

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

Date of application: 8 May 2008

Applicant: Maui Development Limited

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Brief description of Proposed Amendments

This Change Request sets out a series of amendments to the Operating Code which MDL considers to be relatively minor in nature and which are aimed at improving the Operating Code in its current form. MDL considers that the amendments in this Change Request will not adversely interfere with Parties' existing rights and obligations contained under the Operating Code.

1. Introduction

1.1 In accordance with the standard "Recommendation Request form" issued by the Gas Industry Company Limited (the **GIC**), this Change Request by MDL (the **Applicant**) includes:

- (a) details of the amendments to the Operating Code proposed by the Applicant (the **Proposed Amendments**);
- (b) the reasons for the Proposed Amendments;
- (c) the Applicant's assessment of the effect of the Proposed Amendments on:
 - (i) the rights and obligations of parties to ICAs and TSAs; and
 - (ii) the operation of the Maui Pipeline;
- (d) the Applicant's assessment of how and why the Proposed Amendments are 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 Operating Code), non-preferential;
 - (ii) the bi-lateral contractual relationships between parties to ICAs and TSAs;
 - (iii) any relevant Government policy requirements; and
 - (iv) any relevant objective of the kind referred to in paragraph 2.3 of the Memorandum of Understanding between the GIC and MDL dated 5 October 2006 (the **Memorandum of Understanding**);

- (e) the Applicant's assessment of what costs and benefits the Proposed Amendments will bring to MDL, other parties and other industry participants; and
- (f) the Applicant's opinion on how the Proposed Amendments comply with the Commerce Act and other relevant law.

1.2 In this Change Request, unless otherwise stated:

- (a) each capitalised term used has the meaning given to it in the Operating Code; and
- (b) each section reference refers to a section of the Operating Code.

1.3 The Proposed Amendments are set out in the mark-up of the Operating Code attached to this Change Request.

2. DETAILS OF THE PROPOSED AMENDMENTS

Proposed Amendment	Operating Code Section	Subject	Change request detail
1.	1.1	Incentives Pool	<p>(a) Deletion of “by MDL” in the definition of “Incentives Pool.</p> <p>(b) The reference to MDL in the definition is confusing. The Commercial Operator is the Incentives Pool Trustee and all other references in the Operating Code to the Incentives Pool describe obligations of the Incentives Pool Trustee.</p> <p>(c) MDL assesses that the Proposed Amendment will not affect:</p> <ul style="list-style-type: none"> (i) the rights and obligations of Parties to ICAs and TSAs; or (ii) the operation of the Maui Pipeline. <p>(d) The Proposed Amendment is consistent with:</p> <ul style="list-style-type: none"> (i) dealings between the Applicant and users of the Maui Pipeline being transparent, commercial, at arm’s length and non preferential as between MDL and users of the Maui Pipeline; (ii) the bi-lateral contractual relationships between parties to ICAs and TSAs; (iii) any Government policy requirements; and (iv) any relevant objective of the kind referred to in paragraph 2.3 of the Memorandum of Understanding. <p>(e) The benefit of the Proposed Amendment is to remove ambiguity from a definition. There are no cost implications.</p> <p>(f) The Proposed Amendment will not contravene the Commerce Act or any other relevant law.</p>
2.	2A	Early Open	<p>(a) The removal of Section 2A in full.</p>

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		Access	<p>(b) Section 2A can be deleted on the basis that the “Early Open Access” period has passed.</p> <p>(c) MDL assesses that the Proposed Amendment will not affect:</p> <ul style="list-style-type: none"> (i) the rights and obligations of Parties to ICAs and TSAs; or (ii) the operation of the Maui Pipeline. <p>(d) The Proposed Amendment is consistent with:</p> <ul style="list-style-type: none"> (i) dealings between the Applicant and users of the Maui Pipeline being transparent, commercial, at arm’s length and non preferential as between MDL and users of the Maui Pipeline; (ii) the bi-lateral contractual relationships between parties to ICAs and TSAs; (iii) any Government policy requirements; and (iv) any relevant objective of the kind referred to in paragraph 2.3 of the Memorandum of Understanding. <p>(e) The benefit of the Proposed Amendment is to remove a section of the Operating Code that is no longer used in the Operating Code. There are no cost implications.</p> <p>(f) The Proposed Amendment will not contravene the Commerce Act or any other relevant law.</p>
3.	4.1	Intra Day Nomination dead lines	<p>(a) The removal of footnote 3 relating to the proposed Intra-Day Nomination times.</p> <p>(b) The reference is no longer applicable and could lead to unnecessary confusion about the Intra-Day Nomination times.</p> <p>(c) MDL assesses that the Proposed Amendment will not affect:</p> <ul style="list-style-type: none"> (i) the rights and obligations of Parties to ICAs and TSAs; or

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			<p>(ii) the operation of the Maui Pipeline.</p> <p>(d) The Proposed Amendment is consistent with:</p> <ul style="list-style-type: none"> (i) dealings between the Applicant and users of the Maui Pipeline being transparent, commercial, at arm’s length and non preferential as between MDL and users of the Maui Pipeline; (ii) the bi-lateral contractual relationships between parties to ICAs and TSAs (iii) any Government policy requirements; and (iv) any relevant objective of the kind referred to in paragraph 2.3 of the Memorandum of Understanding. <p>(e) The benefit of the Proposed Amendment is to remove an incorrect statement about when Intra-Day Nomination deadlines will be. There are no cost implications.</p> <p>(f) The Proposed Amendment will not contravene the Commerce Act or any other relevant law.</p>
4.	4.2	Shipper information	<p>(a) Amend the table under section 4.2 by adding a row as follows:</p> <p>Information: <i>Nominated Quantities that have been confirmed by Welded Parties.</i></p> <p>Frequency of Posting: <i>One hour before the deadline for MDL to post the applicable Approved Nomination.</i></p> <p>(b) This amendment confirms information that is currently available to Shippers in OATIS.</p> <p>(c) MDL assesses that the Proposed Amendment will not affect:</p> <ul style="list-style-type: none"> (i) the rights and obligations of Parties to ICAs and TSAs; or (ii) the operation of the Maui Pipeline.

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			<p>(d) The Proposed Amendment is consistent with:</p> <ul style="list-style-type: none"> (i) dealings between the Applicant and users of the Maui Pipeline being transparent, commercial, at arm's length and non preferential as between MDL and users of the Maui Pipeline; (ii) the bi-lateral contractual relationships between parties to ICAs and TSAs; (iii) any Government policy requirements; and (iv) any relevant objective of the kind referred to in paragraph 2.3 of the Memorandum of Understanding. <p>(e) The benefit of the Proposed Amendment is to align section 4.2 with MDL's current practice. There are no cost implications.</p> <p>(f) The Proposed Amendment will not contravene the Commerce Act or any other relevant law.</p>

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5.	8.8, 8.9 and 8.11	Provisional and Change Provisional Nomination deadlines	<p>(a) Extend the deadlines for Shippers to submit their Nominated Quantities during the Provisional and Changed Provisional Cycles in sections 8.8 and 8.11 from 2.00pm to 4.00pm. A consequential change is required to section 8.9.</p> <p>(b) The Proposed Amendment would allow Shippers more time to make decisions in relation to their nominations and provide greater accuracy but at the same time will allow Shippers to continue to submit their Nominated Quantities by 2pm if they do not wish to change their current processes for making Nominated Quantities.</p> <p>(c) MDL assesses that the Proposed Amendment will not affect:</p> <ul style="list-style-type: none"> (i) the rights and obligations of Parties to ICAs and TSAs; or (ii) the operation of the Maui Pipeline. <p>(d) The Proposed Amendment is consistent with:</p> <ul style="list-style-type: none"> (i) dealings between the Applicant and users of the Maui Pipeline being transparent, commercial, at arm's length and non preferential as between MDL and users of the Maui Pipeline; (ii) the bi-lateral contractual relationships between parties to ICAs and TSAs; (iii) any Government policy requirements; and (iv) any relevant objective of the kind referred to in paragraph 2.3 of the Memorandum of Understanding. <p>(e) The benefit of the Proposed Amendment is to align sections 8.8 and 8.11 with MDL's current practice. There are no cost implications.</p> <p>(f) The Proposed Amendment will not contravene the Commerce Act or any other relevant law.</p>

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6.	8.16	Intra-day cycle confirmations	<p>(a) Delete the word “confirmed” in section 8.16 and replace with “approved”.</p> <p>(b) The Proposed Amendment will ensure that section 8.16 is consistent with “Approved Nominations” terminology throughout the Operating Code. Welded Parties “confirm” nominations and MDL “approves” nominations.</p> <p>(c) MDL assesses that the Proposed Amendment will not affect:</p> <ul style="list-style-type: none"> (i) the rights and obligations of Parties to ICAs and TSAs; or (ii) the operation of the Maui Pipeline. <p>(d) The Proposed Amendment is consistent with:</p> <ul style="list-style-type: none"> (i) dealings between the Applicant and users of the Maui Pipeline being transparent, commercial, at arm’s length and non preferential as between MDL and users of the Maui Pipeline; (ii) the bi-lateral contractual relationships between parties to ICAs and TSAs (iii) any Government policy requirements; and (iv) any relevant objective of the kind referred to in paragraph 2.3 of the Memorandum of Understanding. <p>(e) The benefit of the Proposed Amendment is to remove any confusion about use of the terms “confirm” and “approve”. There are no cost implications.</p> <p>(f) The Proposed Amendment will not contravene the Commerce Act or any other relevant law.</p>

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7.	12.5	Operational Imbalances	<p>(a) Amend the reference to “Stationby” so as to read “Station by” in the 4th line of section 12.5</p> <p>(b) It is clear that this is a typographical error.</p> <p>(c) MDL assesses that the Proposed Amendment will not affect:</p> <ul style="list-style-type: none"> (i) the rights and obligations of Parties to ICAs and TSAs; or (ii) the operation of the Maui Pipeline. <p>(d) The Proposed Amendment is consistent with:</p> <ul style="list-style-type: none"> (i) dealings between the Applicant and users of the Maui Pipeline being transparent, commercial, at arm’s length and non preferential as between MDL and users of the Maui Pipeline; (ii) the bi-lateral contractual relationships between parties to ICAs and TSAs; (iii) any Government policy requirements; and (iv) any relevant objective of the kind referred to in paragraph 2.3 of the Memorandum of Understanding. <p>(e) The benefit of the Proposed Amendment is to remove a typographical error. There are no cost implications.</p> <p>(f) The Proposed Amendment will not contravene the Commerce Act or any other relevant law.</p>

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8.	18.1(b)		<p>(a) Replace the words “Nomintions” and “accordnace” with “Nominations” and “accordance” in section 18.1(b).</p> <p>(b) It is clear that these are typographical errors.</p> <p>(c) MDL assesses that the Proposed Amendment will not affect:</p> <ul style="list-style-type: none"> (ii) the rights and obligations of Parties to ICAs and TSAs; or (iii) the operation of the Maui Pipeline. <p>(d) The Proposed Amendment is consistent with:</p> <ul style="list-style-type: none"> (iv) dealings between the Applicant and users of the Maui Pipeline being transparent, commercial, at arm’s length and non preferential as between MDL and users of the Maui Pipeline; (v) the bi-lateral contractual relationships between parties to ICAs and TSAs; (vi) any Government policy requirements; and (vii) any relevant objective of the kind referred to in paragraph 2.3 of the Memorandum of Understanding. <p>(e) The benefit of the Proposed Amendment is to remove a typographical error. There are no cost implications.</p> <p>(f) The Proposed Amendment will not contravene the Commerce Act or any other relevant law.</p>

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9.	18.15	Maintenance of Pipeline	<p>(a) Delete the word “the” before “MDL” in the third line of section 18.15.</p> <p>(b) It is clear that this is a typographical error.</p> <p>(c) MDL assesses that the Proposed Amendment will not affect:</p> <ul style="list-style-type: none"> (i) the rights and obligations of Parties to ICAs and TSAs; or (ii) the operation of the Maui Pipeline. <p>(d) The Proposed Amendment consistent with:</p> <ul style="list-style-type: none"> (i) dealings between the Applicant and users of the Maui Pipeline being transparent, commercial, at arm’s length and non preferential as between MDL and users of the Maui Pipeline; (ii) the bi-lateral contractual relationships between parties to ICAs and TSAs; (iii) any Government policy requirements; and (iv) any relevant objective of the kind referred to in paragraph 2.3 of the Memorandum of Understanding. <p>(b) The benefit of the Proposed Amendment is to remove a typographical error. There are no cost implications.</p> <p>(f) The Proposed Amendment will not contravene the Commerce Act or any other relevant law.</p>

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10.	23.3(a)(ii)	Dispute Resolution	<p>(a) Replace the word “so” with the word “no” in the penultimate line of section 23.3(a) (ii).</p> <p>(b) It is clear that this is a typographical error that needs to be amended.</p> <p>(c) MDL assesses that the Proposed Amendment will not affect:</p> <ul style="list-style-type: none"> (i) the rights and obligations of Parties to ICAs and TSAs; or (ii) the operation of the Maui Pipeline. <p>(d) The Proposed Amendment is consistent with:</p> <ul style="list-style-type: none"> (i) dealings between the Applicant and users of the Maui Pipeline being transparent, commercial, at arm’s length and non preferential as between MDL and users of the Maui Pipeline; (ii) the bi-lateral contractual relationships between parties to ICAs and TSAs; (iii) any Government policy requirements; and (iv) any relevant objective of the kind referred to in paragraph 2.3 of the Memorandum of Understanding. <p>(e) The benefit of the Proposed Amendment is to remove a typographical error. There are no cost implications.</p> <p>(f) The Proposed Amendment will not contravene the Commerce Act or any other relevant law.</p>
11.	24.1(d)/ Schedule 4	Confidentiality	<p>(a) Amend section 24.1 as follows:</p> <p><i>24.1 MDL shall ensure and undertakes that the management of the Maui Pipeline is kept at arm’s length and separate from MDL’s businesses (other than MDL’s management of the Maui Pipeline) and its shareholders’ businesses. Without</i></p>

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			<p><i>limiting this section 24.1, MDL will ensure that:</i></p> <ul style="list-style-type: none"> <i>(a) operator and scheduling functions for the Maui Pipeline are contracted to a System Operator;</i> <i>(b) technical functions for the Maui Pipeline are contracted to a Technical Operator;</i> <i>(c) commercial functions for the Maui Pipeline, including the formation and management of balancing gas contracts, are managed by a Commercial Operator and Balancing Agent separate from MDL's businesses (other than MDL's management of the Maui Pipeline) and its shareholders' businesses;</i> <i>(d) the Commercial Operator, System Operator, Technical Operator, Balancing Agent and Incentives Pool Trustee operate at arm's length and separate from the Maui Mining Companies in accordance with the provisions set out in paragraph 8 of Schedule 4; and</i> <i>(e) it, the Commercial Operator, System Operator, Technical Operator, Balancing Agent and Incentives Pool Trustee each comply with the provisions set out in Schedule 4.</i> <p>(b) Include the "System Operator" and "Incentives Pool Trustee" in the definition of "Open Access Personnel" in paragraph 2 of the Confidentiality Protocol in Schedule 4.</p> <p>(c) Section 24.1 does not state that the technical operator functions for the Maui Pipeline are contracted to the Technical Operator. MDL considers that this is an oversight. The definition of "Open Access Personnel" under clause 2 of the Confidentiality Protocol in Schedule 4 should include the System Operator and the Incentives Pool Trustee as each are privy to Confidential Information (in the case of the System Operator, on a daily basis).</p> <p>(d) MDL assesses that the Proposed Amendments will not (other than to the extent they impose additional obligations on MDL) affect:</p> <ul style="list-style-type: none"> (i) the rights and obligations of Parties to ICAs and TSAs; or

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12.	Schedule 1, Part Three	Testing of Metering - Clause 3.2 references	<ul style="list-style-type: none"> (a) Correction of the numbering for paragraph 3 in Schedule 1 is required. (b) The Proposed Amendment needs to be made in order to rectify what appears to be a formatting error. (c) MDL assesses that the Proposed Amendment will not affect: <ul style="list-style-type: none"> (i) the rights and obligations of Parties to ICAs and TSAs; or (ii) the operation of the Maui Pipeline. (d) The Proposed Amendment is consistent with: <ul style="list-style-type: none"> (i) dealings between the Applicant and users of the Maui Pipeline being

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			<p>transparent, commercial, at arm’s length and non preferential as between MDL and users of the Maui Pipeline;</p> <ul style="list-style-type: none"> (ii) the bi-lateral contractual relationships between parties to ICAs and TSAs; (iii) any Government policy requirements; and (iv) any relevant objective of the kind referred to in paragraph 2.3 of the Memorandum of Understanding. <p>(e) The benefit of the Proposed Amendment is to ensure that the Operating Code is correctly formatted. There are no cost implications.</p> <p>(f) The Proposed Amendment will not contravene the Commerce Act or any other relevant law.</p>
13.	Paragraph 5.1 (a) (v) Schedule 4,	Confidentiality Protocols	<ul style="list-style-type: none"> (a) Replace the word “Personal” with the word “Personnel” at the end paragraph 5.1(a) (v) of Schedule 4. (b) It is clear that this is a typographical error. (c) MDL assesses that the Proposed Amendment will not affect: <ul style="list-style-type: none"> (i) the rights and obligations of Parties to ICAs and TSAs; or (ii) the operation of the Maui Pipeline. (d) The Proposed Amendment is consistent with: <ul style="list-style-type: none"> (i) dealings between the Applicant and users of the Maui Pipeline being transparent, commercial, at arm’s length and non preferential as between MDL and users of the Maui Pipeline; (ii) the bi-lateral contractual relationships between parties to ICAs and TSAs; (iii) any Government policy requirements; and

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			<p>(iv) any relevant objective of the kind referred to in paragraph 2.3 of the Memorandum of Understanding.</p> <p>(e) The benefit of the Proposed Amendment is to remove a typographical error. There are no cost implications.</p> <p>(f) The Proposed Amendment will not contravene the Commerce Act or any other relevant law.</p>