

GTAC Workshop minutes 22 August 2018

At the offices of Bell Gully Auckland

Level 21, Vero Centre, 48 Shortland Street, Auckland

Wednesday 22 August 2018 at 10:00 am

Note: these minutes provide a high level record of the position reached and points raised at the workshop to inform First Gas's design of the gas transmission access code (GTAC).

1. Process matters

1.1 Position reached

- 1.1.1 In relation to the appointment of Mike Underhill to the role of Independent Facilitator (IF) for the remaining GTAC workshops that David Smol is unable to attend, stakeholders are able to provide views to Gas Industry Co by 24 August 2018 on Mike's appointment (noting Mike's position as a director of Electra Limited and Electra Generation Limited – an interconnected party).
- 1.1.2 Gas Industry Co is to move First Gas's "GTAC – Wash-up discussion paper" to the consultation section of its website.

2. Liabilities

2.1 FAP findings

- 2.1.1 GTAC s7 requires the liability arrangements in GTAC s16 to be reflected in ICAs. That approach does not take into account differences in the obligations that apply to shippers and interconnected parties (IPs). Some of the obligations that apply to IPs will require exclusions and limits on liability that are different to s16 of the GTAC.
- 2.1.2 Reference to "having due consideration to other users of the Transmission System" in the definition of a reasonable and prudent operator (RPO) may increase the scope for dispute given the vagueness of that concept.
- 2.1.3 Unless it can be shown that First Gas caused gas to become Non-Specification Gas, 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).
- 2.1.4 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.
- 2.1.5 The GTAC 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.
- 2.1.6 Concerns regarding the effectiveness of the subrogation provisions. In any event, not an improvement on current codes.
- 2.1.7 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 IP to recover loss under the GTAC is unclear.

- 2.1.8 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.
- 2.1.9 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. Exclusions from the need to establish a breach of the RPO standard should be reconsidered.

2.2 Position reached

- 2.2.1 Liability arrangements that apply to IPs are to be specified in Schedules 5 and 6 of the GTAC (and therefore would be incorporated in full into every ICA). Those arrangements should mirror the liability arrangements in the GTAC with required differences to recognise the specific aspects that apply to IPs.
- 2.2.2 In relation to the FAP finding that the reference to “having due consideration to other users of the Transmission System” in the definition of a Reasonable and Prudent Operator (RPO) is a vague concept, the revised drafting “having due regard to the IPs and shippers who also use the Transmission System to inject, convey or receive Gas and to First Gas” has been added to improve the clarity of the provision. The definition of RPO should require parties to have regard to the interest of other system users. That more appropriately reflects the shared nature of the gas transmission system. The words “due regard” were not considered to be unacceptably vague.
- 2.2.3 The proposed inflation-adjusted liability caps in section 16.4 are an improvement on the caps in the 8 December 2017 GTAC. The existing liability caps in the GTAC (increased to reflect the findings of the FAP) are adequate.
- 2.2.4 Liability for third party losses in section 16.2 of the GTAC is to be reinstated in relation to the indemnity for Non-Specification Gas.
- 2.2.5 First Gas is to change the reference in section 16.8 from “or” to “and” (in relation to the maximum liability under a TSAs and Coincident Agreements).
- 2.2.6 In relation to the requirement that liable parties mitigate loss “to the fullest extent reasonably practicable”, and various references to “reasonable endeavours”, that terminology is acceptable provided that it is standardised across the GTAC.
- 2.2.7 Whether the GTAC should be a multilateral agreement is outside the scope of the matters that the parties are seeking to address.

2.3 Points raised

- 2.3.1 In relation to First Gas’s proposal that it revert to the back-to-back indemnity concept in relation to the injection of Non-Specification Gas, First Gas is to consider whether the indemnity should be offered to shippers rather than delivery point IPs.
- 2.3.2 Shippers and IPs are to reflect on the limits on liability in section 16 of the GTAC.

- 2.3.3 First Gas is to consider the situation where one shipper overtakes gas to the detriment of other shippers and whether there are appropriate mechanisms for compensating the affected shippers in the absence of a mechanism like the Incentives Pool.
- 2.3.4 First Gas to consider whether requirements in relation to gas quality are incompatible with possible future implementation of Australian Electricity Market Operator (AEMO) standards.
- 2.3.5 In relation to First Gas's proposal that the need to establish a breach of the RPO standard is avoided in relation to failure of comply with an Operational Flow Order (OFO) and overflow provisions, shippers and IPs are to consider that proposal and let First Gas know whether the approach is acceptable.

The meeting closed at 2.45pm.