

5 October 2006

Memorandum of Understanding

Gas Industry Company Limited

Maui Development Limited

This memorandum of understanding dated [] 2006, is made between:

Gas Industry Company Limited (GIC); and

Maui Development Limited (MDL) (acting by and through the Commercial Operator).

Purpose

This memorandum of understanding records GIC's and MDL's mutual understandings about, among other things:

- the principles on or with respect to which, and the ways and means by which, GIC and MDL will perform the roles and functions respectively given to them by sections 7.3, 7.4, 29.4 and (until the Full Open Access Date) 29.5 of the Code;
- how Parties may submit Proposed Amendments for consultation, consideration and decision by GIC in connection with the GIC recommendation; and
- how and when such Parties will contribute to the costs of GIC's work, and of work done by MDL, in connection with Proposed Amendments.

1. Definitions

1.1 In this memorandum of understanding, except where the context otherwise requires:

Capacity Proportion has the meaning ascribed in paragraph 3.1;

Code means the Maui Pipeline Operating Code dated 8 August 2005, as amended, and also includes a reference (i) to ICAs and/or to TSAs (which, and to the extent those, ICAs and/or TSAs incorporate the terms and conditions of the Operating Code) and (ii) where a part of the Code is mentioned, to the corresponding part of an ICA or of a TSA;

Commerce Act means the Commerce Act 1986, as amended or replaced.

direct costs, in respect of a matter or particular piece of work, means all costs and expenses (including GST) incurred by or on behalf of GIC in respect of the matter or work, but does not include:

- (a) GIC's overhead costs and expenses;
- (b) the costs and expenses of third-party advisors and consultants unless, and to the extent, expressly agreed by MDL; or
- (c) other costs and expenses which, in the ordinary course or as a matter of policy, are recovered, or recoverable, by GIC by levies under sections 43ZZB to 43ZZE of the Gas Act and/or annual fees under GIC's constitution;

Gas Act means the Gas Act 1992, as amended or replaced;

GIC means Gas Industry Company Limited;

GIC recommendation has the meaning ascribed in paragraph 5.1;

MDL means Maui Development Limited, as provider of Transmission Services and any other services using the Maui Pipeline;

MOU information has the meaning ascribed in paragraph 8.1;

Proposed Amendment means an amendment to the Code, and to affected ICAs and TSAs, proposed by a Party with a view to making a Change Request under section 29.4 of the Code;

Queuing Rules has the meaning ascribed in paragraph 4.1.

1.2 Terms defined in, or for the purposes of, the Code have the same meanings in this memorandum of understanding.

2. General principles

2.1 On 16 August 2005 the Minister of Energy, having reached the view that the Code is of a sufficient form and function that meets government policy requirements (and subject to a condition subsequently satisfied), invited MDL to put the Code in place.

2.2 GIC acknowledges that Parties have invited GIC to perform the roles and functions specified for it in the Code and that GIC is willing to undertake those roles and functions on the terms and conditions set out in this memorandum of understanding.

2.3 In performing the roles and functions referred to in paragraph 2.2 GIC shall also have regard to the objectives specified in section 43ZN of the Gas Act.

2.4 Before deciding whether or not (i) to approve draft Queuing Rules (section 7.4 of the Code and section 4 below) or (ii) to recommend that a particular Proposed Amendment be supported as a Change Request (section 29.4(a) of the Code and section 5 below), GIC shall:

- (a) prepare an analysis of the issues under consideration, including (unless, GIC is satisfied that the issues are minor and will not adversely affect the interests of an industry participant in a substantial way) a cost-benefit analysis;
- (b) make that analysis available to MDL, Parties and the wider industry for comment (if necessary, as part of a wider consultation process); and
- (c) take any such comments into account as part of its decision-making process.

This paragraph 2.4 does not limit, and is additional to, paragraphs 2.1, 2.2, and 2.3.

2.5 Except as provided in paragraph 8.6 and in paragraph 10.4, this memorandum of understanding is not intended to create legally binding obligations or to supersede any legal, contractual or other obligation of either GIC or MDL.

2.6 Each of GIC and MDL shall post a copy of this memorandum of understanding on their respective websites as soon as it comes into effect.

3. Authorised quantities – Maui Pipeline capacity (section 7.3)

3.1 Subject to MDL obtaining the consent of Buyer and Methanex to the disclosure of any of their respective confidential information, at six-monthly intervals after the Full Open Access Date MDL shall give GIC:

(a) MDL's calculation of the proportion (*Capacity Proportion*) of Maui Pipeline capacity in each AQ Zone that is required to transport Maui Legacy Gas until the expiry of the Maui Legacy Contracts;

(b) the formula adopted by MDL for that purpose; and

(c) the information used by MDL in making that calculation.

3.2 Based on that information GIC shall promptly provide its determination of the Capacity Proportion to MDL. If GIC's determination of the Capacity Proportion differs from that calculated by MDL then GIC shall also give brief reasons for the difference.

3.3 MDL shall promptly post GIC's determination of the Capacity Proportion (and any reasons given in respect of that determination) on the MDL IX.

3.4 MDL shall promptly advise GIC of the Full Open Access Date after which GIC shall:

(a) scope and cost the work described in paragraph 3.2 above;

(b) notify MDL of:

(i) GIC's proposed approach to and methodology for, the work;

(ii) GIC's proposed direct costs for the work; and

(iii) any other costs GIC proposes to recover in respect of the work (including the persons or class of persons from whom, and how, those costs are to be recovered).

3.5 MDL shall promptly post the notice given by GIC under paragraph 3.4(b) on the MDL IX.

3.6 MDL shall pay GIC's actual direct costs for the work (which costs will, in turn, be recovered by MDL from Shippers under, and in accordance with, TSAs).

4. Authorised quantity – queuing rules (section 7.4)

4.1 Once GIC determines that the Capacity Proportion is less than 70% of the capacity of an AQ Zone, MDL shall give GIC a draft of the queuing rules (*Queuing Rules*) MDL proposes to use to allocate the available AQ among Shippers who wish to use it.

4.2 In respect of the Queuing Rules:

- (a) MDL's role is to develop and prepare the draft rules; and
- (b) GIC's role is to consider and to decide whether or not to approve those draft rules.

To avoid doubt, each of MDL and GIC may, but is not obliged to, formally or informally consult with Parties and/or with other members of the industry (or both) in the course of performing, or in order to perform, those roles. If GIC decides to consult Parties and/or other members of the industry GIC shall scope an appropriate consultation process, advise MDL of its programme and, thereafter, conduct the consultation.

4.3 GIC shall decide whether or not to approve the Queuing Rules as quickly as is reasonably possible after receiving the draft of them from MDL. GIC shall notify MDL of its decision promptly. If GIC declines to approve the Queuing Rules then GIC shall also give brief reasons for doing so.

4.4 MDL shall post GIC's decision and either:

- (a) the approved Queuing Rules; or
- (b) GIC's reasons for declining to approve the Queuing Rules,

promptly on the MDL IX.

4.5 If GIC declines to approve the Queuing Rules MDL may amend the draft of them and submit that amended draft to GIC. If MDL does so then:

- (a) paragraphs 4.2, 4.3 and 4.4 shall apply; and
- (b) GIC shall consider whether or not the amendments made by MDL are significant enough to justify further industry consultation.

4.6 GIC shall meet all the costs of its consultation and approval process, unless otherwise agreed with MDL. If MDL agrees to pay any GIC costs (which costs will, in turn, be recovered by MDL from Shippers under, and in accordance with, TSAs) MDL shall post details of those costs and of that agreement on the MDL IX.

5. Change Requests (section 29.4(a))

5.1 Under section 29.4 of the Code a Change Request only results in an amendment to the Code if that Change Request satisfies each of paragraph (a) and paragraph (b) of section 29.4. This section 5, and Attachments 1 and 2, only relate to GIC's recommendation under, and for the purposes of, paragraph (a) (*GIC recommendation*).

5.2 Attachment 1 describes and sets out the process which GIC intends to follow in connection with a GIC recommendation; that is, so as to decide whether or not to recommend that a particular Proposed Amendment be supported as a Change Request.

5.3 GIC shall make available on its website:

- a process description in the form of Attachment 1; and
- a Recommendation Request form in the form of Attachment 2.

MDL shall provide a link to these documents on MDL's website..

- 5.4 Generally GIC shall meet all the costs of its consultation and approval process. However GIC reserves the right at any time to require an applicant to pay all, or some, of such costs in respect of a particular Proposed Amendment. In such a case GIC is not obliged to proceed unless and until the applicant has paid, or (at GIC's option) agreed to pay, such costs..
- 5.5 GIC shall conduct the consultation process under Attachment 1 in connection with the GIC recommendation only if:
- (a) (with a view to promoting a cheaper and more efficient process and given the contractual relationship/s between MDL and the applicant and other Parties) MDL has advised GIC that the applicant has first discussed the Proposed Amendment with MDL in good faith with a view to finding a mutually satisfactory resolution or position which the applicant can submit, with MDL's support, as a Proposed Amendment for consideration, consultation and decision;
 - (b) the applicant has submitted a completed Recommendation Request form, together with all the information required. To avoid doubt, an applicant may submit a Recommendation Request form even if, despite having complied with (a), no mutually satisfactory resolution or position has been reached as between the applicant and MDL;
 - (c) the applicant has paid or (at GIC's option) has agreed to pay, any fee or fees.
- 5.6 After the end of the consultation process in respect of the GIC recommendation GIC shall issue a written recommendation stating whether or not it supports the Proposed Amendment and giving brief reasons for its decision.

6. Change Requests – expedited consultation (section 29.5)

GIC shall abridge timeframes in order to expedite consultation but otherwise follow section 5 and Attachments 1 and 2.

7. Commerce Act and other relevant law

- 7.1 Compliance with the Commerce Act, and with all other relevant law, is the responsibility of the Parties to ICAs and TSAs and, with respect to the Code, of MDL.
- 7.2 GIC does not become a party to the Code, or to any arrangement or understanding that includes the Code, by entering into this memorandum of understanding or by performing a role or function specified in the Code. This paragraph does not limit paragraphs 2.2 to 2.4 above.

7.3 Every decision by GIC to approve Queuing Rules (section 7.4 of the Code and section 4 of this memorandum of understanding) or to recommend a Proposed Amendment (section 29 of the Code and section 5 of this memorandum of understanding) is made, and given, on the basis that:

- (a) paragraph 7.1 above applies;
- (b) GIC has no responsibility for, and has not enquired into compliance with, the Commerce Act or any other relevant law;
- (c) accordingly, the decision does not extend to, and is no assurance that, the Queuing Rules or the Proposed Amendment (as the case may be) comply with the Commerce Act or any other relevant law; and
- (d) MDL, the applicant in respect of a Proposed Amendment and Parties respectively must satisfy themselves in respect of their compliance with the Commerce Act and any other relevant law.

7.4 Without limiting paragraphs 7.1 to 7.3 above, GIC may withdraw its agreement to perform, or cease to perform, any or all of the roles and functions specified for it under the Code or may decline to consider a particular Queuing Rule or Proposed Amendment if (in either case) GIC considers that doing so may cause it, in any way, to be involved directly or indirectly in a contravention of the Commerce Act. GIC shall notify MDL urgently and in writing should GIC take, or seriously consider taking, such a step.

8. Confidentiality

8.1 MDL may disclose private, commercially sensitive or commercially confidential information to GIC for the purposes of this memorandum of understanding. Such information could include:

- (a) any Buyer or Methanex information given to GIC for the purposes of its work in connection with section 7.3 of the Code and of ICAs and TSAs;
- (b) any Confidential Information of which MDL is the Information Recipient;
- (c) information concerning the Maui Pipeline, MDL, or MDL's status or position as a Party; and
- (d) information given to MDL by someone else and disclosed to GIC in written or note form.

Information of the kinds described above, and any other commercial or private information, given by MDL to GIC under and for the purposes of this memorandum of understanding is "MOU information" and, subject to paragraph 8.5, GIC shall treat all such information as having been given to it in confidence and as being subject to an obligation of confidentiality. To avoid doubt, no loss of privacy or confidentiality is to be inferred by reason of MOU information having been given to GIC by MDL whether or not such information is given to GIC with the express consent of its owner.

- 8.2 GIC shall not disclose MOU information, in whole or in part, to any third party without:
- (a) the express written consent of MDL; and
 - (b) the express written consent of the owner of that information.
- 8.3 When it has finished with the MOU information GIC shall either return it to MDL (at the same time certifying to MDL that GIC has not, in any way or by any means, retained any copies of that information) or destroy that information (at the same time certifying to MDL that GIC has done so and has not, in any way or by any means, retained any copies of that information). Despite the previous sentence, GIC may retain MOU information for record-keeping purposes only. This section 8 (except paragraph 8.5) shall apply to such information and GIC shall not use it for any other purpose.
- 8.4 If GIC is obliged by law of mandatory application to disclose MOU information to any third party GIC shall:
- (a) before disclosing it, give notice to MDL and allow MDL and/or the owner of that information to challenge that legal requirement, including by seeking equitable relief; and
 - (b) in any event, disclose MOU information only to the minimum extent necessary to comply with the relevant legal requirement.
- 8.5 Paragraphs 8.2, 8.3 and 8.4 shall not apply to use or disclosure of MOU information that:
- (a) at the time of the disclosure, or at any time thereafter, becomes public, other than by reason of a breach of this section 8;
 - (b) GIC can prove that it already knew at the time that it first received the information from MDL, without breach of any obligation of confidence;
 - (c) GIC can prove that it subsequently acquired from another source without itself, or that other source, being in breach of any obligation of confidence.
- 8.6 Despite paragraph 2.5 this section 8 does, and is intended to, create legal and binding obligations. This section 8 remains in force despite, and after, the termination of this memorandum of understanding.

9. Termination

Either GIC or MDL may terminate this memorandum of understanding at any time by giving the other at least 90 days' prior written notice.

10. Payment of costs

- 10.1 GIC shall, after the end of each month in which GIC has incurred costs or expenses payable by MDL under this memorandum of understanding, render to MDL an invoice stating those costs and expenses, including GST.

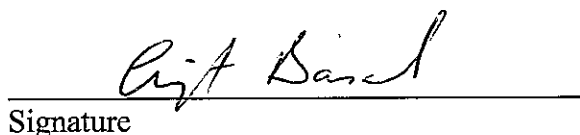
- 10.2 If an invoice issued under, and in accordance with, paragraph 10.1 is received by MDL on or before the 10th Business Day of a month MDL shall pay to GIC the amount specified in that invoice on or about the 20th Business Day of that month. If such an invoice is received after the 10th Business Day of a month it is payable on or about the 20th Business Day of the following month.
- 10.3 If MDL fails to pay the whole or part of an amount in accordance with paragraph 10.2, MDL must pay to GIC on demand by GIC interest on the outstanding amount (or, if any part of that amount is subject to a genuine dispute, on such part of the outstanding amount that is not subject to a genuine dispute) at the Default Rate for the period from the date payment was due to the date it is paid in full.
- 10.4 Despite paragraph 2.5, paragraphs 3.6 and 4.6 and this section 10 do, and are intended to, create legal and binding obligations. Paragraphs 3.6 and 4.6 and this section 10 remain in force despite, and after, the termination of this memorandum of understanding with respect to any rights or obligations accrued at that time.

Execution

Gas Industry Company Limited
by Authorised Signatory:


Signature

Maui Development Limited
by Authorised Signatory


Signature

Attachment 1 – Process for dealing with Proposed Amendments

1. All Proposed Amendments shall be submitted to GIC using its standard “Recommendation Request form”. GIC expects that each applicant will act as a Reasonable and Prudent Operator in preparing and submitting a Proposed Amendment and Recommendation Request form.
2. In the interests of promoting, if possible, a cheaper and more efficient process and given the contractual relationship/s between MDL and the applicant and other Parties, before submitting a Recommendation Request form an applicant must first have discussed the Proposed Amendment with MDL in good faith with a view to finding a mutually satisfactory resolution or position which the applicant can submit, with MDL’s support, as a Proposed Amendment for consultation, consideration and decision. To avoid doubt, an applicant may submit a Recommendation Request form even if, despite having complied with the preceding part of this paragraph, no mutually satisfactory resolution or position has been reached as between the applicant and MDL.
3. Responsibility for ensuring that a Proposed Amendment complies with, or will not contravene, the Commerce Act and any other relevant law rests primarily with the applicant. The applicant shall, at its own cost and expense, take such steps and obtain such advice in that regard as MDL considers reasonably necessary. MDL shall post such information on its website.
4. Generally GIC shall meet all the costs of its consultation and approval process. However GIC reserves the right at any time to require an applicant to pay all, or some, of such costs in respect of a particular Proposed Amendment. In such a case GIC is not obliged to proceed unless and until the applicant has paid, or (at GIC’s option) agreed to pay, such costs.
5. Within 15 business days of receiving a Recommendation Request form, GIC shall advise the applicant:
 - (a) whether or not, in GIC’s view, the Recommendation Request form is complete;
 - (b) if any additional information is required;
 - (c) what consultation process will be followed;
 - (d) the approximate time likely to be required to complete the consultation process.
6. GIC shall:
 - (a) advise MDL that GIC has received a Recommendation Request form forthwith after doing so, and copy that form to MDL;
 - (b) at the same time as it posts a Recommendation Request form on its website, advise MDL that it is doing so.

7. When a completed Recommendation Request form is available, GIC shall post on the GIC website:
 - (a) a copy of the Recommendation Request form, together with all attachments provided as part of the detailed description of the Proposed Amendment;
 - (b) a description of the consultation process which GIC will follow to determine whether or not to recommend that the Proposed Amendment be supported as a Change Request;
 - (c) the form in which submissions on the Proposed Amendment must be made;
 - (d) the deadline for submissions and counter-submissions on the Proposed Amendment.

8. MDL shall provide a link on its website to the page of the GIC website which contains all information related to Change Requests and to the process for dealing with Proposed Amendments. The caption to the link will be along the following lines:

The Gas Industry Company has been asked to consider a Proposed Amendment and will engage in a consultation process to determine if it should support the amendment.

The Code is an industry arrangement which, as such, is subject to the Commerce Act 1986. The Gas Industry Company's consideration of a Proposed Amendment does not extend to Commerce Act compliance, which is the responsibility of the applicant and of Parties to ICAs and TSAs. A decision by the Gas Industry Company to recommend a Proposed Amendment is made and given on the basis, among other things, that MDL, the applicant and Parties to ICAs and TSAs must satisfy themselves as to, and must obtain all consents required for, compliance with the Commerce Act 1986.

*For further information please follow this link
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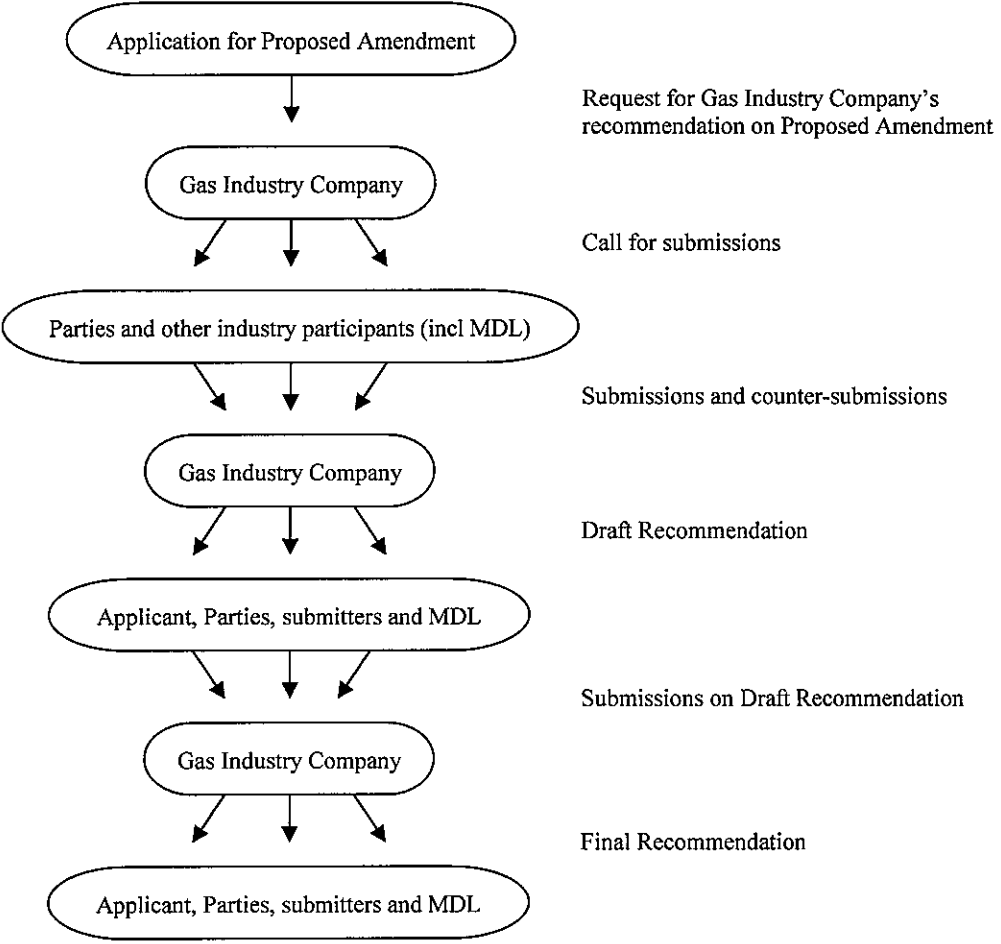
9. GIC shall advise all Parties and all other industry participants known to it whom GIC believes will be affected by the Proposed Amendment that the above information has been posted on its website, and shall invite submissions and (if GIC considers that necessary or appropriate) counter-submissions on the Proposed Amendment.

10. Subject to the next two paragraphs, GIC shall post on its website all submissions and counter-submissions it receives.

11. GIC reserves the right to delete particular confidential or commercially sensitive information from a posted submission or counter-submission where, and if and to the extent, each of the following conditions is met:

- (a) the submitter so requests in writing before or when making the submission or counter-submission concerned, specifying each requested deletion and the reasons for it;
 - (b) GIC is satisfied that the submitter, or another identified person, would be materially commercially disadvantaged were the deleted material posted;
 - (c) the deleted material is not essential or material to the decision to be made by GIC; and
 - (d) GIC is satisfied that, despite the deletion of the deleted material, other Parties and industry participants will not be hindered, ill-informed or otherwise materially disadvantaged when making, or deciding whether or not to make, submissions or counter-submissions themselves.
12. Each deletion from a submission or counter-submission shall be clearly marked as such.
13. As soon as practicable after considering submissions and counter-submissions, GIC shall make a draft recommendation which it shall copy to MDL and post on its website. GIC shall also invite the applicant, Parties, submitters and MDL to make submissions on the draft recommendation by a specified date.
14. Following receipt of submissions and counter-submissions on the draft recommendation, GIC shall finalise its recommendations and notify MDL. Both shall post the final recommendation on their websites. GIC shall also advise the applicant, Parties and submitters of its final recommendation.
15. If GIC considers that the final recommendation is fundamentally different to its draft recommendation, it shall invite further submissions and (if GIC considers that necessary or appropriate) counter-submissions.

Process for dealing with Proposed Amendments



6. What costs and benefits the Proposed Amendment will bring to MDL, other Parties and other industry participants.
7. An opinion on how the Proposed Amendment complies with the Commerce Act and any other relevant law.