16 January 2009

Ian Wilson
Gas Industry Company
P O Box 10-646
Level 8, Todd Building
95 Customhouse Quay
Wellington

Dear Ian

VTC Change Request Appeal - Submission

1. The Gas Industry Company has invited submissions on its draft recommendations on Contact's appeal to the Gas Industry Company to have four change requests allowed that did not receive Vector's consent. Contact's appeal was lodged with the Gas Industry Company on 9 October 2008 and concerned the following change requests:

   – change request 4 (matching payments in and out of the BPP account);

   – change request 5 (payments in and out of the BPP account);

   – change request 6 (confidentiality); and

   – change request 7 (provision of Vector running imbalance information).

2. Contact appreciates the opportunity to comment on the Gas Industry Company's draft recommendations.

3. If the Gas Industry Company would like Contact to elaborate further on any points made in this submission or Contact's appeal of Vector's determination of these change requests please contact either Alex Love or Sharon Wray at Contact.

Appeal Process

4. In determining an appeal under section 25 of the Vector Transmission Code (the VTC) the process the Gas Industry Company is to follow is set out in section 25 of the VTC and in the

PO Box 10742 Wellington New Zealand
Level 1 Harbour City Tower 29 Brandon Street Wellington
Phone 64-4 499 4001 Fax 64-4 499 4003

Memorandum of Understanding between Vector Gas Limited and the Gas Industry Company (the MoU).

5. Section 25.7 of the VTC requires the Gas Industry Company to make a written recommendation supporting or not supporting a change request or finding that Vector has or has not validly withheld consent under section 25.5(b) of the VTC. Section 25.5(b) of the VTC states that it is not unreasonable for Vector to withhold its consent to a change request if:

   – Vector is required to incur capital expenditure that Vector does not wish to incur or is not economically viable;

   – Vector is required to incur operating expenses that Vector cannot reasonably expect to recover;

   – is likely to adversely affect the structure of Vector's transmission services or magnitude of Vector's transmission revenues; and

   – is likely to adversely affect the compatibility of Vector's open access regime with MDL's open access regime.

6. Neither the VTC nor the MoU restricts the Gas Industry Company to recommending that Vector has validly withheld it consent because it is not unreasonable for Vector to withhold its consent for the reasons listed in section 25.5(b) of the VTC. Instead under the MoU the Gas Industry Company has agreed to make a recommendation supporting or not supporting the change request. The Gas Industry Company also has the option of making that same recommendation under the VTC.

7. Clause 2.3 of the MoU requires the Gas Industry Company in performing its role to have regard to the objectives specified in section 43ZN of the Gas Act and the objectives in the Government Policy Statement on Gas Governance (the Government Policy Statement).

8. The objectives specified in section 43ZN of the Gas Act are:

   – to ensure that gas is delivered to existing and new customers in a safe, efficient and reliable manner;

   – to facilitate and promote the ongoing supply of gas to meet New Zealand's energy needs by providing access to essential infrastructure and competitive market arrangements;

   – barriers to competition are minimised;

- incentives for investment in gas processing facilities, transmission and distribution are maintained and advanced;

- delivered gas costs and prices are subject to sustained downward pressure;

- risk relating to security of supply, including transport arrangements, are properly and efficiently managed by all parties; and

- consistency with the Government's gas safety regime is maintained.

9. The Government Policy Statement reiterates the objectives set out in section 43ZN of the Gas Act and in addition includes the following further objectives relevant to the change requests;

   - to ensure that gas is delivered to existing and new customers in a fair and environmentally sustainable manner;

   - energy and other resources used to deliver gas to consumers are used efficiently;

   - competition is facilitated by minimizing barriers to access essential infrastructure;

   - the full cost of producing and transporting gas are signaled to consumers; and

   - the quality of gas services where those services include a trade off between quality and price, as far as possible, reflect customer preferences.

10. In addition, the Government Policy Statement seeks to achieve a number of outcomes. The following outcomes are included and relevant to these appeals:

    - accurate, efficient and timely arrangements for the allocation and reconciliation of upstream gas quantities;

    - access to transmission pipelines is provided on reasonable terms; and

    - consistent standards and protocols apply to the operations relating to access to all distribution pipelines.

11. Contact's appeal to the Gas Industry Company is the first appeal to be determined by the Gas Industry Company. Because of that the process followed by the Gas Industry Company is a particular concern as it is likely set the standard and approach the Gas Industry Company takes in assessing future appeals. Given the wide range of the objectives that the Gas industry Company is required to consider Contact is concerned that the Gas Industry Company's seems to have narrowly determined the appeals on the basis of potential risk of

Vector incurring operating expenses if the change request was implemented. Contact notes that in the introductory section of the Gas Industry Company's draft determination of the appeal it states that the Gas Industry Company is to have regard to the objectives specified in section 43ZN of the Gas Act and the objectives specified in the Government Policy Statement on Gas Governance. In its analysis the Gas Industry Company does not show how it has met those requirements and in fact doesn't refer to those objectives in its analysis. It would be helpful for the Gas Industry Company to explain in its written recommendations how it has considered those objectives in formulating its recommendation. That would help make the Gas Industry Company's recommendations more persuasive.

12. The Gas Industry Company has also narrowly interpreted the VTC provisions that allow Vector to reject change requests that would require Vector to incur operating expenses or costs that it could not reasonably recover. In relation to the change requests the Gas Industry Company has not assessed the mechanisms available to Vector to recover costs and the risk that Vector would incur increased costs. It seems appropriate for the Gas Industry Company to balance its concern for the commercial interests of the pipeline owner with the commercial interests of other industry participants such as users of pipeline services and gas consumers. There does not seem to be anything in the Gas Act or the Government Policy Statement that suggests the Gas Industry Company should have an overriding concern for the commercial interest of pipeline owners.

13. Contact is concerned that narrow Gas Industry Company assessments of change requests will potentially erode the value of the change request appeal process in improving the efficiency of the industry and reducing costs. These are key objectives of Section 43ZN of the Gas Act and of the Government Policy Statement. Contact believes that the MPOC and VTC change request processes could provide an effective and relatively low cost means of improving open access to make those codes consistent with the Gas Act and the Government Policy Statement and that industry participants should be encouraged to use the change process.

14. In its "Transmission Balancing Options Paper", dated December 2008 (the Transmission Balancing Options Paper) the Gas Industry Company seems to recognize value in using the MPOC change process to bring about improved balancing performance.

15. Contact notes that most of the issues raised by Contact in these change requests were identified by Contact as corrections that should have been made to the VTC before the VTC was finalised but Vector was unwilling to make the corrections at that time. Contact wrote to Vector on 16 November 2007 indicating most of these issues. In relation to the issues identified, Contact does not necessarily believe the VTC as it currently exists reflects the intent of the parties that negotiated the VTC.

16. The following is Contact's more detailed submission on the Gas Industry Company's draft recommendations for each change request.

Change Request 4 – matching payments in and out of the BPP account

17. Change request 4 was designed to correct a number of errors in VTC provisions used to allocate balancing charges to Shippers and Non-Code Shippers and included a requirement for Vector to make reasonable endeavours to ensure Non-Code Shippers make payments owed to the BPP.

18. On 19 November 2008 Vector submitted a new VTC change request that replicated Contact's change request 4 apart from the provisions that sought to require Vector to make reasonable endeavours to recover payments owed by Non-Code Shippers to the BPP. On 12 December 2008 Vector notified its Shippers that its revised change request had received sufficient support for the change request to be implemented on 1 December 2008. Consequently, the only matter that is now outstanding in respect of Contact's change request 4 is the requirement that Vector should make reasonable endeavours to recover payments owed by Non-Code Shippers to the BPP.

19. Despite the Gas Industry Company recognising some merit in clarifying who is liable for a shortfall in the BPP Account and who is liable for costs incurred in recovering the shortfall the Gas Industry Company has chosen not to make a recommendation supporting or not supporting the change request. That seems inconsistent with the undertaking the Gas Industry Company agreed under the MoU that it would make a written recommendation supporting or not supporting a change request.

20. In assessing change request 4 Contact believes the Gas Industry Company should have regard to the following objectives which are relevant objectives distilled from the VTC, the Gas Act and the Government Policy Statement:

   – would the change request require Vector to incur operating expenses that Vector could not expect to recover;

   – would the change request adversely affect the structure of Vector's transmission services;

   – would the change request help to ensure gas is delivered in an efficient manner;

   – would the change request help to ensure gas costs and prices are subject to sustained downward pressure;

   – would the change request help to ensure that gas is delivered in a fair manner;

   – would the change request facilitate competition;

- would the change request help to ensure the full cost of producing and transporting gas is signaled to consumers;

- would the change request help to ensure accurate, efficient and timely arrangements for the allocation and reconciliation of gas quantities;

- would the change request help ensure access to pipelines on reasonable terms; and

- would the change help to ensure that consistent standards and protocols apply to the operations relating to all pipelines.

21. Contact has assessed the change request in respect of these objectives.

Would change request 4 require Vector to incur operating expenses that Vector could not expect to recover

22. In its draft recommendation the Gas Industry Company has determined that Vector has validly withheld its consent under section 25.5(a)(i) of the VTC because the Gas Industry Company believes that if the change request was implemented there would be a likelihood that not all of the costs arising from Vector's reasonable endeavours obligation to recover amounts owed by Non-Code Shippers to the BPP would be recoverable by Vector.

23. In reaching its determination the Gas Industry Company does not consider the effect of placing a reasonable endeavours obligation to recover payments on Vector. Recent legal decisions have generally concluded that a reasonable endeavours obligation does not require a party to sacrifice its own commercial interest unless a specific course of action is specified. Usually a reasonable endeavours obligation only requires the party with the obligation to pursue one reasonable course of action. A reasonable endeavours obligation is a less onerous obligation than a best endeavours obligation.

24. The Gas Industry Company also ignores the mechanisms available in the VTC that would allow Vector to recover its costs. As pointed out by Contact in its cross submission dated 17 November 2008 these mechanisms include:

    - section 8.20 that allows Vector to recover the costs paid to a third party for the administration of Vector's operation of the BPP Account;

    - section 14.9 that enables Vector to make a claim against Credit Support;

    - section 16.15, 17 and 18 that provide a dispute resolution process and would enable Vector to recover payments; and

– section 20 that allows Vector to terminate a TSA if a Party under a TSA defaults in making a payment.

25. Finally, the Gas Industry Company may have overlooked that there is nothing in the VTC that prevents Vector recovering costs related to chasing balancing charges through tariff charges. The reasons Vector has provided in the past for increasing its tariffs are many and include matters such as:

– increased cost of gas used in compressors, line heaters and UFG;

– open access development costs;

– regulatory costs;

– balancing charges;

– movements in the CPI;

– general cost increases;

– charges for operations and maintenance services;

– charges for the transmission pipeline welded points; and

– charges for the gas transfer agent role.

26. Recovery of costs related to chasing Non-Code Shippers for recovery of balancing charges would not be out of place on this list. Contact notes that the Gas Industry Company assumes in the Transmission Balancing Options Paper that gas balancing costs will be a pass through in the TSO's regulated revenues.

Would change request 4 adversely affect the structure of Vector's transmission services

27. The Gas Industry Company should consider whether the absence of an obligation on Vector to recover debts owed to the BPP by Shippers under sections 8.13(a), 8.13(b) 8.18(c) and 8.19 may be oversight or a VTC drafting error. Vector has an obligation under the following sections substantially similar to a reasonable endeavours obligation to recover payments owed to the BPP Account:

– section 8.12 relating to recovery of payments from Non-Code Shippers;

– section 8.15(b) relating to recovery of payments from the MPOC Incentives Pool; and

– Section 8.16(b) relating to recovery of payments from Shippers and Non-Code Shippers.

Implementation of change request 4 would place a similar obligation on Vector in respect of sections 8.13(a), 8.13(b) 8.18(c) and 8.19.

28. In its earlier submissions related to change request 4 Contact showed that if Vector has no obligation to recover payments owed to the BPP then Shippers and Non-Code Shippers may conclude that it is unreasonable for them to make payments owed to the BPP. It is unlikely that Shippers and Non-Code Shippers would continue to diligently pay balancing charges if other Shippers and Non-Code Shippers did not have to pay their balancing charges and those payments were partly recovered from Shippers not responsible for the balancing charges. Payment failure would likely quickly lead to the socialization of balancing costs across Shippers and Non-Code Shippers and substantially erode the incentive of Shippers and Non-Code Shippers to balance gas injections and offtakes and to minimize balancing costs. As noted by the Gas Industry Company in its Balancing Options Paper, TSOs are unlikely to have an incentive to minimize balancing costs.

29. Contact believes that VTC Shippers and Non-Code Shippers never contemplated such an outcome as evidenced by the provisions of section 8 of the VTC that clearly seek to allocate balancing costs to the Shippers or Non-Code Shippers causing imbalance.

30. Furthermore, inclusion of a reasonable endeavours obligation on Vector to recover payments owed to the BPP Account under some of the section 8 provisions of the VTC makes questionable Vector's claims that it was never intended that it should have such an obligation in relation to the BPP Account and that it was intended that Vector should be distant from the BPP Account and should have no responsibility for operation of the BPP Account. The inclusion of the reasonable endeavours obligation on Vector in respect of some payments owed to the BPP Account suggests the absence of the requirement in respect of other payments owed to the BPP was oversight and not intended. This was Contact's understanding and why it sought correction of the VTC in respect of these provisions prior to the finalization of the VTC.

31. The Gas Industry Company also appears not to consider section 1.2(a) of the VTC. Section 1.2(a) means that apart from section 8 and section 14 of the VTC that Vector when acting under the VTC acts as both a provider of transmission services and as the BPP Trustee. Vector also signs TSAs in its capacity as the BPP Trustee. Contact believes that because the VTC clearly indicates Vector performs the role of BPP Trustee that its claim that it has no responsibility for pursuing debts owed to the BPP Trustee is wrong.

32. Contact believes that change request 4 is consistent with the structure and intent of the VTC and would not adversely affect the structure of Vector's transmission services.

Would change request 4 help ensure gas is delivered in an efficient manner

33. Contact believes that a consequence of the Gas Industry Company's determination of change request 4 would be that shippers may be allocated balancing costs which they did not generate. Lack of direct exposure to balancing charges will reduce the incentive of shippers to manage and control balancing costs.

34. In the Transmission Balancing Options Paper the Gas Industry Company states that assuming that balancing costs will be a pass-through in the TSO's regulated revenues, the TSOs will have no incentive to minimize balancing costs or to optimize the pricing of balancing and that in the context of balancing the main focus should be on minimizing costs and that signaling "cost to causers" will help minimize costs.

35. As noted by the Gas Industry Company in its Transmission Balancing Options Paper *"the TSOs are interested in the effectiveness of the balancing market, but not necessarily in its efficiency. It is the community of users – who are both the providers and consumers of flexibility – who are best motivated to achieve an efficient balancing market."*

36. In the Transmission Balancing Options Paper the Gas Industry Company has supplemented the criteria for efficiency with the design principles adopted by the European Regulators Group for Electricity and Gas (ERGEG). The ERGEG have adopted the principle that users should have primary responsibility to balance inputs and offtakes.

37. The Gas Industry Company notes in the Transmission Balancing Options Paper that *"balancing charges should signal to users the full cost of balancing actions resulting from users' behaviour in order to promote efficient behaviour and provide incentives for investment in information and business systems".* Contact contemplates that development of information and business systems would reduce balancing costs and overall gas delivery costs.

38. Change request 4 is directed towards allocating balancing costs to the shipper responsible for causing the imbalance and is therefore consistent with ERGEG principles and Gas Industry Company thinking expressed in the Transmission Balancing Options Paper.

Would change request 4 help ensure gas costs and prices are subject to sustained downward pressure

39. Implementation of change request 4 will help ensure that a Non-Code Shipper responsible for creating an imbalance is allocated the costs associated with that imbalance. That should encourage Non-Code Shippers to manage and control imbalance and should help to ensure that element of gas cost is subject to downward pressure.

Would change request 4 help ensure that gas is delivered in a fair manner

40. The Gas Industry Company does not attempt to assess who, and whether in particular it is appropriate that Shippers, should be responsible for balancing charges not paid by Non-Code Shippers.

41. In its determination the Gas Industry Company states that the costs of administering balancing arrangements should be allocated fairly across all those that benefit from those arrangements. Contact agrees with that. Having made the point the Gas Industry Company does not elaborate further on how those costs should be allocated.

42. The Gas Act, Government Policy Statement and ERGEG principles require that shippers should not be exposed to risks that they cannot manage or costs that could create barriers to entry. Change request 4 helps ensure that balancing costs are directly allocated to the shipper causing the imbalance rather than indirectly allocated to shippers not necessarily responsible for those costs via the pipeline tariff.

43. Contact believes that requiring Vector to recover payments from Non-Code Shippers is consistent with Vector's obligations under section 8.12, section 8.15(b) and 8.16(b) and helps ensure that the Non-Code Shipper responsible for imbalance meet the cost of that imbalance. For those reasons implementing change request 4 helps ensure that gas is delivered in a manner that is fair. It is not fair to allow Non-Code Shippers to avoid balancing costs that they cause and then for Vector to allocate those costs to other Shippers not responsible for causing those costs.

Would change request 4 facilitate competition

44. Contact believes that change request 4 would help encourage competition.

45. Implementation of change request 4 will help ensure that those shippers who are able to effectively manage and control imbalance will bear less risk and lower costs than shippers unable to manage and control those costs. That should help create supply competition.

46. In its Transmission Balancing Options Paper the Gas Industry Company states that the Gas Act, the Government Policy Statement and ERGEG principles require that shippers should not be exposed to risks they cannot manage.

Would change request 4 help ensure the full cost of producing and transporting gas is signaled to consumers

47. Consumers will not bear the cost of balancing if the cost of that balancing is not allocated to the shipper responsible for managing the imbalance and shipping gas to the relevant consumer.

48. Implementing change request 4 will help ensure that the full cost of balancing gas is signaled to consumers.

Would change request 4 help ensure accurate, efficient and timely arrangements for the allocation and reconciliation of gas quantities

49. Implementing change request 4 will help ensure that balancing gas is allocated to the shipper responsible for the imbalance.

Would change request 4 help ensure access to pipelines on reasonable terms

50. Contact believes that reasonable terms in relation to balancing are terms that reflect the following kinds of principles:

   – that signal costs to users able to manage and control those costs;

   – that identify tradeoffs in evaluating options;

   – that maximize the use of available flexibility;

   – that aim to achieve balancing at least cost; and

   – that encourage efficiency.

51. The ERGEG principles reflect similar principles.

52. Contact believes that change request 4 is consistent with these principles.

Would change request 4 help ensure that consistent standards and protocols apply to the operations relating to all pipelines

53. Contact believes that the operation of the BPP Account was modeled on the operation of the MPOC Incentives Pool. Contact notes that under section 14.12 of the MPOC that it is clearly envisaged that the Incentives Pool Trustee will take *"all reasonable steps to enforce payments"*.

54. Contact believes that the lack of an obligation on Vector to recover some payments owed to the BPP Account means operation of the BPP will be inconsistent with the operation of the similar MPOC Incentives Pool.

55. Change request 4 therefore helps ensure that consistent standards and protocols apply across the Maui pipeline and Vector pipelines.

Conclusion - change request 4

56. Contact considers that in light of the above and the points previously raised in submissions to the Gas Industry Company in respect of change request 4 that the Gas Industry Company should reconsider its draft recommendation in respect of change request 4.

Change Request 5 – payments in and out of the BPP account

57. This change request proposes to amend the VTC so that payments out of the VTC do not exceed payments into the VTC. This will ensure the BPP Account will not be overdrawn and that Shippers will not be responsible for balancing costs that they did not cause.

58. In making its draft recommendation the Gas Industry Company has assumed that if a payment is not paid out of the BPP when there is a claim made against the BPP then Vector will become liable for that payment. The Gas Industry Company has further assumed that if Vector is liable for these payments then Vector may be liable for costs that it could not recover. The Gas Industry Company has concluded that Vector has validly withheld its consent to change request 5 because it creates risk that Vector may be required to make payments that it is not able to recover.

59. The Gas Industry Company has not shown in its draft recommendation how it has assessed change request 5 in relation to the objectives set out in the MoU nor whether there is wider merit in the change request or whether it supports change request 5.

60. For example, the Gas Industry Company has not considered whether implementation of change request 5 would better align the VTC with accepted principles of open access and in particular would help ensure allocation of balancing costs to the shipper primarily responsible for the imbalance. It seems that the GIC has limited its analysis and assessment to whether Vector is likely to face additional costs if change request 5 is implemented without considering the mechanisms available to Vector to recover those costs or considering the wider benefits of the change request.

61. The Gas Industry Company has not provided a written recommendation supporting or not supporting change request 5 as Contact believes the Gas Industry Company has agreed to provide under the MoU.

62. Change request 5 raises similar issues to change request 4 such as whether shippers should be responsible for the cost of imbalance they create or instead it is acceptable for Vector to pay those costs and then to recover them from all shippers.

63. Similarly to change request 4, Contact believes that the Gas Industry Company should assess change request 5 against the following objectives distilled from the VTC, the MoU, the Gas Act and the Government Policy Statement:

   – would the change request require Vector to incur operating expenses that Vector could not expect to recover;

- would the change request adversely affect the structure of Vector’s transmission services;
- would the change request help to ensure gas is delivered in an efficient manner;
- would the change request help to ensure gas costs and prices are subject to sustained downward pressure;
- would the change request help to ensure that gas is delivered in a fair manner;
- would the change request facilitate competition;
- would the change request help to ensure the full cost of producing and transporting gas is signaled top consumers;
- would the change request help to ensure accurate, efficient and timely arrangements for the allocation and reconciliation of gas quantities;
- would the change request help to ensure access to pipelines on reasonable terms; and
- would the change help to ensure that consistent standards and protocols apply to the operations relating to all pipelines.

64. Contact has assessed the change request in respect of these objectives.

Would change request 5 require Vector to incur operating expenses that Vector could not expect to recover

65. In its assessment the Gas Industry Company has assumed that Vector would remain liable to MDL regardless of who pays into the BPP. The Gas Industry Company overlooks that the proposed amendments relate to parties other than MDL. The proposed amendment to section 8.13(a) and 8.13(b) relate to payments made to the Incentives Pool Trustee. Inconsistently with its apparent acceptance that Vector and the BPP Trustee are separate entities the GIC seems to accept the Incentive Pool Trustee and MDL are the same entity. The proposed amendment to section 8.18(a) relates to purchases of Balancing Gas made by Vector so that Vector’s liability in relation to that provision would remain with the provider of that gas rather than to MDL. Only in the case of the proposed change to section 8.19(a) is Vector liable to MDL.

66. In principle, however, Contact accepts that Vector is potentially liable to a third party whether or not the required payments are made to MDL. Whether Vector is actually liable will depend on the particular circumstances. In some situations Vector may not be liable because the charges do not accord with the requirements of the VTC or the MPOC.

67. Vector's potential liability arises from contracts between Vector and third parties under which Vector is required to make the payments that are subject to change request 5. Vector's contracts are with the following parties:

– section 8.13(a) with MDL as a welded party under the MPOC;

– section 8.13(b) with MDL as a welded party under the MPOC;

– section 8.18(a) with the provider of balancing gas; and

– section 8.19(a) with MDL as a welded party under the MPOC.

68. Through those contracts Vector has a number of mechanisms available to it that will limit those balancing payments. For example, the following mechanisms are available to Vector as a welded party under the MPOC to limit its obligation to make payments to MDL:

– the right to trade operational imbalances;

– the right to call force majeure at welded points;

– the right to curtail gas take through operational flow orders; and

– the right to suspend or terminate transport of gas for a shipper.

69. These mechanisms are not available to Shippers or Non-Code Shippers. To ensure that Vector makes appropriate use of these mechanisms it is appropriate that Vector does not have limitless access to BPP funds to meet any imbalance costs that any third party claims against the BPP. The Gas Industry Company notes in the Transmission Balancing Options Paper that *"assuming gas balancing costs will be a pass-through in the TSO's regulated revenues, the TSO will have no incentive to minimize balancing costs or to optimize the pricing of balancing. The TSOs are interested in the effectiveness of the balancing market, but not necessarily in its efficiency. It is the community of users – who are both the providers and consumers of flexibility – who are best motivated to achieve an efficient balancing market."*

70. The Gas Industry Company also seems to fail to consider that there are mechanisms available to Vector to recover payments for balancing costs from the shipper responsible for the imbalance other than recovery from the BPP. These include:

– section 14.9 which enables Vector to make a claim against Credit Support;

– section 16.15, 17 and 18 which enables Vector to seek recovery through the dispute resolution process; and

– section 20 which enables Vector to terminate a TSA if a party under a TSA defaults in making a payment.

71. In addition to the above a shipper or shippers may decide not to make payments to the BPP because they dispute the charges. In such circumstances it is appropriate that Vector exercises the dispute processes available to it rather than adopting the easy approach of paying the charges from the BPP without challenging the claim in the knowledge it will be able to recover those costs from its shippers. It's inappropriate that Vector should make disputed payments without consideration of the validity of the dispute and then recover those payments indirectly from shippers.

72. Contact believes that it is far from clear that Vector will be ultimately liable for balancing costs that it does not recover from the BPP in the event that payments out of the BPP are limited to amounts paid into the BPP.

Would change request 5 adversely affect the structure of Vector's transmission services

73. Contact believes that implementing change request 5 would not adversely affect the structure of Vector's transmission services. Implementing change request 5 would help ensure that the shipper responsible for causing imbalance would pay the costs generated by that imbalance. That is consistent with the principles underlying section 8 of the VTC.

74. Section 8 of the VTC clearly contains extensive provisions that allocate the cost of imbalance to the shipper responsible for causing imbalance. Change request 5 is consistent with the structure of transmission services provided under the VTC.

Would the change request 5 help ensure gas is delivered in an efficient manner

75. In its Transmission Balancing Options Paper the Gas Industry Company proposes that in the context of balancing the main focus of efficiency should be on minimizing costs and that signaling costs to causers will help minimize cost.

76. Contact believes that limiting payments out of the BPP to payments made into the BPP will help ensure that the shipper responsible for causing imbalance will be responsible for the costs of that imbalance. It is likely that if Vector pays amounts out of the BPP in excess of payments made into the BPP that those excess payments will be recovered from shippers not responsible for the imbalance. Contact therefore believes that change request 5 is consistent with the objective of efficient gas delivery.

77. In addition, limiting payments out of the BPP to payments made into the BPP will help ensure that Vector challenges questionable charges claimed against the BPP. That is less likely to happen if Vector is not limited to making payments out of the BPP to payments

made into the BPP. Appropriate challenge of questionable claims made against the BPP will also help improve the delivery of gas in an efficient manner.

78. The Gas Industry Company notes in its Transmission Balancing Options Paper that TSOs, such as Vector, while they are interested in the effectiveness of balancing they are not necessarily interested in the efficiency of balancing. It is the community of users - who are the providers and consumers of flexibility – who are best motivated to achieve an efficient balancing market.

Would change request 5 help ensure gas costs and prices are subject to sustained downward pressure

79. Implementing change request 5 will help ensure that the Shipper responsible for creating imbalance bears the cost of that imbalance.

80. Shippers able to manage and control their imbalance should face lower costs than shippers not able to do that. Hence implementing change request 5 should help ensure balancing costs are minimized and that gas transportation costs are subject to downward pressure.

81. The Gas Industry Company notes in the Transmission Balancing Options Paper that, *balancing charges should signal to users the full cost of balancing actions resulting from the users' behaviour in order to promote efficient behaviour and provide incentives for investment in information and business systems"*. That should subject gas costs to downward pressure.

Would change request 5 help ensure that gas is delivered in a fair manner

82. Contact considers it unfair to allow some Shippers not to pay the costs of imbalance that they cause while other Shippers pay those costs. Implementing change request 5 will help ensure all Shippers pay the balancing costs for which they are responsible.

83. Under sections 8.15(b) and 8.16(b) of the VTC payments out of the BPP are limited to payments made into the BPP. In both section 8.15(b) and section 8.16(b) Vector is making the payment out of the BPP to Shippers. In contrast Vector is able to use the BPP as a source of funds to fully recover payments it has to make to third parties such as MDL or a provider of balancing gas. It is unclear and unfair why the commercial interests of shippers are subservient to the commercial interests of MDL, Vector and other third parties. The Gas Industry Company should consider whether such dual standards are appropriate. Contact notes that Vector may wish to be able to pay funds out of the BPP in excess of funds paid into the BPP because as a provider of balancing gas it is a potential beneficiary of these payments. The Gas Industry Company in the Transmission Balancing Options Paper has

noted the potential conflict of interest for TSOs providing balancing gas if they have affiliates that are pipeline users with interests both upstream and downstream in the gas market.

84. It is because of this kind of conflict of interest that the Gas Industry Company has concluded that balancing should be managed by an independent balancing agent.

Would change request 5 facilitate competition

85. Contact believes that change request 5 would help encourage competition.

86. Implementation of change request 5 will help ensure that those shippers who are able to effectively manage and control imbalance will bear less risk and lower costs than shippers unable to manage and control those costs. This should promote supply competition.

87. In addition exposing Shippers directly to the costs of the imbalance that they cause will heighten Shipper's interests in lower cost balancing solutions such as improved information or improved information technology. This should help to develop a more competitive and efficient market.

Would change request 5 help ensure the full cost of producing and transporting gas is signaled to consumers

88. Implementing change request 5 will help ensure that each Shipper is responsible for the costs of imbalance associated with transporting gas to their customers. If Shippers can identify and isolate those costs they are likely to pass on those costs to at least their larger customers.

89. Implementing change request 5 will help ensure that consumers pay the full cost of transport.

Would change request 5 help ensure accurate, efficient and timely arrangements for the allocation and reconciliation of gas quantities

90. Implementing change request 4 helps ensure that balancing gas is allocated to the shipper responsible for the imbalance. Change request 5 is consistent with the objective of accurate allocation of gas quantities.

Would change request 5 help ensure access to pipelines on reasonable terms.

91. Apart from payments made out of the VTC in respect of section 8.15(b) and section 8.16(b) the VTC is silent on what happens when a claim against the BPP exceeds payments made into the VTC. This is recognized by the Gas Industry Company in its analysis of the merits of change request 4. The Gas Industry Company states *"there seems to be some merit in*

clarifying in the VTC who is liable for a shortfall in the BPP account and who is liable for costs incurred in recovering the shortfall."

92. As recognized by the Gas Industry Company, section 8.20 of the VTC provides a method for Vector to recover costs paid to a third party for the administration of Vector's operation of the BPP Account. Payments made by Vector out of the BPP Account for balancing charges in excess of payments made into the BPP for balancing charges are clearly not costs related to the administration of the BPP.

93. The Gas Industry Company recognizes in the Transmission Balancing Options Paper that signaling costs to causers will help minimize cost and that it is appropriate that shippers bear the cost of imbalance that they create. This is consistent with ERGEG principles.

94. Contact believes that implementing change request 5 would help ensure that terms of access are consistent with accepted principles and reasonable.

Would change request 5 help ensure that consistent standards and protocols apply to the operations relating to all pipelines

95. Contact believes that the BPP Account was modeled on the MPOC Incentives Pool. Contact notes that under section 14.12 of the MPOC that the Incentives Pool Trustee is required to pay Incentives Pool Claims on a prorata basis if claims exceed payments into the Incentives Pool.

96. Contact considers that implementation of change request 5 would help make the operation of the BPP Account more consistent with the operation of the MPOC Incentives Pool.

Conclusion - change request 5

97. Contact suggests that in light of the above that the Gas Industry Company should review and reconsider its draft recommendation on change request 5.

Change Request 6 – confidentiality

98. The Gas Industry Company does not explain how it has assessed change request 6 in relation to the objectives specified in the MoU. Contact believes that not publishing energy quantity information would be inconsistent with those objectives.

99. Making energy quantity information more widely available should help shippers to manage and control imbalance. Energy quantity information is already collected and provided to selected shippers via OATIS. No additional costs should be incurred in allowing all shippers to access that information. Better management and control of balancing should help improve the efficiency of gas transportation and help reduce the cost of gas transportation.

100. Change request 6 requires Vector to publish all energy quantity data listed in Schedule 4 of the VTC. The Gas Industry Company agrees with Contact, most other submitters and Vector that publication of this data would benefit the industry.

101. It's Contact's understanding that only Vector has expressed reservation about publication of this information and only on grounds that it would be unfair to publish Shipper energy quantity information while Non-Code Shipper energy quantity information was not published. Vector has not indicated why this would be unfair.

102. Both Vector and the Gas Industry Company overlook that Non-Code Shipper TSAs were signed long before the VTC came into effect and fail to consider whether it is reasonable to force on Non-Code shippers arrangements that have come into effect long after those agreements were made.

103. The Gas Industry Company has decided not to support this change request because it has accepted Vector's argument that Non-Code Shippers should sign *"appropriate deeds amending Non-Code Shipper transmission services agreements clarifying that disclosure of the energy quantity information does not constitute breach of confidentiality*".

104. Contact is puzzled by this determination in light of the letter the three Non-Code Shippers sent to Vector confirming that the information was not confidential and that Vector was free to publish the information. It seems as if only Vector could now claim that energy quantity information under Non-Code Shipper agreements is confidential.

105. In addition, Contact notes that in its Transmission Balancing Options Paper the Gas Industry Company has recocognised that pipeline users lack sufficient information with which to make the best balancing decisions. Contact thought because of that the Gas Industry Company would support at the least the principles of change request 6.

106. Although Contact considers it unnecessary it has indicated willingness to sign agreements with Vector confirming that energy quantity information exchanged under each of its Non-Code TSAs is not confidential and may be published by Vector.

107. However, all of the above now seems somewhat academic as Vector has been publishing all of the energy quantity information listed in Schedule Four of the VTC and we believe listed in Schedule Five of Non-Code TSAs.

Conclusion – change request 6

108. Contact believes that the Gas Industry Company should reconsider its draft recommendation on change request 6 and take into account the matters indicated above. Contact believes that consistent with the requirements of the MoU that the Gas Industry Company should publish its assessment of the change request against the requirements set out in the MoU and the VTC and the objectives set out in the Gas Act and the Government Policy Statement.

Change Request 7 - provision of Vector running imbalance information

109. Contact is pleased that the Gas Industry Company has recognized some of the benefits of publication of Vector running imbalance and in its draft recommendation supporting Contact's change request.

110. The Gas Industry Company does not explain how it has assessed change request 7 in relation to the objectives specified in the MoU. Contact believes that failure to publish Vector running imbalance would be inconsistent with these objectives and in particular the objectives of efficiency and downward pressure on costs.

111. The Gas Industry Company has not recognized the distinction between Vector running imbalance and Shipper running mismatch. Individual shippers are responsible for imbalance costs generated by their running mismatch whereas Vector is unlikely to have ultimate responsibility for costs generated in relation to its running imbalance. Contact expects it will pass on such costs to Shippers via the tariff.

112. The magnitude of Vector running imbalance is a significant indicator of the efficiency of Vector's operation of its pipelines as it includes allowance for fuel consumed by Vector, gas vented, UFG and as well allowance for Vector management of gas flows to MPOC nominations.

Conclusion – change request 7

113. Contact believes that consistent with the requirements of the MoU that the Gas Industry Company should publish its assessment of the change request against the requirements set out in the MoU and the VTC and the objectives set out in the Gas Act and the Government Policy Statement.

Yours sincerely

Alex Love