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17 August 2009

Vector's Submission on Transmission Balancing Second Options Paper

1. On Gas Limited, Vector Gas Contracts Limited and Vector Gas Limited (Vector) welcome the opportunity to submit on the Gas Industry Company's (GIC) consultation paper, "Transmission Balancing Second Options Paper"; July 2009.

Executive Summary

2. Of the four balancing options considered, the GIC has concluded that the Participative regulatory option (Participative option) is preferred. While Vector, in its previous submissions has advocated for a full regulatory solution, we believe that the Participative option is a step in a positive direction. However, some of the proposed regulations (such as the TSO indemnity of the balancing agent) must be changed. This option also requires a willingness by other industry participants to engage in the process effectively.
3. Although the contracts option is conceptually plausible, Vector has serious reservations about the practicability of industry players being able to agree sufficiently and in a timely manner. Hence we believe that the GIC must progress an option underpinned by regulation to ensure a solution is developed and to provide an incentive for the proponents of the contracts based option to agree on a path forward.

Commentary

4. Vector regards the development and implementation of new transmission balancing arrangements as one of the GIC's most important work programmes. The effective balancing of transmission pipelines is a key component of a successful open access regime.

5. The current regime is not operating effectively. The current regime's deficiencies were thoroughly described in our two previous submissions (12 September 2008 and 13 March 2009) on transmission balancing. In short, we believe that the existing balancing arrangements are inefficient and do not adhere to the causer-pays principle. The present arrangements fall short of meeting the requirements provided for by Part 4A of the Gas Act 1992, particularly in their failure to meet the efficiency objectives set out in section 43ZN of the Act.
6. Vector submits that the key reforms required are:
 - The implementation of a single balancing regime across the Vector transmission system and the Maui Pipeline;
 - The appointment of a single balancing agent;
 - That Shippers should have the primary responsibility to balance inputs and off-takes; and
 - The establishment of an effective enforcement mechanism that ensures parties comply with the terms and conditions of the balancing regime.
7. We believe strongly that a reformed regime must adhere to the causer-pays principle. This requirement will ensure that parties that are responsible for actions or inactions that create balancing costs will bear the full costs of those actions. It will place the incentives on the correct parties to make investments in new processes and plant to better manage their balancing position. In this regard it is also important that the GIC address inefficiencies in the Downstream Reconciliation Rules which, by allowing parties to submit their downstream positions inaccurately, has flow on deleterious effects on the upstream balancing market.
8. Vector is pleased to see that the GIC has outlined a number of high-level options for consideration as opposed to focussing on the elements of a balancing regime.
9. The Contracts based option as presented in the paper is a continuation of the status quo with minor amendments. In Vector's view the current Operational Balancing Agreement (OBA) is not sustainable in the medium term so this option is not a viable alternative for the GIC to pursue. The current OBA does not provide for a single Balancing Agent nor a single balancing regime. Furthermore, it is not efficient because it does not ensure causers of imbalance pay and does not provide for effective compliance.

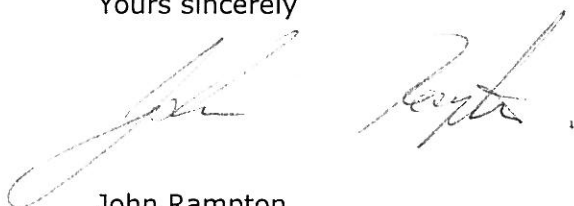
10. At a conceptual level, however, a contracts based option is plausible. However several preconditions would need to be satisfied for it to be effective.
 - First, it must provide for a single regime and Balancing Agent as the foundation. This outcome is possible by incorporating the allocation and recovery of balancing costs at Transmission Pipeline Welded Points directly into the Maui Pipeline Operating Code (MPOC). Only three shippers on the Vector system are not already signatories to the MPOC so it does not require many new contracts or prudential considerations. If this change was made it would greatly simplify the contractual relationships in relation to balancing and enable more rapid evolution of the arrangements as changes would only be necessary in the MPOC rather than by means of co-ordinated MPOC and VTC changes. Vector is happy to initiate the development of the necessary MPOC change request to effect this change.
 - Second, industry participants would have to demonstrate commitment to making the contracts based option work effectively and in line with an enduring cross-sector regulatory approach (as opposed to maximising short-term commercial positions). To date, Vector has not witnessed sufficient commitment from all participants to give it confidence in a contracts based solution. The process to date has been characterised by dispute and delay. If the industry could move quickly to a single contractual regime, then we believe the further development of the arrangements on a contractual basis may be credible.
 - Third, industry participants would have to actively promote positive change, for instance a downstream settlement regime to address the impacts of the shortcomings in the downstream allocations. Some industry participants have demonstrated a tendency to undermine rather than promote positive change.
11. Given our reservations about the practical implementation of a contracts based option, Vector recommends the GIC pursues a version of the Participative option. This option will ensure a backstop solution is in place, as well as providing a deadline to encourage the timely development of a contracts based solution.
12. The Participative option can accommodate the key changes required. TSOs in consultation with pipeline users will be able to design a regime from the 'bottom-up' as opposed to being restricted to inputting into GIC developed

proposals for regulations. However, the GIC will retain a 'backstop' ability to effectively resolve deadlocks if industry players are unable to agree on an approach, or aspects of an approach. This 'backstop' ability would in itself help facilitate industry to reach agreement.

13. Further, and significantly, it is Vector's understanding that the Participative option provides for a single balancing policy overseen by an independent Balancing Agent to be supported by the force of regulations. This element is crucial because it will assist in ensuring compliance. The current regime has been plagued by disputes and delays, especially relating to the payment of imbalance costs.
14. The Participative option will also allow adaptation more quickly than the 'full' regulatory options. The New Zealand gas market is still an immature market and ongoing changes will inevitably occur.
15. Vector is pleased the GIC has recognised that the Participative option could accommodate Vector's full balancing proposal put forward in our submission of September 2008. This would entail the establishment of balancing zones across the transmission pipelines and the differentiation of end users into two classes – large end users and small end users. Large users would be under more stringent requirements to balance.
16. Notwithstanding Vector's view that the Participative option is practicable we have concerns with aspects of the proposal. Most significantly, we are concerned with:
 - Section 5(h) of the proposed regulations that would require TSOs to indemnify the Balancing Agent for any amounts that cannot be recovered from users. This would have the effect of requiring Vector and MDL to underwrite the Balancing Agent function. Indemnification by the TSOs will lessen the incentives on parties to balance. If an indemnity is to be considered it needs to be provided by users, who are collectively responsible for imbalance, not TSOs;
 - Section 15 of the proposed regulations require TSOs to fund the appointment and ongoing costs of a Balancing Agent. However, the proposed regulations do not reference the Commerce Amendment Act and the concept of pass through costs. Vector sees no reason why even under the Participative option the appointment and funding of the Balancing Agent could not sit with the GIC who could recover the costs without impediment; and

- Section 5 (a) iii of the proposed regulations that the TSOs ensure that the Balancing Agent carries out its functions in accordance with these regulations. This represents a surrogate regulatory governance role for the TSOs and would be better performed by the GIC.
17. Finally, we urge the GIC to continue to place the development of improved transmission balancing arrangements high on its work-stream priorities. We recognise that the timeframes are tight to develop and implement a reformed balancing regime. However, it is important that the GIC meets its goal of providing a timely recommendation to the Minister on this matter and ensures that industry follows through in developing a reformed regime expeditiously.
18. Vector has provided answers to the detailed questions raised by the GIC in Appendix 1, which is attached. Thank you for considering this submission. If you require further information please contact me on Tel 04 803 9036 or at john.rampton@vector.co.nz in the first instance.

Yours sincerely



John Rampton

Manager, Industry Governance and Policy

Appendix 1

Company Name: Vector

QUESTION	COMMENT
<p>Q1: Do you consider that the objective identified in section 2 is appropriate? If not, what other objective(s) would you propose?</p>	<p>The proposed objective is:</p> <ul style="list-style-type: none">• <i>To provide an efficient, single balancing arrangement for managing pipeline imbalance.</i> <p>Vector supports the inclusion in the objective of the terms 'efficient' and "single balancing arrangement" because these are key objectives of an effective transmission balancing regime. These points are discussed further below.</p> <p><i>Efficiency:</i></p> <p>The Gas Act, especially section 43ZN clearly requires gas industry arrangements (regulated) to be efficient. For the balancing regime to work effectively it must be efficient.</p> <p>Vector recognises that the efficiency criteria could be unpacked further, and desirable aspects of a regime that contribute to more efficient outcomes could be included in the objective. However, Vector cautions against this approach because the word 'efficient' is simple and sufficiently clear.</p> <p>Vector considers that the key factors to consider in ensuring that the regime is efficient are: First, the regime sends the correct signals to causers of imbalance of the actual costs of balancing so that they can make cost-effective decisions; and secondly, it provides cost effective balancing tools which are appropriate for the characteristics, especially the size and depth of the New Zealand gas market.</p>

QUESTION	COMMENT
	<p>The importance of the regime sending the correct signals to industry participants and thus creating the correct incentives cannot be overstated. Fundamentally, the causers of imbalance have to be held accountable for the cost that the imbalance creates. This will then provide the causers with sufficient incentives to introduce improved processes and make the necessary investment in a cost effective manner. The regime will thus be dynamically efficient. In the main, the Shippers because of their relationship with end-use customers are best placed to be held accountable for balancing and should bear the costs of balancing.</p> <p>The Downstream Reconciliation Rules provide a good case study of a gas governance regime that has been emplaced that does not provide efficient outcomes when viewed in the context of transmission balancing. This is because transmission balancing is based on the Initial Allocation under the Downstream Reconciliation Rules. Retailers face few incentives to improve the accuracy of their Initial Allocations because the rules 'socialise' unaccounted for gas across retailers.</p> <p><i>Single balancing arrangement</i></p> <p>We submit that a single balancing arrangement overseen by a Single Balancing Agent is a key requirement of a successful balancing regime. This has a number of advantages over multiple arrangements which were outlined in our previous submission of March 2009.</p>

QUESTION	COMMENT
<p>Q2: Do you agree that the scope of the proposed regulatory options for this paper identified in section 2.2 is reasonable? Are there any items that should be considered in the scope that Gas Industry Co has not identified? Alternatively, are there any items in the scope that Gas Industry Co has included that should not be included?</p>	<p>Vector agrees with the matters that have been identified as within the scope of the regulatory options. These matters, as a minimum, need to be addressed for a regulatory regime to be effective.</p> <p>However, we are strongly of the view that the development of an effective transmission balancing regime cannot proceed in isolation. An effective balancing regime requires a package of enhanced measures to be put in place across the transmission and gas trading allocation system. We caution against the GIC focusing narrowly on those matters that have been identified in scope and ignoring other matters that need to be reformed – including those noted to be ‘out of scope’.</p> <p>In this regard we are mindful of the development of the Downstream Reconciliation Rules where we believe a too narrower focus on solving these matters in isolation meant that interrelated matters, such as the nexus between downstream reconciliation and transmission balancing were not addressed. This resulted in the development of an inefficient solution.</p> <p>In response to the question posed in the discussion paper, Vector believes that regulations should provide an ‘all reasonable endeavours’ obligation to balance and should set out the consequences of breaching this obligation. This approach would provide greater certainty and transparency of process.</p>
<p>Q3: Do you consider that the evaluation criteria set out in section 3 are appropriate for evaluating options for pipeline balancing arrangements? If not, why?</p>	<p>Vector agrees with the evaluation criteria selected and has not identified any further criteria.</p>

QUESTION	COMMENT
<p>Q4: Do you consider that Gas Industry Co has correctly identified the need to consider the alternative options based on our conclusions from the consultation process outlined in section 4?</p>	<p>Vector agrees with the discussion paper’s approach of identifying practical options for consideration and evaluating them against pertinent criteria. This will lead to the design of a suitable framework which is more appropriate at this stage than identifying and assessing the detailed elements that make up a balancing regime.</p>
<p>Q5: Do you agree that the contracts based option identified in section 5 is reasonably practicable? If not, why?</p>	<p>Vector submits that the Contracts based option as set out by the GIC is <u>not</u> a reasonably practicable option to proceed with.</p> <p>The Contracts based option as presented in the paper is a continuation of the status quo with minor amendments. While at a conceptual level the Contracts based option is plausible we think it is very unlikely to be progressed in an effective and timely manner because of the different interests of the parties.</p> <p>Our specific concerns with the impracticalities of a Contract based regime are detailed below:</p> <ul style="list-style-type: none"> • There is a very high risk that the industry will be unable to agree on the terms and conditions of aspects of a balancing regime. Hence, regulations will eventually be required to break deadlocks. The time taken to get to this point will represent to some extent wasted effort and the implementation of a more effective balancing regime will be further delayed. The recent negotiations between Shippers on changes to the VTC to incorporate a virtual welded points concept highlighted the difficulty and impracticality of developing reformed arrangements through industry ‘contractual’ negotiations. • The Contracts based option is less likely to produce as an effective balancing regime as those provided for by the regulatory options. This is clear from the outcomes of the evaluation of the options against allocative and productive efficiency criteria. Significantly, the Contracts based approach is ranked very

QUESTION	COMMENT
	<p>poorly <i>vis a vis</i> the other options in relation to the enforcement criteria. Vector concurs with this assessment. Enforcement to date under a contracts based approach has proven to be ineffective. Enforcement is not a stand alone criteria – it is inherently linked with the cost of operation and efficiency criteria. Without effective enforcement, parties, especially users, will not have the same incentives as they otherwise would to abide by the regime’s terms and conditions. This will in turn affect the efficiency and cost of operation of the regime. It is all very well to have a theoretically efficient contracts based solution, however, in practice efficiency will not be maximised if parties have the ability and incentive to exploit opportunities to undermine the intent of contractual arrangements to the detriment of the wider industry or the TSO;</p> <ul style="list-style-type: none"> • A contracts based regime is inferior in terms of transparency and non-discrimination. Vector regards transparency as a crucial driver of efficiency. <p>Finally, we note that the discussion paper (bottom of page 39) acknowledges that the short-term and long-term outcomes of the Contract based option are uncertain and as a result states that it is difficult to evaluate the costs and benefits of the approach. Vector agrees with this assessment. The uncertainty associated with the Contract based option is a strong reason for the GIC to proceed with a regulatory option.</p>

QUESTION	COMMENT
<p>Q6: Do you agree that the prescriptive regulation option A identified in section 6 is reasonably practicable? If not, why?</p>	<p>Vector submits that regulatory options (both A and B) are reasonably practicable options. It would be more practicable for the GIC to pursue the ‘full’ regulatory options than the Contract based approach because the regulatory approaches are more likely to deliver the objectives sought, especially on efficiency grounds. The key advantages of the regulatory approach, which is the corollary of the shortcoming of the Contract based option, is that regulatory approach would overcome the risks of industry disagreements or deadlocks, provides for greater certainty of enforcement and is more transparent.</p>
<p>Q7: Do consider that the outline of the prescriptive regulations in Appendix B is appropriate? If not, why?</p>	<p>We have concerns with some of the proposed regulations identified for the Prescriptive and Participative options. We have detailed these concerns in the response to Question 10. The identified regulations can be cross-referenced to their equivalent Prescriptive regulation.</p>
<p>Q8: Do you agree that the prescriptive regulation option B identified in section 7 is reasonably practicable? If not, why?</p>	<p>Vector submits that although a practicable option, Prescriptive regulation Option B is less effective than the Prescriptive regulation option A. The Prescriptive regulation option A is preferred above B because the Balancing Agent would be appointed by the GIC as opposed to MDL which lessens the potential for conflict of interest concerns, real or perceived.</p>
<p>Q9: Do you agree that the participative regulation option identified in section 8 is reasonably practicable? If not, why?</p>	<p>Vector agrees that the Participative option is a step in the right direction, and thus supports the GIC’s selection of the option as its preferred option. However, we do have some reservations that the option may not prove to be as effective perhaps as the Prescriptive regulation Option A because industry players may not be able to proceed as required to deliver a successful balancing regime.</p> <p>The key features of this option that make it a workable approach, and which Vector believes on balance make it reasonably practicable are described below:</p> <ul style="list-style-type: none"> • The Participative option provides for TSOs to develop, in consultation with

QUESTION	COMMENT
	<p>Shippers, a single balancing policy which is approved by regulations. This approach represents a 'bottom up' approach that will enable industry expertise to be utilized better than in the full regulatory options. With the 'full' regulatory options the terms and conditions of the balancing policy would be prescribed in regulation, which is likely to be less facilitative of industry involvement. Balancing is an inherently complex matter and the development of new more efficient arrangements will be enhanced the greater the opportunity industry stakeholders have to input into the development and implementation of the arrangement;</p> <ul style="list-style-type: none"> • The Participative option, by enforcing through regulations a balancing policy as opposed to defining in regulations or rules the specific terms and conditions, will be easier to develop; • The Participative option will also allow adaptation more quickly than the 'full' regulatory options. The New Zealand gas market is still an immature market and ongoing changes will inevitably occur. • The Participative option provides for the GIC to develop a balancing policy, or aspects thereof, if the TSOs are unable to perform this task in a timely fashion. This 'backstop' ability will assist in overcoming the potential for the process to breakdown if parties cannot agree. The mere existence of this function or ability will encourage TSOs and shippers to reach agreement. If the GIC is required to develop aspects of the balancing policy it must adhere strongly to efficiency principles and not opt for the most expedient or popular 'lowest- common denominator' solution. • As with the other regulatory options, Vector understands the Participative

QUESTION	COMMENT
	<p>option will be supported by the force of regulation. This will enable enforcement in a timely and cost effective manner and thus encourage compliance; and</p> <ul style="list-style-type: none"> As demonstrated in the Evaluation of Options section of the discussion paper (Section 9) the Participative option is potentially superior with respect to other options when assessed against a number of relevant criteria. However, Vector refers the GIC to the comments made in our summary. The success or otherwise of this option lies with participants progressing solutions which achieve regulatory (as opposed to purely commercial) objectives and to them working together to achieve the task at hand. These are conditions that the industry in a collective sense has largely failed to meet.
<p>Q10: Do you consider that the outline of the participative regulations in Appendix C are appropriate? If not, why?</p>	<p>We have concerns with a number of the proposed regulations identified in appendix B. These include:</p> <ul style="list-style-type: none"> Section 5(h) of the proposed regulations that would require the TSOs to indemnify the Balancing Agent for any amounts that cannot be recovered. This requirement would have the effect of requiring Vector and MDL to underwrite the Balancing Agent's function. Indemnification by the TSOs will lessen the incentives on parties to balance. If an indemnity is to be considered it needs to be provided by users who collectively cause imbalance and benefit from pipelines being balanced, not TSOs; Section 5 (a) iii of the proposed regulations that the TSOs ensure that the Balancing Agent carries out its functions in accordance with these regulations. This represents a surrogate regulatory governance role for the TSOs and would be better performed by the GIC; and

QUESTION	COMMENT
	<ul style="list-style-type: none"> • Section 15 of the proposed regulations requires that the development and ongoing costs of the Balancing Agent are recovered through pipeline tariffs. Vector submits that these should be recovered through a development fee and ongoing fees levied on industry participants (ie those who use the balancing service). To further improve users' balancing behaviour and maintain downward pressure on the costs of the Balancing Agent, the fees charged to individual users should be linked to the size and frequency of actions taken by the Balancing Agent which were caused by that user. The incidence of fees could also be linked, <i>inter alia</i>, to the recovery of bad debts from users. <p>Additionally, we have comments on the following proposed regulations.</p> <ul style="list-style-type: none"> • Section 4. Obligation on shippers to balance should be at least "all reasonable endeavours" if not "best endeavours" as the consequence of not achieving balance is then laid out in the regulations. • Section 5(a)(v). Vector's primary obligation is to provide transmission services. The TSOs cannot be required to "co-operate... ..with a view to minimizing the cost of balancing actions" as this constraint may undermine their ability to transport gas. • Section 5(g). Vector's primary obligation is to provide transmission services. The TSO will operate its compressors when and to the extent it deems appropriate to transport gas. The regulations must not constrain the operation of compressors, ie the regulations and Balancing Policy need to be consistent with the compressor operation policy not vice versa. • 6(b) This regulation needs to be much more specific to the User's obligation or liability in relation to balancing. As presented it could be construed to cover anything, for example payment of transmission charges. • Section 11(d). Vector is not convinced of the efficacy of marginal pricing for balancing. Investigations into the electricity market have raised concerns about market power and inefficient outcomes. The market for the supply of balancing gas has the potential for greater market concentration than the electricity market.

QUESTION	COMMENT
	<ul style="list-style-type: none"> • Section 11(g). The regulation in relation to a fixed fee should be permissive with the GIC having review powers. Balancing is a physical issue so it is not unreasonable that there may be a fixed fee to contribute to the cost of having capacity available on demand. • Sections 11(k), 11(l) & 14(j). These provisions should not be required as the policy must allocate all balancing gas for each transaction. This can be achieved by having default rules to allocate gas in proportion to mismatch and possibly an ultimate default rule to allocate any residual on deliveries. The Balancing Agent should not have a 'gas position'.
<p>Q11: Do you agree with Gas Industry Co's approach to evaluating the options identified as reasonably practicable in section 9? If not, why?</p>	<p>Vector agrees with the approach taken by the GIC to evaluate the options against the selection criteria. The use of a quantitative evaluation procedure to evaluate the options against the criteria provides a level of rigour to the analysis that would otherwise be missing. Vector is pleased to see that the evaluation procedure included a sensitivity analysis because the assignment of higher weights to the two most important criteria classifications, governance and efficiency, enables clearer discrimination between the options.</p>
<p>Q12: Do you consider Gas Industry Co's assessment of the options presented is fair and reasonable? If not, why?</p>	<p>Vector agrees that the GIC's assessment of the options is fair and reasonable.</p>
<p>Q13: Do you agree that Gas Industry Co has, through the evaluation of options, correctly identified the participative regulation option as its preferred option? If not, why?</p>	<p>Vector recognises that the Participative option scores better overall, particularly against the governance and efficiency classification criteria. Significantly, the Participative option scores well against specific criteria Vector regards as important. We have provided commentary on these important criteria below.</p> <p><i>Productive efficiency</i> – the Participative option scores better against this criterion than the 'full' regulatory options do. Further, its score is more tightly constrained than for the Contracts based option. Improving the efficiency of the balancing regime is crucial.</p>

QUESTION	COMMENT
	<p><i>Allocative Efficiency</i> - the Participative option scores better against this criterion than the 'full' regulatory options and the Contracts based option. The current regime does not drive improvements in allocative efficiency. Arrangements that are more allocatively efficient will result in the better use of existing assets and over time enhanced investment in new systems and flexible capacity.</p> <p><i>Security of Supply</i> - the Participative option scores better against this criterion than the 'full' regulatory options and the Contract based option. The maintenance of security of supply is paramount because this is a key requirement sought by end-users and the Government. If security of supply concerns emerge the regime is unlikely to be sustainable.</p> <p><i>Transparency</i> – The Participative regulatory option scores better against this criterion than the Contracts based option and the same as for the Prescriptive option B. It scores less than the Prescriptive regulation option A does, on the grounds that under option A the Balancing Agent will be appointed by the GIC. Vector acknowledges that stakeholders' perception of transparency is likely to be higher for the Prescriptive regulation option A than for the Participative option. However, the reality is that the Balancing Agent will be a stand-alone entity that will oversee a balancing policy that will be codified and supported by regulations. The effective difference in transparency is thus likely to be minimal.</p> <p><i>Enforcement</i> – The Participative and 'full' regulatory options score the same against this criterion. The score for the Contract based option is considerably lower. The lack of effective enforcement mechanisms is a key deficiency in the current contract based regime. Without effective enforcement arrangements, compliance will be difficult to achieve and a balancing regime will always be sub-optimal.</p> <p><i>Balance</i> – The Participative option scores higher than the other options, particularly the</p>

QUESTION	COMMENT
	<p>Contracts based option, against this criteria. This is important because the term balance as it is used in the discussion paper incorporates a concept of fairness. Stakeholders' interests will inevitable be at odds when developing balancing arrangements. It is thus important, in order to achieve an enduring acceptable regime that the costs and benefits are allocated, and perceived to be allocated, fairly and efficiently between stakeholders.</p> <p>However, while the option scores well against important criteria, the Participative option will only be successful if:</p> <ul style="list-style-type: none"> • Industry participants work together effectively to achieve regulatory as opposed to commercial solutions; and • All relevant material matters which effect transmission balancing are addressed.
<p>Q14: Do you agree with the next steps identified in section 11? If not, why?</p>	<p>Vector agrees with the scheduled timeline for conducting the work necessary for the development and implementation of reformed balancing arrangements. We recognise that it is a tight timeframe, with the recommendation due to the Minister by the end of the year. However, the GIC needs to stick to this timeframe and move forward expeditiously with its programme. The Minister has placed a high expectation on the GIC and more generally on the gas industry to develop and implement more effective gas governance arrangements in a timely manner. Gas balancing, although a complex matter, is an area where the deficiencies are clearly evident and also is an area that has received considerable consideration and investigation by industry over the past few years.</p>

Optional questions	Comment
<p>Appendix B: Outline of prescriptive regulations</p> <p>OQ1: Gas Industry Co is still considering whether the scope of the regulations for prescriptive regulation options A and B should include provisions for curtailment and damages. They are currently drafted in the outline for prescriptive regulation option A. However, Gas Industry Co seeks submitters' views on whether provisions for curtailment and a damages¹ regime should be included in the regulations or left to industry agreement and codes.</p>	<p>Vector believes the issues of curtailment and damages should ideally be addressed by the regulations to enhance the chances of compliance by users.</p> <p>Disputes to the Rulings Panel would also be more appropriately contained within the regulations. That is the case under the Gas Governance (Compliance) Regulations 2008. Now that the Rulings Panel has been appointed and has started to give rulings, it will enhance the panel's enforcement credentials and overall creditability.</p>
<p>OQ2: If the scope of the regulations includes damage claims, the quantum of these can be determined through the dispute resolution process (by the Rulings Panel) or predetermined as 'liquidated damages'. Do you consider that the quantum of damages should be liquidated or are better determined by the Rulings Panel at the time of the claim?</p>	<p>Vector submits that damages should be predetermined as liquidated damages rather than be set by the Rulings Panel. This view is subject to the exception that exemplary damages should be available in some circumstances, particularly where a clear case of a deliberate breach (eg 'gaming') has been established. This will provide the Rulings Panel with sufficient clout in a clear case of gaming, which will discourage similar behaviour from reoccurring. Vector recognises that exemplary damages are not normally awarded in contractual matters. However, on balance we think this will be beneficial in ensuring compliance.</p>

¹ Where there is insufficient balancing gas available then the Balancing Agent could curtail users prior to a critical contingency being called, in order to endeavour to prevent a critical contingency. In this situation a well behaved user that is curtailed will want to claim for damages from the causers of the imbalance that lead to curtailment. Therefore curtailment and damage claims go together.

Optional questions	Comment
<p>OQ3: In schedule 2, Base Linepack and Thresholds, Gas Industry Co has not yet determined a process for setting and revising this table. Do you have a view as to how this might be best achieved under the regulations?</p>	<p>Clearly, base linepack and threshold limits have to be set in consultation with TSOs. Vector is therefore pleased to see that this has been recognised by the GIC in draft Regulation 17 (b) (Schedule 2) of Appendix B.</p> <p>Vector believes that this should be a matter for the TSOs to agree on and recommend to the GIC.</p>
<p>Appendix C: Outline of participative regulations</p> <p>OQ4: A design issue is how to define flexible linepack available to the Balancing Agent and ensure that this is a fair share of the flexibility available. In proposed regulation 5.f. Gas Industry Co has drafted it to be set as 'wide as practical' with any dispute to go to the dispute resolution process. An alternative would be to establish a special purpose process for establishing the flexible linepack. Do you agree with the current drafting, or would the alternative to create a special purpose process be more appropriate?</p>	<p>Vector submits that flexible linepack availability should be defined in the same manner as setting the base linepack and similarly be subject to ongoing review. Disputes again should go to the Rulings Panel.</p>
<p>OQ5: The outline of regulations has been drafted to include tolerances. Do you consider tolerances should be included?</p>	<p>Vector submits that tolerances should also be dealt with in the same way as base linepack and flexible linepack. All three components impact on each other, and therefore should be subject to similar processes.</p>