

27 February 2020

Karen Collins
Regulatory Manager
FirstGas Limited
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New Plymouth
By Email: Karen.collins@FirstGas.co.nz

Dear Karen

Exemption request response: 2019 information disclosures for FirstGas Limited

1. We refer to your letter of 10 January 2020 in which you requested the Commerce Commission (**Commission**) grant FirstGas Limited (**FirstGas**) the following exemptions from complying with Gas Transmission Information Disclosure Determination 2012 (**ID Determination**):
 - 1.1 clause 2.3.1(1)(b)¹ – specifically, an exemption from reporting the historic return on investment for the 2017 disclosure year in the disclosures for the 2019 disclosure year;²
 - 1.2 clause 2.3.1(1)(d)³ – specifically, an exemption from reporting the roll forward of the regulatory asset base (**RAB**) for:
 - 1.2.1 a single year end for the years 2015 to 2016 in the disclosures for the 2019 disclosure year; and
 - 1.2.2 for the 2016 year in the disclosures for the 2020 disclosure year; and
 - 1.3 clause 2.5.1(1)(d)⁴ – exemptions for both the 2019 and 2020 disclosure years.

¹ Clause 2.3.1(1)(b) of the ID Determination requires a Gas Transmission Business to report on its return on investment as set out in Schedule 2 of the ID Determination.

² Clause 2.3.1 of the ID Determination requires the disclosure of several reports within six months of the end of each disclosure year. The 2019 disclosure year ended on 30 September 2019, so the reports due under clause 2.3.1 for the 2019 disclosure year are due on 31 March 2020.

³ Clause 2.3.1(1)(d) of the ID Determination requires a Gas Transmission Business to report on the value of its RAB (rolled forward) as set out in Schedule 4 of the ID Determination.

⁴ Clause 2.5.1(1)(d) of the ID Determination requires a Gas Transmission Business to complete a report on demand as set out in Schedule 9d of the ID Determination.

Background to exemption requests

ROI report and RAB report: difficulty providing historic data

2. Clauses 2.3.1(1)(b) and 2.3.1(1)(d) of the ID Determination respectively require that Gas Transmission Businesses (**GTBs**) complete a report on their return on investment as set out in Schedule 2 of the ID Determination (**ROI report**), and a report on the value of the RAB (rolled forward) as set out in Schedule 4 of the ID Determination (**RAB report**).
3. In prior years, FirstGas reported the results of its Maui and Non-Maui GTBs in two separate disclosures, with different disclosure year ends. In 2017, the Commission amended the disclosure requirements to align both businesses to the same disclosure year (the 12-month period ending on 30 September).
4. As a result of these amendments, the relevant 2017 disclosures for the Maui and Non-Maui GTBs covered a nine and 15-month period, respectively.
5. FirstGas has noted that the differing time periods covered by the disclosures means that historic values in the 2018 disclosure would 'create minor issues when making some year to year comparisons.
6. In January 2019, the Commission granted exemptions to these requirements of the ID Determination, recognising the difficulty in providing this information and allowing FirstGas to disclose the RAB report and ROI report in alternative, more appropriate formats.

Demand report: operating under separate transmission access codes

7. Clause 2.5.1(1)(d) of the ID Determination requires that GTBs complete a report on Demand as set out in Schedule 9d of the ID Determination (**Demand report**).
8. The Maui and Non-Maui networks still operate under separate transmission access codes: the Maui Pipeline Operating Code (**MPOC**) and the Vector Transmission Code (**VTC**), respectively.
9. While FirstGas continues to operate the two networks under separate access codes, it would prefer to provide the Demand report separately for each transmission network stating that:
 - 9.1 FirstGas cannot provide meaningful results in a single disclosure Schedule for demand; and
 - 9.2 it is difficult to merge the two access codes as they have transfers between the two separate networks.
10. FirstGas originally stated that its amalgamation of MPOC and VTC into a single gas transmission access code (**GTAC**) would be complete by 1 October 2018. This would have allowed FirstGas to move to a single disclosure for both networks. However,

FirstGas's implementation of the GTAC has been delayed a number of times due to (amongst other reasons):

- 10.1 the extensive consultation period with customers and regulators;
 - 10.2 the significant development of information systems required to support the GTAC, both for FirstGas and its customers; and
 - 10.3 issues with the development and implementation of information technology infrastructure required to support the GTAC.
11. In January 2019, the Commission agreed with FirstGas that providing separate Demand reports for each of its two transmission networks would be acceptable. FirstGas noted that this alternative approach would distort some of the ratios disclosed under Schedule 1 – Analytical Ratios (**Schedule 1 ratios**) of the ID Determination. We recommended that FirstGas nonetheless include the Sch 1 ratios but also include an explanation in the voluntary notes as to the limitations of those ratios.
 12. Subsequent to the above and the current exemption request, we advised FirstGas that we are disappointed that it has not met the expectations of its customers regarding the implementation of GTAC. In addition, we expressed concern that the Schedule 1 ratios would not fully meet the purpose of information disclosure regulation under section 53A of the Commerce Act 1986 (**Act**).
 13. FirstGas agreed that some of the Schedule 1 ratios would be distorted and that it could produce an amalgamated Demand report which would allow it to use accurate figures when calculating these ratios. In addition, FirstGas agreed that providing a separate Demand report for each of the networks and an amalgamated Demand report would allow its customers to identify changes across both networks while moving forward towards a single disclosure that would reflect the approach it would take once it implements GTAC.

Exemptions requested

14. FirstGas has requested exemptions from complying with clauses 2.3.1(1)(b), 2.3.1(1)(d) and 2.5.1(1)(d) of the ID Determination.
15. In relation to the ROI report, FirstGas proposes that it includes a table in the voluntary explanatory notes (Schedule 15 of the ID Determination)⁵ of its disclosure for the disclosure year ended 30 September 2019 outlining the results from the previous disclosure years for the Maui and Non-Maui GTBs.
16. In relation to the RAB report, FirstGas proposes to add the closing balances of the Maui and Non-Maui GTBs together and explain its approach in the voluntary

⁵ Under clause 2.7.3 of the ID Determination, every GTB may publicly disclose any further comments on the information disclosed in accordance with clause 2.3.1 in Schedule 15.

explanatory notes of its disclosure for the disclosure years ending 30 September 2019 and 30 September 2020.

17. In relation to the Demand report, there is nothing in clause 2.5.1(1)(d) or Schedule 9d of the Determination that prevents FirstGas from providing a separate Demand report for each of its two transmission networks. This is essentially an alternative, permitted approach to complying with these requirements, which we approved in our response to FirstGas's request on the same matter for the 2018 disclosure.

Commission consideration

18. In relation to the ROI report and RAB report, we appreciate the difficulty in disclosing historic values combining the reporting of two separate businesses, which had different disclosure year ends, and have considered the practical solution proposed by FirstGas in light of the need to ensure that sufficient information is readily available to interested persons to assess whether the purpose of Part 4 of the Act is being met.⁶
19. In relation to the Demand report, there is nothing in clause 2.5.1(1)(d) or Schedule 9d of the ID Determination that prevents FirstGas from providing a separate Demand report for each of its two transmission networks. In addition, the Commission accepts that providing the information using the alternative approach would seem consistent with the purpose of information disclosure regulation under section 53A of the Act.

Exemptions granted

20. Under clause 2.11.1(1) of the ID Determination, the Commission grants FirstGas an exemption from the requirement to comply with clauses 2.3.1(1)(b) and 2.3.1(1)(d) of the ID Determination, as specified below.
21. For its ROI report, in relation to the historic ROI values as at 30 September 2017,⁷ FirstGas is:
- 21.1 exempted from completing and disclosing the information required in Schedule 2(i) of the ID Determination regarding historic ROI value for those years;
 - 21.2 required, as a condition of granting the exemption, to provide a table in the voluntary explanatory notes outlining the information required in Schedule 2(i) of the ID Determination for the two separate businesses for those years; and
 - 21.3 required to explain the approach it has taken in the voluntary explanatory notes.

⁶ Section 53A of the Act.

⁷ As required under clause 2(i) of Schedule 2 of the ID Determination.

22. For its RAB report, in relation to the historic RAB roll forward values as at 30 September 2015 to 30 September 2017,⁸ FirstGas is:
- 22.1 exempted from reporting the roll forward of RAB for:
 - 22.1.1 a single year end for the years 2015 to 2016 in the disclosures for the 2019 disclosure year; and
 - 22.1.2 for the 2016 year in the disclosures for the 2020 disclosure year; and
 - 22.2 required, as conditions of granting the exemption, to:
 - 22.2.1 add the annual disclosed results for the Maui and Non-Maui GTBs; and
 - 22.2.2 explain the approach FirstGas has taken in the voluntary explanatory notes under Schedule 15 of the ID Determination.

Alternative reporting approach approved for the Demand report

23. There is nothing in clause 2.5.1(1)(d) or Schedule 9d of the ID Determination that prevents FirstGas from providing a separate Demand report for each of its two transmission networks. As such, the Commission approves the approach suggested by FirstGas, and discussed subsequent to the exemption request, to:
- 23.1 provide a separate Demand report for each of FirstGas's two transmission networks;
 - 23.2 provide a single, amalgamated Demand report for the two transmission networks, as described above at paragraph 13;
 - 23.3 use the figures from the single amalgamated Demand report to calculate the Schedule 1 ratios for the ID, as described above at paragraph 13; and
 - 23.4 include an explanation in the voluntary notes under Schedule 15 of the ID Determination as to the limitations of those ratios.

⁸ As required under Schedule 4(i) of the ID Determination.

Further information

24. These exemptions may be revoked or amended in accordance with clause 2.11.1(2) of the ID Determination.
25. A copy of this exemption response letter will be published on the Commission's website.
26. For any questions relating to this letter, please contact regulation.branch@comcom.govt.nz.

Yours sincerely

A handwritten signature in blue ink that reads "Sue Begg". The signature is written in a cursive style with a large initial 'S'.

Sue Begg
Deputy Chair