

APPLICATION FOR GAS INDUSTRY COMPANY'S RECOMMENDATION ON PROPOSED AMENDMENTS TO THE MAUI PIPELINE OPERATING CODE

Date of Application: 28 March 2013
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1. Introduction

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

- (a) details of the amendments to the Maui Pipeline Operating Code (**MPOC**) proposed by the Applicant; and
- (b) the reasons for the proposed amendments.

1.2 A marked up copy of the MPOC showing the Applicant's proposed amendments is enclosed. The copy of the MPOC provided incorporates the changes made by the Cycle Time Change Request which is due to be implemented in April 2013.

1.3 In making this application, the Applicant has taken into account:

- (a) the MPOC Change Request, dated 13 October 2011 (**B2B Change Request**);
- (b) the status of various legacy agreements, including the Maui Gas Contract, the Methanex 20/20 Agreement, the Settlement and Umbrella Agreement and the User Contract; and
- (c) the accuracy and usability of various MPOC provisions in their current form.

1.4 The Applicant considers the proposed amendments clarify various aspects of the MPOC. The changes proposed are relatively minor and, in the Applicants opinion, should be uncontroversial.

2. Application of Arm's Length Operation requirements in the Confidentiality Protocol to the System Operator

2.1 Currently the ring fencing requirements of the MPOC apply to the Technical Operator and the Commercial Operator but not the System Operator (Schedule 4, clause 8). This is an unintentional omission: there is no reason why the System Operator is exempt from these ring fencing provisions.

2.2 The Confidentiality Auditor appointed for the 2012 Annual Audit under Schedule 4, clause 7.2 of the MPOC recommended amendment to clause 8 of the Confidentiality Protocol to make it clear that the provisions in that paragraph expressly apply to the System Operator (as well as to the Commercial Operator and the Technical Operator).¹

2.3 The Applicant considers this to be an entirely reasonable recommendation and has proposed this change be made to the MPOC. For efficiency, the Applicant considered what other changes could be made to improve the accuracy and usability of the MPOC and has collated all identified in this "Clean Up Change Request".

2.4 Four categories of other changes are proposed: legacy related issues, Welded Party/Welded Point inaccuracies, errors and miscellaneous changes.

¹ See paragraph 13.2 of the 2012 Confidentiality Protocol Audit, available on the 'Publications' section of OATIS.

3. **Legacy related issues**

3.1 Many of the changes proposed relate to now unnecessary legacy definitions and provisions. These definitions and provisions are superfluous and may be confusing to users of the MPOC who are unfamiliar with the status of the relevant agreements (as set out below):

- (a) Maui Gas Contract – no longer in force;
- (b) Methanex 20/20 Agreement - no longer in force;
- (c) User Contract – the agreements relate to sale of legacy gas by the Crown and are no longer in force;
- (d) Umbrella and Settlement Agreement - no longer relevant.

3.2 Although the Methanex 20/20 Agreement is no longer in force, some references to this document will remain in the MPOC. This is because metering owned by Methanex located at or near its Bertrand Road Welded Point may continue to be operated, tested and maintained in accordance with the requirements of the Methanex 20/20 Agreement.

4. **Welded Party/Welded Point Inaccuracies**

4.1 Various parts of the MPOC inaccurately refer to the Welded Party as having an Accumulated Excess Operational Imbalance (**AEOI**) and a Running Operational Imbalance (**ROI**) etc. It is more accurate to say that the Welded Point that has the AEOI and ROI (not the Welded Party). The Applicant considers these proposed changes will improve the accuracy of the MPOC.

5. **Errors**

5.1 This category is the correction of errors (e.g. spelling and grammar).

6. **Miscellaneous amendments**

6.1 The remainder of the changes proposed are minor corrections or updates proposed to ensure the MPOC is as accurate and usable as possible.

7. **General**

7.1 The Applicant considers that all of the proposed amendments comply with the Commerce Act 1986 and all other relevant laws.

7.2 GIC can assume that the Applicant supports the proposed amendments. However, the Applicant acknowledges that the parties to ICAs and TSAs have the right to make submissions to GIC in relation the proposed amendments. The Applicant will give consideration to the proposed amendments in light of the submissions that are received.

7.3 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.

Summary of Proposed Amendments

Key

Unnecessary legacy related definitions and provisions	These definitions and provisions are now superfluous and may be confusing to users of the MPOC who are unfamiliar with the status of the relevant legacy agreements.
Welded Point/Welded Party inaccuracies	Various parts of the MPOC inaccurately refer to the Welded Party as having an AEOI and ROI (etc). The Welded Point has the AEOI and ROI (not the Welded Party).
Errors	Inconsequential correction of errors – spelling and grammar, broken cross references etc.
Miscellaneous	Miscellaneous changes and updates submitted to ensure the MPOC is as accurate and usable as possible.

Number	Section	Issue	Proposed Change	Rationale for Proposed Change
1	1.1	Accuracy	Amend the definition for “Accumulated Excess Operational Imbalance” to refer to a Welded Point rather than a Welded Party.	The Welded Point has the AEOI and the ROI not the Welded Party.
2	1.1	Irrelevant legacy related definition	Delete the definition for “Buyer”.	The Maui Gas Contract is no longer in force and subsequent references to Buyer have been deleted.
3	1.1	Correction	Amend the definition for “Excess Daily Imbalance” by inserting space between “the” and “Trading Hub”.	Current definition reads “theTrading Hub”.
4	1.1	Redundant definition	Delete the definition for “Full Open Access Date”	This definition is not used in the MPOC.
5	1.1	Accuracy	Amend the definition for “Imbalance Limit Overrun Notice” (ILON) to stipulate that an ILON is given to a Welded Party requiring it to reduce an AEOI at a Welded Point.	The Welded Point has the AEOI not the Welded Party.

Number	Section	Issue	Proposed Change	Rationale for Proposed Change
6	1.1	Irrelevant legacy related definition	Delete the definition for "Maui Gas".	Maui Gas is no longer delivered and subsequent references to Maui Gas have been deleted.
7	1.1	Irrelevant legacy related definition	Delete the definition for "Maui Gas Contract".	The Maui Gas Contract is no longer in force and subsequent references to Maui Gas Contract have been deleted.
8	1.1	Irrelevant legacy related definition	Delete the definition for "Maui Legacy Contract".	The Maui Gas Contract and the Methanex 20/20 Agreement are no longer in force, and the Umbrella and Settlement Agreement is no longer relevant. Subsequent references to these agreements have been deleted (with the exception of references to the Methanex 20/20 in relation to the metering requirements for Methanex).
9	1.1	Irrelevant legacy related definition	Delete the definition for "Maui Legacy Gas".	The Maui Gas Contract and the Methanex 20/20 Agreement are no longer in force and subsequent references to Maui Legacy Gas have been deleted.
10	1.1	Accuracy	Correction of mistake in website address for in the definition for "MDL IX". Replace "." with ":" after http.	Self-explanatory.
11	1.1	Irrelevant legacy related definition	Delete reference to "Maui Gas" from definition for "Physical Welded Point".	There is no need to make express reference to the Maui Gas production station (the Oaonui production station is already included in the first half of the definition – "any point at which there is a connection between the Maui Pipeline and the infrastructure of a Welded Party").
12	1.1	Correction	Replace reference to section 12.8 with section 12.17 in definition of Running Operational Imbalance. Deletion of unnecessary space in reference to "(b)(i)"	The definition incorrectly refers to section 12.8 instead of section 12.17.

Number	Section	Issue	Proposed Change	Rationale for Proposed Change
13	1.1	Accuracy	Amend definition of “Running Operational Imbalance Limit” (ROIL) to refer to a Welded Point rather than a Welded Party. ROIL should not be plural.	The Welded Point has the ROIL not the Welded Party.
14	1.1	Irrelevant legacy related definition	Delete definition for “Settlement and Umbrella Agreement”.	Gas is no longer delivered under this contract and all subsequent references to “Settlement and Umbrella Agreement” have been deleted.
15	1.1	Irrelevant legacy related definition	Delete definition for “User Contract”.	These agreements are no longer in force and all subsequent references to “User Contract” have been deleted.
16	2.9	Accuracy	Amend “its Peaking Limit” to “a Peaking Limit” (of a Welded Party).	Peaking Limits only apply to Welded Points. There are no limits for a Welded Party in aggregate.
17	3.2	Unnecessary legacy provision	Delete section 3.2. Change title of section 3 to “Right to Use Pipeline”.	Section 17.22(c) (Maui Mining Companies’ liability under Maui Legacy Contracts) has been deleted making section 3.2 meaningless. Consequently the title of section “Maui Legacy Contracts” needs changing.
18	4.1 - Throughput Charges	Unnecessary duplication	Replace “By 31 July for the immediately following year commencing 1 October.” with “In accordance with section 19.9”.	Section 19.9 specifies the requirements MDL has to meet.
19	4.1 - Records and accounts and Independent Auditor’s report of the Incentives Pool Account	Timing for posting this information does not accord with current practice.	Change the frequency of posting from “60 days of the end of each Year” with “By 31 March in each calendar year”.	Updated to accord with current practice – the report is currently published within a couple of months of each calendar year (i.e. during February), rather than each MPOC “Year” (the “365 ... days commencing ... on the 30 th day of September”). This section should be changed to accord with current practice as the relevant financial information would not be complete within 60 days of each

Number	Section	Issue	Proposed Change	Rationale for Proposed Change
				"Year" as MDL's financial year end is 31 December.
20	4.1 - Intra-Day Nomination Deadlines	Empty footnote	Delete empty footnote.	Self-evident.
21	4.1 - Running Operational Imbalance for each Welded Point	Spelling error	Correct the spelling of unvalidated (previously "unvaildated").	Self-evident.
22	4.3	Accuracy	Insert "applicable to that Welded Party" after "information" in section 4.3.	Welded Parties can see different information and may not see the entire list.
23	6.3	Accuracy	Add reference to section 12.11 at end of section 6.3.	Title to gas can transfer to MDL under section 12.11 (cash outs) too. The addition "or section 12.11 (as applicable)" will be replaced by the B2B Change Request (the B2B Change Request adds "or section 12.10(b)(iv) or section 12.12(a)(ii)" to the end of the paragraph).
24	12.7	Accuracy	Add "that is not a Small Station" to make it clear that Incentive Pool Debits cannot be incurred by Small Stations.	Because Small Stations cannot have an Excess Daily Imbalance because they do not have a Daily Operational Imbalance Limit.
25	12.10	Accuracy	Replace Welded Party with "Welded Point" and insert "of that Welded Point" after "Welded Party" and insert "for that Welded Point" after the ILON.	It is the Welded Point that has the AEOI and the Welded Party is given an ILON in respect of the AEOI at its Welded Point.
26	12.11	Accuracy	Insert "for a Physical Welded Point" after ILON.	A Physical Welded Party receives an ILON for an AEOI at its Physical Welded Point.
27	13.3	Correction	Delete "an" in front of "Incentives Pool Debits" in	Grammar correction.

Number	Section	Issue	Proposed Change	Rationale for Proposed Change
			opening sentence.	
28	14.1	Peaking applies to Welded Points	Change “its Peaking Limit” to “a Peaking Limit” (of a Welded Party) in opening sentence.	Peaking Limits only apply to Welded Points. There are no limits for a Welded Party in aggregate.
29	14.7	Accuracy	Amend section to provide that the annual report for Incentives Pool transactions is published “by 31 March each calendar year” rather than “within 60 days of the end of each Year”.	Practice has been for the annual audit for Incentives Pool transactions to take place in the first quarter of each calendar year. However section 14.7 requires the annual report to be published within 60 days of each “Year”, “Year” being defined as “a period...commencing...on the 30 th day of September in each Year”. This section should be changed to accord with current practice as the relevant financial information would not be complete within 60 days of each “Year” as MDL’s financial year end is 31 December.
30	15.1(b)(v)	Unnecessary legacy reference	Remove words “including the Buyer” from 15.1(b)(v).	There is no longer a “Buyer” of Maui Gas under the MPOC.
31	16.1	Unnecessary metering provision	Delete detail regarding who meters are owned by and whose Metering will be used where MDL is not the Metering Owner. Replace with “Gas quantities injected into or delivered from the Maui Pipeline at a Welded Point shall be determined with Metering from the Metering Owner at that Welded Point”.	It is not necessary to specify this in the main body of the MPOC. Metering owners are specified in Schedule 8 and can change. Insert sentence to clarify that Gas at each Welded Point (whether the Welded Party at that Welded Point is MDL or another party) is measured by the Metering of the Metering Owner at that Welded Point.
32	16.2	Unnecessary metering exemption	Delete metering exemption for MDL.	MDL’s metering now complies with Schedule 1. As such, MDL no longer needs to rely on its metering exemption set out in sections 16.2 and 16.5.
33	16.5	Unnecessary metering exemption	Delete metering exemption for MDL.	MDL’s metering now complies with Schedule 1. As such, MDL no longer needs to rely on its metering exemption set

Number	Section	Issue	Proposed Change	Rationale for Proposed Change
				out in sections 16.2 and 16.5.
34	17.22(b)	Unnecessary legacy reference	Delete MDL indemnity to Shippers for any liability incurred under an agreement for the sale and/or delivery of Gas that was entered into before 1 June 2005, to the extent that: (i) such liability arises as a result of a Non-Specification Gas that passed through the Maui Pipeline being delivered to a party under that agreement; and (ii) such Shipper is not the Welded Party that injected the Non-Specification Gas into the Maui Pipeline; and (iii) such Shipper does not have a valid sale and purchase agreement for Gas with the party who injected the Non-Specification Gas and a right to relief in respect of that Non-Specification Gas delivery under that agreement	There are not believed to be any Shippers still with this status.
35	17.22(c)	Unnecessary legacy reference	Delete MDL indemnity to the MMCs.	This indemnity applies to gas delivered to the Buyer or Methanex under the Maui Legacy Contracts. These contracts are no longer in force and so the indemnity is meaningless and can be removed.
36	19.2	Unnecessary legacy reference	Delete notional application of Tariff 1 and Tariff 2 to Maui Gas.	Maui Gas is no longer delivered under the MPOC.
37	20.7	Correction	Reinsert cross reference.	The cross reference to this is broken so in the current MPOC this appears as “under this section 0 shall be Confidential Information” instead of “under section 20.7”.

Number	Section	Issue	Proposed Change	Rationale for Proposed Change
38	21.13	Unnecessary legacy reference	Delete paragraph providing right to reopen invoice if a dispute arises under the Maui Gas Contract, a User Contract or Methanex 20/20.	The Maui Gas Contract, the User Contracts and the Methanex 20/20 Agreement are no longer in force.
39	24.2(a)	Unnecessary legacy reference	Delete right to disclose confidential information where reasonably required to meet the obligations of the Maui Mining Companies pursuant to the Maui Gas Contract or the Methanex 20/20 Agreement or the Settlement and Umbrella Agreement.	The Maui Gas Contract and the Methanex 20/20 Agreement are no longer in force, and the Umbrella and Settlement Agreement is no longer relevant.
40	24.5	Correction	Delete reference to section 24.2(a).	The exceptions for the disclosure of confidential information currently apply to section 24.2 and 24.2(a). The inclusion of section 24.2 as a whole makes the reference to section 24.2(a) superfluous.
41	28.4	Unnecessary legacy reference	Remove references to section 17.22(c) (indemnity applying to gas delivered to the Buyer or Methanex under the Maui Legacy Contracts).	This change request proposes to remove section 17.22(c) for the reasons outlined above and the reference to section 17.22(c) should therefore be removed from this section also.
42	28.16	Unnecessary legacy reference	Delete reference to liability remaining under the Settlement and Umbrella Agreement, Maui Gas Contract, Methanex 20/20, any User Contract or otherwise to another Party in respect of Maui Legacy Gas.	The Maui Gas Contract and the Methanex 20/20 Agreement are no longer in force, and the Umbrella and Settlement Agreement is no longer relevant.
43	29.4(iv)	Unnecessary legacy reference	Delete right for MDL to withhold its consent if a change request would breach the provisions of a Maui Legacy Contract.	The Maui Legacy Contracts are no longer in force.
44	30.3	Outdated provision	Amend section to allow for email notices by inserting "or email addressed to the address	The notice provisions in the MPOC should provide for more

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			supplied by a Party for the purpose of notices,” after registered mail in the list of means of providing notices under the MPOC or an ICA or TSA.	modern means of communicating notices.
45	30.4	Outdated provision	Amend section 30.4 to provide for when notice by email is deemed to be received.	This change request proposes section 30.3 be changed to allow notices to be able to be given by email. Section 30.4 should consequently provide for when a notice given by email is deemed to be received.
46	38.1	Unnecessary legacy reference	Delete the phrase “Subject to section 38.2”.	This change request proposes section 38.2 be deleted. As such, section 38.1 cannot be subject to section 38.2.
47	38.2	Unnecessary legacy reference	Delete section 38.2 which explains who can enforce section 17.22(c).	This change request proposes section 17.22(c) be deleted. As section 38.2 only relates to section 17.22(c) it should also be deleted.
48	Schedule 1, 2.1	Unnecessary metering exemption	Delete reference to MDL’s exemption from Schedule 1.	MDL’s metering now complies with Schedule 1. As such MDL no longer needs to rely on its metering exemption set out in sections 16.2 and 16.5.
49	Schedule 1, 2.1	Correction	Replace reference to section 16.6 with reference to section 16.5.	Schedule 1, 2.1 incorrectly refers to section 16.6 rather than section 16.5.
50	Schedule 2	Correction to numbering	Replace the second point “4” with “5”, and the “5” with “6”.	The Schedule has a duplicate of point “4” in the numbering.
51	Schedule 4, 4.2	Unnecessary legacy reference	Delete reference to Maui Legacy Gas.	Maui Legacy Gas is no longer shipped.
52	Schedule 4, 8.1	Correction	Update ring fencing requirements to apply to the System Operator also by inserting “System Operator” before “Technical Operator” as	The specific inclusion of the System Operator will make it clear that the provisions in that paragraph expressly apply to the System Operator (as well as to the Commercial

Number	Section	Issue	Proposed Change	Rationale for Proposed Change
			appropriate.	Operator and the Technical Operator). This recommendation made by the Confidentiality Auditor appointed for 2012 Annual Audit under Schedule 4, 7.2.
53	Schedule 5	Accuracy of information under Conditions of Access and Use of MDL IX	Delete reference to the Maui Pipeline website and replace with the MDL IX.	MDL IX is defined by reference to webpage http://mauipipeline.co.nz/ . Using the defined term "MDL IX" is more efficient.
54	Schedule 5	Outdated provision under Conditions of Access and Use of MDL IX	Remove paragraph 2 under the heading "Linking to and from this Site"	The provision is outdated and attempting to enforce it could be difficult.
55	Schedule 10	Corrections	Replace "is more or less that is required" with "is more or less than is required" twice in paragraphs 3 and 5 of the Schedule.	The Schedule incorrectly uses the word "that" instead of "than" in two places.