



Draft

Draft Recommendation
on the MPOC Change
Request proposed by MDL
in June 2008

Date issued: August 2008
Submissions close: 22 September 2008





About Gas Industry Co.

Gas Industry Co was formed to be the co-regulator under the Gas Act.

As such, its role is to:

- recommend arrangements, including rules and regulations where appropriate, which improve:
 - the operation of gas markets;
 - access to infrastructure; and
 - consumer outcomes;
- administer, oversee compliance with, and review such arrangements; and
- report regularly to the Minister of Energy on the performance and present state of the New Zealand gas industry, and the achievement of Government's policy objectives for the gas sector.

Authorship

This paper was prepared by Ian Wilson

Submissions close: 22 September 2008

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Introduction

Section 29 of the Maui Pipeline Operating Code (MPOC) assigns Gas Industry Co a role in respect of any proposed amendment to the MPOC (Change Request). The role involves Gas Industry Co carrying out consultation on the Change Request with the gas industry and determining whether or not to support the Change Request. A Change Request will only proceed where required by law or where Gas Industry Co makes a written recommendation to Maui Development Limited (MDL) supporting the Change Request.

Gas Industry Co has agreed a memorandum of understanding (MoU) with MDL describing how this role will be performed. The MoU sets out a process under which Gas Industry Co receives a Change Request, calls for submissions, issues a draft recommendation, considers further submissions, and finally makes a recommendation to MDL. For further information (including a copy of the MoU) please refer to Gas Industry Co's website at www.gasindustry.co.nz.

Capitalised terms used in this recommendation have the same meaning given to those terms in MPOC, unless stated otherwise.

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Current Change Request and Process to Date

On 20 June 2008 Gas Industry Co received a Change Request from MDL (June Change Request). The June Change Request sets out a series of amendments to MPOC which:

- delete those parts of MPOC that relate to Maui Legacy Gas including those provisions that relate to retrospective allocations of Maui Legacy Gas; and
- change certain parts of MPOC relating to the Taranaki Target Pressure.

Following receipt of the June Change Request Gas Industry Co has followed the process for dealing with change requests contained in the MoU. Gas Industry Co posted the June Change Request on its website on 24 June 2008 and sought submissions. Submissions were received from seven parties.

Gas Industry Co has now considered the submissions it received, including late submissions. (Although, Gas Industry Co notes that it is under no obligation to consider or accept such late submissions.)

The purpose of this paper is to set out the draft recommendation of Gas Industry Co. This paper summarises the June Change Request, the submissions received and Gas Industry Co's analysis of the June Change Request. For further information, including a copy of the June Change Request and a copy of submissions, please refer to Gas Industry Co's website at www.gasindustry.co.nz under the consultation section.

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Next Steps

Gas Industry Co invites MDL, parties to MPOC and submitters from the first round of consultation to make submissions on the draft recommendation.

Parties who wish to make submissions on Gas Industry Co's draft recommendation are invited to respond by 5:00 pm on 22 September 2008. Please note that submissions received after this date may not be able to be considered.

Gas Industry Co's preference is to receive submissions in electronic form (Microsoft Word format or pdf) with 'Submission on MPOC Change Request' in the subject header to submissions@gasindustry.co.nz. A hard copy would also be appreciated and should be posted to:

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Gas Industry Co will acknowledge receipt of all submissions electronically. Please contact Ian Wilson if you do not receive electronic acknowledgement of your submission within two business days.

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Changes Proposed by MDL

On 20 June 2008, Gas Industry Co received the June Change Request from MDL. MDL prepared the June Change Request in accordance with the standard 'recommendation request form' available on Gas Industry Co's website.

The June Change Request splits the changes requested by MDL into two categories, which are:

- deleting those parts of MPOC that relate to Maui Legacy Gas including those provisions that relate to retrospective allocations of Maui Legacy Gas; and
- changing certain parts of MPOC relating to the Taranaki Target Pressure.

MDL has provided a copy of MPOC which has been marked-up to show each specific change requested (Mark-up). This Mark-up is available on Gas Industry Co's website at www.gasindustry.co.nz under the consultation section.

Gas Industry Co sets out below a high-level description of each change requested based on the Mark-up provided by MDL. The description is at a high level only and is not intended to be a word for word breakdown of the changes. For further detail of the provisions, readers should refer to the Mark-up.

Section 2 PIPELINE SERVICES

Section 2 of MPOC sets out general requirements governing the provision of pipeline services.

The changes in the Mark-up can be summarised as follows:

- 2.1**
- The requirement to deal with all users of the Maui Pipeline on an arms length basis, and in a manner consistent with MPOC, is universal. The previous exception in relation to the Maui Gas Contract, Settlement and Umbrella Agreement and the Methanex 20/20 Agreement will no longer apply.
 - The requirement for every Transmission Service Agreement (TSA) with a Shipper to only include terms and conditions in MPOC no longer excludes Maui Mining Companies in their capacity as Shippers of Maui Legacy Gas.

- Special terms and conditions with Maui Mining Companies are no longer required to be disclosed on MDL IX (presumably because there will not be any special terms and conditions).

2.2 MDL's responsibilities remain subject to the terms and conditions in MPOC although the express reference to section 3.1 has now been removed.

2.14 Gas will not be delivered to a Welded Point unless certain criteria are met. The exclusion for Maui Legacy Gas has been removed.

2.19 Section 2.19 relates to the Target Taranaki Pressure. As currently drafted, the pressure is to be between 42 and 48 bar gauge for so long as MDL determines that Maui Gas is being injected at a significant rate. 12 months notice is to be given by MDL for any reduction in pressure.

The changes:

- remove the link between the pressure and Maui Gas so that the pressure of 42 and 48 bar gauge is to be retained in the absence of Maui Gas;
- require at least 12 months notice of an increase or decrease in the pressure; and
- require any change to go through the Change Request process.

2.21 Section 2.21 has been deleted in its entirety. The section provided for a limitation to the adjustment of nominations in instances where Maui Gas is not injected at a significant rate or additional equipment has been added to eliminate the need for the Taranaki Target Pressure limitation.

Section 2A CHANGES TO EARLY OPEN ACCESS

The proposed change would remove section 2A.1(4). Section 2A.1(4) of MPOC currently provides for the insertion of a new 4.12. Section 4.12 operated during the period ending on the Full Open Access Date and stated that information was to be disclosed on MDL's website and via emails between Welded Parties and Shippers.

Gas Industry Co notes that the earlier Change Request made by MDL dated 8 May 2008 (May Change Request) proposes the deletion of section 2A in its entirety. As Gas Industry Co is still consulting on its draft recommendation for the May Change Request it has considered the deletion of 2A.1(4) separately. If MPOC is amended in response to the May Change Request, the proposed change under the June Change Request will be redundant.

Section 3 MAUI LEGACY CONTRACTS

Section 3 sets out the majority of provisions relating to Maui Legacy Contracts. The proposed change deletes section 3 in its entirety with the exception of the current section 3.3(b) which preserves the rights of Maui Mining Companies to make a claim against MDL for liability incurred by Maui Mining Companies to the Crown under Maui Legacy Contracts for the injection of non-specification gas.

The changes in the Mark-up can be summarised as follows:

- The deletions remove the priority for Maui Legacy Contracts over Shippers and Welded Parties.
- The provisions dealing with any conflict between MPOC and Maui Legacy Contracts have been removed.
- The exemptions from obligations of a Welded Party (at Oaonui) are removed (including the exemption from obligations to sell or buy Gas to settle a Running Operational Imbalance (ROI) or Mismatch).

Section 7 CHANGE TO AUTHORISED QUANTITIES

- 7.1** Under section 7.1 MDL currently warrants that there will be sufficient capacity in the Maui Pipeline to transport Authorised Quantities but the warranty is subject to the priority delivery of Maui Legacy Gas. The proposed change would remove this proviso, so that the warranty is universal.
- 7.3** Section 7.3 relates to the capacity available in each AQ Zone. Under section 7.3 the capacity required in each AQ Zone to transport Maui Legacy Gas is currently determined by Gas Industry Co. Under the proposed changes the determination specifically for Maui Legacy Gas is removed and the only part of section 7.3 which is to remain provides that MDL will make AQ volumes available to Shippers, up to 70% of total capacity in each AQ Zone.
- 7.4** Under section 7.4, prior to allocating AQs, MDL must currently obtain Gas Industry Co's approval for the queuing rules it will use for such allocation. Once MDL has determined the amount of AQ available for allocation MDL notifies shippers of that volume. Under the proposed change notice of the amount of AQ available for allocation will be given once Gas Industry Co has approved the queuing rules.

Section 8 NOMINATION AND RENOMINATIONS

Section 8 sets out the nomination and renomination cycles. Differences between MDL's proposed scheduled quantity and the relevant agreed scheduled quantity are currently reconciled by reducing the Shippers Nominations in priority orders with the Maui Gas and Gas delivered under the Methanex 20/20 Agreement having priority.

The proposed changes mean that:

- Maui Gas and Gas under the Methanex 20/20 Agreement are removed from the priority order for the Provisional Cycle, Changed Provisional Cycle and Intra Day Cycle.
- Maui Gas and Gas delivered under the Methanex Agreement are removed from the priority order for allocation of capacity.

Section 12 OPERATIONAL IMBALANCES

Section 12 sets out the consequences of a Welded Party injecting or off taking an amount that is not the same as the Scheduled Quantity.

- 12.9** Under the current wording of MPOC Welded Parties do not have to manage flows to tend a Running Operational Imbalance to zero to the extent that the ROI relates to Maui Legacy Gas. MDL's proposed change removes the different treatment for Maui Legacy Gas.
- 12.16** The ability of a Welded Party to claim from the Incentives Pool for 'forced' Operational Imbalances is currently subject to Maui Mining Companies claims for payment from the Incentives Pool. MDL's proposed change removes this condition.

Section 14 INCENTIVES POOL

The Incentives Pool provides a system of liquidated damages in respect of Excess Daily Imbalances or exceeding Peaking Limits. MDL has proposed that the parts of the section giving special reference to Maui Mining companies are removed (but insofar as Maui Mining Companies are included within other categories, the sections will continue to apply in the capacity under that category).

- 14.1** Section 14.1 currently provides that the Incentives Pool Trustee will receive Incentive Pool Claims from Maui Mining Companies, the Balancing Agent and Welded Parties. MDL's proposed change removes the special reference to Maui Mining Companies from the list of persons who the Incentives Pool Trustee will receive Incentive Pool Claims from (but insofar as Maui Mining Companies are included within other categories in the list, they will still be able to make claims).
- 14.6** Section 14.6 currently sets out a Welded Party's liability to other parties including Maui Mining Companies. MDL's proposed change removes the special reference to Maui Mining Companies.
- 14.7** Section 14.7 sets out the records to be maintained by the Incentive Pool Trustee. Under MDL's proposed change these records no longer include special reference to payments to and from Maui Mining Companies.

- 14.9** Section 14.9 currently sets out the conditions on which Maui Mining Companies may make a claim for payment from the Incentives Pool. MDL has proposed that section 14.9 is deleted in its entirety.
- 14.10** Section 14.10 currently sets out how the amount of the Incentives Pool is calculated. MDL's proposed change deletes the component making special reference to Maui Mining Company claims.

Section 15 INTERRUPTIONS

- 15.3** In the event of interruption or reduction of transmission, MDL will (among other things) co-operate and give effect to the Industry Contingency Plan to the extent it will not cause Maui Mining Companies to breach Maui Gas Contracts, Methanex 20/20 Agreement or the Settlement and Umbrella Agreement. Under MDL's proposed change giving effect to the Industry Contingency Plan is no longer subject to Maui Mining Companies contractual obligations.
- 15.6** Section 15.6 currently provides that MDL should not be required to deplete Line Pack beyond using a Contingency Volume other than to deliver Maui Legacy Gas. MDL's proposed change removes the reference to Maui Legacy Gas.
- 15.11** Section 15.11 currently provides that parties to Maui Legacy contracts may take Line Pack available above the Minimum Pressure in the event that transmission is interrupted or reduced. MDL's proposed change removes section 15.11 in its entirety.

Section 16 MEASUREMENT AND TESTING

- 16.1** An overview to section 16 currently states that due to the Maui Legacy Gas and related agreements, a variety of metering arrangements exist in relation to Welded Points. MDL's proposed change removes this overview.

Section 18 MAINTENANCE OF PIPELINE

- 18.1** Section 18.1 currently requires MDL to act as a Reasonable and Prudent Operator to maintain sufficient Line Pack to (among other things) deliver Maui Gas under the Maui Gas Contract and Methanex 20/20 Agreement. MDL's proposed change removes the requirement to maintain Line Pack for the Maui Gas Contract and Methanex 20/20 Agreement.

Section 24 CONFIDENTIALITY

24.8 Under the current section 24.8, recommendations by a Confidentiality Auditor are to be followed by MDL, subject to section 3 which relates to Maui Legacy contracts. Under MDL's proposed change the recommendations are no longer subject to section 3.

Section 29 MODIFICATIONS TO THE OPERATING CODE

Any change to the MPOC (other than those required by legislation) must be dealt with in accordance with the process set out at section 29.

29.4 Before any TSA or ICA can be amended MDL must be satisfied that a Change Request satisfies a number of conditions. These conditions currently include MDL being satisfied that any amendment does not breach the provisions of a Maui Legacy Contract or otherwise amend the provisions in MPOC that relate to Maui Legacy Contracts and/or Maui Legacy Gas. Under MDL's proposed change the requirement not to breach a Maui Legacy Contract is retained but the requirement not to amend the provisions of MPOC that relate to a Maui Legacy Contract/Maui Gas Legacy is deleted.

Section 38 PRIVACY

38.2 Section 38.2 currently gives Maui Mining Companies the special ability to enforce provisions related to Incentives Pool Claims. MDL's proposed change removes section 38.2.

Section 1 DEFINITIONS

Incentives Pool Claim – MDL's proposed change removes the reference to claims made by Maui Mining Companies.

Maui Legacy Contracts – Under MDL's proposed change the definition retains the same meaning.

Target Taranaki Pressure – Under MDL's proposed change the specific reference to Maui Legacy Gas is removed.

Welded Point – Under MDL's proposed change the specific reference to the facilities connecting the Maui gas production station at Oaonui is removed.

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Submissions Received

Gas Industry Co received seven submissions on the June Change Request. Submissions were received from:

- Contact Energy Limited (Contact);
- Might River Power (Mighty River);
- Vector Limited (Vector);
- Maui Development Limited (MDL);
- Nova Gas Limited (Nova);
- Genesis Power Limited, trading as Genesis Energy (Genesis); and
- Greymouth Gas New Zealand Limited (Greymouth).

Set out below is a brief summary of each submission. For a copy of the submissions received please refer to Gas Industry Co's website at www.gasindustrycompany.co.nz under the consultation section.

Contact Energy

Contact supports the June Change Request.

Contact considers that the June Change Request is largely directed towards removing provisions from MPOC made redundant by agreement (between the Crown, Maui Mining Companies, Vector and Contact) that the Operational Balancing Agreement principles should apply for the allocation of Maui Gas taken under the Maui Legacy Contracts and removing provisions from MPOC that required MDL to give some priority to Maui Gas taken under Maui Legacy Contracts.

Mighty River Power

Mighty River supports the June Change Request.

Vector

Vector does not support the June Change Request.

In general Vector considers that 'the removal of Section 3 and references to Maui Legacy Contracts from MPOC is a step that should not be taken in isolation as the benefits associated with it will not be seen until the wider dispute over the issue and cashing-out of ILONs at Vector Transmission Welded Points is resolved'.

It is noted that Vector has proposed that '... if significant progress on the resolution of the wider dispute is not made by 1 August 2008...' Vector will propose its own Change Request.

In relation to the proposed change to section 2.19 of the MPOC, Vector believes that 12 months notice of any increase in the Target Taranaki Pressure is too short. Vector suggests that obtaining engineering resources, capital equipment and consents would mean that at a bare minimum 18 months notice would be required, and 24 months notice would be more realistic.

Maui Development Limited

MDL supports the June Change Request.

Nova Gas

In its original submission, dated 17 July 2008, Nova states that while it supports the objectives behind the removal of section 3 and other references to Maui Legacy Gas in MPOC it does not support the June Change Request in its current form because it '... fails to address how pipeline balancing will occur in the absence of Section 3'.

In its supplementary submission, dated 23 July 2008, Nova sets out further changes to the MPOC which would, in Nova's view, provide the basis for a more robust balancing arrangement.

Genesis Energy

Genesis supports the objectives behind the removal of the parts of MPOC that relate to Maui Legacy Gas, including the provisions that relate to priority and retrospective allocations.

Genesis notes the shortcomings of MPOC in relation to balancing arrangements, although on balance considers the June Change Request should be recommended.

Greymouth

Greymouth objects to the proposed change to section 2.19 (relating to the Taranaki Target Pressure) on the grounds that:

- a) It opens up the possibility of an increase in the Taranaki Target Pressure, something not currently permitted by the MPOC. Although the Taranaki Target Pressure may only be increased through the MPOC Change Request process, the control on an increase in the Taranaki Target Pressure should be subject to more rigorous debate than that under an MPOC Change Request as it is a fundamental parameter.
- b) It increases uncertainty because intentions are not known with respect to the Taranaki Target Pressure.
- c) An increase in the Taranaki Target Pressure would require significant changes to upstream plant, and can be compared to a change in gas specification.
- d) MDL has not explained why an increase in the Taranaki Target Pressure might be needed.
- e) An increase in the Taranaki Target Pressure could be used as a barrier to entry for a new entrant by increasing development costs, or at least does not facilitate new investment in gas processing facilities.

Greymouth has not commented on any other aspect of the June Change Request.

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Gas Industry Co Analysis

General Considerations

Gas Industry Co has carried out an analysis of the June Change Request which is summarised in this section of the recommendation.

Gas Industry Co has performed a qualitative cost benefit analysis, and believes that the benefits of the June Change Request outweigh the costs of the June Change Request. Gas Industry Co has assessed the benefits and costs of the June Change Request relative to a counterfactual of no change. Gas Industry Co has not compared it against a counterfactual comprising alternative changes which submitters consider to be better.

In undertaking its analysis, Gas Industry Co has had regard to the objectives specified in section 43ZN of the Gas Act 1992 and believes that the June Change Request is consistent with (and in some instances furthers) those objectives.

Gas Industry Co has considered all of the submissions received. Some submissions suggested that the June Change Request could be improved if additional elements were introduced. While Gas Industry Co considers that it is reasonable for submissions to suggest improvements, if such improvements are so extensive that they amount to a substantially different proposal, then the 'improvements' would need to be put forward, considered and consulted on, in their own right as a separate Change Request.

In regard to the changes related to Maui Legacy Gas provisions, Gas Industry Co notes that the Maui Gas Contract will expire on 27 June 2009, or earlier if gas entitlements are consumed. Gas Industry Co understands that MPOC was drafted in a manner which anticipated the removal of provisions related to the Maui Gas Contract (hence the inclusion of the majority of the provisions related to Maui Gas Contracts in section 3). Accordingly, the early removal of these provisions should not undermine or render senseless the remaining provisions in MPOC.

Gas Industry Co understands that as part of a settlement of a dispute related to Maui Legacy Gas (Settlement):

- the Crown (as Buyer under the Maui Gas Contract), the Maui Mining Companies (as Seller under the Maui Gas Contract), Vector Gas Limited, Vector Gas Contracts Limited and Contact have agreed that the Operational Balancing Agreement principles for the allocation of Maui Gas will apply to the Maui Gas Contract; and
- Contact has agreed to support the June Change Request.

Gas Industry Co has not received any submissions from the Maui Mining Companies, therefore Gas Industry Co has assumed that they do not oppose the Change Request. Gas Industry Co has also not received any submissions from other parties to the Maui Legacy Contracts advising of any issues which would void or undermine the June Change Request.

Qualitative cost benefit analysis

MDL sets out at section 7 of the June Change Request the benefits it considers the June Change Request would bring to Parties and other industry participants. The benefits flow from clarifying that:

- a) each Welded Party at a Legacy Welded Point can ascertain its Scheduled Quantities on the day that gas is flowing;
- b) the costs of balancing the Maui Pipeline should be borne by the Welded Parties that have Accumulated Excess Operational Imbalances, rather than such costs being passed on to Shippers (e.g. in the form of higher Throughput Charges);
- c) MDL has a commercial rationale for balancing the Maui Pipeline because MDL can pass on to defaulting Welded Parties under a cash-out transaction MDL's costs of buying/selling gas under a balancing gas contract in a transparent manner; and
- d) MDL does not need to rely on the Maui gas field to balance the Maui Pipeline, which reduces the risk of curtailment if the pipeline requires urgent balancing at a time when Maui field production capacity is unavailable.

The assumption underlying MDL's Change Request appears to be that these benefits have already been realised through various other initiatives, including:

- MDL's notice to its counterparties in its letters dated 16 November 2007 and 21 December 2007, that it waived/suspended the processes that give rise to changes in quantities notified under section 3.7(b) of MPOC;
- the new criteria under which the Maui Pipeline can access gas from the Maui field, set out in the Operator instruction dated 20 June 2008; and
- a joint statement of the Crown, the Maui Mining Companies, Vector Gas Limited, Vector Contracts Limited and Contact Energy Limited, posted on the MDL Pipeline Information Exchange on 15 July 2008 stating that Maui Gas deliveries will be determined by the Primary Allocation Agreement (OBA Principles) from 1 July 2008.

MDL's assumption is reflected in the wording of its Change Request, for example 'After the deletion of the Maui Legacy Gas Allocation Provisions it will be clear that the following apply:' (section 4.2 of the June Change Request), and 'the Applicant considers that the Proposed Amendments would benefit the Operating Code parties and other industry participants by clarifying that:' (section 7 of the June Change Request). The emphasis has been added to make clear MDL's rationale for the Change Request is that the main benefit of the proposed amendments is to add clarity to the current situation, rather than to bring about any further change.

Gas Industry Co agrees with MDL that the items listed in Section 7 of the June Change Request are benefits, as discussed in relation to Nova's submission.

Even if Gas Industry Co were to accept that the benefits have already been realised, Gas Industry Co considers that additional benefits of the June Change Request flow from the improvement to the overall transparency of the open access regime. To the extent any benefit identified by MDL has not yet been fully realised, it is appropriate to take those benefits into account in this cost benefit analysis.

Gas Industry Co also considers that the protections introduced in relation to changes to the Target Taranaki Pressure are benefits.

Apart from acknowledging that an increase in Taranaki Target Pressure might have an impact on new entrants, neither MDL (in the June Change Request) or submitters have advised Gas Industry Co of any costs that the June Change request would impose on Parties and other industry participants. In the absence of advice from MDL and submitters, Gas Industry Co can only assume that the costs are minimal and are outweighed by the benefits.

Effect of the June Change Request and consideration of Gas Act objectives

At a level of principle, preferential treatment for Maui Mining Companies is removed and transparency is increased as Maui Mining Companies are treated on the same basis as any other Shipper or Welded Party (ie clarification of the current position). The ability of MDL to increase the Taranaki Target Pressure once Maui Gas is no longer being injected into the Maui Pipeline at a significant rate is also restricted.

Gas Industry Co notes that MDL states in the June Change Request that 'No amendment to any individual ICA or TSA is required in order to give effect to the Proposed Amendments.' This is not technically correct as each individual ICA and TSA incorporates the provisions of the MPOC. To the extent that the MPOC changes, these changes will be automatically incorporated into each individual ICA and TSA. Gas Industry Co agrees that the amendments proposed in the June Change Request will apply equally to each ICA or TSA, and the general effect is set out above.

The MoU requires Gas Industry Co to have regard to the objectives specified in section 43ZN of the Gas Act when considering whether to support or not support a Change Request. The objectives are as follows:

- '(a) the principal objective is to ensure that gas is delivered to existing and new customers in a safe, efficient, and reliable manner; and
- (b) the other objectives are –
 - (i) the facilitation and promotion of the ongoing supply of gas to meet New Zealand's energy needs, by providing access to essential infrastructure and competitive market arrangements:
 - (ii) barriers to competition in the gas industry are minimised:
 - (iii) incentives for investment in gas processing facilities, transmission, and distribution are maintained or enhanced:
 - (iv) delivered gas costs and prices are subject to sustained downward pressure:
 - (v) risks relating to security of supply, including transport arrangements, are properly and efficiently managed by all parties:
 - (vi) consistency with the Government's gas safety regime is maintained.'

Gas Industry Co agrees with MDL that the June Change Request appears to be consistent with, and further, the principal objective. In particular the transparency of daily Scheduled Quantities at Welded Points is enhanced as Welded Points will not be subject to retrospective allocation adjustments. Accordingly at all Welded Points, Scheduled Quantities can be ascertained on the day after Gas flows rather than in the subsequent month when Maui Legacy Gas quantities are reconciled. A more efficient and reliable service is therefore provided to existing and new customers.

Gas Industry Co considers that risks relating to security of supply are more properly and efficiently managed by all parties under the June Change Request. This is based on MDL's statement that, as MDL does not need to rely on the Maui gas field to balance the Maui Pipeline, the risk of curtailment is reduced where the Maui Pipeline requires urgent balancing at a time when Maui field production capacity is unavailable or is reduced.

Gas Industry Co agrees with Nova that an increase in the Taranaki Target Pressure may increase the costs of a new entrant wishing to use the Maui Pipeline or not facilitate investment in gas processing facilities. Cost has the potential to be a barrier to the entry of new competitors. Both Nova's and Greymouth's submissions in this regard appear to proceed on the assumption that the TTP cannot currently be increased under MPOC. Gas Industry Co notes that MDL has not requested that the Taranaki Target Pressure be increased. To the contrary, MDL has requested that restrictions be placed on the ability for it to increase the Taranaki Target Pressure. This is a step towards minimising barriers

to entry. If any increase (or decrease) is to occur in the future it will be considered in accordance with the Change Request process. As part of that process the costs to new entrants will be considered.

Consideration of submissions

The submissions received can generally be categorised as follows:

Table 1 Broad categorisation of submissions

Submitter	Support for the June Change Request	Legacy changes - further improvements requested	Taranaki Target Pressure – issues with notice period and/or increase in pressure
Contact	✓		
Mighty River	✓		
Vector		✓	✓
MDL	✓		
Nova		✓	
Genesis		✓	
Greymouth			✓

Support for the June Change Request

Contact, Mighty River Power and MDL support the June Change Request.

Mighty River Power does not provide reasons for its support of the June Change Request. Gas Industry Co is encouraged to see that a party independent of the Settlement supports the June Change Request.

Contact has advised that as part of the Settlement it agreed to support the June Change Request. Gas Industry Co has had regard to the fact that MDL is the applicant when considering MDL's submission on the June Change Request.

Legacy changes - further improvements requested

Vector, Nova and Genesis have submitted that additional changes related to pipeline balancing are desirable. On balance Genesis supports the change request. While Nova and Vector support the removal of the provisions related to the Maui Gas Contracts in principle, on balance in the absence of further changes to address issues related to gas balancing, the June Change Request is not supported.

While Gas Industry Co welcomes submissions identifying issues that it should consider in respect of a Change Request, the fact that the June Change Request could have included additional improvements to the MPOC is not a ground for declining to recommend it. As discussed above, Gas Industry Co has had regard to the objectives specified in section 43ZN of the Gas Act 1992 and considers that the June

Change Request is consistent with, and has aspects that further the objectives of the Gas Act. Accordingly, while Gas Industry Co values the feedback from Vector, Nova and Genesis regarding additional improvements to MPOC, Gas Industry Co cannot recommend that those changes be made in the context of the June Change Request. If submitters wish to pursue additional improvements to MPOC through the Change Request process, submitters should submit a separate Change Request.

Gas Industry Co notes that submitters are also welcome to suggest their view of a more robust balancing regime in the context of Gas Industry Co's balancing work stream.

Gas Industry Co has considered Nova's comments that the June Change Request will not fully achieve the benefits identified in section 7 of the June Change Request. Gas Industry Co has considered the benefits and costs of the June Change Request and considers that the benefits claimed in section 7 are justified as follows:

- Section 3 of the MPOC provides, amongst other matters, for the Buyer to notify MDL of its Maui Legacy Gas deliveries by 1pm on the 6th day of the subsequent month (section 3.13), and that the relevant Approved Nominations, Scheduled Quantities, Operational Imbalances, Running Operational Imbalances, and Incentives Pool Debits will adjust accordingly (section 3.7). The removal of Section 3 will mean that Scheduled Quantities only adjust in accordance with sections 9.8 (Intra-Day Nominations), 9.10 (Balancing Gas), 15.1 (interruption), and 15.2 (interruption). So, strictly speaking, Scheduled Quantities can still adjust after '...the day that gas is flowing' (via section 9.10, 15.1 and 15.2 adjustments). However, in relation to the June Change Request it is true that Scheduled Quantities on a day will not change as a result of adjustments for Maui Legacy Gas in the subsequent month.
- Gas Industry Co understands that the month-end adjustment for Maui Legacy Gas provided for in section 3 has prevented MDL from recovering balancing costs from Welded Parties in respect of Maui Legacy Gas delivered. For example, even where a Welded Party is in imbalance, MDL cannot issue an ILON to that Welded Party until after the month-end adjustments (section 3.14). By that time the imbalance could have been corrected. This could have led MDL to take balancing actions to correct for both the original imbalance and for the subsequent correction of that imbalance. Any such balancing costs would then be recovered through Tariff 2 (that is, 'socialised').
- The removal of the month-end adjustment for Maui Legacy Gas allows a better correlation between balancing actions and the issuing of ILONs and subsequent cash outs. It could be expected that this would reduce the risk of legal challenge and therefore improve MDL's commercial rationale for taking balancing actions.
- Under the instructions given in 2005, the Maui Mining Companies gave MDL access to Maui Gas to support Maui Legacy Gas allocation. If the Buyer were to seek the continuation of retrospective adjustment then it might be expected that the Maui Mining Companies would also allow continuation of this instruction (effectively giving MDL access to Balancing Gas at low cost to support imbalances attributed to Maui Legacy Gas). If the Maui Mining Companies did choose to continue to supply balancing gas in this way, then given the low cost of such gas, it is unlikely that any other party would wish to provide balancing gas on better terms, or would wish to incur the expense of entering into balancing arrangements which would very seldom be used. Therefore, MDL would have to continue to rely on the Maui field. The benefit of MDL not having to rely on the Maui

field is the reduced risk of curtailment if the pipeline requires urgent balancing at a time when Maui field production capacity is unavailable.

Taranaki Target Pressure – issues with notice period and/or increase in pressure

Vector has submitted that 12 months notice of any increase in the Target Taranaki Pressure is too short. Greymouth's concerns related to the perceived 'new' ability for MDL to increase the Target Taranaki Pressure.

Gas Industry Co has no reason to doubt Vector's claim that 12 months notice of an increase in the Taranaki Target Pressure may be too short, given the potential difficulties associated with obtaining engineering resources, capital equipment and consents. Gas Industry Co has not received any other submissions related to the adequacy of the 12 month notice period, although Gas Industry Co agrees with Nova's submission that an increase in the Taranaki Target Pressure could require a significant change to upstream plant.

Gas Industry Co notes that the mark-up of MPOC provided by MDL states 'MDL shall give each Shipper and Welded Party not less than 12 months notice if it proposes to change the Taranaki Target Pressure'. 12 months is the minimum notice period Shippers and Welded Parties can expect to receive in the event of any increase or decrease in the Taranaki Target Pressure. As any change in the Taranaki Target Pressure must be implemented through the Change Request process, the appropriate notice period should be considered as part of that Change Request process. This would allow consideration to be given to any change required to upstream plant and the difficulties associated with obtaining engineering resources, capital equipment and consents.

In relation to Greymouth's submission on the increase in the Taranaki Target Pressure, Gas Industry Co considers that:

- The ability for MDL to increase the Taranaki Target Pressure is not a 'new' ability. There are currently no restrictions on MDL's ability to increase the Taranaki Target Pressure once Maui Gas is no longer injected at a significant rate.
- The proposed change to section 2.19 actually provides further protection against changes in the Taranaki Target Pressure. Under MPOC as it is currently worded, the Taranaki Target Pressure only applies for so long as 'MDL determines that Maui Gas is being injected into the Maui Pipeline at a significant rate'. Gas Industry Co interprets this to mean that on (or possibly even before) the expiry of the Maui Gas Contract on 27 June 2009, the Taranaki Target Pressure could be any pressure calculated by MDL that is sufficient to meet the definition of Taranaki Target Pressure. That is, any pressure sufficient to deliver Shippers Approved Nominations, provide for a reasonable quantity of Gas for use in a Contingency Event, and provide for a reasonable quantity of Gas to allow for delivery within the relevant Peaking Limit and Daily Operational Imbalance Limit. This definition appears to be aimed at a minimum pressure and offers little or no protection against any increase.
- The reasons for any increase (or decrease) in the Taranaki Target Pressure should be dealt with in relation to a Change Request submitted at the time a change is requested, rather than in the June Change Request.

- Gas Industry Co agrees that an increase in the Taranaki Target Pressure may increase the costs of a new entrant wishing to use the Maui Pipeline. As noted above, any increase (or decrease) will be considered in accordance with the Change Request process and as part of that process a cost benefit analysis would be performed in respect of the particular change. Gas Industry Co considers it is most appropriate to consider the costs and benefit of any particular change when, and if, a Change Request is submitted in respect of a change in the Taranaki Target Pressure.

Drafting changes to MPOC and miscellaneous issues

The drafting changes and miscellaneous issues identified in this section relate to the marked-up copy of the MPOC provided by MDL as part of the June Change Request.

Section 1. DEFINITIONS AND INTERPRETATIONS

Section 1 provides definitions and interpretations of the Operating Code. In the June Change Request MDL has proposed a number of consequential amendments to those definitions that relate to Maui Legacy Gas. MDL has also proposed that the definition of “Welded Point” be amended to exclude the following extension to the definition ‘(including the facilities connecting the Maui Gas production station at Oaonui to the Maui Pipeline)’. The proposed change does not appear to be related to removal of Maui Legacy Gas provisions or Taranaki Target Pressure. However, as neither the purpose for, nor the significance of, singling out the Oaonui Welded Point in the definition is apparent, Gas Industry Co has no reason to object to its deletion. Gas Industry Co welcomes submissions on this point.

Section 2. PIPELINE SERVICES

Section 2.19 relates to the Taranaki Target Pressure. MDL requests that the second sentence of section 2.19 be amended to read ‘MDL shall give each Shipper and Welded Party not less than 12 months notice if it proposes to change the Taranaki Target Pressure any such change may only be implemented through a Change Request determined in accordance with section 29.’ For drafting clarity Gas Industry Co considers that the second sentence of section 2.19 should be amended as follows: ‘MDL shall give each Shipper and Welded Party not less than 12 months notice if it proposes to change the Taranaki Target Pressure below 42 bar gauge or above 48 bar gauge and any such change may only be implemented through a Change Request in accordance with section 29.’ The amendment clarifies that any change between 42 and 48 bar gauge does not have to be made through a Change Request.

Section 3. MAUI LEGACY CONTRACTS

Section 3 has been deleted in its entirety with the exception of the current section 3.3(b). It is unclear why section 3.2 has been deleted as under this section the Maui Mining Companies consented to MDL having the exclusive right to use the Maui Pipeline to provide services and allow Welded Parties to connect to the Maui Pipeline. Presumably MDL would require this consent going forward. Gas

Industry Co cannot support the deletion of clause 3.2 without further information regarding the reason for its deletion.

Section 15. INTERRUPTIONS

MDL requests that section 15.11 is deleted in its entirety. Section 15.11 provides that parties to the Maui Legacy Contracts and User Contracts may take the Line Pack available above the minimum pressure in the event that transmission is interrupted or reduced. This section does not only relate to Maui Legacy Contracts as defined but extends to User Contracts. While MDL advises that the Methanex 20/20 Agreement has expired, User Contracts also refer to the agreement between the Crown and NGC dated 1 June 2004 and the agreement between the Crown and Contact dated 1 February 1996. Gas Industry Co will assume, unless provided with evidence to the contrary, that the parties to these contracts do not object to the deletion of this section.

Draft

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Draft recommendation

In relation to the June Change Request, Gas Industry Co supports:

- deletion of the following parts of MPOC relating to Maui Legacy Gas:
 - all of section 3 apart from sections 3.2 and 3.3(b).
 - the relevant parts of the definitions in section 1.1.
 - parts of sections 2.1, 2.1(a), 2.1(b), 2.2, 2.14, 7.1, 7.3, 7.4, 12.9, 12.16, 14.1(a), 14.6, 14.7, 15.3(e), 15.6, 24.8 and 29.4(b)(iv).
 - all of sections 8.18(a), 8.18(b), 8.19(a), 8.19(b), 8.20(a), 8.20(b), 8.24(a), 8.24(b), 8.26(a), 8.26(b), 8.28(b), 8.28(c), 14.9, 14.10(b)(iii), 15.11, 16.1, 18.1(a), and 38.2.

- section 2.19 being amended to read as follows:

The Target Taranaki Pressure shall be between 42 and 48 bar gauge, except as may be required as a result of a Contingency Event, Force Majeure Event or Maintenance. MDL shall give each Shipper and Welded Party not less than 12 months notice if it proposes to change the Taranaki Target Pressure below 42 bar gauge or above 48 bar gauge and any such change may only be implemented through a Change Request in accordance with section 29.

- the deletion of section 2A.1(4) in the event that section 2A has not already been deleted in its entirety in response to the May Change Request;
- the deletion of section 2.21; and
- in section 1.1 deletion of the words '(including the facilities connecting the Maui Gas production station at Oaonui to the Maui Pipeline).' from the definition of Welded Point.

All of the supported changes are marked up in the attached copy of MPOC (note that this document does not include the changes that are subject to the Draft Recommendation published by Gas Industry Co for consultation on 7 August 2008).