

Gas Industry Company
Level 8, The Todd Building
95 Customhouse Quay
PO Box 10-646
Wellington 6143

Attention: Ian Wilson

14 July 2015

Dear Ian,

Submission on "MPOC Amendment Process Change Request (APCR) 24 April 2015"

OMV Exploration & Production

OMV welcomes the opportunity to provide a submission in relation to the APCR MPOC Change Request, dated 24 April 2015.

It is OMV's view that the APCR should be rejected as it runs counter to Government policy as well as advice provided to the GIC by the Panel of Expert Advisors.

The Maui Pipeline Operating Code (MPOC) is not a contract

The MPOC should best be considered as a "quasi-regulatory" framework to which users bind themselves with either a Transmission Services Agreement (TSA) or an Interconnection Agreement (ICA). Although technically this is via a contractual mechanism, the MPOC should not be considered a multi-lateral contract.

This is evidenced by the Government steps outlined in the Draft Government Policy Statement: Development of NZ's Gas Industry, released on 6 November 2002 (2002 Draft GPS)¹.

In particular this document set out the requirement that a 'governing entity' be created to oversee further development of gas market arrangements in various key areas, including specifically:

Open Access to the Maui Pipeline

The Government recognises that there is demand to enable non-Maui gas to use the Maui pipeline to assist with the ongoing supply of gas to markets north of Taranaki...

The Government, as a party to the Maui contracts, invites Maui Developments Ltd, the Natural Gas Corporation, Contact Energy and Methanex to present it with a proposal to enable open access to the Maui pipeline consistent with the following approach:

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- **The open access arrangements need to provide non-discriminatory access to all potential users and not be biased towards those with an existing contractual interest in the Maui pipeline. (emphasis added)**

Although signalling that 'industry-led' solutions would be preferable, the Government also signalled that it would use regulatory solutions where necessary if this was not possible.

Patrick Teagle
Commercial & Legal Manager

Tel. +64 4 910 2500
Fax +64 4 910 2504
patrick.teagle@omv.com

OMV New Zealand Ltd
Level 10, Deloitte House
10 Brandon Street
Wellington, New Zealand

Registered Office:
Level 10, Deloitte House
10 Brandon Street
Wellington, New Zealand

www.omv.com

¹ <http://www.beehive.govt.nz/sites/all/files/GAS%20GPS.DOC>

What followed from this was the adoption of the MPOC, with the GIC (the 'governing entity' envisaged in the 2002 Draft GPS) accepting the role of independent decision maker for future changes to the MPOC, through the Memorandum of Understanding (**MOU**) between MDL and the GIC².

The MOU sets out that any proposed changes shall be assessed having regard to the objectives of section 43ZN of the Gas Act 1992, and that the GIC will only make recommendations following a consultation process notified to all parties to the MPOC as well as all other industry participants that the GIC believes will be affected by the proposed change.

In this light, the APCR is very disappointing as it seeks to remove a process that consults widely and uses an independent "quasi-regulatory" decision maker who is bound to take into account legislative objectives and instead replace it with a change process where incumbent users have the ability to make changes with no obligation to observe government objectives, including that "barriers to competition are minimised"³.

Barriers to Competition and the PEA

OMV had a nominated representative on the Panel of Expert Advisors (**PEA**) formed by the GIC in response to concerns raised in 2009 that the capacity allocation mechanisms under the VTC were a barrier to downstream competition for the supply of gas.

In part, the PEA concluded that the 'grandfathering' of capacity rights in favour of the incumbent users under the VTC was a key concern and needed to be addressed.

After publication of the Advice from PEA (Second Report)⁴ in July 2013, the industry was invited to start acting on this advice. To date the issue of capacity allocation has been actively deferred and on 1 April 2015 VTC Shippers put in place a code change process that removed any role for an independent decision maker, instead putting future changes in the hands of incumbent users.

In OMV's view this runs counter to the PEA's stated view that converged governance was possible as "both codes allow any contracted party to propose changes and make the GIC the final decision maker (subject to the requirements of the Gas Act, and limited rights of veto by the respective pipeline owner)"⁵.

In summary, it is OMV's view that the APCR should be rejected as being a retrograde step in transmission code governance which runs counter to Government policy as well as the advice of the PEA.

If you have any questions in relation to OMV's submission, please contact Nick McDougall.

Yours sincerely,



Patrick Teagle
Commercial and Legal Manager

² Available on the Publications page of Maui OATIS (www.oatis.co.nz)

³ Gas Act 1992, section 43ZN (b)(ii)

⁴ <http://www.gasindustry.co.nz/dmsdocument/3163>

⁵ *ibid*