

31 May 2022

To: First Gas Limited (Transmission)
42 Connett Road West
Bell Block
New Plymouth
4312

Notice to supply information to the Commerce Commission under section 53N of the Commerce Act 1986 – Compliance statements for the third regulatory period (01 October 2022 to 30 September 2026)

Background

1. The Gas Transmission Services Default Price-Quality Path Determination 2022 (PQ Determination) published on 31 May 2022 will apply to First Gas Limited (First Gas) in respect of gas transmission services for the period from 1 October 2022 to 30 September 2026. The PQ Determination requires First Gas to comply with the price path, quality standards and reporting requirements in the case of a Major Interruption that is specified in the PQ Determination.
2. Section 53N of the Commerce Act 1986 (Act) empowers the Commerce Commission (Commission) to issue a written notice to a regulated supplier requiring it to supply a range of information for the purpose of monitoring compliance with a price-quality path.

Purpose of this notice

3. The purpose of this notice is to require First Gas to provide information to the Commission periodically on First Gas's compliance with its price path and quality standards and the reporting requirements in the case of a Major Interruption (and any instances of non-compliance) in the PQ Determination. This information is required as part of the Commission's monitoring of First Gas's compliance with the price-quality paths in the PQ Determination.
4. We require First Gas, under s 53N(a), (b), (c), and (d) of the Act, to provide the information set out in Attachments A and B of this notice.

Timeframes for responding to this notice

5. First Gas must supply the information annually required in paragraph 3 of Attachment A by 30 September and in paragraph 7 of Attachment A by 31 March.

Exemptions

6. The Commission may, at any time, by way of written notice to First Gas:
 - 6.1 exempt First Gas from any obligation in this notice, on such terms and conditions as the Commission specifies in the notice; and
 - 6.2 amend or revoke any such exemption.

Means of responding to this notice

7. First Gas must provide the Commission with the information required by sending it by email to infrastructure.branch@comcom.govt.nz (Attention: Manager, Transpower and Gas) with the subject line "First Gas – Response to section 53N Notice – Compliance statements for the third regulatory period".

Use of supplied information and confidentiality

8. If First Gas considers that any information it provides to the Commission in response to this notice is confidential or commercially sensitive, and that the Commission should not publish or publicly refer to any particular part of First Gas's response, First Gas must:
 - 8.1 provide that information in a separate appendix;
 - 8.2 provide both an unredacted version and a redacted version with the confidential/commercially sensitive information removed;
 - 8.3 clearly mark the information as confidential or commercially sensitive (as applicable) in the unredacted version; and
 - 8.4 for each redaction of information provide reasons why First Gas considers that part or all of the response is confidential or commercially sensitive (as applicable) and why the Commission should not publish or publicly refer to it.
9. If First Gas indicates that we should not publish or publicly refer to part of its response, we will discuss with First Gas before deciding whether to do so.
10. Please note that all responses we receive, including any parts thereof that we decide not to publish, can be requested from the Commission under the Official Information Act 1982. This means that, if requested, we would be required to release material (whether published or not) unless good reason existed under the Official Information Act 1982 to withhold it. We would normally consult First Gas before releasing any material that First Gas has requested to not be published.

Offences under section 103 of the Commerce Act 1986

11. Section 103 of the Commerce Act provides that no person shall:
 - 11.1 without reasonable excuse, refuse or fail to comply with a notice under section 53N of the Act;
 - 11.2 in purported compliance with such a notice, furnish information, or produce a document, or give evidence, knowing it to be false or misleading; or
 - 11.3 attempt to deceive or knowingly mislead the Commission in relation to any matter before it.
12. It is an offence to contravene s 103 of the Commerce Act and any person who does so is liable on conviction to a fine not exceeding \$100,000 in the case of an individual or \$300,000 in any other case.

Dated at Wellington: 31 May 2022

Signed by:

A handwritten signature in black ink, appearing to read 'Vhari McWha', is written over a horizontal line.

Vhari McWha
Associate Commissioner

Attachment A Information required

- A1 Under section 53N(a), (b), (c) and (d) of the **Act**, **First Gas** must provide the information in paragraphs A3 to A13 of this Attachment.
- A2 In this Attachment, unless the context requires otherwise,—
- A2.1 terms used in this notice that are defined in the **IM Determination** or the **PQ Determination** (as applicable) but not in this notice have the same meanings as in the **IM Determination** or the **PQ Determination** (as applicable);
- A2.2 a word which denotes the singular also denotes the plural and vice versa;
- A2.3 any reference to “includes” means “includes, but is not limited to”; and
- A2.4 words or phrases in bold type have the following meanings:

A

Act	means the Commerce Act 1986;
Assessment Period	means a 12-month period commencing 1 October and ending on 30 September of the following year;
Auditor	means a person who: <ul style="list-style-type: none"> (a) is qualified for appointment as an auditor of a company under the Companies Act 1993 or, where the First Gas is a public entity (as defined in section 4 of the Public Audit Act 2001), is the Auditor-General; (b) has no relationship with, or interest in First Gas that is likely to involve the person in a conflict of interest; (c) has not assisted with the preparation of the Compliance Statement or provided advice or opinions (other than in relation to audit reports) on the

methodologies or processes
used in preparing the
Compliance Statement;

- (d) is not associated with nor
directed by any person
mentioned in (c) above;
- (e) has the necessary expertise
to properly prepare the
assurance report required by
paragraph A7(d); but
- (f) need not be the same person
as the person who audits **First
Gas's** accounts for any other
purpose;

C

Commission

means the Commerce Commission as
defined in section 2 of the **Act**;

Compliance Statement

means the written annual statements
required to be made by **First Gas**
under paragraphs A3 and A7;

Consumer

has the same meaning as in clause
1.1.4 of the **IM Determination**;

D

Director

has the same meaning as in clause
1.1.4 of the **IM Determination**;

E

Emergency

means:

- (a) an unplanned escape or
ignition of gas that
requires the active
involvement of any
emergency service (eg, fire
service, ambulance);

- (b) an unplanned disruption in the supply of gas that affects more than five installation control points; or
- (c) an evacuation of a premises as the result of escape or ignition of gas;

F

First Gas	means First Gas Limited or any subsidiary or successor to that company;
Forecast Revenue From Prices	has the same meaning as in clause 4.2 of the PQ Determination ;
Forecast Allowable Revenue	has the same meaning as in clause 4.2 of the PQ Determination ;

I

IM Determination	means the <i>Gas Transmission Services Input Methodologies determination 2012</i> as at the date of this notice;
ISAE (NZ) 3000	means the <i>International Standard on Assurance Engagements (New Zealand) 3000 (Revised), Assurance Engagements Other than Audits or Reviews of Historical Financial Information</i> , issued by the New Zealand Auditing and Assurance Standards Board of the External Reporting Board in July 2014 and incorporating amendments up to the date of this notice under s 12(b) of the Financial Reporting Act 2013;

M

Major Interruption

has the same meaning as in clause 4.2 of the **PQ Determination**;

P

Pass-through Cost

has the same meaning as in clause 1.1.4 of the **IM Determination**;

Price

has the same meaning as in clause 1.1.4 of the **IM Determination**;

PQ Determination

means the *Gas Transmission Services Default Price-Quality Path determination 2022* [2022] NZCC 20, made on 31 May 2022;

Q

Quantities

has the same meaning as in clause 1.1.4 of the **IM Determination**;

R

Recoverable Cost

has the same meaning as in clause 1.1.4 of the **IM Determination**;

Regulatory Period

means the period from 1 October 2022 to 30 September 2026;

RTE

means ‘response time to emergencies’, being the time between when an **Emergency** is reported to a **First Gas** representative and when **First Gas’s** personnel arrive at the location of the **Emergency**;

S

SAE 3100

means the *Standard on Assurance Engagements 3100 (Revised)* – *Assurance Engagements on*

Compliance, issued by the External Reporting Board in March 2017 and incorporating amendments up to the date of this notice under s 12(b) of the Financial Reporting Act 2013.

W

Wash-up Amount has the same meaning as in clause 4.2 of the **PQ Determination**;

Working Day has the same meaning as in clause 1.1.4 of the **IM Determination**

Annual Compliance Statement in respect of Price setting

A3 **First Gas** must, by 30 September, before the start of an **Assessment Period**, provide to the **Commission** a written annual statement for that **Assessment Period** (the relevant **Assessment Period**) including:

- (a) the information in paragraphs A5 and A6;
- (b) schedules reflecting the relevant **Price** and forecast **Quantities** used in the calculation of **Forecast Revenue From Prices** in an electronic format that is compatible with Microsoft Excel; and
- (c) a certificate in the form provided under paragraph A12 signed by at least one **Director of First Gas**.

A4 For the purposes of paragraph A3, the **Assessment Periods** for which annual **Compliance Statements** are required, are the **Assessment Periods** beginning 1 October 2022, 1 October 2023, 1 October 2024 and 1 October 2025.

A5 The annual **Compliance Statement** must—

- (a) state whether **First Gas** has complied with the price path in clause 8.3 of the **PQ Determination** for the relevant **Assessment Period**;
- (b) state the date on which the **Compliance Statement** was prepared.

A6 The annual **Compliance Statement** must include the following information:

- (a) **First Gas's** calculation of its **Forecast Revenue From Prices** together with supporting information for all components of the calculation;

- (b) **First Gas's** calculation of its **Forecast Allowable Revenue** together with supporting information for all components of the calculation;
- (c) if **First Gas** has not complied with the price path, the reasons for non-compliance; and
- (d) if **First Gas** has not complied with the price path, actions taken to mitigate any non-compliance and to prevent similar non-compliance in future **Assessment Periods**, including **Assessment Periods** associated with future **Regulatory Periods**.

Annual Compliance Statement in respect of the Wash-up Amount calculation and quality standards (including quality incentive reporting in the case of a Major Interruption)

- A7 **First Gas** must, by 31 March following the end of an **Assessment Period**, provide to the **Commission** a written annual statement for that **Assessment Period** (the relevant **Assessment Period**) including:
- (a) the information in paragraphs A9, A10 and A11;
 - (b) schedules reflecting the relevant **Prices** and actual **Quantities** used in the calculation of the **Wash-up Amount**, in an electronic format that is compatible with Microsoft Excel;
 - (c) a certificate in the form provided under paragraph A12, signed by at least one **Director** of **First Gas**; and
 - (d) an assurance report meeting the requirements in paragraph A13, in respect of all information contained in this annual **Compliance Statement**.
- A8 For the purposes of paragraph A7, the **Assessment Periods** for which annual **Compliance Statements** are required, are the **Assessment Periods** beginning 1 October 2022, 1 October 2023, 1 October 2024 and 1 October 2025.
- A9 The annual **Compliance Statement** must—
- (a) state whether **First Gas** has complied with the requirement to calculate the **Wash-up Amount** in clause 8.4 of the **PQ Determination** for the relevant **Assessment Period**;
 - (b) state whether **First Gas** has complied with the quality standards in clause 9 of the **PQ Determination** for the relevant **Assessment Period**;
 - (c) state whether **First Gas** has complied with the quality incentive reporting requirements in clause 10 of the **PQ Determination** for the relevant **Assessment Period**;
 - (d) state the date on which the **Compliance Statement** was prepared.

- A10 The annual **Compliance Statement** must include any information reasonably necessary to demonstrate whether **First Gas** has, during the relevant **Assessment Period**, complied with clause 8.4, clause 9 and clause 10 of the **PQ Determination**, including but not limited to:
- (a) details of the **Wash-up Amount** calculation as specified in clause 8.4, together with supporting information for all components of the calculation;
 - (b) the quality standards in clause 9 of the **PQ Determination**, including but not limited to:
 - (i) relevant incident data and calculations;
 - (ii) a description of the policies and procedures **First Gas** has used to record the **RTE** statistics for the relevant **Assessment Period**;
 - (iii) a list of **Emergencies** in respect of which the **Commission** has determined that **First Gas** can treat the **RTE** of the **Emergency** as having complied with the quality standard, and any requests under clause 9.2 that are pending a decision by the **Commission**;
 - (iv) if **First Gas** has not complied with a quality standard, the reasons for not meeting the quality standard;
 - (v) if **First Gas** has not complied with a quality standard, the actions taken to mitigate any non-compliance and to prevent similar non-compliance in future **Assessment Periods**, including **Assessment Periods** associated with future **Regulatory Periods**; and
 - (vi) where a quality standard has not been met, for each **Emergency** which exceeded the **RTE** for that quality standard, a description of the **Emergency**, including the nature, cause, and location of the **Emergency** and the number of **Consumers** affected.
- A11 The annual **Compliance Statement** must include any information reasonably necessary to demonstrate whether **First Gas** has, during the relevant **Assessment Period**, complied with clause 10 of the **PQ Determination**, including but not limited to:
- (a) a statement whether **First Gas** has complied with clause 10.1 and clause 10.2 of the **PQ Determination**;
 - (b) details of all **Major Interruptions**, including without limitation the following information where such information has not already been disclosed under clause 10.1 of the **PQ Determination** -
 - (i) details of the trigger event and contributory factors to the **Major**

Interruption;

- (ii) whether or not the triggers and contributory factors to the **Major Interruption** were within **First Gas's** control, including whether the **Major Interruption** was due to the **First Gas's** own systems, or a third party event; and
- (iii) whether the risk of the trigger event and contributory factors to the **Major Interruption** were identified and mitigated, including any steps **First Gas** took to avoid the **Major Interruption** or reduce its impact.

*Form of Director's certificate for the annual **Compliance Statement***

- A12 The **Director's** certificate referenced at paragraphs A3(c) and A7(c) must take the following form:

I/We, *[insert full name/s]*, being director/s of First Gas Limited certify that, having made all reasonable enquiries, to the best of my/our knowledge and belief, the attached price path compliance statement of First Gas, and related information, prepared for the purposes of the *Gas Transmission Services Default Price-Quality Path determination 2022*, has been prepared in accordance with all the relevant requirements**[except in the following respects]*.

**[insert description of non-compliance]*

[Signatures of Director(s)]

[Date]

*Delete if inapplicable.

*Form of Auditor's report on annual **Compliance Statement***

- A13 For the purposes of paragraph A7(d) of this notice, **First Gas** must procure an assurance report by an **Auditor** in respect of the annual **Compliance Statement** that is prepared in accordance with **SAE 3100** and **ISAE (NZ) 3000**, signed by the **Auditor** (either in their own name or that of their firm), and that—

- (a) is addressed to the **Directors** of **First Gas** and to the **Commission** as the intended users of the assurance report;
- (b) states—
 - (i) that it has been prepared in accordance with **SAE 3100** and **ISAE (NZ) 3000**;

- (ii) the work done by the **Auditor**;
 - (iii) the scope and limitations of the assurance engagement;
 - (iv) the existence of any relationship (other than that of auditor) which the **Auditor** has with, or any interests which the **Auditor** has in, **First Gas** or any of its **Interconnected Bodies Corporate**;
 - (v) whether the **Auditor** has obtained sufficient recorded evidence and explanations that he or she required and, if not, the information and explanations not obtained; and
 - (vi) whether, in the **Auditor's** opinion, as far as appears from an examination, the information used in the preparation of the **Compliance Statement** has been properly extracted from **First Gas's** accounting and other records, sourced from its financial and non-financial systems; and
- (c) states whether (and if not, the respects in which it has not), in the **Auditor's** opinion, **First Gas** has complied, in all material respects, with the **PQ Determination** in preparing the annual **Compliance Statement**.
- (i) if **First Gas** has not complied with the price path, the reasons for non-compliance; and
 - (ii) if **First Gas** has not complied with the price path, actions taken to mitigate any non-compliance and to prevent similar non-compliance in future **Assessment Periods**, including **Assessment Periods** associated with future **Regulatory Periods**;