



GREYMOUTH GAS

18 October 2012

John Bright
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Gas Industry Company Limited
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Dear John,

RE: Draft Recommendation: VTC CR Appeal 31 July 2012

Greymouth Gas New Zealand Limited ("Greymouth Gas") is pleased to make a submission on the Draft Recommendation: VTC CR Appeal 31 July 2012 (the "paper") following an invitation from the Gas Industry Company Limited ("GIC") on 1 October 2012.

Greymouth Gas' submission on the paper follows the questions posed in the paper.

Questions in paper

1) *Do you agree with GIC's evaluation of this proposed change [prudential requirements]?*

No – GIC misses the point¹.

By deleting '*in accordance with Agreement*' from the current section 14.12(a) of the Vector Transmission Code ("VTC"), this decreases protection for shippers. In response to the GIC's comments in the paper and further to our comments on the same in our previous submission:

- GIC is correct that Vector Gas Limited's ("Vector") ability to claim under section 14.12(a) of the VTC is limited to any security pertaining to a terminated TSA. However, the point is that up to this amount, any Vector claim could be unfettered because of the deletion of Vector needing to act '*in accordance with Agreement*'.
 - This is a worse position than at present because currently, Vector must act in accordance with Agreement.
 - This is a not in accordance with section 43ZN(b)(v) of the Gas Act 1992 (the "act") as it represents inefficient management of a transport arrangement and a more inefficient position than at present.

¹ apart from removal of the cash bond to which Greymouth Gas does not disagree with.

- GIC is incorrect that Greymouth Gas' point that Vector's ability to claim under section 14.12(a) of the VTC² is a variation on the change request. It is not a variation because the deletion of Vector having to act in accordance with Agreement casts doubt on being able to rely on section 14.12(b) of the VTC. The previous two sub-points above also apply.
- GIC is incorrect that Greymouth Gas' point that the release of securities should not be delayed by unreasonable claims of Vector is also a variation on the change request. It is not a variation because the deletion of Vector having to act in accordance with Agreement casts doubt on Vector being reasonable, should section 14.12(a) of the VTC come into play. The previously mentioned two sub-points also apply.

It should therefore be evident that aside from removing cash bonds (non-material), the proposed change to section 14.12(a) of the VTC does frustrate the ability of participants and new entrants to access the transmission system on reasonable terms and conditions, particularly compared with the status quo.

- 2) *The additional information provided by Vector shows that there are a number of disputes that took a long time to resolve. Do you have any comments on the time it takes to resolve disputed invoices? What factors are you aware of that influence the time it takes to resolve disputed invoices?*

The additional information provided by Vector appears to be only part of the picture. Greymouth Gas contends that this information must be interpreted and analysed in context, including, without limitation:

- There was only 1 dispute within the last 2 years.
- Most of the balancing disputes appear to pertain to a completely different balancing environment (e.g. longer ILONs, wider legacy issues, different industry players). This environment changed, 2 day ILONs were implemented, other changes were made and the disputes largely went away.
- There is no information next to the transmission disputes (like for the balancing disputes) that shows the outcome.
- There is no information supplied³ to indicate the issue in dispute, which means no conclusions can be drawn from the information in terms of whether it is a shipper, or Vector, or the complex nature of the dispute that influenced the time taken to resolve.

The evidence provided by Vector actually disproves Vector's position and suggests that disputes are not currently a problem to Vector.

The evidence provided supports all shippers' comments in previous submissions that the case for change has not been made by Vector, and this is even more evident based on this evidence.

² that Vector's ability should be limited to outstanding amounts and all amounts payable or which may reasonably be considered by Vector to become payable in the following 30 months under that TSA

³ and it may be bound by confidentiality protocols

- 3) *Do you agree that the proposed change does not need to be symmetrical because: (a) in any case, a dispute may be settled by an independent expert and (b) disputes raised by Vector are likely to be mechanical in nature?*

No – GIC's argument in the paper bears no relation to its support. In other words:

- The fact that a dispute may be settled by an independent expert has no bearing on arguments pertaining to symmetric or asymmetric cash payments, and
- That disputes raised by Vector are likely to be mechanical in nature likewise has no bearing on arguments pertaining to symmetric or asymmetric cash payments.

The only argument should be what is fair and efficient in terms of the act. In other words, currently all parties who can dispute are entitled to withhold full cash payment of the amount in dispute. But under the proposed change, Vector has preferential treatment (to withhold full cash payment) but shippers are treated differently (and must pay half the amount in dispute).

Therefore while it is appropriate for either party to dispute invoiced amounts, it is inappropriate for both parties to have different cash payment mechanisms.

From a principle perspective, this is inefficient under section 43ZN(b)(v) of the act, and compared with the status quo. That the GIC can argue differently does not stack up.

Furthermore, GIC cites an 'other outcome' of the Government Policy Statement on Gas Governance dated April 2008 ("GPS"), referring to appropriate dispute resolution processes. There are a few relevant points here:

- Part of the proposed change is inappropriate, and not in accordance with the GPS, and
- This 'outcome' cited in the GPS is only an outcome for the industry against which GIC must report⁴, and is not (according to the GPS and section 43ZO(1) of the act) an objective that the GIC should pursue. GIC is therefore barred from referring to this GPS 'outcome' for the purposes of assessing or determining its support or otherwise from any work-stream including a VTC change request.

It is clear⁵ that cash-payment symmetry is a function of an efficient and proper regime.

- 4) *Do you agree with GIC's evaluation of this proposed change [disputes]? Do you have any evidence to suggest that Vector's claims are incorrect?*

Greymouth Gas does not agree with GIC's evaluation of this proposed change and the evidence provided by Vector in the paper strongly suggests that Vector's claims are incorrect.

Aside from only seeking statements from Vector, GIC's discussion in the paper does not appear to be balanced (and this, together with the following, forms the basis about why GIC's evaluation of the disputes change is wrong) because:

⁴ page 4 of the GPS

⁵ setting to one side the discussion on withholding cash payments or paying 50% of amounts in dispute

- While Vector does indicate that resolving disputes within reasonable periods has not always occurred:
 - o There is no evidence provided by Vector to indicate why, and
 - o It is more than likely, based on the evidence, that balancing disputes arose because of a completely different balancing environment.

- It is not possible to assess Vector's evidence and determine that shippers unnecessarily dragged out the dispute process. How the GIC can make this statement, based on the evidence, is not clear. The evidence shows:
 - o Some claims took a long time to resolve,
 - o There is a strong correlation between an improved balancing environment and the cessation of balancing disputes,
 - o There is no evidence to show that shippers unnecessarily dragged out the process,
 - o There is no evidence to show what the actual issues in dispute were, and
 - o Based on the evidence, it appears just as likely that Vector dragged out disputes as much as shippers did⁶.

- GIC's comment about transaction costs is true in theory but this is an ordinary part of business. One could argue that Vector has already successfully addressed this issue, based on the evidence of very few disputes within the last two years.

- It is not possible for GIC to determine that transaction costs can be out of proportion to the amount in dispute because:
 - o No evidence of transaction costs to Vector is supplied,
 - o A reasonable dispute can be for any amount, and
 - o Given the few days it took to resolve the smaller disputes, has GIC double checked that these were, in fact, formal disputes and not simply disagreements solved at or before they went down a formal disputes resolution process?

- Vector's statement⁷ is one side of the equation. Greymouth Gas has also found that Vector refuses to engage on many issues and appears to delay resolution, such issues being:
 - o Prudential requirements,
 - o Timely, accurate reserved capacity queue information,
 - o In recent past, continuing to progress with bundled change requests despite industry desire to assess issues on a stand-alone basis, and
 - o Provision of correctly requested information.

GIC cannot therefore, place any weight on Vector's statement, if it is indeed accurate, because Vector's behaviour could be said to be equally commercial.

- Vector's belief that Shippers have an incentive to obfuscate in the hope that Vector will write-off the invoice is incorrect because the evidence strongly suggests:

⁶ assuming this is correct

⁷ page 11 of the paper: *'we have found that some Shippers refuse to pay or delay payment of balancing costs by raising technical arguments, and then refuse to engage in the dispute resolution process and appear to delay resolution'*

- That no amounts have been written-off, and
 - That Vector will pursue all amounts owed to it.
- GIC is incorrect in concluding, from assessing the evidence, that there is considerable scope for disputed invoices to be drawn out over a long period of time, citing 3 year settlements and balancing disputes being found in favour of Vector. Actually, the evidence suggests:
- There is no evidence to suggest any reason for why it took a long time to resolve some disputes,
 - That balancing disputes were typically found in favour of Vector does not necessarily suggest that shippers were the party holding up the dispute process – it is more than likely that the technical arguments had merit and it was the complexity of the previous balancing environment that meant disputes took a long time to resolve. This is evidenced because with the solving of legacy balancing issues, the disputes largely fell away, and
 - This strongly suggests that Vector was the party holding up the process.

The evidence actually raises a strategic issue in terms of how shippers are protected in the VTC if Vector, as party to the Maui Pipeline Operating Code (“MPOC”), has reasonable grounds to dispute MPOC charges.

The fact that balancing disputes went away when the MPOC balancing framework improved, strongly suggests that Vector had an unwillingness to become caught in the middle of disputes.

However, from an industry perspective, it is unacceptable for Vector to simply catch-and-pass invoices if the charges/costs in the invoices have no technical basis under the MPOC.

If the MPOC is going to be changed⁸ next year, then it is absolutely critical that the VTC has a proper mechanism for incentivising cross-code dispute resolution and that shippers remain entitled to dispute both transmission and balancing invoices with Vector – part of an efficient process.

- The previous arguments make it difficult to see how GIC can agree with Vector that payment of a portion of a disputed amount should reduce the incentive to frustrate the process. In actual fact, Greymouth Gas contends that:
- This will create perverse incentives,
 - Fast dispute resolution is encouraged when the dispute resolution structure is clear and concise,
 - Having ½ the parties to the VTC make ½ cash payments introduces needless complexity which is contrary to section 43ZN(b)(v) of the act) which requires risks relating to security of supply to be properly and efficiently managed by all parties,
 - Further to the above, the idea is not to weight competitive market arrangements in favour of a monopoly player – however, the change request does do this, thus it contradicts section 43ZN(b)(i) of the act,
 - There is nothing about what happens to interest earned on disputed amounts,

⁸ based on the 2011 MPOC balancing change request, and Greymouth Gas reserves further comment on this at this stage

- Separating the cash payment from the dispute fundamentals (and introducing asymmetry) is more likely to delay disputes compared to the counterfactual status quo in which 1 dispute occurred within the last 2 years and took only 35 days to resolve, and
 - Dispute resolution costs are unlikely to change because at least half of a disputed amount has been paid. This does not change the underlying dispute or the costs that parties are likely to incur. If anything, the party raising the dispute is likely to spend more operating costs to seek to ensure that disputed amounts that have been paid are actually returned if their dispute is upheld.
- GIC's statement that a disputed invoice will either be found to be in favour of the shipper or Vector followed by what happens to the cash has no relationship to proving or disproving whether shippers should pay half of disputed amounts.

In summary, GIC presents a range of illogical arguments based on a partial interpretation of the evidence. The evidence does not suggest that shippers have been frustrating the process, thus the primary argument must apply.

The primary argument, per shippers' submissions, is that making shippers pay half of disputed amounts will not create a more efficient dispute resolution process (and will, in fact, create a less efficient process) for reasons previously stated.

5) *Do you agree with GIC's evaluation of this proposed change?*

Yes – although this change should be given no weight in terms of overall analysis of the paper.

Conclusion

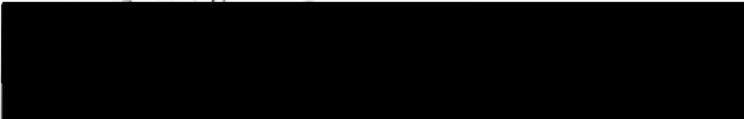
Appendix B of the paper makes it clear that Vector's evidence proves the opposite of what it is arguing.

Furthermore, GIC has used questionable logic to form the basis of its support in the paper – in fact there are fundamental issues pertaining to all questions in the paper except question five.

GIC must reach an independent, reasonable, logical recommendation particularly from a status quo, act, and precedent⁹ perspective. This should leave only one option available.

Greymouth Gas requests the GIC withdraw its support for this VTC change request in its final recommendation.

Yours sincerely,


Chris Boxall
Commercial Manager

⁹ where GIC can only support a change in whole; thus if there are issues with a part, then the recommendation must either default to non-support or seek to apply a weighting methodology early in the process.