Vector Transmission Code 20 February 2009 Change Request Appeal: draft recommendation

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GAS INDUSTRY COMPANY LIMITED

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About Gas Industry Co.

Gas Industry Co was formed to be the co-regulator under the Gas Act.

Its role is to:

- recommend arrangements, including rules and regulations where appropriate, which improve:
  - the operation of gas markets;
  - access to infrastructure; and
  - consumer outcomes;
- administer, oversee compliance with, and review such arrangements; and
- report regularly to the Minister of Energy and Resources on the performance and present state of the New Zealand gas industry, and the achievement of Government's policy objectives for the gas sector.

Author: Ian Wilson

Submissions close: 3 July 2009

Send to: submissions@gasindustry.co.nz

Enquiries: Ian Wilson
ian.wilson@gasindustry.co.nz
04 472 1800

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1 Background and Introduction

Background

The purpose of this paper is to set out Gas Industry Co Limited's (Gas Industry Co) draft recommendation on Vector Gas Limited's (Vector) 20 February 2009 change request appeal under the Vector Transmission Code (VTC).

Under the VTC, any party can request a variation or modification to, or waiver from, any provision of the VTC. Section 25 of the VTC sets out a process for considering such change requests, which includes compulsory consultation with all shippers on Vector's transmission system. 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 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

When making its recommendation on an appeal, the MoU requires Gas Industry Co to have regard to the objectives specified in section 43ZN of the Gas Act 1992 (the Gas Act) and the objectives specified in the Government Policy Statement on Gas Governance (GPS). The combined principal objectives for Gas Industry Co are to ensure that gas is delivered to existing and new customers in a safe, efficient, fair, reliable, and environmentally sustainable manner.

[1] VTC Section 25.7.

Gas Industry Co's final recommendation is binding on the parties to the VTC, but not if Vector has withheld its consent and the change would result in Vector incurring capital expenditure or operating expenses[2]. Even then, if another party is prepared to cover the cost, or Gas Industry Co regulates to recover the cost, then Vector is obliged to make the change.

Introduction

On 20 February 2009, Gas Industry Co received an appeal from Vector. The appeal relates to a change request initiated by Vector and notified to shippers by Vector on 21 January 2009 titled 'VTC Change Request: BPP Trustee' (the appeal).

Of the five shippers who responded to the change request, three consented and two did not. Clause 25.5(c) of the VTC requires the consent of Vector and 75 percent of all shippers who respond to a change request before the change can be made. This threshold was not met and Vector has appealed to have the change allowed.

On 10 March 2009, Gas Industry Co published the appeal on its website and notified relevant stakeholders. Submissions closed and were published on Gas Industry Co's website on 23 March 2009. Cross-submissions closed and were published on Gas Industry Co's website on 9 April 2009.

The VTC provides that any party making a change request must submit a written request specifying the reasons for the amendment and the nature, intended impact, effect of that amendment, and the date on which the amendment will take effect (section 25.4).

The details of Vector's original change request of 21 January 2009, and all submissions, are available on Gas Industry Co's website.

[2] VTC section 25.5(b)(i) and (ii).

2 Process and Submissions

This draft recommendation provides the basis for consultation. At the end of the consultation period, Gas Industry Co considers submissions and publishes a final recommendation. The original timetable for this process was as follows:

29 April 2009	Gas Industry Co publishes draft recommendation on its website and notifies interested parties. Submissions on the draft recommendation invited.
22 May 2009	Final date for submissions on draft recommendation. Gas Industry Co publishes submissions on its website and notifies interested parties.
19 June 2009	Gas Industry Co makes final recommendation to Vector. Gas Industry Co publishes final recommendation on its website and notifies interested parties.

However, Gas Industry Co was unable to meet this timetable. The revised timetable is now:

12 June 2009	Gas Industry Co publishes draft recommendation on its website and notifies interested parties. Submissions on the draft recommendation invited.
3 July 2009	Final date for submissions on draft recommendation. Gas Industry Co publishes submissions on its website and notifies interested parties.
28 August 2009	Gas Industry Co makes final recommendation to Vector. Gas Industry Co publishes final recommendation on its website and notifies interested parties.

Submitters may identify any information in their submission which they believe to be confidential or commercially sensitive. If a submitter identifies any such information they must also state their reasons for believing that it to be confidential. Gas Industry Co may delete that information from the submission before publishing it on its website where:

- it is satisfied that the submitter, or another identified person, would be materially commercially disadvantaged if the information is published;
- the information is not essential or material to the decision to be made by Gas Industry Co; and
- it is satisfied that, despite the deletion of the information, other parties and industry participants will not be hindered, ill-informed or otherwise materially disadvantaged when making, or deciding whether or not to make, submissions themselves.

Parties who wish to make submissions on the draft recommendation are invited to respond by 5:00 pm on 3 July 2009. Please note that submissions received after that date may not be considered. By making a submission, submitters agree that Gas Industry Co will not be liable for publishing any information it receives in a submission.

Gas Industry Co prefers to receive submissions in electronic form (Microsoft Word format or pdf), emailed to submissions@gasindustry.co.nz with 'VTC Change Request Appeal - Submission' in the subject header. A hard copy would also be appreciated and should be posted to:

Ian Wilson
Gas Industry Co
Level 8, Todd Building
95 Customhouse Quay
PO Box 10-646
Wellington

Tel: +64 4 474 2462
Fax: +64 4 472 1801

Gas Industry Co will send you an email to let you know your submission has been received.

3 The Appeal

The purpose of the change request is to give the Balancing and Peaking Pool (BPP) Trustee the express power to borrow. This would allow the Trustee to have an overdraft facility on the BPP Trust Account.

The BPP is a mechanism included in the VTC that allocates the costs of balancing, including:

- payments made by Vector to Maui Development Limited (MDL) as a result of an imbalance limit overrun notice (ILON) or incentives pool debit;
- payments made as a result of Vector taking its own balancing actions, such as purchasing balancing gas; and
- claims for non-delivery where a shipper was unable to take gas to which it was entitled.

BPP costs are allocated proportionately among Vector and its shippers according to a formula set out in sections 1 and 8 of the VTC. Gas Industry Co understands that shippers with contracts that are not subject to the VTC (non-code shippers) are allocated their share of BPP costs on the same basis as shippers under the VTC.

Vector is the BPP Trustee.

Previous change requests and subsequent developments

On 10 September 2008, Vector received from Contact a change request proposing several changes to the VTC. These changes included:

- making Vector liable for any amounts not paid by shippers and non-code shippers into the BPP (referred to as 'change request 4'); and
- preventing payments going out of the BPP on a gas day from exceeding the sums that were paid into the BPP in respect of that day (referred to as 'change request 5').

Vector consulted with its shippers and withheld its consent to these two change requests.

Contact appealed Vector's decision to withhold its consent. Gas Industry Co received the appeal on 9 October 2008. Gas Industry Co's final recommendations (published on 20 February 2009) were that it:

- supported change request 4 but considered Vector had validly withheld its consent to the change request; and
- did not support change request 5 and considered that Vector had validly withheld its consent.

The outcome was that the proposed change requests were not implemented.

Since these original change requests, developments have caused the issue of the BPP account operating an overdraft to be raised again. At the end of 2008, Vector changed its bank. The new bank required Vector to confirm the BPP Trustee has the express power to borrow before it would allow the Trustee to have an overdraft facility on the BPP Trust Account. The VTC gives no such express power to the BPP Trustee. The BPP Trust Account has not therefore been able to operate an overdraft.

At the same time, Gas Industry Co understands some of Vector's shippers have disputed balancing costs that have been invoiced by MDL and allocated to them via the BPP. These shippers have not paid their allocated costs into the BPP Trust Account, and, without an overdraft facility, there were not sufficient funds in that account to pay MDL invoices. Vector has refused to pay MDL's invoices, claiming it should not be liable for balancing costs caused by others. The consequence has been that the MDL invoices remain unpaid.

Reasons for the appeal

In its submission on the appeal, Contact notes that:

> Under section 25.6 of the VTC, Vector, acting reasonably, may lodge an appeal to the GIC to seek to have a change request allowed and must provide full particulars as to its reasons for lodging its appeal. As far as Contact is able to determine Vector has done nothing more than lodge its original change request with the Gas Industry Co…. To provide reasons for lodging its appeal Vector should have addressed submissions made on its original change request.

The intent of many appeal processes is to allow parties to have a decision re-considered by arguing that it resulted from errors or omissions serious enough to invalidate the outcome. Usually parties appealing such a decision are required to state the grounds on which they think the decision should be re-considered.

However, Gas Industry Co believes the purpose of the VTC appeal process is different. Gas Industry Co considers the purpose is to provide an independent review and to allow issues to be considered in the context of the Gas Act and GPS objectives. Such consideration is not required under the VTC change request process as set out under Section 25 of the VTC. Section 25 allows for a change to be made to the code if agreed to by Vector and 75 percent of all shippers who respond to the change request. But it does not set out any criteria that parties must consider when giving or withholding their consent.

It is therefore reasonable for Vector to lodge an appeal based on the same reasons as its 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. In Vector's cross-submission it notes that there is no requirement on any party lodging an appeal to address the concerns of other parties, because that happens during the consultation process allows these to be addressed. While this is true, it does mean that the first round of submissions on an appeal may not advance the discussion. Gas Industry Co would prefer that the party making an appeal responds to issues raised in submissions on the change request, and is also specific about which Gas Act or GPS objectives it believes to be relevant to the appeal.

Submissions

Contact does not support Vector's change request. Contact sees the main problem being that the VTC inadequately describes the operation of the BPP Trustee Account. It does not believe that those involved in negotiating the VTC had 'always contemplated' an overdraft facility, as Vector claims. Contact believes that an overdraft facility on the BPP Trustee Account would result in 'innocent' shippers covering cost created by 'guilty' shippers. It suggests that allowing the BPP to operate in overdraft makes operation of the BPP unclear and means that shippers efficiently managing balancing will be exposed to the balancing costs created by other users of the pipeline. Contact considers this inappropriate and that socialisation of costs appears contrary to the objectives under the Gas Act and GPS.

Contact submits that it would be inappropriate for Gas Industry Co to support Vector's change request without addressing the underlying deficiencies in the BPP's operation.

Genesis Energy submits that it does not accept that it is necessary or desirable for the BPP Account to be able to go into overdraft. In its view, an overdraft facility would:

- reduce the incentive on the BPP Trustee to pursue slow payers;
- encourage VTC shippers not to pay on the expectation that unpaid costs would eventually have to be socialised; and
- raise the issue of what should happen if the overdraft limit is reached.

Like Contact, Genesis Energy does not believe the ability to borrow was inadvertently omitted from the VTC, and cites various sections of the VTC to support its view. Genesis Energy also believes that it is feasible for the BPP Trustee to operate without an overdraft facility because 'all costs charged to the BPP are allocated to VTC shippers'.

Nova also submits that it does not support Vector's appeal of the change request. Nova's opinion is that BPP payments should be limited to payments made into the BPP. This gives an incentive to the Trustee to pursue payments owing. It, too, is concerned about the possibility of socialised costs and innocent shippers cross-subsidising those responsible for the owed amounts. Nova also agrees with Contact's concerns about the failure of the VTC to contain an express obligation on Vector to pursue non-code shippers through the equivalent mechanism in their transmission services agreements. The lack of an enforceable obligation on Vector means it is possible that the BPP could build a large deficit.

Greymouth Gas, OnGas, and Vector submitted in support of Vector's change request.

Greymouth Gas believes that the change request supports the principles of the balancing arrangements by allowing costs and benefits to flow to causers in a timely manner. It does not consider the cost of the overdraft to be an issue, because there are several ways in which it can be recovered.

OnGas suggests that it is not feasible to run the BPP Account without an overdraft function and it is more than likely that this was overlooked when the VTC was first drafted.

Gas Industry Co analysis

Drafting errors

Submitters disagree on whether the ability of the BPP Trustee to borrow was inadvertently omitted from the VTC during its drafting[3]. Gas Industry Co has no means of assessing whether this is the case. Even if it did, Gas Industry Co considers that it would still be required to undertake the analysis set out in this recommendation.

Liabilities for payments: current contractual arrangements

Certain contractual arrangements under the MPOC are relevant to Gas Industry Co's analysis of this appeal.

In its final recommendation to the October 2008 change request appeal, Gas Industry Co noted that under the VTC, Vector is contractually liable in respect of the obligation (debt) referred to in sections:

[3] Submissions and cross-submissions offered opposing views and occasionally interpreted the same evidence as support for those opposing views.

- 8.13(a) to MDL as a welded party under the MPOC;
- 8.13(b) to MDL as a welded party under the MPOC;
- 8.18(a) to the seller of the balancing gas through a gas purchase contract; and
- 8.19(a) to MDL as a welded party under the MPOC.

Vector is therefore liable for balancing costs and uses the BPP as a mechanism to allocate those costs to its shippers.

Under the MPOC and VTC, Vector is obliged to pay all balancing costs it incurs as an MPOC welded party in the first instance. Under the VTC, Vector is entitled to recover these costs from shippers who have mismatch positions. The BPP Trustee Account is the 'clearing point' for these transactions; that is, balancing costs are paid from the account, and shipper reimbursements paid into it.

If there are insufficient funds in the BPP Trustee account to pay balancing gas invoices, Vector remains liable to pay these invoices. It can pay those invoices directly from its own accounts; or, if the BPP Trustee Account is able to operate an overdraft, the BPP can pay the invoices using the account's overdraft facility. In either case, as Vector notes in its cross-submission, '…that overdraft will still be in the name of Vector Gas Limited… who will ultimately be responsible for its repayment'.

Gas Industry Co concludes 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.

Liabilities for payments: alternative contractual arrangements

Gas Industry Co notes Genesis Energy's view that Vector could behave in the same way as the electricity market clearing manager, who deals with non-payment or partial payment from purchasers by making pro-rata payments to generators. Genesis Energy's preference is to amend the VTC to align with the approach taken in the electricity governance rules rather than to establish an overdraft facility for the BPP Trustee. Contact agrees that 'a chain of contractual dispute (from Vector shipper, to Vector, to MDL) is a preferable mechanism.'

Gas Industry Co does not agree that short-paying suppliers of balancing gas is preferable to allowing an overdraft facility. It could be that the short-payment relates to a matter such as the allocation of these costs to shippers, which has nothing to do with the supplier of balancing services. If provision of gas services is not the issue, then it is surely inefficient to dispute payment and unfair to suppliers of balancing services. Also, balancing gas suppliers are less likely to offer their services if they perceive that payment may be withheld because of issues between Vector and its shippers.

In any case, Gas Industry Co's role in considering appeals is limited to determining if a change request should be adopted or not. It cannot determine that an alternative be adopted.

Behavioural assumptions: Vector paying balancing costs

Some submissions objecting to the change request suggest that Vector has different incentives to pay balancing costs if an overdraft facility exists. For example, Genesis submits that an overdraft facility would 'reduce the incentive on the BPP Trustee to pursue slow players'; and Nova submits that BPP payments should be limited to payments into the BPP 'such that the Trustee is incentivised to pursue payments owed to the BPP'. Contact also comments that section 16.16 of the VTC obliges shippers to pay interest on payments that are disputed and then resolved in favour of the balancing gas provider. In Contact's view this obligation means that Vector should not be under pressure to pay disputed amounts until the dispute is resolved and 'appropriately incentivises Vector to pursue disputes raised by shippers'.

Gas Industry Co has found it difficult to assess the validity of these assumptions because submitters have not always fully explained why the behaviour they anticipate should be expected. We consider some possible reasons—legal and financial—below.

There appears to be no contractual imperative for Vector to behave differently depending on whether or not an overdraft facility exists. In a previous submission[4] Contact noted that the VTC gives Vector the following mechanisms to recover costs under:

- section 14.9 by making a claim against credit support[5];
- section 16.15, 17, and 18 by seeking recovery through the dispute resolution process; and/or
- section 20 by terminating the TSA of a defaulting shipper.

Gas Industry Co notes that section 1.2 of the VTC allows Vector access to the cost recovery mechanisms listed above as both a provider of transmission services and the BPP Trustee. So there is no legal impediment to Vector using these mechanisms whether the short payment is accounted for in the BPP Trustee Account or in another of its bank accounts.

Also, Vector is the BPP Trustee and therefore has the contractual relationship with the bank for the BPP Trustee Account. So Vector is liable for any overdraft on the account, not its shippers.

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[4] See Contact's submission to the 9 October 2008 appeal.
[5] Although, in Vector's cross-submission it notes that prudentials cannot be accessed while a dispute is in progress.

There therefore appears to be no legal reason for Vector to behave differently depending on whether or not an overdraft facility exists.

Similarly, from a financial perspective, there appears to be no cause for Vector to behave differently. Section 8.20 of the VTC provides that 'Vector shall be entitled to recover costs paid to a third party for the administration of Vector's operation of the BPP Account, including audit fees and bank charges (net of any interest earned)'. However, in the absence of an overdraft facility, Vector would record the costs in another account and seek recovery of such costs through future transmission fee calculations (subject to possible Commerce Commission restrictions).

However, in section 1.9 of its 23 March 2009 submission Vector does posit that, in respect of making payments for balancing gas, its behaviour would be different if an overdraft facility existed. In the example cited by Vector, Vector withheld payment for balancing costs invoiced by MDL rather than fund these from its own accounts. In that instance, it claims that, 'An overdraft facility would have enabled the BPP Trustee to have paid Vector and then Vector to have paid MDL in full and on time.'

On balance, while Gas Industry Co cannot identify any incentives which would cause Vector to behave differently, it must accept that in the example given by Vector it did behave differently. The tentative conclusion must be that balancing costs are more likely to be paid in a timely fashion if an overdraft facility exists.

Behavioural assumptions: pursuit of debts

Submissions from Genesis Energy and Nova imply that Vector perceives a BPP Trustee Account overdraft to be less significant than a lower balance in another of its bank accounts. They suggest Vector might therefore be more inclined to pursue the debt if it is not in the BPP. A BPP Trustee Account overdraft would reduce incentives on Vector to use cost recovery mechanisms and increase the likelihood that costs are socialised, which would be inefficient and unfair.

Gas Industry Co understands that, because of the absence of an overdraft facility, Vector has been paying balancing costs invoiced by MDL only to the extent that it has been able to recover those costs from Vector shippers. The balance of payments owing to MDL remain outstanding. It does seem likely that if Vector is being pursued by MDL (or any other balancing gas provider) to pay outstanding balancing costs, Vector may be more inclined to pursue payment from its shippers.

Gas Industry Co's conclusion is that Vector will be less likely to pursue debts if an overdraft facility exists.

Behavioural assumptions: behaviour of shippers

In its submission Genesis suggests that an overdraft facility would encourage VTC shippers not to pay their allocation of balancing costs on the expectation that unpaid costs would eventually have to be socialised.

Gas Industry Co considers potential exists for bad debts to be socialised regardless of whether they lie in the BPP account or not. However, the previous section concluded that the absence of an overdraft facility may make Vector more inclined to pursue payment from its shippers. Knowing this should give those shippers a greater incentive to pay. Gas Industry Co therefore agrees with Genesis's conclusion, that Vector shippers will be less likely to pay balancing costs if an overdraft facility exists.

Applicable Gas Act and GPS Objectives

The above sections of our analysis consider the likely effects of the proposed change request. This section goes on to analyse those effects against the objectives in the GPS and section 43ZN of the Gas Act, as required by Gas Industry Co's MoU with Vector.

The objectives specified in section 43ZN of the Gas Act are:

- to ensure that gas is delivered to existing and new customers in a safe, efficient and reliable manner (which is the principal objective);
- to facilitate and promote the ongoing supply of gas to meet New Zealand's energy needs by providing access to essential infrastructure and competitive market arrangements;
- barriers to competition are minimised;
- incentives for investment in gas processing facilities, transmission and distribution are maintained and advanced;
- delivered gas costs and prices are subject to sustained downward pressure;
- risk relating to security of supply, including transport arrangements, are properly and efficiently managed by all parties; and
- consistency with the Government's gas safety regime is maintained.

The GPS reiterates the objectives set out in section 43ZN of the Gas Act and includes the following further objectives:

- to ensure that gas is delivered to existing and new customers in a fair and environmentally sustainable manner;
- energy and other resources used to deliver gas to consumers are used efficiently;
- competition is facilitated in upstream and downstream gas markets by minimising barriers to access to essential infrastructure to the long-term benefit of end users;
- the full costs of producing and transporting gas are signalled to consumers;
- the quality of gas services where those services include a trade-off between quality and price, as far as possible, reflect customers' preferences; and
- the gas sector contributes to achieving the Government's climate change objectives as set out in the New Zealand Energy Strategy, or any other document the Minister of Energy may specify from time to time, by minimising gas losses and promoting demand-side management and energy efficiency.

In addition, the GPS seeks to achieve a number of outcomes. Gas Industry Co acknowledges that the MoU does not specifically require these outcomes to be considered. However, we did consider that the following outcomes were potentially relevant to these appeals:

- accurate, efficient and timely arrangements for the allocation and reconciliation of upstream gas quantities; and
- access to transmission pipelines is provided on reasonable terms.

Having considered each of the above potentially relevant criteria, Gas Industry Co concluded that the following are relevant to consideration of the proposed change request:

- delivered gas costs and prices are subject to sustained downward pressure;
- risks relating to security of supply, including transport arrangements, are properly and efficiently managed by all parties;
- the full costs of producing and transporting gas are signalled to consumers; and
- to ensure that gas is delivered to existing and new customers in a safe, efficient and reliable manner.

Assessment against objectives

Delivered gas costs

From the earlier section 'Behavioural assumptions: Vector paying balancing costs', Gas Industry Co concludes that an overdraft facility is likely to make payments to balancing gas providers more reliable. This reduced risk should be reflected in lower costs somewhere along the gas supply chain, possibly in MDL and Vector's transmission tariffs.

(With an overdraft facility, explicit overdraft costs will be incurred, but these would substitute hidden costs of Vector and MDL funding the transactional costs of balancing gas, so the net effect should be minimal.)

Gas Industry Co concludes that the provision of an overdraft facility would put downward pressure on delivered gas costs.

Risks are properly and efficiently managed by all parties

In the context of a BPP overdraft facility, three possible sources of risk should be considered:

- the operational risk of balancing gas being available when required;
- the financial risk of uncertain cash flows; and
- the efficiency risk that costs do not fall to causers.

In relation to operational risks, Gas Industry Co believes that supply risk is reduced when balancing gas is available. In the long run more balancing gas is likely to be available when the providers of balancing gas are confident of reliable arrangements to pay for the service. Gas Industry Co considers that Vector overstates the case in its 9 April cross submission where it suggests that '… the industry will soon paint itself into a corner where no one will be willing to offer these services.' However, it appears that an overdraft facility would result in more reliable payment for balancing gas services, which must reduce operational risk to some extent.

In relation to financial risk, that is, the uncertainty of cash flows, the overdraft facility should ensure that timing differences between the provision of balancing services and the collection of balancing costs do not delay payment to providers of balancing gas.

In relation to the efficiency risk of costs not being properly allocated to causers, the situation is less clear. In the section 'Behavioural assumptions: pursuit of debts', Gas Industry Co concluded that Vector may be less inclined to pursue debts if they lie within the BPP Trustee Account. However, Gas Industry Co does not believe that this necessarily means that such debts will be written off. They may be pursued, but with less urgency than otherwise.

Whether or not the BPP Trustee Account operates an overdraft facility, Vector is in effect liable for any difference between gas balancing costs and reimbursements from shippers. Where these differences are long-term and especially where they occur because of unresolved disputes, Vector is out of pocket until it recovers the costs either through pursuing debt or by socialising the costs.

Gas Industry Co concludes that the provision of an overdraft facility will reduce operational and financial risks, and is neutral on efficiency risks.

The full costs of producing and transporting gas are signalled to consumers

Gas Industry Co considers that if the BPP is unable to go in to overdraft, then Vector will be required to supplement BPP payments with payments from other Vector bank accounts. This would lead to an increase in transactions and greater complexity in the operation of the BPP account. Gas Industry Co thinks it desirable that all balancing costs go in and out of the BPP account. This makes the cost of balancing, and the extent to which it is socialised, easily identifiable during an audit, and better able to be signalled to consumers.

Gas Industry Co concludes that the provision of an overdraft facility will assist in ensuring that the full costs are signalled to consumers.

Gas is delivered in a safe, efficient and reliable manner

Gas Industry Co agrees with submitters that socialisation of costs is contrary to fair and efficient outcomes.

In relation to behavioural assumptions, Gas Industry Co concluded that the provision of an overdraft facility would result in :

- Vector being more likely to pay providers of balancing services in a timely manner; and
- Vector shippers being less likely to pay balancing costs.

However, as noted in the earlier assessment of risks, Gas Industry Co does not believe that more shipper debts will necessarily be written off as a result of these behaviours (and hence those costs being socialised). The outcome may instead be that the parties have more incentive to address the problems that give rise to disputed balancing costs.

Gas Industry Co concludes that the provision of an overdraft facility will not necessarily lead to greater socialisation of costs, and hence inefficient outcomes.

VTC changes to create express obligations on Vector

Gas Industry Co accepts that behavioural responses to incentives are not always rational, and it is sensitive to the strong view of some shippers that the current incentives on Vector to recover the costs of balancing are weak. For example, Nova agreed with Contact that the risk of costs being socialised is '… heightened by the failure of the VTC to contain an express obligation on Vector to pursue non-code shippers per the equivalent mechanism in their TSAs to pay their share of any BPP costs owed'.

However, if this concern is justified then the best remedy would be to deal with it directly by proposing a VTC change that would create such an express obligation. Gas Industry Co believes balancing is a community issue and the costs of administering balancing arrangements should be allocated fairly across all those who benefit from them. Therefore, Gas Industry Co considers that a VTC change request seeking to create an express obligation on Vector to pursue non-code shippers would need to suggest amendments to the VTC and TSAs that would allow Vector to recoup debt recovery costs in some way.

Such a change could also address the Genesis Energy concern about what would happen when the overdraft limit is reached.

Conclusion

Gas Industry Co supports the change request appeal because the provision of an overdraft facility will:

- put downward pressure on delivered gas costs;
- reduce operational and financial risks;
- assist in ensuring that the full costs are signalled to consumers.

In addition there appear to be no strong efficiency arguments for rejecting the appeal.

This conclusion is consistent with Gas Industry Co's recommendation to the October 2008 change request appeal, where we concluded, in effect, that the BPP Account should be able to operate an overdraft.

Gas Industry Co encourages shippers who believe that there should be an express obligation on the BPP Trustee to pursue debts to propose such an amendment to the VTC (including a mechanism for recouping the costs of recovering debt).

4 Draft Recommendation

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).