



# Vector Transmission Code Change Request Appeal: final recommendation

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## **About Gas Industry Co.**

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

As such, 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 on the performance and present state of the New Zealand gas industry, and the achievement of Government's policy objectives for the gas sector.

## **Authorship**

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# 1

## Introduction

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The purpose of this paper is to set out Gas Industry Co Limited's (Gas Industry Co) final recommendation on Contact Energy Limited's (Contact) change request appeal of 9 October 2008 under the Vector Transmission Code (VTC or the code).

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 the consideration of such change requests, which includes compulsory consultation with all shippers on Vector's transmission system. The change request is successful where Vector, and 75% of all shippers who respond, consent to the change request, otherwise the amendment is not made. Once that process is complete, certain parties may appeal the outcome, whether or not the change request was successful (s 25.6). 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 written recommendation in accordance with section 25.7 supporting or not supporting the change request or finding that Vector Gas Limited (Vector) has or has not validly withheld consent under section 25.5(b).

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) setting out, in greater detail, the process that Gas Industry Co will follow when considering appeals. A copy of that MoU is available on the publications page of Gas Industry Co's website:

<http://www.gasindustry.co.nz/sites/default/files/publications/Memorandum%20of%20Understanding%20with%20Vector.pdf>

While performing its role in the appeal process in the VTC, 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) (together the objectives). The combined principal objective for Gas Industry Co is to ensure that gas is delivered to existing and new customers in a safe, efficient, fair, reliable and environmentally sustainable manner.

Gas Industry Co's final recommendation is binding on the parties to the VTC except to the extent that Vector has withheld its consent and the change would:

- require Vector to incur capital expenditure that it does not wish to incur or considers that expenditure to not be economically viable to incur; or
- require Vector to incur operating expenses or costs that it cannot reasonably expect to recover.

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<sup>1</sup>.

Any recommendation made by Gas Industry Co shall be final and binding. Where Gas Industry Co is considering whether to support or not support a change that has already been made to the VTC, that change shall continue in full force and effect until otherwise notified by Gas Industry Co<sup>2</sup>.

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<sup>1</sup> See VTC sections 25.5(b)(i) and (ii), and section 25.8.

<sup>2</sup> VTC Section 25.7.

# 2

## The appeal

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On 10 September 2008, Vector received from Contact a change request proposing eight sets of changes to the VTC. Vector consulted with its shippers and consented to three out of the eight change requests submitted. These three changes have now been incorporated into the VTC. The drafting and effect of a fourth change was worked through and is now incorporated into the VTC. Vector withheld its consent to the remaining four change requests. On 9 October 2008, Gas Industry Co received an appeal from Contact (the appeal). The appeal concerns the remaining four (out of eight) change requests originally made by Contact. The appeals are described by Contact as follows:

- change request 4 (matching payments in and out of the BPP account);
- change request 5 (payments in and out of the BPP account);
- change request 6 (confidentiality); and
- change request 7 (provision of Vector running imbalance information).

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 each change request (including proposed wording changes) are set out in full in Contact's letter to Vector of 10 September 2008 and are summarised in Contact's appeal letter of 9 October 2008. Vector has summarised its view of the change requests in its submission dated 3 November 2008. This information and all other submissions are available on Gas Industry Co's website.

# 3

## Appeal process

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On 20 October 2008, Gas Industry Co published the appeal on its website and notified relevant stakeholders. Submissions and cross-submissions were considered and Gas Industry Co published a draft recommendation on its website on 18 December 2008. Gas Industry Co has now considered submissions made on the draft recommendation and has made the appropriate changes in this final recommendation.

In submissions made on the draft recommendation, some general comments were made on the appeal process and other matters. Since this is the first appeal Gas Industry Co has considered it has addressed the substantive points of process in full in this section.

### **The appeal process**

The following is a description of the key stages in the appeal process.

Amendments to the VTC must go through the change request process set out in section 25, unless the amendment is required by law or by order of a Court and there is insufficient time to follow the change process (ss 25.2 and 25.3).

Sections 25.4 and 25.5 set out the process to be followed for a change request. Section 25.4 provides that shippers should notify Vector of any changes sought and that Vector must provide a copy of the change request to all other shippers. Vector may also submit change requests and must follow the same process as its shippers.

Under section 25.5(a), shippers have 15 business days to respond as to whether or not they consent to the change request. Vector also has a 15 business day maximum to notify its consent but is also required by section 25.5(b) to provide its consent without unreasonable delay.

Under section 25.5(b), Vector may withhold its consent to a change request only if to do so is reasonable. Section 25.5(b) sets out several circumstances where Vector's refusal to consent will be considered reasonable. Those are 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 section 25.5(c), Vector and shippers agreed that the VTC would be amended only if Vector and 75% of all shippers who respond consent to the change request, or where Vector or a shipper has appealed to Gas Industry Co in accordance with section 25.6 and Gas Industry Co has given a written recommendation in support of the change request.

Section 25.6 provides that the following parties may appeal a change request to Gas Industry Co:

- (i) a shipper who considers that Vector had invalidly withheld its consent to the change request under section 25.5(b);
- (ii) a shipper who responded but did not consent to the change request;
- (iii) a shipper who responded and consented to the change request where the relevant change was not made; and
- (iv) Vector.

Gas Industry Co's role in determining appeals under the VTC is set out in section 25.7, which provides that Gas Industry Co shall consider an appeal and make a written recommendation supporting or not supporting the change request or finding that Vector has or has not validly withheld consent under section 25.5(b).

Section 25.7(a) provides that Gas Industry Co must not otherwise be involved in the change request process. Section 25.7(b) provides that Gas Industry Co may decline to consider an appeal on the grounds that it is vexatious.

Section 25.7 provides that recommendations given by Gas Industry Co are final and binding. Where a change has already been made to the code, that change shall remain in effect until otherwise notified by Gas Industry Co and then in accordance with that notice.

However, where:

- Vector has withheld its consent and the change request would require Vector to incur a cost described in sections 25.5(b)(i) and/or (ii); and
- Gas Industry Co makes a written recommendation in support of the change request;

then section 25.8 provides that Vector is required to change the code only where:

- Gas Industry Co has regulated that Vector or another party shall incur the cost; or
- Vector receives an agreement in writing that a party other than Vector will incur the cost.

### **What Gas Industry Co is required to recommend**

Shortly after receiving the appeal, Gas Industry Co met separately with Vector and Contact to discuss the appeal and Gas Industry Co's role. In particular, Gas Industry Co asked both parties what they considered to be the effect of the wording of section 25.7 requiring Gas Industry Co to make a written recommendation 'supporting or not supporting the change request or finding that Vector has or has not validly withheld consent'.

In its submission dated 17 November 2008, Vector submitted that Gas Industry Co had four avenues open to it i.e. Gas Industry Co had to choose between one of the four options. Vector submitted that Gas Industry Co 'need not make a determination as to whether Vector validly or invalidly withheld its consent, to then support or not support an appealed [change request]'. We interpret this as meaning that, having made a determination whether or not Vector has validly or invalidly withheld its consent, Gas Industry Co need not then go on to decide whether or not it supports the change request.

In its submission dated 16 January 2009, Contact submitted that neither the VTC nor the MoU restricts Gas Industry Co to recommending that Vector has validly withheld its consent because it is not unreasonable for Vector to withhold its consent for the reasons listed in section 25.5(b). Contact further submitted that under the MoU Gas Industry Co had agreed to make a recommendation 'supporting or not supporting the change request' (clause 2.4(d)).

Gas Industry Co notes that it has had some difficulty determining how it should apply these sections of the VTC. This is also reflected in the submissions from shippers, particularly that of Contact. Gas Industry Co has gone to some lengths to ensure that it is correctly applying the relevant sections, however it may be of some assistance if these sections were reviewed and clarified in the near future.

In the draft recommendation, Gas Industry Co took the view that choosing only one of the four possible outcomes was most appropriate. However, given Contact's strong submissions on this issue, Gas Industry Co has considered whether this position may result in perverse outcomes under the VTC.

For example, where Gas Industry Co recommends that Vector has not validly withheld its consent under section 25.5(b), but the change will require Vector to incur the costs envisaged in section 25.5(b)(i) or (ii), does section 25.8 also require Gas Industry Co to support the change request in accordance with section 25.5(c)(ii)? Gas Industry Co's analysis of this issue is as follows.

Changes to the VTC may be made only in the following circumstances:

- Where Vector and at least 75% of all shippers who respond to a change request consent (section 25.5(c)(i));
- Where Vector or a shipper has appealed to Gas Industry Co and Gas Industry Co has made a recommendation in support of the change request (section 25.5(c)(ii)); or
- Where a shipper has appealed to Gas Industry Co, Gas Industry Co has made a recommendation in support of the change request but the change would require Vector to incur costs and then either it is regulated for Vector to incur the costs involved or another party has agreed to pay those costs (section 25.8).

Appeals can be made under section 25.6 by:

- (a) A shipper who considers that Vector has invalidly withheld consent under section 25.5(b). This section does not require that shipper to be one who responded or, if the shipper did respond, either did or did not give consent.
- (b) A shipper who responded to the change request but did not give consent. Presumably here the change was made because Vector and 75% of shippers who responded did give consent.
- (c) A shipper who did give consent to a change request but the relevant change was not made. In this case Vector must have given consent but 75% of shippers did not because otherwise the appeal would be made under (a).
- (d) Vector. This is only likely to be in a situation where Vector consented but 75% of shippers did not.

In each of the above situations the VTC requires Gas Industry Co to respond as follows:

- Under (a) the issue arises whether, as well as determining whether Vector has validly withheld its consent under section 25.5(b), Gas Industry Co also needs to consider whether or not it supports the change request. This is because section 25.8 refers to the application of section 25.5(c)(ii) which requires Gas Industry Co to support the change. This issue is discussed further below.
- Under (b) Gas Industry Co is required to consider whether it supports the change request. In this case the change will have already been made meaning that both Vector and 75% of shippers who

responded consented (ie there is no question of Vector invalidly withholding its consent). If Gas Industry Co supports the change request then section 25.5(c)(ii) applies.

- Under (c) Gas Industry Co is required to consider whether it supports the change request. In this case it is assumed that Vector consented but that the change was not made because 75% of shippers did not consent. If Vector had not consented then the appeal would be made under (a). If Gas Industry Co supports the change then section 25.5(c)(ii) applies.
- Under (d) Gas Industry Co is required to consider whether it supports the change request. As Vector is appealing it is assumed that it had consented but 75% of shippers did not. There is therefore no question of whether Vector invalidly withheld its consent. If Gas Industry Co supports the change then section 25.5(c)(ii) applies.

The issue that arises in (a) above is whether Gas Industry Co needs to consider both whether Vector invalidly withheld its consent and whether it supports the change request. Gas Industry Co believes that the VTC requires it to make that dual decision. This is because section 25.5(c)(ii) requires Gas Industry Co to have given a written recommendation in support of a change request before a change can be made to the VTC. If it is found that Vector did not validly withhold its consent then the change must be made in accordance with section 25.5(c)(ii).

However, where such a change will require Vector to incur the sorts of costs envisaged by section 25.5(b)(i) and (ii), section 25.8 provides that Vector will be required to make that change only as a result of the operation of section 25.5(c)(ii) (ie where Gas Industry Co supports a change request) if Gas Industry Co regulates for the change or another party agrees to pay any costs to be incurred by Vector.

It is conceivable in these circumstances that Gas Industry Co could recommend that Vector has validly withheld its consent on the grounds in section 25.5(b) but that it supports the change request. In that case, because Vector would be required to incur the costs envisaged by sections 25.5(b)(i) and (ii), Gas Industry Co considers that section 25.8 would apply. In that case Vector would be required to make the change only if it was regulated for or another party agreed to pay the costs to be incurred.

Conversely, Gas Industry Co could conceivably recommend that Vector has invalidly withheld its consent under section 25.5(b) but that it does not support the change request. In that case the change would not be required to be made as section 25.5(c)(ii) states that a change can be made only where Gas Industry Co has given a recommendation in support of the change request. Although Contact has taken has a somewhat different view of how Gas Industry Co should apply the relevant sections of the VTC, the outcome of Gas Industry Co's analysis reaches a similar one to that advocated by Contact. As noted above, the differences of view expressed by the submitters on this issue suggests that these sections of the VTC would benefit from some clarification in this regard.

### **Vector's 'commercial interests'**

Contact submitted that Gas Industry Co should balance its concern for the commercial interests of the pipeline owner with the commercial interests of other industry participants. Contact also submitted that if Gas Industry Co balanced the interests of both parties that (generally) the MPOC and VTC change request processes could provide an effective and relatively low cost means of improving open access.

Contact submitted that 'there does not seem to be anything in the Gas Act or the Government Policy Statement that suggests the Gas Industry Co should have an overriding concern for the commercial interests of pipeline owners'.

Gas Industry Co's role in relation to VTC appeals arises out of, and is limited to, the scope as described in section 25.7 of the VTC. Therefore, Gas Industry Co considers that the provisions of the VTC prevail in terms of what Gas Industry Co will consider when making recommendations under the VTC appeal process.

Gas Industry Co agrees that in terms of whether it supports or does not support an appeal, it should balance the commercial (and other) interests of all parties affected by the change request. In undertaking this consideration Gas Industry Co will take into account the objectives in the Gas Act and GPS as agreed in the MoU.

### **Gas Act and GPS Objectives**

Contact submitted that clause 2.3 of the MoU requires Gas Industry Co, in performing its role, to have regard to the objectives in the Act and the GPS (the objectives). Contact also submitted that, in its analysis, Gas Industry Co does not show how it has met the requirement to have regard to the objectives 'and in fact doesn't refer to those objectives in its analysis'. Contact submitted that 'It would be helpful for the Gas Industry Co to explain in its written recommendations how it has considered those objectives in formulating its recommendation'.

Gas Industry Co agrees that it should have regard to the objectives in making its recommendations under the VTC appeal process where possible. To assist the industry, where particularly relevant or notable, Gas Industry Co will endeavour to also set out in its analysis how it has had regard to those objectives.

# 4

## Appeal of change request 4

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### Summary of appeal

The primary purpose of change request 4 was originally to clarify and correct a number of errors in the VTC provisions used to allocate balancing charges to shippers and non-code shippers. Balancing charges are accrued by the balancing and peaking pool<sup>3</sup> (the 'BPP') and allocated on a monthly basis. According to submissions, 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, which is calculated in accordance with the shipper allocation formula set out in section 1 of the VTC.

In addition to its primary purpose, change request 4 also addressed the obligation on Vector to use reasonable endeavours to recover unpaid sums from non-code shippers. This obligation currently applies in respect of the Maui Pipeline Operating Code (MPOC) indemnity cost (s 8.12) and in respect of the BPP Trustee's liability to a shipper with a verified claim under section 8.16(b).

Change request 4 proposed to extend this obligation to sections:

- 8.13(a) and (c) (allocation of payments into and out of the BPP Pool);
- 8.18 (where a sale or purchase of balancing gas occurs); and
- 8.19 (where a cash-out occurs).

Vector and less than 75% of shippers (two of the five who responded) withheld their consent to change request 4. On 19 November 2008, Vector submitted a new change request that largely replicated Contact's change request 4. This change request received sufficient industry support in accordance with section 25.5(c)(i) and took effect on 1 December 2008. However, Vector's change request did not include the extended obligations on Vector to use reasonable endeavours to recover unpaid sums from non-code shippers.

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<sup>3</sup> 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);
  - 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:
- shippers who have a negative mismatch on that pipeline on that day; and
  - Vector if it has any negative Vector imbalance on that pipeline on that day.

In its submission dated 16 January 2009, Contact states that 'the only matter now outstanding in respect of Contact's change request 4 is the requirement that Vector should make reasonable endeavours to recover payments owed by non-code shippers to the BPP'.

Gas Industry Co considers that the issue is slightly narrower than Contact submitted. Vector is already under an obligation to use reasonable endeavours to recover payments owed by non-code shippers to the BPP in respect of the MPOC indemnity under section 8.12. The remaining issue is, therefore, not whether Vector should be subject to that obligation in general but rather whether that obligation should be extended to new areas of the VTC.

Consequently, the issue that Gas Industry Co has considered is whether to extend to sections 8.13(a) and (b), 8.18, and 8.19 the obligation on Vector to use reasonable endeavours to recover unpaid sums from non-code shippers. Gas Industry Co has considered both whether Vector invalidly withheld its consent under section 25.5(b) and whether it supports the change request.

### **Submissions on appeal**

Contact submitted that Vector is the only one with a contractual relationship with non-code shippers and should therefore be responsible for recovering unpaid sums from them. Contact also submitted that change request 4 would more clearly define the risks faced by all parties under the VTC, including Vector.

EDNZ supported the merits of the appeal of change request 4 but considered that Vector was within its rights under the VTC to refuse to consent because Vector would incur operating expenses that it could not reasonably expect to recover.

Genesis supported the appeal of change request 4 because it considered that the change would clarify the arrangements and was consistent with the intent of the VTC. Vector cross-submitted that this was not Vector's intention and that it did not believe the industry had this intention.

MRP did not support the appeal of change request 4. Rather, it considered that a payment recovery mechanism such as the one suggested by Vector in its submission would be more beneficial.

OnGas did not support the appeal of change request 4 as proposed by Contact because it considered the BPP should be managed separately by the BPP Trustee and not by Vector. OnGas suggested some amendments to the appeal of change request 4, which it considered would make the appeal of change request 4 acceptable. However, in its appeal role under the VTC, Gas Industry Co is limited in scope to considering change requests as proposed.

Vector did not support the requirement to pursue non-code shippers in change request 4 as proposed by Contact largely because Vector does not consider that it should be responsible for the day-to-day operation of the BPP. Vector submitted that 'balancing is, for the most part, largely a Shipper created

problem.’ Vector admitted that it does contribute to pipeline imbalances through the need for compressor fuel and as a result of UFG. However, Vector considered it inappropriate that, as pipeline owner, it should ‘bear the costs of chasing Shippers or Non-Code Shippers who, for whatever reason, have chosen not to pay their invoices in a particular month’.

### **Draft recommendation and submissions**

In its draft recommendation, Gas Industry Co stated that:

- until all shippers are subject to the same balancing arrangements (which may require regulation) and while the non-code shippers remain outside the VTC, it is arguable that the costs and benefits of the arrangements for non-code shippers should lie fairly with Vector just as other non-code shipper costs and benefits do; but that
- because there are potentially significant costs that may not be recoverable from non-code shippers, including the costs of the actual shortfall itself, court costs, legal costs, and in-house costs, Gas Industry Co’s recommendation was that Vector has validly withheld its consent under section 25.5(a)(i) to change request 4.

Other than the matters already addressed in the general sections above, Contact submitted that:

- Gas Industry Co should consider whether the absence of the obligation to pursue shippers is a drafting error or oversight;
- recent legal decisions have generally concluded that a reasonable endeavours obligation does not require a party to sacrifice its own commercial interest unless a specific course of action is specified;
- payment failure would lead to socialised balancing costs, which is against best practice balancing principles and that change request 4 is directed towards allocating balancing costs to the shipper responsible for the costs;
- change request 4 will lead to lower balancing costs;
- Gas Industry Co may not have considered section 1.2(a), which says that Vector acts as both a provider of transmission services and the BPP Trustee; and
- Gas Industry Co has failed to assess whether it is appropriate that code shippers should be responsible for balancing charges not paid by non-code shippers.

Genesis acknowledged Gas Industry Co’s view that Vector had validly withheld its consent but also supported Gas Industry Co’s views that:

- the VTC should clarify who is liable for any shortfall; and

- [while different balancing arrangements exist] BPP account costs associated with non-code shippers lie fairly with Vector.

MRP and OnGas agreed with Gas Industry Co's draft recommendation.

Vector agreed with Gas Industry Co's recommendation but commented on Gas Industry Co's views that Vector cannot of its own accord bring the non-code shipper arrangements to an end, nor even to successfully amend them. Vector submitted that non-code shippers have reneged on statements that they would bring non-code TSAs in line with the VTC, requiring Vector to run more than one balancing regime.

### **Financial neutrality**

Balancing is primarily covered in section 8 of the VTC. Vector submitted that section 8.20, which is titled 'financial neutrality', means that Vector should neither profit nor lose money from operating the BPP. Therefore Vector should not be liable for non-code shippers' non-payments, including the costs of recovering those payments. Contact cross-submitted that section 8.20 only prevents Vector from profiting from the BPP but that it is silent on whether Vector might incur losses as a result of operating the BPP, including from shipper non-payment into the BPP.

Section 1.2(c) provides that headings are for convenience only and have no effect on the construction of the code. The concept of financial neutrality appears only in the heading to section 8.20 and can therefore not be used in interpreting the section.

However, in terms of its meaning, section 8.20 provides that Vector is entitled to recover any costs paid to a third party for the administration of Vector's operation of the BPP Account. It is not clear to Gas Industry Co whether this extends to recovery of costs for using reasonable endeavours to recoup unpaid monies. If it does, section 8.20 provides that these administration costs are to be allocated to shippers in proportion to the quantity of each shipper's aggregate deliveries of gas over the relevant period. Assuming Vector is also allocated its share of the costs, this appears to be an equitable outcome and one to which the parties have already agreed.

## **Gas Industry Co analysis**

### **Drafting error**

Contact submitted that Vector's obligation under section 8.12 is similar to its obligations under sections 8.15(b) and 8.16(b) and that therefore the absence of the obligation under sections 8.13(a) and (b), 8.18, and 8.19 could be viewed as an oversight or drafting error. Gas Industry Co notes that none of the other shippers have made this assertion in their submissions. Gas Industry Co has no means of assessing whether the absence of these obligations is an oversight or drafting error. Even if it

did, Gas Industry Co considers that it would still be required to undertake the analysis set out in this recommendation.

## **Whether Gas Industry Co supports the appeal**

### **Objectives**

It is difficult to assess this appeal in relation to the objectives. It may not, for example, increase competition or efficiency to extend the obligation on Vector to other sections of the VTC where it may not have been intended to apply. For instance, it may have been considered more efficient to only require Vector to chase defaulting shippers where it was most necessary.

In terms of fairness, Gas Industry Co considers that balancing is a community issue and that the costs of administering balancing arrangements should be allocated fairly across all those who benefit from the arrangements, including Vector, shippers, and non-code shippers. In that sense, to support a change request that allocates all of the cost on one party may seem unfair. However, as Contact points out in its submission, Vector is the only party to have a contractual relationship with non-code shippers. There is no way for code shippers to require non-code shippers to pay because the non-code shipper arrangements lie outside the VTC.

Gas Industry Co's preference, therefore, is that shippers and non-code shippers be subject to the same balancing arrangements. This would mean that everyone who benefits from the balancing regime would also bear the costs of a defaulting party.

Until all shippers are subject to the same balancing arrangements (which may require regulation) and while the non-code shippers remain outside the VTC, Gas Industry Co considers that the costs of the arrangements for non-code shippers should lie fairly with Vector. Vector submitted that it is unable to single-handedly change these arrangements. However, it is the party with the biggest incentive and greatest ability to bring all shippers into the VTC balancing arrangements. As mentioned above, if non-code shippers do not agree then this may require a regulated outcome.

### **Lower balancing costs and payment failure leading to socialised balancing costs**

Gas Industry Co agrees with Contact that placing an obligation on the person responsible for the BPP account to pursue non-code shippers for unpaid monies would more likely result in balancing costs being recovered from those shippers who cause them. Not having that obligation would be likely to lead to greater socialised balancing costs because the person responsible for the BPP account would be likely to socialise those costs rather than exert the effort pursuing non-code shippers. Gas Industry Co considers that keeping costs with shippers who cause them will not only reduce socialised balancing costs but also keep downward pressure on gas prices overall.

### **Vector and the BPP Trustee**

In terms of whether there was intended to be a difference between the BPP Trustee and Vector, the VTC is quite clear that they are intended to be treated as separate entities, except that for some purposes Vector acts in the capacity of the BPP Trustee (section 1.2(a)). Gas Industry notes, however, that the balancing function is covered in section 8, which is excluded from section 1.2(a).

### **Code shippers responsible for non-code shipper defaults**

Gas industry Co agrees with Contact that code shippers should not be responsible for the defaults of non-code shippers. Unless all parties have the same obligations, one should not ideally be responsible for the defaults of others.

For the reasons discussed above, Gas Industry Co supports Contact's change request 4.

### **Whether Vector validly withheld its consent**

As mentioned above, where Vector would incur a cost as described in sections 25.5(b)(i) and/or (ii) that is deemed by section 25.5(b) to be a reasonable reason for withholding its consent for the purposes of section 25.5(a).

Section 25.5(b)(ii) provides that Vector withholding its consent will be reasonable where the change would require Vector to incur operating expenses or costs that Vector cannot reasonably expect to recover.

In its email to shippers of 2 October 2008, Vector stated that it did not consent to change request 4 because it considered that it should not be solely responsible for the costs of running the balancing regime. In its submission of 3 November 2008, Vector considered the costs of this proposal to be substantial and that many of those costs would not be recoverable (paras 28 to 32).

### **Reasonable endeavours obligation**

Gas Industry Co agrees with Contact that a reasonable endeavours obligation is at the lower end of the scale of obligations. However, while that may serve to reduce the obligation it does not eliminate it. Otherwise, there would be no sense in including the obligation. Even with a reasonable endeavours obligation, Vector would still be required to actively pursue non-code shippers – at a minimum using internal resources – which adds to operating expenses.

There are still potentially significant recovery costs that may not be recoverable if Vector is required to use reasonable endeavours to pursue defaulting non-code shippers. For example, internal costs, court costs, legal costs, and in-house costs could all form part of the total recovery costs.

### **Reasonable expectation of recovery**

While some of the recovery costs may be recouped from the shipper itself or through the courts, there is also a likelihood that Vector could not reasonably expect to recover some of these costs.

To recover the costs, Vector would be required to spread the charging across other users of the pipeline. To achieve this, amendments to the VTC and TSAs would likely be required, unless an existing fee or tariff could be used. No amendments have been presented in change request 4.

Arguably, Vector could possibly include the recovery costs in the throughput charge (clause 4.2 of code TSAs) as adjusted by annual redetermination (clause 13.6 of code TSAs). However, it would be very difficult to assess the recovery costs and come up with an accurate figure for inclusion in the throughput charge. The throughput charge is set annually. The recovery costs could be nothing for many years and then be quite significant (due to several shippers defaulting at once) in one year.

Due to the difficult nature of recovering the costs under existing VTC mechanisms, and the need to amend the VTC and TSAs to recoup the recovery costs as a one-off fee, Gas Industry Co considers the recovery costs to be costs that Vector cannot reasonably expect to recover in accordance with section 25.5(b)(ii). Gas Industry Co therefore considers that Vector validly withheld its consent under section 25.5(b).

## **Conclusion**

For the reasons set out above, Gas Industry Co:

- supports change request 4; and
- considers that Vector has validly withheld its consent to change request 4 under section 25.5(a)(i) on the basis of the grounds in section 25.5(b)(ii).

In accordance with section 25.8 Vector shall be obliged to make a change to the code only where Gas industry Co has regulated that Vector or another party shall bear that cost, or the shipper seeking the change request has agreed with Vector in writing that such shipper or another party (not being Vector) will bear that cost.

# 5

## Appeal of change request 5

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### Summary of appeal

Change request 5 proposes to prevent payments going out of the BPP on a gas day from exceeding the sums that were paid into the BPP in respect of that same gas day as provided for in the following sections:

- 8.13(a) and (b) payments to the Incentives Pool Trustee;
- 8.18(a) where a sale or purchase of balancing gas occurs; and
- 8.19(a) where a cash-out occurs.

Vector and three of the five shippers who responded withheld their consent to the change request. Gas Industry Co has considered whether Vector invalidly withheld its consent under section 25.5(b) and whether it supports the change request.

### Submissions on appeal

In the change request, Contact stated that it considers it is:

not appropriate for the BPP to go into overdraft to fund any shortfall in amounts that are to be paid out of the BPP account where one or more Shipper, Non-Code Shipper or Vector (as applicable) fails to pay into the BPP Account amounts it is required to pay into that account.

EDNZ supported the merits of the appeal of change request 5 but considered that Vector was within its rights under the VTC to refuse to consent to the changes because Vector would incur operating expenses that it could not reasonably expect to recover.

Genesis supported the appeal of change request 5 because it also did not consider it appropriate for the BPP to go into overdraft.

Mighty River Power did not support the appeal of change request 5 because it did not consider that Vector should be 'out-of-pocket' if payments into the BPP were less than payments required from the BPP.

OnGas did not support the appeal of change request 5 because it considered that an overdraft was the correct facility to manage the shortfall. OnGas' submission suggests that the BPP Trustee should seek to recover payments due but does not address who it considers should be liable in the event of a party defaulting.

Vector submitted that the appeal of change request 5 would require it to underwrite the actions or omissions of shippers (as they related to the BPP) and effectively act as a bank. Vector disagreed with the appeal of change request 5 for the same reasons it disagreed with the appeal of change request 4, including that it would require Vector to incur costs that it could not reasonably expect to recover.

### **Draft recommendation and submissions**

Gas Industry Co's draft recommendation was that:

- There may be some benefit to the industry in clarifying whether the BPP can go into overdraft. It is Gas Industry Co's view that the costs of a balancing regime for the industry should fall on all those who benefit from it. However, because of the non-code shipper arrangements, Gas Industry Co's view is that the costs and benefits of these arrangements should fairly lie with Vector.
- For this reason, Gas Industry Co considered that imposing these costs on Vector would be likely to result in Vector incurring operating expenses or costs that Vector cannot reasonably expect to recover. Consequently, Gas Industry Co's recommendation was that Vector had validly withheld its consent under section 25.5(a)(i) to change request 5.

Other than the matters already addressed in the general sections above, Contact submitted that:

- Gas Industry Co should consider whether the proper incentives are being placed on Vector to manage balancing on the basis of least cost to shippers;
- supporting change request 5 would impose a more equitable outcome;
- supporting change request 5 would make the VTC balancing regime more consistent with the MPOC; and
- change request 5 is consistent with the principle that costs should generally be borne by those who cause them.

Genesis agreed with Gas Industry Co's recommendation but also stated that it supported the VTC being clarified as to who was responsible for the shortfall.

OnGas, MRP, and Vector agreed with Gas Industry Co's recommendations.

## Gas Industry Co analysis

Change request 5 does not address who would be liable for any shortfall in the BPP account but it does prevent the payments out from exceeding the payments in. Consequently, change request 5 essentially forces the issue of who is liable for a shortfall to be decided. Someone must pay MDL for the imbalance costs on the Maui pipeline and someone must pay the provider of gas purchased for balancing the Vector pipeline.

In the past, it was supposed that the BPP account would go into overdraft, which change request 5 proposes to prevent. If the BPP account cannot go into overdraft, then Vector, as the party contractually liable to MDL and to the provider of balancing gas, will be liable for the shortfall.

Since Vector is the party who is contractually liable to MDL as a welded party, and Vector is the party who currently purchases balancing gas and balances the pipeline as system operator, change request 5 means that Vector is liable for any shortfall in the BPP account.

If the appeal of change request 5 is successful, Vector would be left temporarily out-of-pocket until a dispute with a shipper could be resolved and may also be out-of-pocket in the long-term if the dispute could not be resolved.

Vector notified Gas Industry Co by email of 16 December 2008 that:

In changing our banking service provider we have been challenged on the ability of the BPP Trustee to borrow funds (i.e. run an overdraft). This is the first we have heard of the issue, and having sought advice we now understand that the BPP Trustee must have an express power to borrow in the VTC, for the BPP Account to be set up with our new provider with an overdraft facility. The VTC does not currently contain this.

The lawyers involved in the VTC negotiations were not trust experts and we do not believe this to be a deliberate omission – in fact, we believe the opposite to be the case, that is, that the BPP Account was always intended to run with an overdraft facility, the costs of which would be borne by the industry – and we have submitted directly on this point.

Vector has since submitted a new change request proposal that allows the BPP to go into overdraft. The outcome of Vector's change request will not be known until after the final recommendation on this paper is published.

In Gas Industry Co's view, the fact that a new banking services provider or Vector's other advisers have a different view from the previous banking services provider about the possibility of having an overdraft facility based on the wording of the VTC can have little impact on Gas Industry Co's decision.

However, this confusion supports the conclusion that clarification in the VTC of whether an overdraft is permissible, who is liable for shortfalls in the BPP account, and the costs of recovering those shortfalls is necessary.

## Whether Gas Industry Co supports the appeal

### Objectives

The consideration of Gas Act and GPS objectives set out in respect of change request 4 are also applicable to change request 5. In the appeal, Contact submitted that 'the VTC does not state the consequences of payments from the BPP exceeding payments into the BPP.' Contact submits that one benefit of change request 5 would be clarifying in the VTC whether payments out of the BPP can exceed payments into the BPP.

Transparency and certainty are important elements of an effective and efficient market. Clarification of whether an overdraft facility is possible would benefit Vector and its shippers because certainty in the VTC will lead to fewer disputes. While clarification is a benefit of change request 5 it would also be a benefit to clarify the opposite of change request 5, i.e. that the BPP can go into overdraft. However, the recommendation Gas Industry Co is being asked to make is not 'whether to clarify' it is to 'how to clarify' and in particular to 'spell out that no overdraft facility is possible'. The effect of change request 5 is that Vector would likely remain liable to a third party for any shortfall in amounts paid into the BPP and the actual amount of the third-party debt (assuming the shortfall could not be recovered from the shipper using dispute resolution or some other method).

As Contact points out in its submission of 16 January 2009, Vector is contractually liable in respect of the obligation (debt) referred to in sections:

- 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.

As discussed in relation to the appeal of change request 4, it is Gas Industry Co's view that generally the costs of a balancing regime for the industry should fall on all those who benefit from it.

### Incentives

Contact submits change request 5 will increase incentives on Vector (as transmission system owner) to ensure that Vector makes appropriate use of existing mechanisms to limit its obligation to make payments to MDL, such as the right to:

- trade operational imbalances;
- call force majeure at welded points;
- curtail gas take through operational flow orders; and

- suspend or terminate a shipper's ability to transport gas.

This is consistent with the view expressed by Gas Industry Co in its Transmission Balancing Option Paper of December 2008 that whoever undertakes the gas balancing role must have proper incentives on it to run an efficient balancing regime.

While Gas Industry Co agrees that this may place incentives on Vector (as the person who operates the balancing regime), Gas Industry Co is not convinced that placing this cost on Vector is the most appropriate way to fix problems in the balancing regime. Gas Industry Co considers that balancing issues should be considered in the wider context and addressed in the balancing policy work stream.

### **MPOC consistency**

Contact submitted that the BPP account in the VTC should be more consistent with the incentives pool in the MPOC because 'Contact believes that the BPP account was modelled on the MPOC incentives pool'. Contact did not put forward any other benefit of consistency.

The BPP uses a cost allocation mechanism to allocate the costs of balancing the Vector system to shippers. Under the MPOC, the incentives pool was originally established to provide a system of liquidated damages by which one party (Party A) could claim a set amount if Party A suffered a loss due to Party B's actions.

Given the different purposes and structures of the BPP and incentives pool, Gas Industry Co can see little benefit from making the two regimes consistent in regard to liability for shortfalls.

### **Equity**

Contact submitted that change request 5 would likely provide a more equitable outcome in terms of who ends up liable for a shortfall. When a shipper has a valid claim for non-delivery under sections 8.15 (b) and 8.16(b) the person who suffers the shortfall is the shipper with the valid claim. However, when a debt is due to a third party (such as for recovery of MPOC indemnity costs under section 8.12), the person who suffers the loss is not the third party.

It is unfortunate that, in the former case, the person who suffers the loss is also the person who has suffered the harm. In the latter case, if the BPP facility can go into overdraft then the BPP account suffers the temporary loss. Unless the loss can be recovered from the responsible party in the short term the BPP Trustee would presumably need to recover the long term loss. However, the VTC is silent as to who this cost will be recovered from.

The effect of change request 5 is that the person who suffers the loss is Vector because, as discussed above, Vector has a contractual liability to that person. 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.

While Gas Industry Co agrees that it would be helpful to clarify the VTC to state who is liable for the shortfall of defaulting shippers in the BPP account, Gas Industry Co cannot support change request 5. It would result in Vector suffering loss which would be inconsistent with the principle that costs should generally be borne by those who cause them and does not appear to be any more equitable than if these costs were socialised among shippers.

For the reasons set out above Gas Industry Co does not support change request 5.

## **Whether Vector validly withheld its consent**

Contact submitted that Gas Industry Co failed to consider that there were mechanisms available to Vector to recover payments for balancing costs from the shipper responsible for the imbalance other than recovery from the BPP.

There are potentially material costs associated with change request 5. Vector would be made the sole party liable to MDL for the shortfall of any defaulting shippers under section 8.13(a), 8.13(b), and 8.19(a). Vector would also be liable to a third party gas supplier for the shortfall of any defaulting shipper under section 8.18(a).

Contact submitted that Gas Industry Co should consider the ability of Vector to recover those costs under:

- section 14.9 by making a claim against credit support;
- 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.

Under section 14.9, Vector is prevented from making a claim to credit support for unpaid BPP invoices as long as the shipper has complied with the dispute resolution provisions of the VTC.

Recovery of an unpaid sum by way of dispute resolution or arbitration (ss 17 and 18) is clearly not a certainty that on which Vector can rely. Further, under section 16.15, as long as a shipper complies with the dispute resolution provisions, Vector is prevented from suspending or terminating transmission services.

While the threat of section 20 is likely to make any shipper pay up it is a very blunt tool and Vector could easily be accused of abusing its monopoly position if it made regular use of this provision.

Unless the shipper corrects its defaulting position and pays Vector the costs incurred, then in order to recover the costs Vector would be required to recover the costs from other users of the pipeline i.e. socialising the costs.

As discussed under change request 4, these costs are likely to be random and vary significantly from year-to-year, which makes it difficult to be included in an annual throughput fee.

Gas Industry Co considers that Vector validly withheld its consent to change request 5 in accordance with section 25.5(a)(i).

## **Conclusion**

For the reasons set out above Gas Industry Co:

- does not support the appeal of change request 5; and
- considers that Vector validly withheld its consent to change request 5 under section 25(a)(i) on the basis of the grounds in section 25.5(b).

# 6

## Appeal of change request 6

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### Summary of appeal

Vector publishes information on the energy quantities listed in Schedule 4 of the VTC for all code shippers (and Schedule 5 of non-code TSAs for non-code shippers) at only the welded points, receipt points and delivery points on the Vector transmission system where there are more than two shippers using the gate.

The rationale for this is that if there is only one shipper at a gas gate then everyone would become aware of that shipper's actual energy quantity information. Further, if there are only two shippers at a gas gate then giving out the aggregate would give each shipper at that gas gate the other shipper's actual energy quantity information.

### Update

Vector informed Gas Industry Co by email of 26 November 2008 that a revised version of change request 6 had been resubmitted by Vector. By telephone conversation of 4 February 2009, Vector informed Gas Industry Co that the revised change request 6 had been consented to in accordance with the VTC and the relevant changes been made. Vector has been publishing the information that is the subject of change request 6 since December 2008.

Indeed, Contact's submission dated 16 January 2009 provides:

However, [change request 6] now seems somewhat academic as Vector has been publishing all of the energy quantity information listed in Schedule Four of the VTC and Schedule Five of Non-Code TSAs.

It is therefore unnecessary for Gas Industry Co to consider change request 6 any further.

### Deeds of amendment

Vector advised that it would consent to the revised change request 6 if non-code shippers agreed to execute deeds of amendment. The deeds are intended to clarify that publishing the energy quantity information does not breach the confidentiality provisions of the transmission services agreements between Vector and non-code shippers.

In its submission dated 19 January 2009, Vector again updated Gas Industry Co. Progress has been made on the deeds of amendment but they have not been finalised and executed.

Gas Industry Co commends the industry for coming to agreement on this issue and trusts that non-code shippers will promptly finalise the relevant deeds of amendment.

# 7

## Appeal of change request 7

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### Summary of appeal

Change request 7 requires Vector to publish 'Vector running imbalance'<sup>4</sup> information on the Open Access Transmission Information System (OATIS) on the date that Vector issues invoices to VTC shippers. All of the shippers who responded supported change request 7 but Vector withheld its consent.

### Submissions on appeal

Contact submitted that change request 7 would:

enable shippers to ascertain whether the amounts specified in [BPP] invoices rendered pursuant to section 16.2 are correctly calculated. In order to determine whether invoices are correctly calculated, shippers require information regarding the total amounts payable into and out of the BPP and its own position compared to the total amount payable by or to all shippers, non-code shippers, and Vector. As Vector will make payments into and receive payments out of the BPP based on Vector running imbalance, shippers should be provided with information regarding the amount of Vector running imbalance in respect of each day covered by the relevant BPP invoice in order to check the accuracy of that invoice. The information should be made available on the same day as the invoice is provided.

Contact also referred more generally to the benefits of Vector's running imbalance being transparent, including that '[e]xposure of Vector Running Imbalance is an appropriate discipline and will help ensure that Vector manages its running imbalance effectively'.

EDNZ supports change request 7 for the same reasons as Contact in its change request and appeal. EDNZ submitted that it does not consider that Vector would incur any significant additional costs as a result of obtaining or publishing this information. EDNZ notes that it has previously consented to its mismatch positions to be disclosed by Vector.

Genesis supports change request 7 on the basis that it allows BPP invoices to be verified.

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<sup>4</sup> 'Vector running imbalance' is the aggregate of all operational imbalances attributable to Vector at a welded point at the end of a gas day less any gas Vector has sold to MDL on that gas day in relation to that welded point.

MRP supports change request 7 because it considers Vector's running imbalance at a welded point is a determinant of a shipper's mismatch position and therefore impacts on a shipper's balancing invoice. It considers that Vector's imbalance information is required to reconcile shipper balancing invoices and should therefore be published.

OnGas does not support change request 7. Instead OnGas noted that it will be submitting a different change request to allow shippers to check invoices without requiring Vector to publish its running imbalance.

Vector submitted that it did not consent to change request 7 because:

- it would not enable shippers to check BPP invoices;
- the VTC contains an audit process through which errors would be identified; and
- the Vector running imbalance is the equivalent of a shipper's mismatch position and shippers have refused publication of their mismatch positions fearing blaming behaviour of others and therefore it considered that it should be treated no differently from other shippers.

Vector also mentioned that publishing the Vector running imbalance (and shipper mismatch information) would tend to create industry quarrels around whose fault an imbalance was.

### **Draft recommendation and submissions**

Gas Industry Co's draft recommendation was to support the appeal of change request 7 on the grounds that transparency of Vector's running imbalance promotes the objectives. Gas Industry Co also considered that section 25.8 did not apply because publication of Vector's running imbalance would not result in additional costs for Vector.

Contact submitted that Gas Industry Co has not explained how it has assessed change request 7 in relation to the objectives. Contact also submitted that Gas Industry Co has not recognised the distinction between Vector running imbalance and shipper running mismatch.

Genesis and OnGas agreed with Gas Industry Co's analysis and recommendation. MRP agreed with Gas Industry Co's recommendation.

Vector disagreed with Gas Industry Co's recommendation. It submitted that that provision of the Vector running imbalance information in no way improves the ability of shippers to check their BPP invoices. Vector submitted that the appeal of change request 7 should be put on hold until other change requests requiring disclosure of shipper mismatch positions are successfully implemented.

Vector also disagreed that disclosure of this information would improve the efficiency of its operations. Vector submitted that management of its running imbalance is in accordance with the VTC.

### **Gas Industry Co analysis**

Contact describes two benefits of change request 7. Firstly, it submits that Vector's running imbalance is required to help verify BPP invoices. Secondly, it submits that transparency of Vector's running imbalance will help ensure that Vector manages its running imbalance effectively. Contact submits that a failure by Vector to manage its running imbalance will expose all shippers to higher gas transportation costs.

In response to the first benefit described by Contact, Vector submits that disclosure of Vector's running imbalance will not enable shippers to replicate or check their BPP invoices because two variables will remain unknown. These two variables are:

- the value of the non-code shipper contribution; and
- the sum of the VTC shippers' running mismatch.

Vector argues that the independent audit process should comfort its shippers in respect of managing the BPP account. No audits have yet been conducted but only 10 transactions have taken place in the BPP account thus far.

Vector's response to the second benefit described by Contact (transparency to encourage Vector to manage its running imbalance effectively) is that Vector should be treated no differently from other shippers. Vector has taken the position in paragraph 52 of its submission that it would 'be more than willing to disclose its position when others disclose theirs'. Vector submits that it recently conducted a poll of its shippers and the result was that shippers do not want imbalance positions known. While transparency of all shipper running mismatch and Vector's running imbalance would also be likely to promote the objectives of the Gas Act and the GPS, the change request in front of Gas Industry Co concerns only Vector's running imbalance.

### **Whether Gas Industry Co supports the change request**

In terms of the objectives, Gas Industry Co considers that publication of Vector's running imbalance will improve each shipper's ability to judge the accuracy of BPP invoices, especially if in future the value of the non-code shipper contribution and the sum of the VTC shippers' running mismatch is disclosed.

Gas Industry Co considers that it is relevant that, as Contact has observed in its submission, it is Vector's shippers, and not Vector, who ultimately meet the cost of the Vector imbalance. This diminishes the strength of Vector's assertion that Vector's imbalance is analogous to its shippers'

mismatches, and adds further weight to the arguments in favour of disclosing these imbalance quantities.

The fact that Vector's imbalance and shipper imbalances are different things does not mean that there are not good reasons for both to be transparent. However, Gas Industry Co is restricted to considering the change request before it and can not modify the change request in any way, such as to publish both the Vector running imbalance and shipper running mismatch. From this perspective Vector may wish to consider submitting its own change request.

Gas Industry Co therefore supports change request 7.

## **Whether Vector validly withheld its consent**

The reasons Vector provided for withholding its consent to change request 7 have been discussed above. Gas Industry Co understands Vector's concerns about being the only one required to disclose its position and that the audit process exists to confirm BPP transactions and allocations.

Section 25.5(b) requires Vector's consent not to be unreasonably withheld. As Vector will not incur additional costs in disclosing its running imbalance, none of the grounds in section 25.5(b) are relevant. Accordingly, Gas Industry Co considers the reasons provided by Vector for withholding its consent to change request 7 to be unreasonable in terms of section 25.5(b). Vector therefore has not validly withheld its consent to change request 7.

## **Conclusion**

For the reasons set out above Gas Industry Co:

- supports change request 7; and
- considers that Vector did not validly withhold its consent to change request 7 under section 25.5(b).

The relevant change must therefore be made to the VTC in accordance with section 25.5(c)(ii) with effect from the date in the change request.

# 8

## Final recommendation

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In accordance with section 25.7 of the VTC, and in respect of Contact's appeals of 9 October 2008 under the VTC, Gas Industry Co:

- Supports change request 4 and considers that Vector validly withheld its consent to change request 4 under section 25.5(b).
- Does not support change request 5 and considers that Vector validly withheld its consent to change request 5 under section 25.5(b).
- Is not required to consider change request 6 any further.
- Supports change request 7 and considers that Vector did not validly withhold its consent to change request 7 under section 25.5(b).

In accordance with section 25.8 of the VTC, Vector shall only be obliged to make change request 4 where Gas Industry Co has regulated that Vector or another party will bear the costs or the shipper seeking the change has agreed in writing with Vector that it (or another party) will bear the costs.

No changes are necessary as a result of change requests 5 and 6.

In accordance with section 25.5(c)(ii) of the VTC, change request 7 must be made to the VTC with effect from the date in the change request (1 October 2008).