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Malay Shah  
Gas Industry Company Limited  
PO Box 10-646  
Wellington

18 December 2008

Dear Malay,

**SUBMISSION ON TRANSITIONAL EXEMPTIONS UNDER THE GAS  
(SWITCHING ARRANGEMENTS) RULES 2008**

1. Vector Limited ("Vector") welcomes the opportunity to provide comments on the transitional exemption applications for the Gas (Switching Arrangements) Rules 2008. Vector notes that this submission is provided without prejudice to any consideration of the legitimacy of the Gas Industry Company's ("GIC") actions in providing exemptions to rules approved by a Government Minister, including exemptions that may be in conflict with, or outside the bounds of Government policy.
2. In general, Vector believes the GIC has done a good job of developing and implementing the switching and registry rules. However, Vector questions why the GIC did not consult with industry participants on the guidelines, as Vector has identified several aspects of the process in which improvements could be made. With several sets of rules in place, it is important that consistent frameworks are developed, consulted on and applied to the GIC's processes.
3. Vector would like to relay possible areas where improvements could be made to the framework under which exemptions are dealt with. Vector has provided comments on the following areas on which it seeks clarification:
  - Provisions for exemption types; and
  - Criteria for assessing exemptions.
4. The remainder of this cover letter explores each of the above areas in greater detail, with suggestions offered wherever possible. Vector has provided its' answers to specific questions on the transitional exemptions in the attached Appendix A.

## **Clarification of Exemption Types**

5. Vector believes the provisions relating to the three exemption types should be clarified to reduce risks of misinterpretation. More specifically, Vector asks that the GIC confirm the following provisions contained in the Information Paper:
  - the application of urgent exemptions; and
  - the application of the consultation process.
6. On page two of the Information Paper, under the section, "Application form and initial handling of applications," the GIC does not accurately clarify that urgent applications are only applicable to the Downstream Reconciliation Rules and not the Switching Rules. Vector recommends that this differentiation could be made by including a subsection for each set of rules with the relevant provisions following each.
7. For further clarity, the consultation process outlined in the Information Paper should be revisited to ensure it is clear. The section on the consultation process, found on page three of the paper, does not make an obvious distinction between the Downstream Reconciliation and Switching Rules, thus appearing as though the consultation process applies to both.
8. The Information Paper also states that the GIC will consult, for consistency, on all exemptions. Effectively, this could be viewed as making a new rule for transitional and urgent exemptions, as at present consultation is not required for either type of exemption under the Reconciliation Rules or for transitional exemptions under the Switching Rules.
9. Lastly, the Switching Rules do not allow for urgent applications so Vector notes that there should be no implied reference to that option under the stated consultation process.

## **Criteria for Assessing Exemptions**

10. Vector seeks clarification on the criteria the GIC will be using to assess exemption applications against. Namely, Vector asks that the following provisions of assessment criteria are clarified by the GIC:
  - criteria in relation to objectives in section 43ZN of the Gas Act 1992;
  - the consistency of exemption criteria;
  - use of 'ad hoc' evaluation criteria; and

- the consistency of 'other relevant considerations' when assessing exemptions.
11. Vector notes that none of the criteria listed includes the objectives found in section 43ZN of the Act. In order to ensure exemptions are consistently assessed against the Act, criteria for transitional exemptions should be explicitly considered against the relevant Act objectives.
  12. Also, the criteria for assessing exemptions found in the Information Paper could be made more consistent with other GIC publications. For example, under the Reconciliation Rules the exemptions criteria is only applicable to standard and urgent exemptions. In fact, transitional exemptions for both Reconciliation and Switching Rules are also assessed against criteria, as seen on page four of the consultation paper for Transitional Exemptions under Gas (Switching Arrangements) Rules 2008.
  13. Vector also considers that the addition of ad hoc "evaluation criteria" on page three of the GIC's consultation paper "Transitional Exemptions under the Gas (Switching Arrangements) Rules 2008", creates further uncertainty for those applying and assessing exemptions. Effective regulatory jurisdictions must contain consistent and coherent criteria for making robust decisions and their workability is eroded when criteria are seemingly tacked on whenever the existing criteria appear incomplete. Vector would recommend reviewing the original framework criteria, not the provision of avenues for additional criteria to be made that make the framework criteria redundant. At a minimum any additional criteria should be explicitly consistent and accord with one of the desirable characteristics of a regulatory regime.<sup>1</sup>
  14. The criteria on page four of the Information Paper only allows for "Any other relevant considerations" to be applicable to Rule 19, standard exemptions. As noted above, on page three of the consultation paper, the GIC has pointed out other considerations in which transitional exemptions may be assessed against. Thus, to ensure the provision is consistently applied, the GIC should ensure that the criterion, "any other relevant considerations" be allowed for urgent and transitional exemptions in addition to standard ones.
  15. Vector would prefer that the GIC finalize the "evaluation criteria" for exemptions and incorporate them into the Information Paper as a separate criterion, providing for greater transparency on the assessment of the decision at hand. Additionally, these supplementary considerations should

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<sup>1</sup> see *Review of Regulatory Control Provisions under the Commerce Act 1986: Discussion Document*, Appendix 1 Ministry of Economic Development April 2007- <http://www.beehive.govt.nz/Documents/Files/final-discussion-document.pdf>

be given weight by demonstrating which objective under the Act or Rules each criterion relates to.

### **Additional changes**

16. In addition to the above, Vector would like to propose the following changes:

- On page three, under the section on the "Consultation Process" there is a duplication in paragraph one (lines two and four) relating to the exclusion from publication of confidential information. This should be corrected.
- On page five, under the section, "Criteria for Transitional Exemptions under both the Reconciliation and Switching Rules," there is an incorrect reference to rule 90 of the Reconciliation Rules. Vector notes that there are only 84 Rules. This reference should be corrected.
- On page seven, under the section, "List of Appendices," the title to Appendix E in the list is different to that on the Appendix E template (page 21).

### **In Summary**

17. Vector considers that consultation should continue to take place as these new frameworks are being developed, especially when all industry participants are reliant on the processes running smoothly.

18. If you have any queries, or require further information on any aspect of this submission, please feel free to contact me at [nathan.strong@vector.co.nz](mailto:nathan.strong@vector.co.nz) or 04 462 8711.

Kind regards



**Nathan Strong**

Manager Regulatory Affairs

# Appendix A Recommended Format for Submissions

To assist Gas Industry Co in the orderly and efficient consideration of responses, a suggested format for submissions has been prepared. This is drawn from the questions posed in the body of this consultation paper. Submitters are also free to include other material on the exemptions in their responses.

Submission from: Vector Limited

Question	Comment
<i>Q1: Do submitters have any comments on the transitional exemption applications regarding retailer switch notice response timeframes from gas retailers?</i>	<p>Vector agrees that the exemptions should be granted, however, questions why the GIC is not considering a rule change. At the very least, the GIC could begin the process of a rule change citing its inference, “in the longer term, GIC proposes to address this issue via the consideration of potential amendments to the Switching Rules.” Delaying the process by granting a two year transitional exemption seems to be delaying a change that should be dealt with as swiftly as possible. The eleven applications should act as a clear signal to the GIC that a timely change is necessary. Exemptions should be genuine exceptions to the rule, and not create a legitimate expectation in the industry, by incremental process, that they have become the rule.</p> <p>Vector also questions why this difficulty was not picked up on from early consultation. Vector has throughout the consultation process noted that a deadline of two business days for rules 78.1 and 81.1 is unreasonable. Additionally, consultation on the Switching Rules has shown that there is a strong desire from all participants to have the protocols for sending and receiving data to the registry the same for both electricity and gas, allowing business processes to be streamlined and more certainty for industry participants retailing both fuels.</p>

Question	Comment
<i>Q2: Do submitters have any comments on the transitional exemption application regarding distributor ICP parameter entry timeframes from Powerco?</i>	Vector agrees that the relaxed timeframes should be granted for Powerco. Our response to Q1 relates to Q2 as well.