

13 October 2021

Attn: Karen Collins
Regulatory and Policy Manager
First Gas Limited

By email only: karen.collins@firstgasgroup.co.nz

Dear Karen,

Response to First Gas Limited's request for an exemption from disclosure requirements under the Gas Transmission Information Disclosure Determination 2012

1. We write in response to First Gas Limited's (**First Gas**) letter dated 7 July 2021 that requests the Commerce Commission (the **Commission**) provide an exemption from the requirement under clause 2.8.5(1) of the Gas Transmission Information Disclosure Determination (**ID Determination**) for the year ending 30 September 2021 (the **2021 disclosure year**).
2. We respond to your exemption request below. We outline the background of First Gas's exemption request (the **First Gas request**); the basis for the decision made on the exemption request; and our expectations for future exemption requests.

Background

3. Under Part 4 of the Commerce Act 1986, Gas Transmission Businesses (**GTBs**) are subject to information disclosure regulation. The ID Determination requires GTBs to disclose information about its transactions with related parties (i.e. related party transactions or **RPTs**).

4. Under the RPT rules, in any given disclosure year, if a GTB has:
 - 4.1 total annual operating expenditure (**Opex**) or capital expenditure (**Capex**) that exceeds \$20 million; and
 - 4.2 RPTs make up 10% or more of total annual expenditure,
 it will be required to obtain an independent report prepared by an independent appraiser (the independent report or **IR**).
5. A GTB required to obtain an independent report may elect not to obtain such a report if the following two conditions are met (the **optional IR test**):¹
 - 5.1 proportional RPT expenditure movement has not increased by more than 5% compared to the base year (the **first condition**); and
 - 5.2 an independent report has been disclosed in at least one of the two disclosure years immediately prior to the current disclosure year (the **second condition**).

Current Exemption Request

6. We received the First Gas request on 7 July 2021. First Gas applied for an exemption from the first condition of the optional IR test for the 2021 disclosure year.
7. First Gas states it will be required to produce an independent report for the 2021 disclosure year. Based on its unadjusted calculations, proportional movement in Capex RPTs for the 2021 disclosure year is more than 5% compared to the 2019 disclosure year (i.e. the base year).
8. First Gas states it would satisfy the first condition of the optional IR test if it adjusted its Capex RPT calculations for an 'atypical transaction'. According to First Gas, the threshold exceedance for the 2021 disclosure year is due to a single, atypical transaction, stemming from the discontinuation of the Gas Transmission Access Code (**GTAC**) Project (the **atypical transaction**).
9. First Gas intends to make an adjustment in its regulatory accounts that, due to the GTAC project being discontinued, reverses relevant Capex project costs from its Regulatory Asset Base for the 2021 disclosure year. As the relevant Capex is no longer being borne by consumers, First Gas considers it appropriate to similarly exclude this capex from Capex RPT calculations for the 2021 disclosure year.
10. Making the adjustment would give First Gas the option of not obtaining an independent report for the 2021 disclosure year.

¹ *Gas Transmission Information Disclosure Determination 2012 (consolidated April 2018)*, clause 2.8.5, page 56.

11. First Gas requested an exemption on the basis that requiring an independent report in the 2021 disclosure year is inconsistent with the policy intent of the information disclosure regime, for the following reasons:
 - 11.1 total Capex purchased from RPTs has not changed materially, rather only the total Capex spend has changed;
 - 11.2 an exemption to RPT rules based on an 'atypical' event was granted to Horizon Energy Distribution Limited (**Horizon**) in the 2018 disclosure year; and
 - 11.3 there are significant compliance costs in preparing an independent report, with First Gas bearing these costs in the 2019 disclosure year.

Exemption granted

12. The Commission considers it appropriate to grant an exemption, in response to the First Gas request, for the reasons outlined below.
13. We agree that, based on the calculations provided by First Gas, the change in the proportional movement in Capex RPTs is essentially due to an 'accounting transaction' i.e. the atypical transaction, rather than the result of any significant change in its dealing with related parties. As such, we agree that Capex via RPTs is unlikely to have increased materially since the base year.
14. This disclosure is intended to provide interested persons with information about RPTs. It is our view that, if First Gas' RPTs have not materially changed since the base year, the cost in producing an independent report is likely to outweigh its benefit .
15. In its application letter, First Gas states its intention to procure an independent report for the 2022 disclosure year, which it may not be required to do if it procured an independent report in the 2021 disclosure year. Due to an additional year of RPT data, we consider a report in the 2022 disclosure year is likely to be at least of comparable benefit to interested persons.
16. If First Gas is not required to produce an independent report for the 2021 disclosure year, we consider the independent report from the base year combined with other RPT disclosures for the 2021 disclosure year, will continue to allow the purpose of Part 4 and the purpose of information disclosure to be met.²
17. Further, due to the likely limited marginal value of an independent report for the 2021 disclosure year, we consider granting an exemption is consistent with proportional regulation.

² The purpose of ID regulation is to ensure that sufficient information is readily available to interested persons to assess whether the purpose of Part 4 is being met.

18. Under clause 2.11.1(1) of the ID determination, by this notice, the Commission grants First Gas an exemption from the requirement in clause 2.8.5(1) of the ID Determination for the 2021 disclosure year.

Our expectations

19. First Gas requested an exemption on 7 July 2021 and asked for a response to this request by the end of July 2021. Based on previous experience, First Gas stated it would need to engage with an independent appraiser around this time to be able to comply with its regulatory obligations.
20. We notified First Gas of the Commission's decision once it had been made. This was to provide First Gas staff with appropriate comfort before this official communication was finalised.
21. As set out in our administrative guidance,³ parties should not presume in advance that exemptions will be granted, and short notice requests reduce the scope for the Commission to grant any requested exemption.

Further information

22. This exemption may be revoked or further amended by the Commission at any time in accordance with clause 2.11.1(2) of the ID determination.
23. A copy of this exemption response letter will be published on the Commission's website.
24. If you have any questions regarding this matter, please contact Rhys Williams at rhys.williams@comcom.govt.nz.

Yours sincerely



Sue Begg
Deputy Chair

³ Our administrative guidance for exemption requests can be found [here](#) on the Commission's website.