

4<sup>th</sup> November 2019

PEPANZ  
PO Box 25259  
Featherston Street  
Wellington  
6146

Dear Joshua,

### **Upstream Gas Outage Information Disclosure Code 2019**

emsTradepoint appreciates the thought and initiative the upstream producer parties have put into creating a voluntary disclosure Code, and their responsiveness. The voluntary Code is a good immediate interim solution to the concerns raised about the availability of outage information and we look forward to the quality and timeliness of the information produced to understand its effectiveness.

emsTradepoint has long been an advocate for timely information disclosure in the wholesale gas sector, we have stressed the importance of information availability to support a well-functioning gas market. Our position has always been that regulation will be required. However, if the Code is fully complied with by all producers we see it as being a good solution to the problem.

We note the following principles for compliance with the voluntary Code:

1. *All gas contracts entered into after the date of the Code requires compliance with the Code whilst the gas producer remains a participant in the Code.*
2. *A requirement for the gas producer to act in good faith and as a reasonable and prudent operator*
3. *Gas producers to respond to complaints about compliance*
4. *Gas Producers may request that a producer who is not complying to the Code withdraws from the Code – The remaining gas producers must be at least 75% in number. –*

For the fourth principle, given the small number of producers in the market, it would only take one or two to withdraw or not participate in the Code for this measure to fall apart. If one producer does not abide by the voluntary Code this may affect the incentives on other producers to also abide by it. In our view the voluntary Code will only be effective from the positive efforts of all producers. It is our view that the only real implications coming from non-compliance with the Code would be a negative impact on the producer's reputation within the industry, and any contractual obligations to comply under Part B section 9.1.

If these principles are not sufficient for a producer to abide by the voluntary approach or the voluntary approach is ineffective at timely and relevant disclosure information, then the case for active regulation is even stronger.

We note that the Code is voluntary which was in-line with the responses from the producer side on the GIC's Options for Information Disclosure in April this year. There is no support for the key downfall that GIC highlighted in their Options paper that a voluntary approach would fail if one or more parties opted out, since those parties would gain an advantage. It is also unclear who would enforce the rules agreed under a voluntary approach.

While the GIC continue with their current workstream on "Problem Assessment", it would seem an opportune time for the Upstream Gas Outage Information Disclosure Code to go live to ensure that it is 'fit for purpose' and offers a viable alternative to regulation.

Best regards,



Quintin Tahau

General Manager emsTradepoint Limited