



31 May 2013

Mr Ian Dempster  
Gas Industry Company  
Level 8, The Todd Building  
95 Customhouse Quay  
Wellington 6143

**Re: 6 May 2013 VTC Single Issue CR Appeal**

**1. Appeal**

- 1.1. On 6 May 2013, Contact submitted a change request in respect to section 25.4 of the Vector Transmission Code (VTC) to Vector (Change Request).
- 1.2. The Change Request was supported by all shippers except one who abstained from responding.
- 1.3. Vector did not consent to the Change Request, for the reasons set out in its letter dated 27 May 2013 (Letter).
- 1.4. As a result of Vector's non-consent and in accordance with section 25.6(a) and (c) of the VTC Contact now appeals to the Gas Industry Company (GIC) to seek to have the Change Request allowed.

**2. Basis for Change Request**

- 2.1. The Change Request was initially discussed with other shippers and drafted as a result of prior experience dealing with Vector Change Requests that covered multiple issues. Often these change requests included contentious issues that shippers did not consent to. However by including a contentious issue, which on its own would likely not pass consent requirements, with other issues which would, the request would end up on appeal with the GIC. The GIC was then left in a position of making a decision based on the change request as a whole.
- 2.2. Contact and shippers believe that if change requests are restricted to a single issue or related series of issues, then this will improve the efficiency of the decision making process. This efficiency will be gained by:
  - a reduction in the number of change requests that are lodged on appeal;
  - ease in reviewing and providing responses to change requests when considering a single issue at a time or at least related issues; and
  - reducing any conflict on decisions by avoiding controversial matters being introduced into change requests.
- 2.3. There have been a number of examples where change requests have been lodged on multiple issues. Some of these are mentioned in paragraph 4.2 a.

**3. Basis for Appeal**

- 3.1. Contact considers that Vector has invalidly withheld consent under section 25.5(b).

The VTC sets out the reasons under which Vector may withhold consent as follows:

*..where the Change request would:*

- (i) *require Vector to incur capital expenditure that Vector does not wish to incur or considers that expenditure to not be economically viable to incur;*
- (ii) *require Vector to incur operating expenses or costs that it cannot reasonably expect to recover; or*
- (iii) *be likely to adversely affect:*
  - (A) *the structure of Vector's transmission services, business structure or the structure or magnitude of Vector's transmission revenues; or*
  - (B) *the compatibility of Vector's Transmission System open access regime and the open access regime on the Maui Pipeline*

In Vector's letter (under section 4) it does not address any of the arguable reasons set out in the VTC.

Limiting a change request to a single issue or series of related issues will not require Vector to incur capital expenditure.

Nor will it require Vector to incur additional operating expenditure of any significance when completing (for example) two change requests instead of one. In fact, separately identifying change request issues will provide more clarity and ease of response from , which will improve the effectiveness and efficiency of the VTC change process.

In respect to section 25.5(b)(iii)(A) and (B) a change request that is a change to the process for making change requests is not a change that will structurally change Vector's transmission services, business structure or the structure or magnitude of Vector's transmission revenues or interfere with the compatibility of its regime with that of Maui.

Therefore Contact maintains that as none of the reasons set out above apply to the Change Request Vector has not validly withheld consent.

#### **4. Response to Vector's reasons for withholding consent**

4.1. Vector believes it has the right to withhold consent on the basis that the Change Request:

- a. purports to address a problem that does not exist;
- b. will create an inefficient change process (including increased costs for shippers and workload for the GIC);
- c. will undermine the ability of parties to negotiate varied terms;
- d. will hinder and/or halt the implementation of wide ranging reforms, such as recommended by the PEA; and
- e. will create ambiguity and uncertainty around a "single issue" or "related series of issues" which will result in more disputes.

4.2. Contact addresses each of these reasons below.

**a. The problem does not exist**

It is clear to Contact and other shippers that this is a problem that exists now and has caused problems in the past for the GIC when considering change requests presented to it on varied subjects. By way of example we cite the Draft Recommendation from the GIC to the VTC Appeal of 14 December 2011 in respect to Invoicing. Note that while the change request was titled "Invoicing" it dealt with

- Peaking,
- Corrections,
- Prudential Requirements,
- Shipper Insolvency, and
- Invoicing.

Section 4 of the draft recommendation states:

*"These are rather diverse topics and, as noted by submitters, more easily dealt with as subject specific change requests. Certainly the only robust approach to analysing such diverse proposals is on a subject by subject basis."*

Further in that same section the GIC went on to state:

*"Gas industry Co is required to make a single recommendation on the proposed change, and cannot separate or otherwise materially change it. The scope of the change was made difficult for gas Industry Co to arrive at an overall view."*

Fortunately in this instance the overall effect of the change did not meet the Gas Act objectives so the change was not supported. However it could easily fall the other way where a change is supported when it includes a topic or issue that is separate and not supported.

This matter was raised again in the 31 July 2012 VTC Appeal (Prudentials and Disputes) Draft Recommendation (Section 4.2). In response to submitters again suggesting that change requests should be issue specific, the GIC agreed with the sentiment and noted that it was up to Vector and its Shippers to come to an understanding and that a change to the change request process was more ideal than a change to the MOU.

Again under the VTC Change Request Appeal 27 November 2012 (Balancing), currently before the GIC, we saw a change request that contained more than one issue. The issues covered were:

1. the removal of ILON process and replacing with B2B cash-out mechanism;
2. new Peaking Charge; and
3. limiting the scope of disputing invoices relating to balancing.

In submissions all shippers except Vector and EDNZ (who did not submit) opposed the third issue. This matter had been discussed by Shippers with Vector as not acceptable prior to the change request being lodged. And it was evident from

submissions that the change request may well have proceeded uncontested if the third issue was not included in the change request. If this had of been the case much time and resources would have been spared.

Vector, in its Letter (paragraph 7), state the third issue was necessary to maximise the efficiency of the new balancing arrangements yet the analysis provided by NERA and the conclusions from the GIC suggested that in absence of the third issue the change request would not be adversely affected as there was no proof that it was necessary to maintain the efficiency benefits of B2B balancing that Vector claimed.

**b. Creates an inefficient change process**

As explained in paragraph 2.2 above Contact believe that by amending the change request process to limit requests to single issues or a series of related issues the process will be much more efficient and provide GIC with an easier brief to address when considering changes on appeal.

The GIC itself agreed that single issue requests would be more simply dealt with and is the only robust approach to analysing diverse topics.

**c. Will undermine the ability of parties to negotiate varied terms**

The change to the process is not intended to undermine the ability to negotiate varied terms. In order to allow that, submitters may lodge requests on a series of issues provided they can justify they are related. If a party required a change that involved a number of issues which without one of those issues the entire change could not function then the issues should be considered related.

**d. Will hinder and/or halt the implementation of wide ranging reforms, such as recommended by the PEA**

Contact believes that propositions as wide ranging as reform would best be achieved though industry consultation to uncover any specific issues that may be difficult for shippers/submitters to support. If such issues exist and if they are necessary in order to implement a change that shippers do support then either the issues are related and therefore able to be included in the same change request or an alternative must be found. This could include regulation.

**e. Will create ambiguity and uncertainty around a “single issue” or “related series of issues” which will result in more disputes**

Under the amendment to section 25.4 the wording in 25.4(a) states that the basis of a related series of issues must be stated in the change request. Further under 25.4(c) Vector/Shippers can ask the party making the change request for additional relevant information about the change request. This can include clarification of the basis for the related issues. This, like any other change request, can be appealed and the party making the change request risks the GIC finding against them.

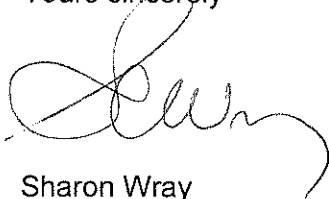
Vector states in its Letter (paragraph 18) the single issue rule could be used tactically to frustrate the passage of efficiency-enhancing change requests. As set out above it is not apparent how this could come to pass.

Conversely Contact's view is that, in the past, multiple issue change requests have been used to push through unsupported issues which have then had to be pursued through the appeal process. Contact challenge that this is not efficiency-enhancing.

## **5. Conclusions**

- 5.1. Contact lodged this Change Request specifically in the interests of efficiency and expediency.
- 5.2. On the part of the GIC there will be little to no additional time involved in assessing multiple change requests on one issue each than on a single change request covering multiple issues. The same applies on the part of shippers who may wish to lodge change requests.
- 5.3. What it will allow is a more robust process and less change requests proceeding to the GIC on appeal. It will also provide the shippers with more balanced negotiating power and prevent Vector from including controversial changes that are only in their interest.
- 5.4. Contact therefore asks the GIC to (1) find that Vector has not validly withheld its consent under section 25.5(b) and (2) to make a written recommendation in support of the Change request.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sharon Wray', with a stylized flourish at the end.

Sharon Wray  
Manager, Fuels Trading

