



Draft Recommendation on 31 May 2013 VTC Change Request (Single Issue)

Date issued: 2 August 2013
Submissions close: 23 August 2013





About Gas Industry Co.

Gas Industry Co is the gas industry body and co-regulator under the Gas Act. Its role is to:

- develop arrangements, including regulations where appropriate, which improve:
 - the operation of gas markets;
 - access to infrastructure; and
 - consumer outcomes;
- develop these arrangements with the principal objective to ensure that gas is delivered to existing and new customers in a safe, efficient, reliable, fair and environmentally sustainable manner; and
- oversee compliance with, and review such arrangements.

Gas Industry Co is required to have regard to the Government's policy objectives for the gas sector, and to report on the achievement of those objectives and on the state of the New Zealand gas industry.

Gas Industry Co's corporate strategy is to 'optimise the contribution of gas to New Zealand'.

Submissions close: 23 August 2013

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Executive summary

This Draft Recommendation considers appeals in relation to the Change Request submitted by Contact Energy Limited (Contact) to Vector Limited (Vector) on 6 May 2013 in accordance with section 25.4 of the Vector Transmission Code (VTC). The appeal and other relevant papers can be found at <http://gasindustry.co.nz/work-programme/vtc-change-request-appeal-31-may-2013-single-issue>.

The Change Request sought changes to the amendment/notification process in the VTC by providing that parties could only submit change requests that deal with a single issue, or related series of issues (Single Request). The change request is designed to address an issue that a change request may comprise a number of different matters unrelated to the core reasons for the change request being proposed.

Vector did not consent to the Change Request, so the change has not been made to the VTC. Contact has appealed to Gas Industry Co on two grounds seeking to have the change proceed. The two grounds are:

- Vector has invalidly withheld consent (section 25.6(a))
- Appeal by a shipper who did consent to the Change Request, where the relevant change was not made (section 25.6(c))

The two grounds involve different considerations so each will be considered separately.

Appeal Ground One - Draft Recommendation

Our assessment of appeal ground one is that Vector has validly withheld consent for the Change Request as the Change Request will create ambiguity and may create inefficiencies. Gas Industry Co's Draft Recommendation accordingly is that Vector has demonstrated a reasonable ground for withholding consent, and that Contact's appeal under section 25.6(a) fails.

The five reasons that Vector withheld consent, and our conclusion with respect to each reason, is as follows:

Reason for withholding consent	Our conclusion
One: the problem that the Change Request purports to address does not in fact exist	Not a reasonable basis for withholding consent
Two: the Change Request will create an inefficient change process which, among other things, will increase the cost for all parties and unnecessarily	Not a reasonable basis for withholding consent on its own but we note that when considered alongside ground five it is possible that the

increase Gas Industry Co's workload	change request may create inefficiencies
Three: the Change Request will undermine the ability of the parties to the VTC – a commercial contract - to negotiate varied terms	Not a reasonable basis for withholding consent
Four: the Change Request will hinder and potentially halt the implementation of wide ranging market reforms, such as those recommended by the Panel of Expert Advisers (PEA)	Not a reasonable basis for withholding consent
Five: the Change Request will create ambiguity and uncertainty around what a "single issue" or "related series of issues", and this will result in more disputes	Reasonable basis for withholding consent
Overall conclusion	As Vector has presented a reasonable basis for withholding consent, Contact's appeal under section 25.6(a) must fail.

Appeal Ground Two – Submissions Requested

Gas Industry Co has become aware that there are varying views as to whether Gas Industry Co, as the appeals body, can or must consider Contact's second ground of appeal if we find (in our Final Recommendation) that Vector has reasonably withheld consent. Gas Industry Co believes that it is inappropriate for it to develop a recommendation on appeal ground 2 unless or until it receives clarification that it can properly do so under the VTC, by way of agreement amongst the parties, dispute resolution under the VTC or otherwise. The parties may wish to comment on this aspect as part of their submissions on the Draft Recommendation.

Next steps

Gas Industry Co invites submissions on this Draft Recommendation on appeal ground one and on the question raised in relation to appeal ground two.

Submissions are due by **5pm, 23 August 2013** and can be made by logging on to Gas Industry Co's website. Please note that submissions received after this date may not be considered.

Gas Industry Co will then issue a Final Recommendation by **5pm, 6 September 2013** on ground one of Contact's appeal.

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1

Introduction

Background

Current appeal

On 6 May 2013, Contact submitted a Vector Transmission Code (VTC) Change Request proposing that change requests must relate only to a single issue or related series of issues. The Change Request was supported by all shippers except one, which abstained from responding. Vector did not consent to the Change Request.

On 31 May 2013, Contact notified Gas Industry Co that it was appealing Vector's decision not to consent to the Change Request.

Contact has referred to two sections of the VTC as the basis for its appeal. The first is section 25.6(a) which provides for appeal by a shipper who considers Vector has invalidly withheld consent. The second is section 25.6(c) which provides for appeal by a shipper who did consent, where the relevant change was not made.

Change Request Process under the VTC

Under the VTC, any Party may propose an amendment to the VTC (change request). Section 25 of the VTC sets out a process for considering change requests, including consultation with Shippers. Under section 25.5(c)(i) of the VTC, Vector and 75 percent of all shippers who respond must consent to a change request for the change to be made to the VTC. Once that process is complete, certain parties may appeal the outcome whether or not the change request was successful. For example, a party who voted against a change request that was successful may appeal that outcome and vice versa.

Gas Industry Co is tasked with independently reviewing and making a recommendation on change request appeals. Following consultation, Gas Industry Co must make a final recommendation 'supporting or not supporting the Change Request or finding that Vector has or has not validly withheld consent'¹.

In consultation with its shippers, Vector developed a process for considering change request appeals under the VTC. Gas Industry Co and Vector have incorporated that process into a Memorandum of

¹ VTC Section 25.7.

Understanding (MoU). The MoU sets out in detail the process that Gas Industry Co follows when considering appeals. A copy of that MoU is available on Gas Industry Co's website:

<http://www.gasindustry.co.nz/work-programme/vtc-change-request-appeal-20-february-2009?tab=1183>

Gas Industry Co's final recommendations are binding on the parties to the VTC, except in limited circumstances in which Vector may withhold its consent if, for example, the change would result in Vector incurring unrecoverable capital expenditure or operating expenses. These circumstances are listed in section 25.5(b) of the VTC.

The two grounds of appeal

Contact has referred to two sections of the VTC as the basis for its appeal. The first is section 25.6(a) which provides for appeal by a shipper who considers Vector has invalidly withheld consent. The second is section 25.6(c) which provides for appeal by a shipper who did consent, where the relevant change was not made.

Ground one: Vector's ability to reasonably withhold consent

We note that there has been confusion from some shippers as to the interpretation of section 25.5(b) - the clause that sets the parameters on the grounds on which Vector has an ability to withhold consent. Our view is that the list of grounds set out in section 25.5(b) is not exhaustive. Vector can reasonably withhold consent for reasons other than those specified.

Our decision as to whether Vector acted reasonably an assessment that needs to be supported by existing legal principles. This can be distinguished from the 'merits review' that would be taken under ground two.

Contact and Vector have provided us with information to help us consider ground one. This information is on our website <http://gasindustry.co.nz/work-programme/vtc-change-request-appeal-31-may-2013-single-issue>

Our recommendation under ground one involves an assessment whether or not Vector has reasonably withheld consent.

Ground two: consent to change request that was not made

If we are required to consider the second ground, timetables/information requirements for this second ground will be notified at a later date. However, we consider that there is a question of interpretation and the answer to that question may mean that we cannot or should not make a recommendation on appeal ground two.

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Proposed changes and Vector's reasons for withholding consent

Proposed changes

Contact submitted a change request to amend section 25.4 of the VTC to restrict change requests to a single issue or related series of issues.

Contact's contention is 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 processing by:

- reducing the number of change requests that are lodged on appeal;
- creating 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.

Vector's reasons for withholding consent

The reasons Vector has given for validly withholding its consent are:

- (a) that the problem that the Change Request purports to address does not in fact exist;
- (b) the Change Request will create an inefficient change process which, among other things, will increase the cost for all parties and is likely to unnecessarily increase Gas Industry Co's workload;
- (c) the Change Request will undermine the ability of the parties to the VTC – a commercial contract – to negotiate varied terms;
- (d) the Change Request will hinder and potentially halt the implementation of wide ranging market reforms, such as those recommended by the Panel of Expert Advisers; and
- (e) the Change Request will create ambiguity and uncertainty around what a 'single issue' or 'related series of issues', and this will result in more disputes.

Vector's reasons for withholding consent are more thoroughly discussed in the next section of this Draft Recommendation. Vector's original response can be found at <http://gasindustry.co.nz/work-programme/vtc-change-request-appeal-31-may-2013-single-issue>

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Appeal Ground One - Evaluation of whether Vector validly withheld consent

This section assesses whether Vector has validly withheld consent for the Change Request under section 25.5(b) of the VTC in relation to appeal ground one.

Scope of reasons for withholding consent

The list of reasons why Vector could validly withhold consent set out in subsections (i), (ii) and (iii) of section 25.5(b) is not exhaustive. The words “without limiting the previous part of this section 25.5(b)” in section 25.5(b) make it clear that the list of reasons is not exclusive. Vector is entitled to withhold its consent on other grounds, provided these grounds are “reasonable”.

Legal test for reasonableness

Determining the reasonableness of Vector's decision requires an exercise of legal interpretation, including by reference to Court decisions. The basic legal test for determining reasonableness is two-pronged. It requires consideration of:

- a) the reasons Vector gave for withholding consent; and
- b) whether those reasons provide reasonable grounds for withholding consent.

Typically, whether withholding consent is reasonable or not will depend on the facts. However, there is also a significant body of legal guidance that can aid the assessment of whether Vector has provided reasonable grounds for withholding consent. For example:

- withholding consent is unlikely to be reasonable where it is designed to achieve a collateral benefit or wholly unconnected purpose (*Bromley Park Garden Estates Ltd v Moss* [1982] 1 WLR 1019; [1982] 2 All ER 890 (CA); *W E Wagener Ltd v Photo Engravers Ltd* [1984] 1 NZLR 412);
- the reasonableness of a withholding of consent should be judged objectively and not subjectively. There should be reasons which can be justified at some level, even if only by showing that they are genuine reasons and not fanciful for withholding consent (*BP Oil New Zealand Ltd v Ports of*

Auckland Ltd [2004] 2 NZLR 208; *NCR Ltd v Riverland Portfolio No 1 Ltd* (No 2) [2005] EWCA Civ 312);

- whether a decision to withhold consent is reasonable can only be decided by reference to the circumstances existing and known to the decision-maker at the time the decision to withhold consent is made (*Kened Ltd v Connie Investments Ltd* [1997] 1 EGLR 21; *CIN Properties Ltd v Gill* [1993] 2 EGLR 97); and
- an enquiry into why the consent was withheld should look first into the actual basis for withholding consent and secondly as to whether that basis provides reasonable grounds for withholding consent (*Greymouth Gas Kaimiro Ltd v GXL Royalties Ltd* [2011] 1 NZLR 289).

Other considerations

Section 25.5(b)

To the extent that the list in section 25.5(b) demonstrates grounds that are clearly reasonable, we consider this to be a useful reference point for the type of other grounds that may indicate that consent has been reasonably withheld.

In this light we note that the grounds in section 25.5(b)(i)-(ii) are generally focussed on the potential for a change request to have an inequitable impact on Vector or its business, and it is easy to see why these would be reasonable grounds for Vector to withhold consent. In contrast the grounds identified by Vector in relation to the Change Request are not focussed on an inequitable impact on Vector. Instead they focus on perceived issues with the efficiency or effectiveness of the change request process if the Single Request model is adopted. In such situations we consider the threshold for establishing that these are reasonable grounds to withhold consent (when the overwhelming majority of shippers wish for the change request to succeed) is reasonably high. We do not think the mere potential for some efficiency or effectiveness impacts is sufficient; to be a reasonable ground for withholding consent, we consider there must be a real potential of a material decrease in efficiency or effectiveness.

Objectives from the Gas Act and Gas Policy Statement

We believe that the objectives specified in section 43ZN of the Gas Act and in the Government Policy Statement (*the Objectives*) are relevant. In accordance with the MoU, GIC needs "to have regard to" the Objectives when exercising the role of appeals body under the VTC. However, we disagree with Vector's suggestion that any reason for withholding consent that is genuinely aligned with the Objectives must be considered reasonable.

We consider that the Objectives have limited direct application in terms of an appeal relating to the "reasonableness" of Vector having withheld consent. We can envisage situations where consent is

clearly being reasonably withheld but where the Objectives might suggest that the change should proceed.

Application of legal tests to Vector's reasons for withholding consent

Vector has relied on several reasons to support its decision to withhold consent to the change request. We set out each of these reasons and our assessment as to whether they provide reasonable justification for withholding consent, below. It is our view that the appeal must fail if, when viewed objectively, any one of the reasons, or any combination of the reasons, put forward by Vector forms a reasonable basis for withholding consent.

Vector's grounds for withholding consent and our conclusion on their validity is summarised in the following table. A full description of the grounds and our analysis is presented below.

Reasons for withholding consent	Our conclusion
One: the problem that the Change Request purports to address does not in fact exist	Not a reasonable basis for withholding consent
Two: the Change Request will create an inefficient change process which, among other things, will increase the cost for all parties and unnecessarily increase Gas Industry Co's workload	Not a reasonable basis for withholding consent on its own but we note that when considered alongside ground five it is possible that the change request may create inefficiencies
Three: the Change Request will undermine the ability of the parties to the VTC – a commercial contract - to negotiate varied terms	Not a reasonable basis for withholding consent
Four: the Change Request will hinder and potentially halt the implementation of wide ranging market reforms, such as those recommended by the Panel of Expert Advisers (PEA)	Not a reasonable basis for withholding consent
Five: the Change Request will create ambiguity and uncertainty around what a "single issue" or "related series of issues", and this will result in more disputes	Reasonable basis for withholding consent
Overall conclusion	As Vector has presented a reasonable basis for withholding consent, Contact's appeal under section 25.6(a) must fail.

Analysis of each of the reasons under which Vector has said it has withheld consent.

One – there is no problem to be fixed by the Change Request

Description of reason one

The point Vector is making under this reason is not so much that Package Request presents no issues. Vector specifically acknowledges that the ability to make Package Requests carries risk and the potential for abuse. However, Vector's view is that the problems associated with Package Requests are not sufficient to warrant an amendment to the VTC and that the informal processes that have been established by GIC are sufficient to address those issues.

Conclusion of reason one analysis

We consider reason one is not a reasonable basis for withholding consent.

Analysis

We acknowledge the point made by Vector that Gas Industry Co is "alive" to the issues with Package Requests and have managed such issues in the past. However, when considered objectively it does not necessarily follow that the problems posed by Package Requests are therefore immaterial.

We have previously indicated that the complexity and number of issues dealt with in a Package Request can pose problems for appeals. In particular, we can have real difficulty analysing the merits of a change request and arriving at an overall view when the change request seeks to address unrelated issues. Our approach to this problem has been to adopt a more conservative attitude to its consideration of Package Requests. For this reason, we have advised participants that we consider Package Requests to be inherently more risky (i.e. in terms of the likelihood of success) than a Single Request. However, the fact that we have decided on this approach internally and advised VTC participants of it does not resolve the practical difficulties in considering Package Requests.

In addition, it is significant that all but one of the shippers (who abstained from voting) supported the change request. The fact that the majority of participants in the VTC believe that the Package Request issue is sufficiently important to warrant a formal amendment is, in itself, significant. Vector's view that the problem is not sufficiently material to warrant intervention is not reasonable in the face of such support for the Single Request model.

In light of the above, we consider reason one is not a reasonable ground for withholding consent.

Two – the Change Request will create inefficiencies in the VTC change process

Description of reason two

Reason two is that, if accepted, the Change Request would create inefficiencies in the VTC change request process. This is based on the assumption that there will be an increase in the number of change requests submitted if parties are prohibited from submitting Package Requests. As a consequence parties will need to incur greater costs and spend additional time assessing a greater number of change requests. Increased numbers of change requests are also likely to generate more appeals and consequently, increase our workload as the appeal body.

Conclusion of reason two analysis

We are not convinced it is reasonable to withhold consent simply because of the possibility that there may be some loss of efficiency (especially when considered against the potential for better quality outcomes). However, we do have concerns as to the impact on efficiency in conjunction with the potential ambiguity over what is, and is not, a single issue.

Analysis

We agree that a Single Request model has the potential to create additional work (particularly for a party such as Vector which needs to consider and respond to all requests) and some timing inefficiency.

However, this result is far from certain. It may be that there is no real impact on work or efficiency. Indeed the Single Request model could present opportunities for potential efficiency gains.

There may be increased ease for parties assessing and responding to change requests. Vector acknowledges that Package Requests are inherently more complex and difficult for parties to assess. A Single Request model would allow parties to focus on reaching a view on a single issue, rather than needing to consider a suite of unrelated changes. Arguably, this will make the process of reaching a view on the change request simpler for the parties. As discussed above, it may also streamline our consideration of appeals.

Alternatively, it may be the case that there will be little change to the process that parties currently work through to consider a Package Request. We have previously noted that, when faced with diverse topics in a change request "the only robust approach to analysing such diverse proposals is on a subject by subject basis". Assuming that parties adopt a similar practice of assessing Package Request in accordance with their component parts, the time/cost implications of receiving changes as a series of Single Requests may not materially differ from receiving them as a Package Request.

There may also be better quality outcomes and less appeals. Restricting change requests to Single Requests may lead to better quality decision-making and outcomes overall. Where parties are only

being asked to consider a Single Request, their decision to support (or not) the change request will be an accurate reflection of their view on the merits of the change proposed. This will not always be the case with Package Requests where parties may believe they need to vote tactically and oppose changes that they support in order to block other changes coming into effect. Cases where parties have felt compelled to vote against changes that they wished to support are more likely to end up on appeal.

On balance, we are not convinced it is reasonable to withhold consent simply because of the possibility that there may be some loss of efficiency (especially when considered against the potential for better quality outcomes). However, we do have concerns as to the impact on efficiency in conjunction with the potential ambiguity over what is, and is not, a single issue.

Three – The Change Request would undermine the parties’ ability to negotiate varied terms

Description of reason three

Vector contends that the Change Request will undermine the ability of the parties to the VTC to negotiate varied terms and implement commercial trade-off solutions. Vector suggests that the practical effect of the Change Request will be to restrict the changes that parties can request to the VTC.

Conclusion of reason three analysis

In our view, Vector’s concerns about the impact of the Change Request on the parties’ ability to amend the VTC are not reasonable. We do not consider that Vector has established a reasonable basis for withholding consent.

Analysis

Viewed objectively, we cannot see that the Single Request model will materially decrease the prospect of a consensus of parties from agreeing variations to the VTC, or limit the scope of those variations.

The wording of the Change Request is sufficiently broad to allow a Single Request to be made in respect of a “related series of events”. On our interpretation, a package of changes can still be proposed in a Single Request provided that the submitter can establish that there is a genuine relationship between the various amendments being put forward. This should not be unduly difficult in a trade-off situation where typically the proposals, although diverse, are targeted at achieving a common goal.

In addition and as a matter of practice, a package of reforms that has been negotiated by the parties and has the requisite support to be passed under the VTC should not be frustrated simply because a Single Request model has been implemented. The requirement for a change request to address a single issue only has the potential to frustrate change requests where there is insufficient support for

the proposed amendments. Where the parties are in agreement on the nature of the changes, we would have thought that the change request should pass through the process relatively easily.

In addition, we note that the Shipper consensus in supporting the Change Request would seem to suggest the other VTC parties are more concerned with the issues posed by the Package Request, than they are with any risk that they have lost the right to negotiate.

Four – The Change Request will hinder the implementation of market reforms

Description of reason four

Vector suggests that a Single Request model would hinder and potentially halt the implementation of wide-ranging market reforms such as those recommended by the Panel of Expert Advisers (PEA).

Vector also considers that the progress of the reforms would be hindered by the large amount of work needed to draft multiple change requests and that splitting up market reforms may mean that the net benefits test cannot be satisfied.

Vector considers Contact's suggestion of implementing such reforms through regulation to be an unnecessary and expensive option.

Conclusion of reason four analysis

We do not consider that Vector has established a reasonable basis for withholding consent.

Analysis

There are three main reasons that we do not consider that Vector has established reasonable grounds for withholding consent under ground four.

Firstly, if reforms are to be implemented by agreed amendment to the VTC, those reforms will need a broad consensus, and we do not consider such consensus is rendered less likely by the Single Request model.

Secondly, depending on the reforms, the linkage between the various amendments may well be sufficient to satisfy a Single Request model in any event. For example, the PEA Work Plan 2012 (Work Plan) requires the PEA to undertake a review of transmission access and capacity. The purpose of the review is to ensure Vector's arrangements for transmission access and capacity pricing allocate capacity efficiently and effectively signal the need for investment in additional capacity. Although the PEA may recommend a raft of wide-ranging changes to the VTC as a result of this review, it would seem possible for them to be categorised as a as a Single Request if the basis of the relationship between the proposals can be clearly linked to the common aspect of the Work Plan.

Thirdly, Vector's view also seems to be that, absent the change request being successful market reforms such as those suggested by the PEA, would need to be implemented via the VTC appeal process. However, the appeal process is just one of the avenues that can be used to implement market reforms. The Work Plan (clause 8(d)) expressly acknowledges that some reforms may require implementation by way of regulation.

While we acknowledge there may be some potential for the Single Request model to impact the market reform process, the existing process does not provide any certainty of an easy path for some reforms; and we struggle to see that the Single Request model would make a material difference.

Five – The Change Request will create ambiguity

Description of reason five

The final reason relied upon by Vector is that the Change Request will create ambiguity and uncertainty around what constitutes a "single issue" or "related series of issues". This uncertainty will create a new basis for disputes between the VTC parties, the possibility of which is not provided for, or capable of being resolved, under the VTC as currently drafted.

Conclusion of reason five analysis

We believe that under this reason Vector has established a reasonable basis for withholding consent.

Analysis

The issues with the Change Request are twofold.

First, the definition of "single issue" or "series of related issues" is ambiguous and may be difficult to apply. Vector has provided numerous examples in its correspondence of situations where the line between single and multiple issues may not be clear. In doing so, Vector has demonstrated a reasonable likelihood that even parties acting reasonably (i.e. without an intention to frustrate a change request) could arrive at differing interpretations of the Single Request criteria.

In one example, Vector raises the possibility that the Single Request criteria could prevent parties from attempting to rectify minor drafting clarifications in otherwise unrelated change requests. It is reasonable to believe that the Single Request criteria could prevent ancillary changes such as this being made, even in situations where the changes are agreeable to all VTC parties.

In this scenario, requiring a separate change request to be submitted lends weight to Vector's assertion, in ground two, that the Single Request model will create inefficiencies in the VTC change control process.

Secondly, there is no clear process in the VTC outlining how disputes about the scope of a change request will be addressed and which entity will determine such disputes. Disputes about the scope of a change request fall outside the appeals process in section 25 of the VTC, which is strictly limited to dealing with appeals arising from decision-making on change requests.

There is no scope in section 25 of the VTC for an interim determination to be made on whether a change request meets the underlying Single Request criteria.

Even in the event that an interim determination about scope could be made under the VTC, we have no mandate to perform that function. Our role under the VTC is strictly limited to that of appeals body². We have no jurisdiction to consider, or make recommendations on the scope of a change request. Introduction of a Single Request model would pose real issues for us in terms of understanding our role and how we might be expected to implement and enforce the underlying single issue criteria.

In the absence of any clear mandate to resolve scope issues, the parties may be required to take disputes about the scope of a change request to a court or other arbiter.

We consider the impact of ambiguity could be significant in terms of efficiency and effectiveness. Given the past debate over the appropriateness of certain change requests, there seems a reasonable prospect of legitimate dispute over whether change requests fulfil the requisite single issue criteria. It also opens up the possibility that the Single Request criteria will become a tactical tool used to frustrate and stall the implementation of VTC amendments. In the absence of any simple, decisive mechanism to resolve such issues, there is a material risk that such issues could have a material adverse impact on the ability of VTC parties to make legitimate amendments to the VTC.

We consider it is reasonable for Vector to have concerns about the overall effect this could have on the VTC, and accordingly think it reasonable for Vector to withhold its consent.

Draft Recommendation on Appeal Ground One

Our Draft Recommendation on appeal ground one is accordingly that Vector has reasonably withheld consent, and that Contact's appeal under section 25.6(a) must fail.

² This is spelt out explicitly in section 25.7.

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Consideration of Appeal Ground 2

A question arises at this point whether the VTC provides that, in a case where Gas Industry Co was to determine (consistent with our Draft Determination above) that Vector has validly withheld consent to a change request, the second appeal ground survives and can be the subject of a Recommendation by Gas Industry Co. The question arises because we have become aware that there are differing interpretations of the VTC appeal provisions in section 25, essentially as to whether Gas Industry Co is open to consider a second ground of appeal on a change request if it has first found that Vector has reasonably withheld consent to the same change request.

Gas Industry Co is normally able to make recommendations in its appellate role under the VTC and the MoU (discussed in section one above) without the need to resolve such questions of interpretation. We note that our role is set out in the VTC and the MoU, and neither document expressly provides us with powers to consider points of law under the VTC, such as contractual interpretation. We also note that there are no appeal rights to a recommendation made by Gas Industry Co on a change request appeal on points of law or similar.

However, the VTC does contain a disputes resolution procedure that provides a number of avenues to parties for resolving disputes, which might be used to address such issues.

Therefore we think it is most appropriate for parties to the VTC to resolve amongst themselves, using the dispute resolution procedures if required, whether Contact has a second ground of appeal that would survive a Final Recommendation consistent with our Draft Recommendation on appeal ground one. If it does, Gas Industry Co could then proceed to make a recommendation on that matter.

Gas Industry Co accordingly concludes that it is inappropriate for it to develop a recommendation on appeal ground 2 unless or until it receives clarification that it can properly do so under the VTC, by way of agreement amongst the parties, dispute resolution under the VTC or otherwise. The parties may wish to comment on this aspect as part of their submissions on the Draft Recommendation.

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Next Steps

Next Steps

Gas Industry Co invites submissions on this Draft Recommendation on appeal ground one.

Submissions are due by **5pm, 23 August 2013** and can be made by logging on to Gas Industry Co's website. Please note that submissions received after this date may not be considered.

Gas Industry Co values openness and transparency, and places submissions on our website. If you intend to provide confidential information in your submission, please discuss this first with Ian Wilson at Gas Industry Co.

We intend to issue a Final Recommendation on ground one by **Friday 6 September**.