

**APPLICATION FOR GAS INDUSTRY COMPANY'S RECOMMENDATION ON  
PROPOSED AMENDMENTS TO THE MAUI PIPELINE OPERATING CODE ("MPOC")**

Date of Application: 17 December 2009

Applicant: Maui Development Limited (MDL)

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**1. Introduction**

1.1 In accordance with the standard "Recommendation Request form" issued by the Gas Industry Company Limited (GIC), this application by Maui Development Limited (the Applicant) includes the following information:

- (a) precise and complete details of the amendments to the MPOC proposed by the Applicant;
- (b) the reasons for the proposed amendments;

1.2 In making this application, the Applicant has taken into account the draft rules set out in the GIC's "Statement of Proposal – Transmission Pipeline Balancing" dated October 2009 (**Draft Rules**) and the principles set out in the "*Memorandum of Understanding: Integrated Gas Balancing Regime*" (**MoU**) document dated December 2009.

1.3 The Applicant assesses that some of the proposed amendments may impact on the existing rights and obligations of parties to ICAs and parties to TSAs on the basis that the existing mechanisms for allocating and recovery of Balancing Gas costs (under sections 12 and 14 of the MPOC) will be amended. However, the Applicant notes the following points should be taken into account in assessing the impact of the proposed amendments on the existing rights and obligations of parties to ICAs and TSAs:

- (a) The proposed amendment in section 2.14 seeks to remove any doubt that the TP Welded Party's payment obligations are not limited to it first receiving payment from its customers.
- (b) The insertion of a new section 3 which deals with "Balancing Principles" seeks to:

- (i) Increase transparency in relation to the role of the Balancing Operator in managing Line Pack on the Maui Pipeline, and in particular:
  - (aa) Distinguish between the processes for the buying and selling of Gas for normal pipeline operations, and the buying and selling of Balancing Gas to deal with Line Pack fluctuations;
  - (bb) The process for recovery of Balancing Gas costs from causers and, to the extent of any non-recovery, via Tariff 3.
  - (cc) The processes for entering into, and publication of, Balancing Gas transactions and related information ;
  - (dd) The development and use of standard operating procedures
- (c) The proposed amendments to section 11 (Shipper Mismatch) reflect that Shipper's get benefit of the Gas in circumstances when Shipper Mismatch is created and should therefore pay for the benefit that is provided to the Shipper on the day at market based prices.
- (d) The proposed amendments to section 12 (Operational Imbalance) introduce a "back to back" cash-out regime whereby cash-outs for Operational Imbalances at Welded Points (positive and/or negative) be purchased and/or sold at a market related price and will only occur on days on which the Balancing Operator has purchased and/or sold Balancing Gas. .
- (e) The proposed amendments to section 13 (Peaking) reflect that:
  - (i) Peaking is an hourly concept and that the application to Peaking Limit should reflect changes to Scheduled Quantities during the course of the day.
  - (ii) The Balancing Operator should seek to recover residual Balancing Gas costs directly from those causing peaking on the basis that peaking is likely to create the need for balancing.
- (f) The proposed amendments to section 14 (Incentives Pool) reflect that:
  - (i) Incentives Pool Claims by the Balancing Operator are limited to the extent that there has not been full recovery of Balancing Gas costs under the proposed section 12 back to back cash-out mechanism (i.e. a residual Balancing Gas cost recovery mechanism);
  - (ii) Welded Parties will continue to have the right to make Incentives Pool Claims on days where they have been unable to off-take to Scheduled Quantity.
  - (iii) The quantity of Incentives Pool Claims (in GJ) will be capped to the quantity of Incentive Pool Debits (in GJ) that are incurred on the

Day and will be pro-rated accordingly so that the total cost recovery from balancing gas cash outs and Incentives Pool claims does not exceed Balancing Gas costs on the Day. This means that there will be a cap on the amount a Welded Party can claim on the Incentives Pool when it has a Forced Operational Imbalance.

- (iv) The role of the Incentives Pool Trustee is limited to an administrative role and as such it should be immune from suit (except for wilful default) and that its costs will for the moment be recovered under Tariff 2.
  - (g) Of the other proposed amendments in sections 2, 21 and 23 relating to payment obligations and disputes, the applicant notes that these are consistent with the philosophy of “*pay now, dispute later*” which is provided for in the Draft Rules and supported by the parties which entered into the MoU. The applicant considers that the relevant sections of the MPOC already provide for “pay now, dispute later” obligations and that the proposed amendments therefore seek reinforce those obligations. The applicant supports the eventual adoption of the Rulings Panel to determine disputes that arise under ICAs and TSA. However, it considers that it is more appropriate to make a separate Change Request to deal with the adoption of the Rulings Panel dispute resolution procedure when it is clear that the Rulings Panel, or another similar body, has the appropriate jurisdiction to deal with disputes that arise under ICAs and TSAs.
  - (h) There are a number of proposed amendments which are either inconsequential and/or minor in nature and in that sense the Applicant considers them to be consistent with:
    - (i) dealings between MDL and users of the Maui Pipeline being transparent, commercial, at arm’s length, and (except as provided in the MPOC), non-preferential;
    - (ii) the bi-lateral contractual relationships between parties to ICAs and TSAs;
    - (iii) any relevant Government policy requirements; and/or
    - (iv) any relevant objective of the kind referred to paragraph 2.3 of the Memorandum of Understanding between the GIC and MDL dated 5 October 2006;
  - (i) The Applicant notes that the proposed amendments are aimed at attributing Balancing Gas costs directly to causers as far as possible and thus reduce the socialisation of those costs across Shippers as a whole.
- 1.4 The Applicant considers that all of the proposed amendments comply with the Commerce Act and other relevant law.
- 1.5 GIC can assume that MDL supports the proposed amendments. However, the Applicant acknowledges that the parties to ICAs and TSAs have the right to make

submissions to the GIC in relation the proposed amendments. The Applicant will give consideration to the proposed amendments in light of the submissions that are received.

- 1.6 In this application:
  - (a) each capitalised term used has the meaning given to it in the MPOC; and
  - (b) each section reference refers to a section of the MPOC.
- 1.7 All proposed amendments in this Application assume the acceptance of the "Trading Hub Changes" which are set out pursuant to a MPOC Change Request application dated 5 October 2009 (MPOC October Change Request).
- 1.8 For ease of reference, a marked up copy of the MPOC showing all the proposed amendments is enclosed with this Application.

## Summary of Proposed Amendments

Section	Issue	Proposed Change	Rationale for Proposed Change
1	Definitions:	<p>Modifications to definitions in section 1. The major amendments include :</p> <ul style="list-style-type: none"> <li>• deletion of “Accumulated Excess Operational Imbalance” and “Running Operational Imbalance Limits” and certain definitions relating to the payback of Mismatch all of which become redundant;</li> <li>• new definitions for “Cash-out Quantity” “Cash-out Transaction”, “Mean Call Price” and “Mean Put Price”, and “Tariff 3”;</li> <li>• consequential amendments to definitions of “Balancing Agent” which becomes “Balancing Operator”; the definition of “Balancing Gas” “Daily Operational Imbalance Limit” to reflect that the limit will set at 3 % of SQ at each Welded Point (except when OFOs are issued to a Welded Party); “Peaking Limit” and “Running Operational Imbalance”</li> </ul>	<p>The definitional changes are consequential to proposed amendments to operational provisions of the MPOC.</p>
2	Pipeline Services:	<p>The following changes to section 2:</p> <ul style="list-style-type: none"> <li>• Insertion of a new section 2.1 relating to the Maui Mining Companies’ consent.</li> <li>• Amendments to ss 2.13 - 2.16 (now ss2.15 – 2.16) of the MPOC to confirm MDL’s position that the TP Welded Party’s payment obligations under the</li> </ul>	<ul style="list-style-type: none"> <li>• The newly inserted section 2.1 is currently provided for in the current section 3 and therefore reflects the proposed amendment to section 3.</li> <li>• The proposed amendment to section 2.13 – 2.16 strengthen the “pay now, dispute later” principles which MDL considers to be already to be provided for under the MPOC.</li> </ul>

		<p>MPOC are not conditional on the TP Welded Party receiving payment from its customers;</p> <ul style="list-style-type: none"> <li>• Amendment to section 2.17 to provide for the development of Standard Operating Procedures and the addition a new section 2.18 to provide for consultation on the development of SOPs and any proposed amendments.</li> </ul>	<ul style="list-style-type: none"> <li>• The proposed amendment to section 2.17 tidies up some unnecessary drafting given that “Operators” is defined under section 1 as including the “Commercial Operator, System Operator and the Technical Operator who perform operational services for MDL.” The definition now includes the Balancing Operator.</li> </ul>
3	Balancing Principles	<p>The insertion of a new “Balancing Principles” section which outlines certain rights and obligations in relation to management of Line Pack on the Maui Pipeline:</p> <ul style="list-style-type: none"> <li>• The appointment of the Balancing Operator by MDL;</li> <li>• The roles of the Balancing Operator - including the management of Line Pack on the Maui Pipeline and the buying and selling of Balancing Gas, determining of Tariff 3 and carrying out other activities in accordance with standard operating procedures;</li> <li>• The processes for the sale and purchase of Balancing Gas transactions by the Balancing Operator; and</li> <li>• The obligations on the Balancing Operator to provide information about Balancing Gas transactions entered into and the publication of information on the BGX.</li> </ul>	<p>The proposed amendment is aimed at providing a greater level of transparency in relation to the role of the Balancing Operator, the processes that are carried out by the Balancing Operator and publication of information relating to Balancing Gas transactions.</p>
4	MDL IX	<p>Modifications to information made available on the MDL IX including:</p>	<p>The proposed amendments seek to provide all Shippers and Welded Parties with a greater amount of real time information on the pipeline conditions and operational</p>

		<ul style="list-style-type: none"> <li>making more information generally available, including publication of information previously restricted to each Welded Point such as Operational Imbalances, Balancing Gas actions taken and corresponding Cash-out information along with Excess Daily Imbalance and Peaking information at each Welded Point ;</li> <li>information to be displayed on the BGX, including Balancing Gas standard terms and conditions, Balancing Gas price stack information and Balancing Operator financial information.</li> </ul>	<p>imbalances at all Welded Points.</p> <p>The objective is to ensure that all parties are better placed to make more informed decisions in relation to their primary balancing obligation under the MPOC and to reduce exposure to costs associated with the Balancing Operator taking residual balancing actions to manage fluctuations in Line Pack on the Maui Pipeline.</p>
8/9	Nominations / Scheduled Quantities	<ul style="list-style-type: none"> <li>Amendments to section 8 (and consequential amendments to section 9) to reflect the change to the definition of “Balancing Gas” as Gas used to manage Line Pack on the Maui Pipeline as opposed to the Transmission Pipeline and the consequential removal of the TP Welded Party’s ability to use a “Post Intra-Day Cycle” for Nominations of Balancing Gas;</li> <li>Amendments to the priority given to Intra- Day Nominations in the event of capacity curtailment to reflect priority between AQ and non AQ nominations.</li> </ul>	<ul style="list-style-type: none"> <li>The proposed amendments to sections 8.6, 8.17 8.23, 8.25 and 8.27 reflect the fact that “Balancing Gas” is currently defined in section 1 as “Gas used to manage line pack on a Transmission Pipeline “ and as such, contemplates the TP Welded Party making Balancing Gas nominations. However, as part of this change request application, it is proposed that the definition of Balancing Gas will be changed to “Gas purchased or sold by the Balancing Operator which is purchased as Balancing Gas Call, or sold as part of a Balancing Gas Put.”</li> </ul> <p>This change would mean that the TP Welded Party would no longer have the ability to make Balancing Gas nominations under the MPOC which, in turn, makes the current references to Balancing Gas nominations in section 8 redundant along with the ability to use a “Post Intra-Day Cycle” for Nominations of Balancing Gas. The change is necessary in order to provide consistency with the</p>

			<p>“back-to-back” cash-out regime which is proposed in section 12 and also the fact the parties are required balance their position throughout the day.</p> <ul style="list-style-type: none"> <li>• The change to sections relating to priority given to Approved Nominations reflects the expectation that Shippers who purchase AQ to reserve capacity on the Maui Pipeline, would have priority over a non AQ Shipper when capacity on the Maui Pipeline is reached.</li> </ul>
11	Shipper Mismatch	Amendments to reflect that Shippers will be automatically cashed –out at the end of Day when Shipper Mismatch is created in accordance with section 8.30.	The proposed amendments seek to make the Mismatch regime consistent with daily Back to Back Cash Out regime by taking away notice periods and making settlement of Mismatches at the end of each Day at Gas prices which reflect the market price on the day.
12	Operational Imbalance	<p>Amendments to reflect:</p> <ul style="list-style-type: none"> <li>• Simplification of the determination of Excess Daily Imbalance whereby the Daily Operational Imbalance Limit at each Welded Point will be set at 3 % of the Scheduled Quantity for the Day to the extent it depletes Line Pack;</li> <li>• the removal of the processes for issuing and cashing–out Imbalance Limit Overrun Notices (ILONs); and</li> <li>• the insertion of a “Back to Back” cash-out regime which provides for a cost recovery allocation mechanism that is directly linked to</li> </ul>	The proposed amendments reflect a level of consensus in the industry that back-to-back cash-out mechanism will provide for a better allocation of Balancing Gas costs to causers.



		<p>Balancing Gas actions taken by the Balancing Operator on a Day;</p> <ul style="list-style-type: none"> <li>• Minor amendments to the section dealing with “Forced” Operational Imbalances but still provides Welded Parties with the opportunity to make an Incentives Pool Claim if they are unable to off-take up to the Scheduled Quantity for the Day. The amount that a Welded Party can claim is limited by a quantity cap.</li> </ul>	
13	Peaking	<p>Amendments section 13 to reflect that:</p> <ul style="list-style-type: none"> <li>• Peaking Limits at each Welded Point will be set on a percentage to HSQ basis only</li> <li>• Welded Parties will not be relieved from liability from Peaking in the event of a FM Event, Contingency Event, Pipeline Contingency Event, or Maintenance.</li> </ul>	<p>The proposed amendments to section 13 are relatively minor.</p> <ul style="list-style-type: none"> <li>• The proposal to set the Peaking Limit at each Welded Point as a percentage Hourly Scheduled Quantity is designed to simplify the determination as to whether there has been excess Peaking at a Welded Point for any Hour.</li> <li>• The proposed amendment also seeks to remove any doubt that the Peaking Limit at each Welded Point can fluctuate over the course of a Day and is not limited to a Peaking Limit set at the Changed Provisional Cycle Nomination time.</li> <li>• The proposed amendment to delete the provisions which provide for relief from liability for exceeding the Peaking Limit in the event of a Force Majeure Event, Contingency Event, Pipeline Contingency Event or Maintenance, reflects that parties are required to balance (within Peaking Limits) throughout the day and are responsible for costs if they do not and in that sense reflects the causer pays principle whereby</li> </ul>

			parties which cause the requirement for Call Balancing Gas are required to pay the costs that are incurred without exception.
14	Incentives Pool	Amendments to the Incentives Pool regime under section 14 to reflect that the Balancing Operator's Incentives Pool claim is limited to the extent of Call Balancing Gas costs not recovered under the back-to-back cash-out mechanism under section 12.	<p>The proposed amendments to section 14 are relatively minor and reflect the following principles:</p> <ul style="list-style-type: none"> <li>• The Balancing Operator may not recover all of its costs under the back to back to back cash-out mechanism and should therefore be entitled to seek to recover the residual Balancing Gas costs from Welded Parties that have Excess Daily Imbalances or exceed the Peaking Limit.</li> <li>• Section 14 maintains Welded Parties' right to make claims (subject to a cap) on the Incentives Pool when they are unable to off-take to the Scheduled Quantity at their Welded Point.</li> </ul>
15	Interruptions	Consequential amendments to section 15 to reflect amendments to the Mismatch, Operational Imbalance and Peaking regimes.	The amendment to section 15.9 is consistent with other proposed amendments and reflect that Shippers and/or Welded Parties will be subject to the processes under sections 11 (Mismatch), 12 (Operational Imbalance) and/or 13 (Peaking) respectively if MDL releases the Contingency Volume to support events under 15.1 and/or 15.2.
17.	Gas Specification	Amendments to section 17.22 (c) to remove references to the Maui Legacy Contracts.	The proposed amendment seeks to remove provisions that are now redundant as a result of the expiry of the Maui Legacy Contracts.
18	Maintenance	Deletion of section 18.13 which provides for Welded Party relief from Peaking liability during unscheduled Maintenance.	The proposed amendment deletes the provisions which provide Welded Parties with relief from liability for exceeding the Peaking Limit in the event of a Force

			Majeure Event, Contingency Event, Pipeline Contingency Event or Maintenance. This reflects that parties are required to balance (within Peaking Limits) throughout the day and are responsible for costs if they do not and in that sense reflects the causer pays principle whereby parties who cause the requirement for Call Balancing Gas are required to contribute to the associated costs without exception.
19	Fees	Amendment to provide for the insertion of Tariff 3 to cover the Balancing Operator's unrecovered balancing costs.	<p>The proposed amendment providing for the insertion of Tariff 3 is that the Balancing Operator will incur costs which may not be recoverable under the proposed amendment to sections 12 (back to back cash-outs) and under section 14 (Incentives Pool).</p> <p>Tariff 3 will be charged to Shippers on the same basis that Tariff 2 is currently charged as an operational cost, except that Tariff 3 will be determined monthly in arrears. Currently, the Balancing Operator's operational costs are recovered under Tariff 2 so it is not expected that costs to Shippers will increase as result of the introduction of the new tariff.</p>
20	Prudential Requirements	Amend section 20.3 to reflect that the "independent auditor" referred to is not the Independent Auditor as defined in section 1.	The definition of Independent Auditor in section 1 relates to the auditor appointed to audit the Incentives Pool and the Balancing Operator. The proposed amendment reflects that is not necessary for the same independent auditor to certify a Welded Party's or a Shipper's credit worthiness.
21	Invoicing and Payment	<p>Amend the invoicing procedure to provide for recovery of the Balancing Operator's costs from Shippers under the proposed Tariff 3.</p> <p>There are also changes to section 21.11 to provide that Invoiced Parties must pay the full amount of any</p>	The proposed amendments to the invoicing procedures under section 21 are necessary in order to reflect proposed amendments to other provisions which provide the basis for either MDL issuing Monthly Invoices or Charges. These include cost recovery of Balancing Gas cost from Shippers under Tariff 3 where the sections 12

		<p>Invoiced amount before they have the right to dispute the Invoice.</p> <p>Deletion of provisions in section 21.13 relating to the Maui Legacy Gas contracts which are now redundant.</p>	<p>(Operational Imbalance) and 14 (Incentives Pool) do not provide for full recovery of Balancing Gas costs.</p> <p>The proposed amendment for disputing Invoiced amounts to reflect “pay now, dispute later” principles is to provide a greater incentive on the disputing parties to actively engage in the dispute resolution process and provide for greater efficiency in relation the resolution of the underlying dispute.</p> <p>Finally, the proposed amendments to sections 21.12 and 21.13 reflect proposed amendments to the Dispute Resolution procedure under section 23.</p>
23	Dispute Resolution	Amendments to sections 23.5 and 23.6 to reflect that Invoices must be paid before any Dispute Notice can be issued by a Party.	The proposed amendments are relatively minor to reflect the pay now dispute later principle.
24	Confidentiality	Consequential amendments to reflect the Balancing Operator’s rights and obligations with respect to Confidential Information and also the redundancy of provisions relating to Maui Legacy Gas contracts.	The proposed amendments to section 24 are consequential to other proposed amendments in this Change Request Application.
27	Force Majeure	Amendments to section 28.4 and the deletion of section 28.16 relating to the Maui Legacy Gas contracts.	The proposed amendments reflect the also the redundancy of provisions relating to Maui Legacy Gas contracts.
29	Modifications to MPOC	Amendments to provide for “Transitional Provisions” in relation to the implementation of MPOC changes.	The proposed amendment seeks to provide for a transitional process to introduce MPOC amendments resulting from a Change Request, if needed.
38	Privity of Contract	Deletion of provisions relating to the Maui Legacy Gas contracts.	The proposed amendments reflect the redundancy of provisions relating to Maui Legacy Gas contracts.
Schedule 4	Confidentiality Protocols	Amendments to the Confidentiality Protocols to reflect the Balancing Operator’s rights and obligations with	The proposed amendment is consequential and reflects the proposed amendment to change the Balancing

		respect to Confidential Information.  Amendments to remove references to the Maui Legacy Gas contract arrangements.	Agent to the “Balancing Operator”.  The other proposed amendment reflects the redundancy of provisions relating to Maui Legacy Gas contracts.
Schedule 5	IT Requirements	Amendments to extend IT requirements to the BGX.	The proposed amendments are consequential to and reflect the proposed amendments to sections 3 (Balancing Principles) and 4 (MDL IX) as they relate to the BGX.
Schedule 7	DOIL and Peaking Limits	Amendments to Schedule 7 as follows: <ul style="list-style-type: none"> <li>• refers only to the Peaking Limits as a percentage of HSQ;</li> <li>• removes references to the Daily Operational Imbalance Limits;</li> <li>• Updates to provide for new Welded Points</li> </ul>	The proposed amendments reflect the simplification the process for determining whether a Welded Party has exceeded its Peaking Limit for any Hour.  The proposed amendment also reflects that all Welded Parties will have a Daily Operational Imbalance Limit equal to 3 percent of Scheduled Quantity which means that there is no need for these limits to be referred to in a Schedule.  The Peaking Limits and Daily Operational Imbalance Limit are deemed to be zero if an Operational Flow Ordered is issued to a Welded Party on a day.
Schedule 8	Peaking Limits	Updated to include all Welded Points and that the Peaking Limit at Welded Point will 125 % of HSQ.  Deletion of the “Daily Operational Imbalance Limits”.	The changes to the Peaking Limits are to provide greater consistency across all Welded Points.  The deletion of the Daily Operational Imbalance Limits schedule is on account of the proposed amendment to the definition in section 1.
Schedule 10	Tariff Principles	The insertion of Tariff 3 for recovery of Balancing Operator costs and consequential amendments to Tariff 2 under Schedule 10.	The proposed amendment reflects that the Balancing Operator’s recovery of Balancing Gas costs under Tariff 3 will be separate and distinct from the recovery of MDL’s other operational expenditure under Tariff 2. Tariff 3 will be determined monthly in arrears, and used to

			recover costs not recovered from Welded Parties under section 12 (Back to back cash-outs) and section 14 (Incentives Pool).
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