



9 April 2009

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Dear Ian

**VTC Change Request Appeal 20 February 2009 (BPP overdraft facility),  
Cross Submission**

Contact Energy welcomes the opportunity to provide a cross submission on the appeal lodged by Vector to allow a change to section 8.25 of the VTC to permit the BPP Trustee to borrow against the BPP account to enable the BPP Trustee to make payments from the BPP Account (BPP Overdraft Change Request).

Genesis and Nova Gas have made submissions opposing the change request and have cited reasons for their opposition similar to the reasons set out in Contact's submission.

On Gas and Greymouth Gas have made submissions supporting Vector's change request.

This cross submission addresses the points raised in the submissions made by Vector, On Gas and Greymouth Gas.

**Vector submission**

The paragraph references below refer to paragraphs of the Vector submission dated 23 March 2009.

**Paragraph 1.2**

Vector holds the view that the absence of an express power to borrow was an inadvertent omission from the VTC. Contact's email of 22 November 2007, referenced in its submission of 23 March 2009, shows that shippers raised concerns about the operation of the BPP before negotiation of the VTC was concluded but Vector closed off the negotiation before those concerns were addressed.

#### Paragraph 1.5

Vector could align the payment dates of MPOC invoices and VTC invoices through a VTC change request or a MPOC change request. The alternative approach of paying MDL from the BPP before the relevant payments are made into the BPP will incur BPP interest costs.

#### Paragraph 1.6

Vector states that if one or more shippers dispute a BPP invoice there is a disconnect between payments made into the BPP and Vector's obligation to make payments out of the BPP. This is incorrect. In such circumstances the interests of MDL, through section 21.12 of the MPOC, and the interests of Vector, through section 16.16 of the VTC, are protected by the obligation to pay interest on disputed amounts.

If a shipper disputes a payment to be made into the BPP then Vector should dispute the relevant payment to be made out of the BPP. If the dispute is resolved in favour of the shipper then the shipper will not be required to make the payment into the BPP and Vector should not be required to make a payment out of the BPP. If the disputed payment from the BPP is owed to MDL and the dispute is resolved in favour of MDL then the shipper should be required to pay the disputed amount into the BPP with interest and Vector will be required to make payment to MDL with interest. The interest paid to Vector and MDL will compensate MDL for the delayed payment.

The obligation to pay interest on disputed amounts means that Vector should not be under pressure to pay disputed amounts until the dispute is resolved and appropriately incentivises Vector to pursue disputes raised by shippers. This mechanism also protects the interest of shippers.

#### Paragraph 1.7

Vector suggests that it is reasonable to make shippers jointly liable for payment of imbalance charges at TP Welded Points. Such a view is completely contrary to the principles usually adopted for the management of open access balancing. For example principle 1 of the ERGEG principles for good gas balancing practice states *"the primary responsibility of network users is to balance their own inputs and offtakes"* and principle 4b states *"there should be accurate targeting of system balancing and operation costs to those participants that caused them to be incurred"*.

#### Paragraph 1.8

We do not expect Vector to operate as a bank and to make payments out of the BPP when a shipper has disputed a relevant payment into the BPP. Vector should only make payments out of the BPP when the relevant payment has been made into the BPP. Such an approach is common to the MPOC Incentives Pool, the contingency cash pool and the electricity market.

Vector suggests that it took on the role of a TP Welded Party to facilitate open access and on the strict understanding that it would not lose or gain from the arrangement. It was Vector's free choice

to take on the role of TP Welded Party in order to hasten the implementation of open access despite the concerns raised by shippers. Vector may have believed that it would not lose by taking on that role but shippers, likewise, were also entitled to believe that they would not lose by Vector assuming the role of TP Welded Party.

#### Paragraph 1.9

Vector indicates that it has not been able to make payments to MDL because shippers have disputed BPP invoices. Vector's non-payment of disputed invoices while those invoices remain in dispute is appropriate. When the dispute is resolved Vector will be able to pay MDL if the dispute is resolved in favour of MDL. If after the dispute is resolved the shipper continues to refuse to make payment then Vector will be able to draw on the prudential and other provisions of the VTC to extract payment from the shipper. Vector will also be required to pay interest to MDL to cover the delay in making the payment. Provisions of the VTC allow Vector to recover those interest costs from the shipper.

Alternatively the dispute may be resolved in favour of the shipper and in such circumstances no payments will be required to settle the dispute.

It is a widely adopted principle in gas contracts that payment of a debt is not required until any dispute related to that debt is resolved.

Vector claims that it is facing summary judgment proceedings in relation to the debt. Vector has the alternative of exercising the dispute resolution procedures of the MPOC and the VTC.

Vector does not need an overdraft facility to enable it to pay disputed amounts to MDL.

#### **On Gas submission**

On Gas suggests in its submission *"that running the BPP Account without an overdraft function is not feasible"*. For the reasons set out in Contact's submissions and as demonstrated by the manner in which the MPOC Incentives Pool, the contingency cash pool and the Electricity Market are run On Gas's suggestion is ill founded.

On Gas further suggests *"this provision [an overdraft function] was more than likely overlooked when the Code was initially drafted"*. Contact's email of 22 November 2007 suggests that is incorrect.

#### **Greymouth Gas submission**

Greymouth Gas takes a rather one sided view of the benefits of the change request and suggests that implementation of Vector's change request will mean that shippers promptly received payments made from the VTC. It then suggests that Vector will recover those costs from the causer of the particular event or alternatively, and rather optimistically, that Vector will pay the costs. Contact agrees that costs should be recovered from the causer of the particular event. The problem with

Vector's proposal is that there is nothing in the proposal to ensure that will happen and to ensure the costs will not be socialized across all shippers.

### **Concluding Comments**

Contact again suggests that while Vector's change request would protect Vector from risks arising from the incomplete description of the operation of the BPP Account in the VTC it would not protect shippers from those risks. The GIC should decline to support Vector's change request but suggest it would further consider a change request to cover the operation of the BPP Account if that change request addressed:

- the obligation to make payments into the BPP Account;
- the obligation to make payments out of the BPP Account; and
- the responsibility for operating the VTC including the responsibility for recovery of debts owed to the BPP Account.

We are happy to discuss this cross submission with you if you wish.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alex Love', written in a cursive style.

Alex Love  
Manager Gas Markets