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Ministry of Business, Innovation and Employment
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Options for amending the Gas Act 1992

Genesis Energy Limited (**Genesis**) welcomes the opportunity to respond to the Ministry of Business, Innovation and Employment's (**MBIE**) May 2019 discussion document – *Options for amending the Gas Act 1992*.

At a glance

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Emerging challenges for the Gas Act 1992

We commend the MBIE for seeking early engagement on the potential challenges and opportunities which emerging technologies and alternative fuels may provide for the regulatory regime under the Gas Act 1992 (**Gas Act**), as well as the barriers that the Gas Act may itself pose to these.

The extent and timing of the impact of emerging technologies and alternative fuels on New Zealand's energy system are uncertain. Currently, the definition of "Gas" in the Gas Act is broad enough to cover alternative gas fuels currently being trialled in New Zealand such as hydrogen, including its blending with natural gas. Our regulatory framework for gas will, however, need to keep pace with change and flex and adapt as required. For instance, as fuel storage technology advances, the framework provided by the Gas Act 1992 (which regulates gas) and the Hazardous

Substances and New Organisms Act 1996 (which regulates containers for gas storage) will need to remain cohesive.

Information Disclosure

There is information asymmetry in the gas market. Typically, gas producers and large customers know about gas outages from the gas fields they have ownership in or purchase from. However, the information is usually disclosed to them under conditions of confidentiality, and there is no specific regulatory requirement (which is often an exception to confidentiality restrictions) to disclose outages to the gas market.

The absence of a regulatory requirement is out of step with the information disclosure requirements in other jurisdictions, such as the Australian East and West Coast disclosure regimes. As discussed in our submission on the Gas Industry Company's Options Paper for Information Disclosure,¹ all energy industry participants can benefit from ready access to relevant information about the gas market and the market will operate more effectively if information barriers are addressed. Disclosure of outages ensures that all parties have relevant information to assess the market price of gas and enables users who may be affected by the outage, to plan alternative supply arrangements. The electricity industry, where generators are required to disclose planned and unplanned outages, provides a precedent and template for this. Genesis therefore supports amendments to the Gas Act that would allow the GIC to recommend specific regulations requiring gas field operators and major users to disclose outage information.

Changes to the Gas Act penalty regime

We have reservations about certain of the proposed changes to the penalty regime under the Gas Act. This is because no data has been presented which evidences the misbehaviour which these seek to address. We also observe that Option 2 (introducing civil penalties for non-industry participants) may be preferable to Option 3 (making large users industry participants under the Gas Act). Option 2 is simpler and potentially avoids unintended consequences. For example, Option 3 has potential implications for the shareholding and governance of the Gas Industry Company.

Summary

The extent and timing of the impact of emerging technologies and alternative fuels on New Zealand's energy system is uncertain and our regulatory framework will need to flex and adapt as required. A certain and stable regulatory framework helps the market deliver innovative products and solutions for consumers. Changes should, therefore, be made carefully. In essence, where there is market failure or there are otherwise clear benefits in doing so. Genesis believes there are clear benefits to greater transparency in the gas market. Accordingly, we support the proposed changes to the Gas Act to facilitate increased information disclosure.

¹ <https://gasindustry.co.nz/assets/Consultations/Uploads/Genesis-Energy-submission-on-Options-Paper-for-Information-Disclosure.pdf>

Our responses to the consultation questions are set out in the **Appendix** to this letter.

If you wish to discuss any of the matters in our submission, please contact me by email: warwick.williams@genesisenergy.co.nz or by phone:

Privacy of
natural
persons

Yours sincerely



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Appendix: Responses to Discussion Document Questions

QUESTION	COMMENT
Emerging challenges for the Gas Act 1992	
Question one: What emerging technologies or alternative fuel sources are likely to be covered by the Act's definition of "Gas"?	It is uncertain what emerging technologies or alternative fuels will form part of New Zealand's future energy system. Genesis supports the principle that the definition of "Gas" should be broad enough to cover new gasses or blends of gasses. Currently, the definition of "Gas" is broad enough to cover alternative fuels being trialled such as hydrogen, and blends of different gasses. As technology advances and new methods of fuel storage are developed, it will be important to ensure that the framework provided by the Gas Act 1992 (which regulates gas) and the Hazardous Substances and New Organisms Act 1996 (which regulates containers for gas storage), and other related legislation, keeps pace and remains cohesive.
Question five: Does the Act cause any issues with complying with any requirements under other legislation?	As noted above, a key challenge will be ensuring that the Gas Act and related legislation keep pace with change and remain cohesive.
Question six: Are you or your organisation involved in the development or deployment of emerging technologies or alternative fuels?	Genesis continues to investigate the potential of alternative fuels, including hydrogen.
Question seven: Are you interested in being contacted as MBIE develops a longer-term programme of regulatory work around the development of emerging technologies and alternative fuels relating to the Act?	Yes.
Information disclosure	
Question eight: What concerns do you have about the flow and availability of	There is information asymmetry in the gas market. Typically, gas producers and large customers know about gas outages from the gas fields they have ownership in or

<p>information available to you or your organisation regarding situations that may affect the price and/or availability of gas supply?</p>	<p>purchase from. However, the information is usually disclosed to them under conditions of confidentiality, and there is no specific regulatory requirement (which is often an exception to confidentiality restrictions) to disclose outages to the gas market.</p> <p>The absence of a regulatory requirement for gas producers to disclose planned and unplanned outages is out of step with the information disclosure requirements in other jurisdictions. Both the Australian East and West Coast disclosure regimes focus primarily on making production, pipeline and storage information readily available and disclosing previous day data for large users is also required. Similarly, in the electricity industry, generators must disclose planned and unplanned generation outages.</p> <p>As discussed in our submission on the Gas Industry Company's Options Paper for Information Disclosure, all energy industry participants can benefit from ready access to relevant information about the gas market and the market will operate more effectively if information barriers are addressed. Disclosure of outages ensures that all parties have relevant information to assess the market price of gas and enables users who may be affected by the outage, to plan alternative supply arrangements.</p> <p>Further, this would promote greater trust and confidence following a period of electricity and gas market stress which has highlighted: (a) that greater transparency of information about gas supply and gas availability is critical to the efficient operation of both the gas and electricity markets; and (b) the need to better educate market participants about the information that is already publicly available.</p> <p>Genesis therefore supports amendments to the Gas Act that would allow the GIC to recommend specific regulations requiring gas field operators and major users to disclose outage information.</p>
<p>Question nine: Do you support the inclusion of an additional regulation/rule making power in the Act to require broader disclosure of</p>	<p>Yes.</p>

information from the gas industry?	
Penalties under the Gas Act 1992	
Question ten: What concerns do you have about the current penalty regime for gas governance arrangements provided for by the Act?	The consultation paper notes that penalties under the Gas Act are lower in comparison to penalties for breaching the Electricity Industry Participation Code 2010. However, paragraph 74 of the paper points out that industry participants have generally demonstrated good compliance since 2008 and so we query whether there is a material issue that requires change. Similarly, while the consultation paper identifies that a fixed penalty limit may create a perverse incentive in certain situations, no evidence is provided showing that industry participants have acted in this way. Regulatory change in this area should be evidence based and we would like to see data supporting the proposed change.
Question eleven: Are there other factors, such as contractual arrangements between parties, that mitigate any concerns about the penalties regime?	We note that there are strong incentives under the MPOC, VTC and GTAC to ensure that gas shippers stay in balance.
Question thirteen: Do you consider it still appropriate for the Gas Rulings Panel to only have one member if the penalties are increased to higher levels?	A multi member panel would be consistent with other regulatory bodies such as the Electricity Authority's rulings panel or the NZ Markets Disciplinary Tribunal. We can also see the merits of a panel which has a mix of industry, legal and market expertise. This ought to be another factor driving change rather than solely the penalty amount.
Question fourteen: Do you support the addition of daily or volumetric penalties to the Act to enhance the flexibility of penalties available? What would be an appropriate minimum or maximum rate, if any?	We would support the addition of volumetric penalties, particularly in the context of breaches of the Critical Contingency Management regulations.
Question fifteen: Are there circumstances where the Act should impose a criminal	Outside of examples, such as the theft of gas, it is difficult to conceive of any in this context and we note the comments at paragraph 106 of the consultation paper that

<p>offence on either industry participants or on non-industry participants? What are these?</p>	<p>the cost and burden of proof for a criminal investigation may act as a barrier to regulators bringing action.</p>
<p>Question sixteen: Do you support the addition of a civil pecuniary fine as an additional penalty to improve the effectiveness of the penalties regime? If not, why not?</p>	<p>There is merit in civil penalties being available to sanction (and incentivise) non-industry participants. This would allow the sanction to be tailored to the nature and severity of the offending and ensure consistency in treatment of industry participants and non-industry participants. For example, it would ensure consistency in treatment where a large user is subject to an obligation to disclose outages (as we believe they should) and breaches that obligation. Similarly, in certain circumstances, a civil pecuniary penalty rather than a criminal penalty may be appropriate where a small / medium sized user fails to comply with a gas retailer's instructions in a critical contingency scenario.</p>
<p>Question seventeen: What are your views on expanding the definition of industry-participant to include all large gas users (e.g. any user averaging over a certain level of consumption per day)? If so, what would be an appropriate threshold?</p>	<p>There are strong incentives for large users to comply within the Transmission Code. It seems sensible that these should be supported by a civil pecuniary penalty regime where, notwithstanding the incentive, there is a breach. Option 2 would achieve the policy objective and is a simpler approach. Option 3 potentially introduces complexity and risks unintended consequences (e.g. implications for Gas Industry Company shareholding and governance).</p>