



11 June 2019

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Dear Carolyn

Options for Amending the Gas Act - submission

Thank you for the opportunity to make a submission on the discussion document *Options for amending the Gas Act 1992* (“**Discussion Document**”) dated May 2019. This document constitutes the joint submissions of Todd Energy Limited as well as its related upstream companies (“**Todd Energy**”) and Nova Energy Limited (“**Nova**”), together “**Todd**”, for this Discussion Document.

Todd Energy is a natural gas producer and is the 100% owner and operator of Kapuni, McKee and Mangahewa and holds 26% interest in Pohokura. Nova is a downstream energy company: it is a wholesaler and retailer of natural gas as well as an electricity generator and retailer. Both companies are wholly New Zealand-owned.

Emerging Challenges for the Gas Act 1992

Todd supports the Government’s desire to ensure that the Gas Act remains fit for purpose and enable the development of emerging fuels and technology. Todd is always assessing the feasibility of new technology. While we do not see the need for changes to the legislation in the short term, we support building flexibility into the legislation to empower the Minister to make legislation as the need arises. For example, this could be done by an amendment to section 43F of the Gas Act i.e. to include regulations to accommodate new technology.

Todd would be interested in being contacted as MBIE develops a longer-term programme of regulatory work in this area.

Information Disclosure

Todd has had no problems in the past with the flow and availability of information, including information about other companies’ gas fields. Todd (including Nova) has utilised the existing information sources, including real time data and information provided by gas transmission service providers that is also in the public domain, for gas supply information. We do, however, acknowledge that some organisations have had difficulties and have been confused by gas supply

availability generally. For that reason, we support the introduction of a suitable system to provide information on planned and unplanned gas outages.

Todd is in the process of engaging with other upstream gas producers to set up a new system to provide information on planned and unplanned gas outages. We are confident that this will be effective as a non-regulated system. Todd expects that any real or perceived information disclosure problems will be satisfactorily resolved by this non-regulated solution, making regulation under the Act unnecessary. Todd does not object to a new regulation/rule making power being included in the Act specifically on information disclosure. We are, however, concerned that the wording of the proposed power is too broad. The Discussion Document proposes a new power to make "other gas governance regulations", going further than simply an information disclosure power. We suggest a new provision to the following effect be included "providing for the disclosure of outage information (planned and unplanned) by [gas producers, gas field operators, gas shippers and gas transmitters]".

Penalties under the Gas Act 1992

Todd does not have any concerns with the current penalty regime for gas governance arrangements.

The Discussion Document highlights the difference between the pecuniary penalty of the Gas Act (not more than \$20,000), and the Electricity Industry Participation Act 2010 (not more than \$200,000). There is a sound reason for this difference as the market model for gas is different from the market model for electricity.

The Electricity Industry Participation Act 2010 governs the operations of the wholesale electricity spot market which is a 'gross pool market' i.e. a centralised market where all electricity is sold and purchased through the pool. All generation units are offered and scheduled through the pool and all electricity retailers must purchase their demand from the pool (not directly from generators, except in limited circumstances). Under this centralised market model, the production schedule for electricity generation is determined by the market operator (who also determines the price to be paid) and as such, electricity generators are not responsible for physically delivering electricity to end-users. Correspondingly, the liability framework under the Electricity Industry Participation Act is to ensure that market participants comply with the market rules (Electricity Industry Participation Code) to ensure the integrity of the market. It differs from the gas sector in that electricity generators do not have any liability (and therefore do not have to pay compensation) to end users for a failure to deliver electricity as there is no contractual nexus between the parties.

In contrast, the gas sector operates largely under a decentralised bilateral contracts market. The Gas Act does not regulate the operation of a centralised wholesale gas market. Under the bilateral contracts market, all market participants are free to engage and contract directly with other market participants for the supply of gas. Scheduling or delivery decisions depend on the parties' requirements, not the market operator. As such, there is a contractual nexus between producers, shippers and end-users for the delivery of gas with liability provisions in the supply contracts for failure to supply.

Todd considers that the ability of the Rulings Panel under the Gas Act to make orders for compensation to parties affected by a breach of the (Critical Contingency Management) Regulations 2008 ("**CCM Regulations**") more than mitigates the smaller penalty amount. Such compensation could in fact easily exceed \$200,000 should priority consumers lose gas supply prematurely during a critical contingency outage. The \$20,000 penalty reflects more of a de-minimis sum in the event there are no orders for compensation. The prospect of being required to pay compensation is therefore a more than adequate incentive for parties to comply with

instructions from the Critical Contingency Operator. We note that to date, no compensation claim has been brought to the Rulings Panel for breach of the CCM Regulations.

Todd considers that no change in the current penalty regime is necessary, although it could be updated for inflation that has occurred since it was set.

Todd does not see a particular need to increase the size of the Rulings Panel, except where compensation is claimed for more than say, \$50,000 in which case, we support the proposal to increase the size of the Rulings Panel using a “stepped” approach with a maximum of 3 members. For example, if the amount of compensation claimed is up to \$100,000, the size of the Rulings Panel could be increased to 2 members; if the amount claimed is \$100,000 or more, the size of the Rulings Panel could be increased to 3.

For the same reasons as above, Todd considers that there is no need for either daily or volumetric penalties to apply. Compensation payments, by definition, are in direct relationship to the impact of any breach.

If you have any questions regarding this submission, please contact [redacted] at [redacted] or on [redacted] Privacy of natural persons

Yours sincerely

[redacted signature]

Babu Bahirathan
Vice President Downstream Energy
(for and on behalf of Todd Energy Limited and Nova Energy Limited)