



## GREYMOUTH GAS

13 March 2012

Ian Wilson  
Principal Advisor – Infrastructure Access Group  
Gas Industry Company Limited  
PO Box 10 646  
Wellington 6143

Dear Ian,


**RE: Draft Recommendation on the 13 October 2011 MPOC Change Request**

Greymouth Gas New Zealand Limited ("Greymouth Gas") is pleased to make a submission on the Draft Recommendation (the "paper") on 13 October 2011 MPOC Change Request (the "MPOC CR"), following the invitation from the Gas Industry Company ("GIC") on 22 February 2012.

Greymouth Gas refers to a separate 13 March 2012 letter to the GIC (which is incorporated as part of this submission) outlining how the paper contradicts the MPOC CR cross submission process put forth by the GIC, and numerous other contract and process issues. These issues must be separately and wholly addressed with urgency.

Greymouth Gas reasserts that the MPOC CR is not unconditionally supported by the industry and should not be supported by the GIC. The proposed MPOC CR will result in increased costs to end users and retailers. Furthermore we do not believe that a balancing issue current exists in the gas industry and no solution is required.

Yours sincerely,

  
Chris Boxall  
Commercial Manager



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Principal Advisor – Infrastructure Access Group  
Gas Industry Company Limited  
PO Box 10 646  
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Dear Ian,

### **RE: 13 October 2011 MPOC Change Request**

Greymouth Gas New Zealand Limited ("Greymouth Gas") writes to Gas Industry Company Limited ("GIC") about the process the GIC is following on the 13 October 2011 MPOC Change Request ("MPOC CR"). Greymouth Gas has a number of concerns with the process the GIC is following on the MPOC CR and we set each of these out below.

#### **1) Breach of Cross-Submission Process**

In the Draft Recommendation on the MPOC CR (the "paper"), GIC states a number of times that the GIC's scope to recommend modifications to a change request is limited to minor and technical matters.

On its website, GIC states that the minor and technical amendments made by Maui Development Limited ("MDL") to the MPOC CR referred to throughout the paper were obtained from MDL's cross-submission on the initial submissions on the MPOC CR.

MDL's cross-submission on the original submissions on the MPOC CR states that drafting errors were brought to its attention through the initial submission process and through informal discussions with industry.

In the GIC 2 December 2011 invitation to industry for cross-submissions on the original submissions on the MPOC CR, GIC says:

*"GIC invites cross-submissions to be made on MDL's MPOC CR application. Cross-submissions should only address points raised in the initial submissions. Note that any new material raised in cross-submissions is unlikely to be considered by GIC in its preparation of the Draft Recommendation."*

GIC has therefore allowed MDL to make minor and technical amendments to the MPOC CR via the cross-submission process when GIC explicitly stated that cross-submissions should only address points raised in the initial submissions, and not as a result of informal discussions with industry.

GIC has allowed new material raised in cross-submissions that wasn't raised in initial submissions to be considered by the GIC in the paper. This contradicts the process GIC set forth in its original invitation to industry when calling for cross-submissions, and gives MDL (in effect) a procedural advantage that was not extended to other industry participants.

There is an established process to follow and GIC has not followed that process. Appropriate consultation has therefore not been followed per section 29.4(a) of the MPOC and therefore GIC's proposed recommendation in the paper is not valid.

## **2) Breadth of Cost-Benefit Analysis**

Clause 2.4(a) of the MoU states that GIC shall prepare an analysis of the issues, including a cost-benefit analysis. The MoU is silent on whether this cost-benefit analysis should be qualitative or quantitative or both.

Greymouth Gas asserts that both analyses should be covered by the realm of clause 2.4(a) of the MoU, or that the fallback analysis should be quantitative. GIC has only done a superficial qualitative cost-benefit analysis.

Clause 29.4(a) of the MPOC requires the GIC to conduct appropriate consultation. Greymouth Gas asserts that for the following reasons, it is inappropriate for the GIC to only do a qualitative analysis:

- Balancing has been an industry issue for more than three years and it is reasonable to expect quantitative analysis to settle this work-stream,
- Balancing gas problems are < \$2million per annum and it is reasonable to consider that the dollar value of costs to further reduce this might be greater than the marginal productive benefits from implementing the MPOC CR, particularly in light of dollar values asserted by Vector Gas Limited in their initial submission on the MPOC CR,
- No scoring or weighting of the qualitative analysis has been conducted by the GIC, as was conducted in the Draft Recommendation on the 17 December 2009 MPOC Change Request,
- There are significant wider economic productive implications, like climate change, where such a quantitative analysis would not only add value but should be part of the minimum requirement when addressing such comprehensive proposed changes.

Appropriate GIC consultation is therefore required.

### **3) Process for doing Cost-Benefit Analysis**

Clause 2.4 of the MoU requires the GIC to do the cost-benefit analysis before deciding whether or not to recommend that a particular proposed amendment be supported as a change request.

In the paper, GIC sets forth its recommendation to support the Change Request. Even though this is a draft recommendation, it is the first stage of the GIC deciding whether or not to recommend support to MDL per clause 29.4(a) of the MPOC. In any case, the process of the GIC deciding the recommendation has commenced and this process will ultimately result in a recommendation. It is not relevant that the GIC's decision is not yet final. It is relevant that the GIC has gathered all the submissions, has been through a decision-making process and is now deciding on the outcome.

In the paper, GIC also sets forth their cost-benefit analysis. The cost-benefit analysis occurs at the same time as the GIC starts deciding on whether or not to recommend support to MDL.

Clause 2.4 of the MoU explicitly says GIC must do a cost-benefit analysis before deciding. Because the deciding and the cost-benefit analysis have both occurred at the same time, GIC has contravened clause 2.4 of the MoU and appropriate consultation per clause 29.4(a) of the MPOC has therefore not happened.

Furthermore clause 2.4(c) of the MoU required the GIC to take any such comments on a cost-benefit analysis into account as part of its decision-making process before deciding whether to recommend support. GIC appears to have completed a decision-making process to end up in a position where GIC is deciding what the outcome is. It is therefore impossible for GIC to take comments on the cost-benefit analysis into account as part of its total decision-making process, notwithstanding that they may still be able to take such comments into account during the end stages of the decision making process. Cost-benefit analysis must happen before deciding and the process of deciding is well advanced because of the paper.

In our cross-submission on the initial submissions on the MPOC CR, Greymouth Gas called for GIC to put a cost-benefit analysis to industry prior to issuing the paper. This did not occur and now the GIC has not followed the process set forth in clause 2.4 of the MoU.

### **4) Commerce Act Concerns**

MDL states in the Recommendation Request that they consider that all of the proposed amendments comply with the Commerce Act 1986 (the "Commerce Act"). According to the MoU, GIC has no responsibility for and has not enquired into compliance with the Commerce Act.

Greymouth Gas is concerned that the MPOC CR breaches part of the Commerce Act, primarily because the Balancing Agent's role would include the purchase of fuel gas for MDL. The two issues with this are as outlined below.

- First, MDL currently has the ability to purchase fuel gas for its Mokau Compressor Station from any supplier, including those only trading on or who have fields connected to the Vector transmission system. However, if the Balancing Agent is afforded this function, with such agent only having access to the BGX to purchase fuel gas, then suppliers who could previously contract with MDL to supply gas from a TP Welded

Point will no longer have that ability as TP Welded Points (and locations further downstream) are not able to participate in the BGX. This is expressly against section 27(1) of the Commerce Act which says:

*“no person shall enter into a contract or arrangement, or arrive at an understanding, containing a provision that has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market”*

Competition for the supply of fuel gas to MDL will halve, from a market of supply on both the Maui and Vector transmission systems, to a market on just the Maui transmission system.

Although this is a small component of the MPOC CR, this provision is against the above clause of the Commerce Act.

- Second, MDL in its capacity as a Welded Party is in competition with other Welded Parties (and Shippers) for the supply of gas used at a Welded Point or downstream of a TP Welded Point. If the Balancing Agent is afforded the function of purchasing fuel gas for MDL, in its capacity as a Welded Party, then this by definition excludes the Balancing Agent from purchasing fuel gas or any gas for any other Welded Party (or Shipper). All parties need gas. This is expressly against section 29(3) of the Commerce Act which says:

*“no person shall enter into a contract, or an arrangement, or arrive at an understanding, that contains an exclusionary provision.”*

Section 29(1) of the Commerce Act sets out what an exclusionary provision is and Greymouth Gas tests the scenario here against the definition in the Commerce Act:

*“subject to subsection (1A), for the purposes of this Act, a provision of a contract, arrangement, or understanding is an exclusionary provision if—*

- (a) It is a provision of a contract or arrangement entered into, or understanding arrived at, between persons of whom any 2 or more are in competition with each other; [all Welded Points and Shippers are in competition with each other for the buying and selling of gas] and*
- (b) It has the purpose of preventing, restricting, or limiting the supply of goods or services to, or the acquisition of goods or services from, any particular person or class of persons, either generally or in particular circumstances or on particular conditions, by all or any of the parties to the contract, arrangement, or understanding, or if a party is a body corporate, by a body corporate that is interconnected with that party; [by having exclusive access to the Balancing Agent to purchase its own use fuel gas, MDL is preventing, by putting forth the MPOC CR, the supply of the service of sourcing fuel gas to other Welded Parties and Shippers] and*
- (c) the particular person or the class of persons to which the provision relates is in competition with 1 or more of the parties to the contract, arrangement or understanding in relation to the supply or acquisition of those goods or*



services” [all Welded Points and Shippers are in competition with each other for the buying and selling of gas]

Section 29(1A) of the Commerce Act says the following:

*“a provision of a contract, an arrangement, or an understanding that would, but for this subsection, be an exclusionary provision under subsection (1) is not an exclusionary provision if it is proved that the provision does not have the purpose, or does not have or is not likely to have the effect, or substantially lessening competition on a market.”*

Competition in the market for the provision of fuel gas to MDL will reduce by half, per prior arguments. This is a substantial lessening of competition in the market.

Greymouth Gas alluded to these two concerns in our initial submission on the MPOC CR and these were not only noted by the GIC in the paper, but on page 44 of the paper, GIC agrees that fuel gas could be purchased in a different way to allow a wider range of suppliers to bid.

## **5) Status Quo**

GIC policy is to test the MPOC CR against the status quo. However, GIC appears to have gone above and beyond this test because:

- GIC notes in the paper that GIC support for the proposed change is strengthened by their belief that [BGX2] is one component of improved balancing arrangements that will encourage other improvements to be made (such as improved gas trading, improved allocation information, extended nominations, improved Line Pack management etc.).
- GIC is using a theoretical belief that BGX2 will be successful in effectively allowing the MPOC CR to deliver a successful outcome. However, BGX2 is unproven, no party knows how successful it will be, ergo how can GIC make reference to this in the paper?
- In the paper, GIC is also making assumptions that BGX2 will lead to further improvements, but this may not be the reality.
- GIC sets out a cover note to the paper which sets the path forwards as part of its broader role. In this note, the GIC is attempting to steer industry towards a situation where the future-state as at MPOC CR implementation date will be palatable to retrospectively justify support of the MPOC CR.

GIC thinking behind the recommendation to support the MPOC CR therefore strongly appears to go above an assessment against the status quo and also includes an assessment against the future-state.

This is not appropriate and GIC should redo the paper, and the path forwards, only having regard to the status quo.

Furthermore, if GIC were to accurately consider such a wide-ranging change request against the status quo (i.e. with no corresponding VTC change request), then such an MPOC change

request should automatically not be supported because the status quo does not allow the concept of the MPOC CR to be rolled out across all industry contracts.

This highlights numerous change request process concerns which Greymouth Gas reserves its right to comment on.

There is an established process to follow and GIC has not followed that process and GIC's proposed recommendation in the paper is not valid.

## **6) Reflect Customers' Preferences**

GIC is required to have regard for the Government Policy Statement on Gas Governance dated April 2008 (the "GPS"), which is an objective and outcome that the government wants to apply to all GIC recommendations for rules, regulations or non-regulatory arrangements per section 43ZO of the Gas Act. Specifically, section 12 d) of the GPS adds the following as an objective:

*"the quality of gas services where those services included a trade-off between quality and price, as far as possible, reflect customers' preferences"*

The MPOC CR primarily seeks to address the allocation of cost and risk, which is a direct trade-off between the quality of the balancing service and price (including socialisation vs. cost to causer). Therefore the only issue at play here is what are the customers' preferences?

Customers of the balancing service are direct or indirect parties to the MPOC. Here are submitters' views on the MPOC CR:

- Greymouth Gas – does not support MPOC CR
- Contact – does not support MPOC CR in its current form
- Genesis – does not support MPOC CR except in conjunction with BGX2 implementation
- MGUG – does not support MPOC CR except in conjunction with simultaneous VTC change request
- Methanex – does not support MPOC except if 4 changes are made including one being the same as Genesis's
- MRP – does not support MPOC CR in its current form with a number of concerns raised
- Shell – notes that MPOC CR is a step in the right direction but falls short of supporting the MPOC CR
- Vector – does not support MPOC CR in its current form, imposing at least five conditions to be worked through

It is clear that customers' preferences are not to support the MPOC CR.

Therefore, by seeking to support the MPOC CR, GIC is not taking the section 12 d) GPS objective into account. Section 12 d) of the GPS must be taken into account in analysis of the paper.

## 7) Climate Change

The balancing framework in the MPOC CR seeks to significantly tighten gas management and incentives. In practice, this will cause contracts to be changed. There are only really two parties at play: suppliers and end-users (as shippers can be assumed to pass all costs onto end-users).

Under the MPOC CR, the issue will be: what is allowed to happen to nominations/purchases when call or put balancing gas has been purchased under normal operating conditions when no party can declare a Force Majeure?

In a put scenario, if a Welded Party matches flow with nominations, but an end-user is taking less gas than nominated, the end-user is at risk of effectively being cashed-out. It is most likely that material (ID3 and ID4) end-user nomination changes in non-Force Majeure situations will not be possible.

This leaves the end-user with one of two options: be cashed-out or use the gas. Some might argue that being cashed-out is a fair allocation of cost to causer. Notwithstanding this argument though, the end-user will conduct a cost-benefit analysis. Depending on the numbers, in some circumstances it might be more economic for the end-user to take some extra gas and put it to flare to minimise their back-to-back balancing exposure.

Having a very tight balancing framework as posed by the MPOC CR will increase the occurrence of end-users flaring gas to manage their gas position. This directly contradicts section 12 e) of the GPS which says:

*“the gas sector contributes to achieving the Government’s climate change objectives as set out in the New Zealand Energy Strategy...by minimising gas losses and promoting demand-side management and energy efficiency”*

The MPOC CR will not minimise gas losses, but will encourage flaring by end-users as a demand-side management tool which is against the intent of the above objective.

Therefore, by seeking to support the MPOC CR, GIC is not taking the section 12 e) GPS objective into account. Section 12 e) of the GPS must be taken into account in analysis of the paper.

Overly tightening the balancing framework will compromise NZ Inc.'s climate change strategy. However, it would also be inconsistent with section 43ZN(b)(v) of the Gas Act as security of supply will not be properly and efficiently managed by the end-user.

Demand side management is most efficient when upstream security of supply arrangements provide adequate downstream flexibility.

Greymouth Gas asserts that this is another area where a quantitative cost-benefit analysis should take into account the big picture, including costs such as end-user flaring and end-users being distracted from core business to more intensively manage their fuel gas. This is not efficient and must have productive efficiency implications on the NZ Inc. economy and the paper is very light-on in this regard.



**Conclusion**

Greymouth Gas requests the GIC to immediately strike out the MPOC CR until our concerns have been properly addressed.

Yours sincerely,



Chris Boxall  
Commercial Manager