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Bas Walker  
Gas Industry Co  
PO Box 10646  
Wellington

27 November 2008

Dear Bas,

## **SUBMISSION ON PROPOSED GUIDELINES FOR THE MANAGEMENT OF PROPOSED CHANGES TO GAS GOVERNANCE RULES AND REGULATIONS**

### **Introduction**

1. Vector Limited ('Vector') welcomes the opportunity to provide feedback and suggestions to the Gas Industry Company ('GIC') on the proposed guidelines for the handling of rule and regulation changes. Thorough consultation on the guidelines is important given the application of them is expected to be applied across all rules and regulations developed by the GIC.
2. Vector considers that greater consistency in processes will lead to greater consistency in decision making. Additionally, the transparency of procedures will help to ensure that processes are managed in a timely manner with equal treatment of the different classes of industry participants (as opposed to industry participants as a whole).
3. Perhaps most importantly of all, it is imperative that the processes around rule changes and other related processes such as the granting of exemptions appropriately identify policy and precedent issues from operational issues, and due consideration and process is placed around the former. For the record, Vector remains concerned that the exemptions processes carried out to date by the GIC contain a number of policy and precedent issues that have not received due consideration.
4. The focus of this submission and the attached appendix offers the GIC suggestions where improvements can be made to the proposed guidelines for the rule and regulation change process. This submission reflects the one weeks consultation provided by GIC and while Vector has endeavoured to consider the detail of these guidelines Vector would prefer that the GIC provide further commentary on the reasons for decisions it takes in establishing the rules so submitters concerns can be tracked accordingly.

## **Desired Outcomes through Robust Processes**

5. Having noted the importance of process design, Vector considers that the GIC should always aim to apply explicit, clear and transparent criteria when considering and making decisions. Vector suggests that the GIC could enhance the form of the guidelines by:
  - improving the clarity; and
  - ensuring accuracy is achieved throughout.
6. In addition to the form, the substance of the guidelines should be revised with improvements made by guaranteeing alignment with:
  - relevant sections and part 4A of the Gas Act; and
  - common law.

## **Improving Form of Guidelines**

7. Both the clarity and accuracy of the guidelines should be revisited before taking effect. The interpretation of each step in the process should be carefully scrutinized to ensure clarity of actions. For example, step 6 reads as though the Minister will approve all recommendations, which is not reflective of the process outlines under s43ZP of the Gas Act ('the Act'). Vector suggests that this provision should be reworded to reflect that the proposed rule change will be submitted to the Minister for a decision and if approved published in the *New Zealand Gazette*.
8. Vector found the sections of the guidelines to be confusing and unclear in places. Several headings would benefit from the addition of sub-headings to improve the ability for readers to reference particular sections. For example, the GIC's section on various proposals should be broken down by type (ie. major, minor, and urgent) with respective processes following each type. Improving the headings will greatly improve the flow and result in a clearer process for everyone involved.
9. Additionally, Vector considers that the guidelines are not consistent or accurate when defining several terms. An example of this inaccuracy is found with the GIC's term, 'major policy review,' which is again referred to on page four under the heading, 'Process,' as a 'general policy review.' Small inconsistencies in naming conventions have the ability to create unintended confusion amongst participants. Vector requests that the GIC clarify whether the policy review will be 'general' or 'major' and perhaps outline what is included in the intended review.

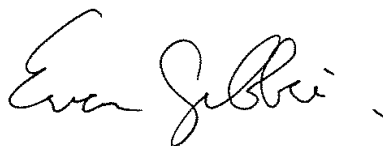
## **Improving Substance of Guidelines**

10. Vector has identified several areas within the guidelines that could be improved upon by aligning and ensuring consistency is achieved with overarching jurisdiction. Perhaps the most important alignment the GIC should aim to achieve is alongside the relevant sections contained within the Gas Act. The preliminary criteria in which the GIC should use to assess a proposal is whether or not it is consistent with the objectives of the GIC included under s43NZ of the Act.
11. Additionally, Vector considers that the GIC should look towards requirements of common law, such as those for consultation. An example of which is the Consultation Ruling for *Wellington International Airport Limited and others v Air New Zealand* [1993] 1 NZLR 671 (CA) which details that sufficient time and effort should be involved when consulting. The steps for rule and regulation changes should reflect that the consultation taking place is of a broader scope than casual consultation with industry participants.

## **In Summary**

12. Improving on both the form and substance of the guidelines will greatly enhance their effectiveness. It is important that these aspects of the guidelines are improved upon to reach a desired outcome through the rule change process. Our responses outlined in Appendix B offer further suggestions for doing so.
13. Thank you for considering this submission. If you have any queries, or require further information, please feel free to contact me at [ewan.gebbie@vector.co.nz](mailto:ewan.gebbie@vector.co.nz) or 04 462 8657.

Kind regards



Ewan Gebbie

**Group Manager Regulatory Performance**

# Appendix B Template for Submissions

Submitters are invited to provide comments against the questions below but there is also a space for other information to be provided:

Question	Comments
<p>Question 1: What change if any would you suggest to the proposed criteria for deciding whether or not proposals will be accepted?</p>	<p>In the first instance, Vector suggests that the GIC ensure that the proposed Guidelines are carefully aligned with the relevant sections of the Gas Act and consistent with the objectives of the GIC under s43ZN. For example, Vector notes that the GIC should, on a preliminary basis, assess whether the objective of any proposal could be achieved in a way other than by a rule (see s43N (1) (c)).</p> <p>Vector considers that a proposal that introduces new material on the suggested rule change should not be rejected for resubmission at a later date; it should be classified as 'Deferred' for inclusion in the next policy review. This simple classification will help the GIC keep track of proposals and the status of each.</p> <p>Vector asks that the expression 'or all' is deleted from paragraph two on page 3 as it is meaningless if a proposal can be rejected if it fails to satisfy 'any' of the criteria.</p>
<p>Question 2: What changes if any would you suggest to the proposals for the packaging and timing of rule change proposals?</p>	<p>Vector reminds the GIC that the timeframe for processing rule changes should take into account that the Minister has up to 90 days under s43ZP to decide whether the GIC recommendation is accepted or rejected. It is unclear from the section on 'General Guidelines and Constraints' whether this has been incorporated into the 6 to 9 month processing time.</p>
<p>Question 3: What changes if any would you suggest to the proposals for dealing with proposed changes which meet the criteria for the simplified process?</p>	<p>Vector stresses the importance of consultation regardless of whether the rule change is a result of a policy review or an individual change that has been requested. The process, either way should still require a full and robust consultation process. Vector considers that the GIC should look to common law on consultation which is a clear indication that both sufficient time and effort needs to be made when consulting. Thus, all GIC rule change processes should still require consultation in addition to adequate information being made available to those parties invited to make submissions (see <i>Wellington International Airport Limited</i></p>

	<i>and others v Air New Zealand</i> [1993] 1 NZLR 671 (CA)).
Question 4: Is the description of the steps in the rule change process sufficiently full? If not what would you add?	<p>No, Vector does not consider the steps in the rule change process to be sufficiently full and has noted several areas in which the GIC could improve the process.</p> <p>Those improvements are as follows:</p> <ul style="list-style-type: none"> <li>• Step 1 should provide for two extra headings – ‘Proposals that have been declined’ and ‘Proposals that deal with material to be included in a policy review.’ Reasons why the GIC has placed the proposal in either category should accompany the proposed rule change. This categorization will allow for the GIC to filter out changes that would best be addressed as part of an overall review. For example, a rule change that is dependant on several others in order to gain its meaning may benefit from a wider review.</li> <li>• After Step 5, an extra step should be inserted which requires that the GIC notify the industry once a recommendation has been made to the Minister. The status of the rule change could easily be maintained on the GIC’s website allowing for greater transparency of the process.</li> <li>• Currently, Step 6 reads as though the Minister will approve <i>all</i> recommendations. However, this is not consistent with s43ZP of the Gas Act. The provision should be reworded to reflect that the proposed rule change will be <i>submitted</i> to the Minister for a decision and if approved and published in the <i>Gazette</i> stating his or her decision.</li> <li>• Step 7 is inconsistent with s43R(3) which also allows for rules to come into force on any date (later than 28 days) as stated in the notice in the <i>NZ Gazette</i>.</li> </ul>
Question 5: Do you agree with the range of headings in the register? If not what changes would you suggest?	Referring to our response in Question 4, Vector considers that under Step 1 two additional headings should be included in the Register – ‘Proposals that have been declined’ and ‘Proposals that deal with material to be included in a policy review’. Additionally, we ask that reasons are provided for why the proposal was placed in either category.
Question 6: Is there anything missing from the	Vector would like to see more clarity around the Guideline sub-headings. Our

<p>Guidelines document which should be added to make it more useful?</p>	<p>suggestions are as follows:</p> <ul style="list-style-type: none"> <li>• On page 1, delete 'General Guidelines and constraints', and replace with 'Accumulated proposals' as this title more clearly reflects the subject matter in the following paragraphs on how rule changes will be accumulated before considered.</li> <li>• Insert a new heading above the 2<sup>nd</sup> paragraph on page 3 titled, 'Criteria for accepting or rejecting proposals.' Again, a clearer reflection of the material presented in the text that would follow.</li> <li>• On page 2, delete 'Processing of rule changes under the Gas Act', and replace with 'Assessment of and consultation on proposals' to allow for participants to easily identify the material in the Guidelines that will be used for assessing a proposal.</li> <li>• On page 3 under the newly proposed heading (see 3<sup>rd</sup> bullet point), 'Assessment of and consultation on proposals' insert a subheadings above the 2<sup>nd</sup> paragraph called, '<i>Proposals having major effect</i>' on page 4, above the 1<sup>st</sup> paragraph insert '<i>Proposals having minor effect</i>'; and add a new subheading under the completion of the section called, '<i>Urgent proposals</i>' – with text under stating, 'Nothing in these Guidelines applies where rules are required to be amended urgently under s43P.'</li> </ul>
<p>Question 7: Is there any other information you would like to provide?</p>	<p>In addition to the above, Vector would like to point out the following suggestions on the Guidelines:</p> <ul style="list-style-type: none"> <li>• Vector reminds the GIC that the Guidelines run the risk of being considered unlawful if they are intended to substitute for a rule.</li> <li>• Vector has been concerned for some time at the lack of clear definition between "classes" of industry participant. Vector believes that it is appropriate for the GIC Guidelines to outline definitive classes of industry participant. Furthermore explicit reference should be made to the need for a balance of views between classes of industry participant to ensure the risk that the many to one relationship between shippers and pipeline companies</li> </ul>

	<p>is appropriately considered and managed. Section 25 of the Vector Transmission Code (which prescribes the process for Change Requests) illustrates this point.</p> <ul style="list-style-type: none"><li>• Additionally, Vector considers that the Guidelines would benefit from an appendix of sections 43L and 43N, as the Guidelines are likely to be referred to more than relevant provisions of the Gas Act where industry participants are intending to make a proposal, it is important that the Guidelines accurately reflect the relevant provisions of the Act.</li><li>• As a general note, it is essential to consider the importance of the initial judgment used when considering a rule change. The GIC could be at risk of being accused of having a 'closed mind' if it rejects a rule change that it is later required to look at the proposal a second time. This could occur if an Industry participant sends through the proposal to the Minister, who, in turn, requires that the GIC consider it a second time. For an example from common law see, <i>Creednz v Governor General</i> [1981] 1 NZLR 172. Thus, the Guidelines should include an extra provision which allows for a rule change to be reconsidered by the GIC despite it being originally rejected on a preliminary basis.</li><li>• At the top of page 4 there is an incorrect reference to s43L(1) of the Gas Act as being the statutory provision for requiring the GIC to prepare a Statement of Purpose for the purpose of consultation. The correct reference is s43N (1) (d).</li><li>• The Minister (or Government) should also be included in the provisions relating to 'Initiation of proposed rule changes'. Proposals to amend can also come from that quarter – usually requiring a policy review (s43J (2) and s43C(1)).</li><li>• There are inconsistent references to policy review throughout the Guidelines ie 'general' and 'major'. A reference to 'policy review' should be adequate and remove any suggestion that there are different types of policy review.</li></ul>
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