relieved of charges. (see GTAC section 9.13, and ICAs section 9.11). First Gas also has its RPO obligations to operate the transmission system in an appropriate manner and to use the tools referred to above and discussed in the workshops to ensure that occurs.</p> <p>The difficulties in First Gas providing a system of compensation are significant. The largest difficulty being connecting the actions of the causer with the loss suffered. The current schemes under the MPOC demonstrate this issue. Parties with a large welded point tolerance are unlikely to pay peaking charges and therefore unlikely to incur incentives pool debits. However, these parties are more likely to cause issues for other users. The scheme also limits payment to times when line pack limits are breached which means that events occurring during normal operating conditions do not incur peaking pool debits. Finally, First Gas needs to have taken a balancing gas action, which again may not occur as the primary balancing of the pipeline may be unaffected. This means that while there is an appearance of an incentive pool, there is no protection in practice due to the very reasonable limitations of the scheme.</p> <p>We are therefore comfortable that the proposal in GTAC, and in particular that fact that users get relief from charges in a curtailment situation and that First Gas has enhanced tools to use to facilitate appropriate gas injection and deliveries (as described in the memo which accompanied the workshop materials), means there are appropriate incentives and tools such that the overall position of users is no worse off (and may actually be enhanced).</p>

Item	Addressed by
<p>First Gas to consider whether any parts of the Gas Quality regime are incompatible with the implementation of the AEMO standards.</p>	<p>As per our previous communications on this issue we support the work to be undertaken next year to see if these standards can either be adapted for or adopted in the New Zealand context. The standards largely relate to notification of non-specification events, the timeliness of notification, actions able to be taken by the pipeline operator. They standardise the response to non-specification events and will bring more certainty for all users of the transmission system. Based on this preliminary analysis we believe the AEMO Guidelines to be complementary to the provisions in section 6 of the Receipt Point ICA and section 12 of the GTAC on this subject.</p> <p>During the course of the work next year on the AEMO Guidelines we will examine this question in more detail and propose changes if required.</p>
<p>Stakeholder to consider whether the application of the Non-RPO standard for OFO/Curtailment is appropriate.</p>	<p>Stakeholders are to feed back on this point at the drafting workshop on 4 to 6 September.</p>
<p>The point was raised whether there should be a multi-party disputes resolution mechanism.</p>	<p>The consensus was that this was not appropriate. It is also not the position under either the MPOC or the VTC.</p>