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Bas Walker
Gas Industry Company Limited
PO Box 10 646
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5 February 2009

Dear Bas,

Submission on Exemption Applications under the Gas (Downstream Reconciliation) Rules 2008

1. Vector Gas Limited ("Vector") welcomes the opportunity to provide comments to the Gas Industry Company ("GIC") on the five Exemption Applications under the Gas (Downstream Reconciliation) Rules 2008 ("the Rules").
2. Vector has provided general comments relating to the statutory authority of the GIC concerning the exemption process and specific exemption applications and decisions in this covering letter. Additionally, Vector has provided answers to the GIC's specific questions in the attached Appendix A.

General Comments on GICs Authority

GIC as Applicant

3. Vector has reservations regarding the statutory authority for the GIC to apply for transitional or standard exemptions under the Rules even when the application is proposed by the GIC for the benefit of an allocation participant. Vector notes that the two applications proposed by the GIC relate to the obligations of the allocation agent under rule 45 of the Rules. As co-regulator (s 43ZK of the Gas Act) the GIC has the function of considering and deciding on whether or not applications for exemptions should be granted. It is therefore questionable if the GIC can propose an application itself, even for the benefit of an allocation participant.
4. Rules 19 and 81 allow for the industry body (the GIC) to exempt allocation participants, gas gates and the allocation agent (M-Co) from complying with all or any of the Rules. The GIC is not within the category of applicants envisaged by the Rules that can apply for exemptions. Nor is the GIC affected by the outcome of its decisions to grant or decline applications for exemptions. Therefore, Vector does not believe the GIC is able to apply for an exemption under the Rules even for the benefit of an allocation participant.
5. Further, Vector considers that as the GIC is the body that has the statutory discretion to grant or decline the applications, a potential conflict of interest

and likelihood of bias would arise if the GIC were permitted to both propose and consider an application for an exemption.

6. Vector considers that the GIC having both the authority to apply for an exemption and to make a decision in respect of that application, would breach one of the rules of natural justice - *Nemo iudex in sua causa* (no person can be a judge in their cause); and also s 27(1) of the New Zealand Bill of Rights Act 1990, as the GIC (as co-regulator) is a public authority.

Exemption is an Amendment

7. In reference to exemption applications DR09-02-S and DR09-05-S, Vector notes that while there is some authority for exemptions to be provided for under part 4A of the Gas Act, the exemption of substituting "zero" as the gas gate residual profile in the case of negative values is effectively an unauthorised amendment to the Rules. At best it could only be a "deemed" value and even that would be unauthorised unless it was specified in the Rules. Exemptions can only prevent the application of a rule, not substitute another rule in its place under the guise of an exemption.

Rule 81 is not a Transitional Provision

8. Vector also would like to point out that rule 81, and any approval under it to grant a transitional exemption, is not a transitional provision. It is an unauthorised suspension of the law. S 43S(1)(h) of the Gas Act enables the Rules to provide for transitional provisions. However rule 81 is not a transitional provision as generally understood. The following paragraph describes what the Legislation Advisory Committee Guidelines consider a legislative transitional provision is:

"A transitional provision explains how an enactment applies to circumstances that, having arisen in the past, will be affected by the enactment's coming into force. Circumstances for which transitional provisions might be needed include the existence, when the enactment comes into force, of persons holding office or proceedings before a court." (*Process and Content of Legislation 2001*; ch 7.4.2).

9. Thus, Vector considers the basic rule relating to transitional provisions is that a provision applies only to what happens in the future with respect to a particular circumstance that existed in the past. Rule 81 does not purport to do that. The provision simply defers or suspends the application of a rule. It is effectively the same as rule 4.2 (relating to Commencement) which deferred the application of Parts 2, 3, and 4 of the Rules from the commencement date of 30 May 2008 until the 'go-live' date of 1 October 2008.

Vector's Recommendation

10. To resolve the above, Vector recommends that the GIC withdraw or amend the previous exemptions that it has proposed itself on behalf of allocation participants and the exemptions it is currently proposing. Exemptions granted include:

- Transitional Exemption (DR08-13-T: Group 1, 2, 3, and 5 Consumer Installations) Notice 2008;
- Transitional Exemption (DR08-14-T: Unmetered Gas Gates) Notice 2008;
- Transitional Exemption (DR08-19-T: Allocation Agent Annual UFG Factor) Notice 2008; and
- Transitional Exemption (DR08-28-T: Allocation Agent Monthly UFG Factor) Notice 2008.

11. Exemption applications currently proposed are:

- Transitional Exemption application DR09-02-T (Negative gas gate residual profile values); and
- Transitional Exemption Application DR09-03-T (Allocation of injection quantities where no consumption has been submitted).

12. Thank you for considering this submission. If you have any queries, or require further information, please feel free to contact me at jo.murray@vector.co.nz or 04 803 9018

Kind regards



Jo Murray

Commercial Manager, Gas Transportation

Vector Gas Limited

Appendix A Recommended Format for Submissions

To assist Gas Industry Co in the orderly and efficient consideration of stakeholders' 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 exemption applications in their responses.

Submission from Vector Transmission, Jo Murray

Question	Comment
<i>Q1: Do submitters have any comments on the exemption DR09-01-U proposed by Contact regarding the new Stratford 3 direct connect gas gate?</i>	<p>Vector supports the exemption of Stratford 3 from the Gas (Downstream Reconciliation) Rules 2008.</p> <p>Vector agrees with the GIC's assertion that all direct connect gas gates should be treated the same in any exemption granted. As noted in the past, Vector believes the best way to deal with these sites is through an amendment to the definition of "Gas Gate." The definition should be reworded to ensure sites that are directly connected to the transmission system are not considered under the Rules.</p>

Question	Comment
<p><i>Q2: Do submitters have any comments on exemptions DR09-02-T proposed by Gas Industry Co and DR09-05-S from Mighty River Power regarding potential arrangements to address negative GGRP values??</i></p>	<p>Vector does not support exemption applications DR09-02-T and DR09-05-S.</p> <p>A “zero floor” on GGRP values results in an allocation exceeding the transmission system owner (“TSO”) injection metered quantity at the gate. Applying a “deemed” value in the case of GGRP negative values would result in daily shipper allocations at the Delivery Point that do not sum to the injection metered quantity. When the gas measured by TOU metering at the gate is greater than the gas measured by the injection meter, then under the exemption (if granted) the mass market retailers will be allocated 0 GJ. This will result in an allocation at the gate that is larger than the injection metered quantity, which will not pass validation when uploaded into OATIS because it does not equal the injection meter plus or minus the OATIS tolerance.</p> <p>The difference between the total TOU metering and the injection meter at the gas gate is unaccounted for gas (“UFG”) on the distribution network. By allocating more gas than went through the injection meter the TSO will effectively gain gas in the form of UFG on the Transmission System.</p> <p>Finally, Vector wishes to point out that the outcome of this proposed exemption (if granted) is contrary to the GIC’s key policy assumption in respect of the Rules:</p> <p style="padding-left: 40px;">“A key policy assumption in respect of the Rules is that all gas will be allocated – ie the consumption information balances with the injection quantities at a gas gate. Complete allocation is also important for upstream reconciliation purposes.” (<i>Appendix G DR09-03-T, part 4</i>)</p> <p>Vector does not support the related application by Mighty River Power (“MRP”) and accordingly agrees with the GIC’s initial assessment of MRPs exemption application. While it is unlikely to be MRPs intention, Vector notes that the proposal could allow retailers to game the allocation system.</p>

Question	Comment
<p><i>Q3: Do submitters have any comments on the transitional exemption application DR09-03-T proposed by Gas Industry Co regarding the arrangements for any residual unallocated gas?</i></p>	<p>Vector does not support exemption application DR09-03-T.</p> <p>By not allocating the flow through an injection meter, when no retailer has reported consumption UFG on the distribution system, gas is effectively allocated to the TSO and becomes UFG on the transmission system – making the TSO financially responsible for UFG that is in fact on the distribution system and in respect of which it does not have the same level of control and information as the network owner. This is especially so when there are many potentially inaccurate TOU meters downstream of the gate and only one or two injection meters. The network owner is also better placed to comment on leakage or loss from the distribution system.</p> <p>In addition, Vector notes that the exemption exposes the TSO to the risk of incorrect retailer trading notifications. Vector understands that a good proportion of retailer data around switching is inaccurate. Accordingly it is both unfair and unreasonable to transfer the responsibility to the TSO for reconciling the inaccurate information to attain a reasonably accurate picture of usage.</p>
<p><i>Q4: Do submitters have any comments on the exemption DR09-04-S proposed by Contact regarding the rule 39 notification deadlines and the submission of zero data?</i></p>	<p>In respect of the exemption application DR09-04-S, Vector supports the first generic option proposed by the GIC to address the rule 39 timeframe issue: “an exemption that still requires retailers to make a notification under rule 39 prior to submitting consumption information for the relevant consumption period’s initial allocation (ie by the third business day)” (page 14 of the package of 5 exemption applications, 22 January 2009).</p> <p>As indicated above, many failures by retailers to comply with their obligations under the Rules result in inaccurate initial allocations and these inevitably flow through to the allocation of pipeline balancing costs in the Balancing and Peaking Pool (“BPP”). This is so for breaches of rule 39. Under section 8.21(a) of the Vector Transmission Code (“VTC”) these balancing costs allocations are not revised by subsequent interim, final or special allocation runs.</p> <p>Accordingly, Vector endorses any action by the GIC to support its aim that the initial allocation is both timely and accurate. Compliance with that requirement will eliminate perceived unfairness in the allocation of pipeline balancing costs. It will also reinforce Principle 1 of the ERGEG balancing principles to place the primary responsibility on network users to “balance their own inputs and offtakes over the relevant period.”</p>

