



23 August 2013

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Dear Ian

**Draft Recommendation on 31 May 2013 VTC Change Request (Single Issue) –  
Submission of Contact Energy Limited**

1. On 6 May 2013, Contact Energy Limited (**Contact**) proposed a change to section 25 of the VTC to limit Change Requests to a single issue or related series of issues (**CR**).
2. Vector did not consent to the CR, and cited five reasons for reaching that decision. Contact has appealed this decision on the grounds that:
  - (a) Vector did not validly withhold its consent (section 25.6(a) – **Appeal Ground One**); and
  - (b) Contact is a Shipper who consented to a Change Request that was not approved (section 25.6(c) – **Appeal Ground Two**).

**Appeal Ground One**

3. In relation to Appeal Ground One, Contact agrees with the points made in the GIC's draft recommendation<sup>1</sup> with respect to reasons, **one**, **three** and **four**. However, we wish to make further comments in relation to points **two** and **five** below.
4. Contact does not agree with the overall conclusion reached by the GIC that as Vector presented a reasonable basis for withholding consent (i.e. under **reason five**), the appeal "must" fail.

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<sup>1</sup> Set out in the tables in the Executive Summary and on page 14.

## **Two – the change request will create inefficiencies in the VTC change process**

5. In its own analysis of past appeals, the GIC has commented that the inclusion of unrelated issues in the same Change Request has caused inefficiencies and other problems. The GIC also includes a comment in its draft recommendation that it is not convinced that it is reasonable to withhold consent to a Change Request in situations where there is merely *a possibility that there may be a loss of efficiency* (this comment is relevant to the issue of whether there has to be more than a “mere potential” for the Change Request to create inefficiency or effectiveness impacts).
6. All parties, including Vector, must consider all aspects of Change Requests, and this would not change if discrete issues are put into separate Change Requests. Contact’s view is that it will, in fact, be easier to assess specific changes if issues are treated separately or, at least, have to be related to one another. This is because, where there are multiple issues, there is an added complication of assessing the implications of approving the Change Request as a whole, and on the balance of all the (unrelated) issues; especially there is a contentious or otherwise unsatisfactory issue involved among them. This commonly results in overall non-approval of Change Requests and appeals.
7. Contact agrees with the point put forward by the GIC on this **reason two** as set out in the draft recommendation. However, it is not at all clear how or why this should be linked to **reason five**.

## **Five – the Change Request will create ambiguity**

8. Contact believes that, if it had proposed the CR on the basis that Change Requests should cover single issues only (i.e. not referred to related series of issues), the issue of ambiguity would never have arisen. We believe that it is easy to determine what constitutes a single issue. Therefore, it appears that the real question is what determines a ‘series of related issues’. More specifically – what determines a relationship between issues?
9. The relevant VTC section here is section 25.4. Under this, a party who has any doubt about the validity of a relationship existing between issues is entitled, at any time, to ask the party making the Change Request to supply additional, relevant detail about that request. This right was specifically included in the VTC as a tool for dealing with any ambiguities in relation to Change Requests, and is applicable to both single issues and any series of related issues (or any other matter covered by or discussed in a Change Request).

10. Contact believes that a request to clarify an ambiguity in a Change Request made under section 25.4(c) should in itself provide enough assistance to enable the party raising the question to make a decision on the Change Request's merit and whether or not it should agree to the change request.
11. If a party, based on its own assessment of the Change Request and any feedback obtained under section 25.4, did not agree that a Change Request was based on related issues, it would of course be free to vote against that Change request.
12. Further if a Change Request is subsequently approved any person who voted against it would still have the right to appeal that decision, in accordance with the VTC.
13. An appeal to the GIC has to be accompanied by full particulars as to its reasons. The GIC will consider the matter, under section 25.7 and make a written recommendation supporting or not supporting the change request.
14. Accordingly, there are sufficient safeguards in the process to ensure any issues around whether a Change Request covers a related set of issues can be resolved without complication, and no need to treat that specific question any differently to the way other objections to proposed Change Requests are currently dealt with.
15. In addition, nothing prevents the GIC making a recommendation on any particular grounds of appeal put forward by either a Shipper or Vector. An issue does not become a dispute just because a party appeals a decision based on the fact that they believe the change request is not presenting related issues. Nor does the decision made by the GIC lead to a dispute because its decisions are final and binding (clause 25.7).
16. For the avoidance of doubt, Contact is not asking for a new process to be initiated or the GIC to make any sort of interim determination(s). The GIC takes the full particulars, considers and recommends that in the same way as it does under any appeal today, as set out under section 25.7.
17. Vector has put forward an example of the issues it claims may arise from Contact's CR, by using a proposal to make minor drafting changes to the VTC that is included in an otherwise unrelated Change Request. However, in reality, these minor drafting changes are not material to the core Change Request and cannot be considered as "issues" in themselves. This said, Contact acknowledges that a request could be made to sever them from the core request and dealt with separately<sup>2</sup> – if a number of

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<sup>2</sup> It is normal practice to send out draft Change Requests to all parties before submitting them formally. If there was a drafting change separate to the main issue covered by the Change Request one would find it hard to

drafting changes need to be made to the VTC it would be simple to put them in one Change Request as a series of related issues (i.e. minor drafting). Contact submits, however, that it would be highly inefficient and nonsensical to require minor changes of this nature to each be submitted completely individually.

## **Appeal Ground Two**

18. The GIC states that there are varying views about whether it can or must consider Appeal Ground Two if it finds Vector reasonably withheld its consent to the CR.
19. The GIC's approach would seem to lead to unintended and irrational outcomes: for example, it would be possible for one party to appeal under section 25.6(a) and another party to appeal under section 25.6(b). If the GIC rejected the first party's appeal it would seem it could not hear the second party's appeal at all. Further, would the GIC always have to consider and reach a view on section 25(a) appeals before it could consider appeals brought under any other ground (as the former would always trump the latter), and why would anyone ever appeal (in the first instance) under section 25(a) if doing so would raise the risk that any appeal made by it or any other person on a different basis being incapable of being dealt with?
20. Section 25.7 states that the GIC shall make its decision, supporting or not supporting the Change Request or finding that Vector has or has no validly withheld its consent. There is nothing in this section to indicate that, if the GIC finds Vector validly withheld consent to a Change Request, the GIC cannot further or otherwise look at whether it supports the implementation of the Change Request.
21. In fact, the VTC specifically contemplates that Vector may validly withhold consent to a proposed Change Request but that the Change Request still gets approved – under section 25.8.
22. Contact considers it is possible for Vector to validly withhold consent to a Change Request yet for the GIC to still find the change should be allowed. To enable Vector to simply prevent change by finding a reason to validly withhold consent does not result in a fair industry process and would grant Vector even more power to control the content of the Code, and scope of change or development of it, than it has already.

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see a Shipper or Vector refusing the request on that basis, but they could always request them to be separated.

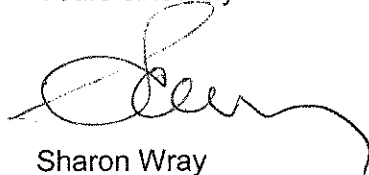
23. For the reasons set out above Contact believes the GIC should continue to review and determine the support or otherwise for the Change Request, regardless of the outcome of its assessment in respect of Vector's consent.
24. Contact does not know why the GIC has come to the conclusion it was inappropriate to develop a recommendation on Appeal Ground Two without additional feedback, and finds this opinion inexplicable.

### **Summary**

Vector has not shown any real (i.e. as opposed to "mere") potential for Contact's CR to cause ambiguity, uncertainty or inefficiency, or to be likely to result in more disputes about Change Requests arising than would occur if it was not implemented. The GIC's draft recommendation does not provide any compelling evidence of such outcomes either. Accordingly, Contact submits that the draft recommendation should be revised and that the GIC should support the implementation of Contact's CR.

If, notwithstanding the foregoing, the GIC still considers that Vector has validly withheld its consent to Contact's CR, the GIC should undertake a consideration of Appeal Ground Two. Contact does not consider there is any valid reason at law for the GIC to not consider Appeal Ground Two.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sharon Wray', with a long, sweeping horizontal line extending to the right.

Sharon Wray

