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3 July 2009

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By Email

Dear Ian

Re: Submission to GIC on Change request Appeal (BPP - 20 February 2009)

Vector Gas Limited (**Vector**) welcomes the opportunity to provide this submission on the Draft Recommendation of the Gas Industry Company Limited (**GIC**) on the *Vector Transmission Code 20 February 2009 Change Request Appeal: draft recommendation*.

Draft Recommendation

Vector **agrees** with the draft recommendation of the GIC that:

"In accordance with section 25.7 of the VTC, and in respect of Vector's appeal of 20 February 2009 under the VTC, Gas Industry Co supports the change request appeal.

In accordance with section 25.5(c)(ii) of the VTC, the change request must be made to the VTC with effect from the date specified in the change request (1 January 2009)." (Draft Recommendation, Part 4, page 22).

Vector considers that the draft recommendation to include an express power for the BPP trustee to borrow is, despite the submissions of some of the Shippers, the correct conclusion in respect of this protracted matter and is consistent with the objectives of Part 4A of the Gas Act 1992 and the April 2008 Government's Policy Statement on Gas Governance. Vector looks forward to the GIC confirming its draft recommendation so that the change request can proceed and the overdraft facility be established as was originally intended.

Vector does however consider that it is important to make some further comment in response to the GIC's behavioural assumptions (based on the submissions received during the initial consultation), and assessment against those objectives. We also consider it important to reiterate our views as to the original intent of the proposal to include in the VTC a power for the BPP Trustee to borrow.

Inadvertent Omission/Original Intent

In its Change Request of 21 January 2009, and subsequently in its submission on 23 March 2009, Vector submitted that the inclusion of the express power to borrow for the BPP Trustee was an inadvertent omission when the VTC was being negotiated with Shippers prior to 1 December 2007. In support of that view Vector stated that when section 8.20 of the VTC was being discussed with Shippers:

“... trust law experts were not involved at the time the Code was initially negotiated. If they had been, the need for an express provision would have been identified and progressed.”

Further, we have also indicated that the specific reference in that section to recovery of bank charges, and the obvious disconnect between the timing of payments by Shippers into the BPP account (particularly if there is a dispute) and obligation by Vector to pay MDL balancing costs, supports the view that, at least from Vector’s position, a power to borrow was originally intended. While the GIC has concluded that it has no means of assessing whether a power to borrow was inadvertently omitted, this conclusion is based on opposing claims. Accordingly, Vector considers it is important to emphasise its points in support of its view and intent at that time.

Vector’s Appeal

In response to Contact’s claim that Vector in lodging its appeal had done nothing more than lodge its original Change Request with the GIC, the GIC has stated that:

“It is therefore reasonable for Vector to lodge an appeal based on the same reasons as the original request. Nonetheless, Gas Industry Co agrees with Contact that it would have been helpful for Vector to have responded to submissions made to it on the original change request.” (Page 12)

Vector carefully considered the submissions on the original change request but noted that no additional substantive information was supplied which required a response. Apart from Contact, most submitters effectively either lodged their support for or rejection of the original Change Request. Vector considered that all matters that required addressing were done so in the context of Contact’s Change Request 5. To revisit those submissions simply for the purpose of lodging the appeal would, in Vector’s view, have been a futile exercise. Moreover, Vector believes that the failure to address those submissions has not affected the due process of the appeal.

In addition, the GIC has noted that as well as its desire that appellants address issues raised in submissions, that they should also be:

“... specific about which Gas Act or GPS objectives it believes to be relevant to the appeal.” (Page 12)

While Vector acknowledges that the GIC has an obligation to have regard to the objectives of the GPS, section 43ZN of the Gas Act 1992 and under the Memorandum of Understanding with Vector in respect of Change Request appeals (17 October 2008, clause 2.3), we note that compliance with those objectives, by Vector or Shippers, is not part of the Change Request process under section 25 of the VTC.

Vector's Risk

It is important for the GIC and Shippers to understand that the availability of an overdraft facility is an enabling mechanism for payment to be made to MDL on time, but it is not necessarily a tool that will be resorted to on an automatic basis by Vector. Before pursuing recovery of outstanding payments, the BPP Trustee needs to ascertain that payment is both due and it is also appropriate to seek recovery.

The GIC has correctly concluded that:

"... Vector's obligations in the VTC to pay balancing costs are the same whether balancing costs are charged to the BPP Trustee account or another Vector account." (Page 14)

In determining whether or not it is appropriate to seek recovery, Vector is in an invidious position. It must decide whether to utilise the overdraft facility and then pursue the debtors, or pursue the debtors in the first place. Either way Vector bears the cost and therefore incurs a financial risk. Accordingly, while Vector has a discretion and must exercise it appropriately according to the circumstances, it also must act in a manner which limits its exposure to financial risk.

Comments on GIC's Behavioural Assumptions

Vector paying balancing costs

The GIC has stated that:

"There appears to be no contractual imperative for Vector to behave differently depending on whether or not an overdraft facility exists." (Page 15)

While Contact in its earlier submission on this matter indicates that the VTC provides various mechanisms to recover costs from Shippers, Vector does not accept that all of these are practical mechanisms. Resort to Prudential Requirements is not appropriate where there is a dispute. Further, Vector considers that the GIC would not be amenable to Vector exercising its right to terminate a Shipper's Transmission Services Agreement. The only appropriate remedy is through the disputes mechanism in section 17 of the VTC. That is the process which is being used in respect of the current disputes. It is costly even if those costs are absorbed by the respective parties.

Accordingly, Vector **agrees** with that conclusion.

Pursuit of debts

The GIC has stated that:

"Vector will be less likely to pursue debts if an overdraft facility exists." (Page 16)

As indicated, Vector is exposed to a financial risk whichever action it decides to take in terms of its discretion to pursue debts. Vector must therefore act in a manner which limits its exposure to that risk. Vector has no obligation to pursue debts but may choose to do so in any particular circumstances and consequentially recover costs from Shippers. Alternatively, it may decide that the circumstances do not warrant recovery action. As indicated, the existence of an overdraft facility is an enabling mechanism only and Vector will have the discretion to use it or not.

Accordingly, Vector **disagrees** with that conclusion.

Behaviour of Shippers

The GIC has stated that:

"Gas Industry Co agrees...that Vector shippers will be less likely to pay balancing costs if an overdraft facility exists." (Page 17)

The GIC has based its view on the comment from Genesis that an overdraft facility will encourage Shippers not to pay balancing costs on the expectation that unpaid costs would eventually have to be socialised. Vector cannot predict the behaviour of some Shippers if the GIC confirms its draft recommendation and the VTC is changed to include an express power for the BPP Trustee to borrow. However, Vector can confirm that the contractual obligation on Shippers to pay their share of the balancing costs will remain unchanged if and when an overdraft facility is available. If Shippers choose to adopt a behaviour which is in deliberate breach of the VTC in that regard, it will also give rise to a larger issue of failure to comply with their obligation to act as a Reasonable and Prudent Operator under section 2.8 of the VTC.

Vector also wishes to emphasise the point that we made in our 23 March 2009 submission, and which the GIC has made on many occasions in the context of balancing (and particularly in its final determination on Contact's appeal) that:

"... it is the Gas Industry Co's view that the costs of a balancing regime for the industry should fall on all those who benefit from it." (Page 20)

Vector does not benefit from its position as BPP Trustee, nor should it suffer a detriment. However, Shippers are seeking to benefit from Vector's position as 'middleman'. That does not sit well with the objective of fairness.

Accordingly, while Vector is **unable to agree or disagree** with the conclusion of the GIC, it confirms that Shipper obligations under the VTC will remain unchanged if and when an overdraft facility is available. Except in the case of genuine disputes, Vector would hope that Shippers will adopt a behaviour which aligns with their reasonable and prudent obligation in this regard.

GIC's Assessment Against Objectives

Of the relevant objectives in Part 4A of the Gas Act and in the Government's Policy Statement, the GIC has, in summary, concluded that the provision of an overdraft facility will:

- put downward pressure on delivered gas costs;
- reduce operational and financial risks, and is neutral on efficiency risks;
- assist in ensuring that the full costs are signalled to consumers; and
- not necessarily lead to greater socialisation of costs, and hence inefficient outcomes.

An overdraft facility may result in one or more of those outcomes and may "result in more reliable payment for balancing gas services." However, Vector endorses any outcome which has the effect of reducing its operational and financial risk.

Finally, Vector acknowledges that the draft recommendation is consistent with the GIC's recommendation in February 2009 in declining to support Contact's Change Request 5, when it stated:

"... if the BPP is unable to go into overdraft, then Vector will be required to supplement BPP payments. This is likely to lead to greater complexity in operating the BPP Account and may increase the likelihood of transactional errors. It is much cleaner if all balancing charges go into and out of the BPP Account." (*Vector Transmission Code Change Request Appeal: final recommendation, February 2009, pages 21 and 22*)

Vector looks forward to receiving your final recommendation. If you require any further information please contact Bob Sheppard – phone (04) 803 9013.

Yours sincerely



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