

24 April 2015

Steve Bielby
Chief Executive
Gas Industry Company Limited
PO Box 10646
Wellington 6143

Dear Steve

Maui Pipeline Operating Code - Amendment Process

1. Pursuant to section 29 of the Maui Pipeline Operating Code (Code) posted on OATIS and effective as at 22 July 2103, Mighty River Power wishes to amend the Code for the reasons explained below.
2. In accordance with the standard "Recommendation Request Form" issued by the Gas Industry Company this application by Mighty River Power includes the following information:-
 - (a) details of our proposed amendment to the Maui Pipeline Operating Code; and
 - (b) the reasons for the specifically proposed amendments.

Reasons for the amendments

3. The Panel of Expert Advisors (PEA) recommended to the Gas Industry Company (GIC) in its report in July 2013 that there should be:-
 - (a) convergence of the Code and the Vector Transmission Code; and
 - (b) improved governance arrangements within the Code and the Vector Transmission Code to enable implementation of its recommendations.
4. The Maui Pipeline Operating Code is a multi-lateral contractual agreement between Maui Development Limited (MDL) and the Code signatories. In Mighty River Power's opinion the current Code amendment process is exclusive rather than inclusive.
5. Whilst one of the parties to the Code, MDL, is a monopoly service provider it is our view that the Code is essentially a contractual arrangement like any other albeit operating in a regulated environment. Changes to contractual arrangements are normally negotiated and agreed between the parties with disagreements resolved through a formal disputes resolution process. The Code's current amendment process bypasses these normal arrangements and moves directly to a "quasi disputes resolution" arrangement with the GIC in the role as the arbiter of Code amendments.
6. There is no flexibility for any changes to a proposed Code amendment once submitted to the GIC even when the submitting party agrees with the suggested changes. The proposed amendment process is designed to promote an inclusive and collaborative change process as opposed to the current arrangement which can become adversarial.

7. Mighty River Power believes that the GIC as the industry's co-regulator has an important role to play in the design of the operational arrangements on both the Maui and Vector transmission systems. The current Code amendment process excludes the GIC and any other interested party from being involved in the design, development and implementation of changes to the Code. This proposed amendment is in part specifically designed to address this situation. It will allow the GIC to decide for itself how much it wishes to be involved in amending the Code rather than the narrow restrictions placed on it under the current regime.
8. Disagreements on the outcome of an amendment request will be dealt with under the Disputes section of the Code, section 23 as are normal in contractual disagreements that cannot be resolved by negotiations. Section 23.3 of the current Disputes section allows for the use of an independent Expert Advisor to resolve disputes and it is our view that the Expert Advisor will undertake a role similar to that current played by the GIC.
9. Schedule 1 to this request provides a summary of the proposed amendment.
10. Mighty River Power has consulted with Maui Development Limited and whilst some issues have been acknowledged, addressed and agreed upon the parties have been unable to reach agreement on certain key proposals contained within the change request.
11. The proposed amendments align with the recent changes made to the Vector Transmission Code (VTC). This furthers the PEA's recommendation for convergence of the codes. The VTC changes were fully consulted on with the VTC shippers and wider industry, reviewed by the GIC and with the exception of MDL supported by both.

Nature, intended impact and effect of amendments

12. The amendment does not affect:-

- (a) The rights and obligations of the parties to ICAs or TSAs; or
- (b) The operation of the Maui pipeline

13. The amendment will:-

- (a) enhance dealings between MDL and users of the Maui Pipeline through a more inclusive Code amendment process.
- (b) meet the relevant Government Policy Statement and Gas Act requirements.
- (c) comply with the Commerce Act and other relevant laws .

14. There will be no additional costs associated with the proposed amendment incurred by the owners, operators or customers of the Maui pipeline.

15. The amendment:-

- (a) should encourage amendments to the Code to be made through collaboration and consensus between the parties; and
- (b) will no longer be adjudicated by GIC, therefore the GIC will no longer be conflicted from involvement in the change request process. Disputes over a change request will now proceed through the standard dispute resolution procedure; and
- (c) will provide close alignment of the Code and the new Vector Transmission Code change request processes.

Effective date of change request

16. The amendment to the Code to take effect on the 30th day following the date on which the Change Request is approved in accordance with the Code.

Yours sincerely

A handwritten signature in black ink that reads "Jim Raybould". The signature is written in a cursive style with a horizontal line above the first name.

Jim Raybould
Gas Manager

Schedule 1: Summary of Proposed Change Request Process Amendments

Section	Matter	Proposed Amendment	Reason for proposed amendment
1.1	New definitions	The following new definitions are inserted: "Change Request Notification" "Draft Change Request" "Final Change Request" "Legislative Change"	These are new terms used in the amended section 29.
23.4 (v)	New subsection	Expands the role of the Expert Advisor	Allows the Expert Advisor to rule on any disputes arising from the new Code change request process
23.4(f)	Amended subsection	Clarifies how the cost of Expert Disputes will be funded	The costs associate with both a Dispute and an Expert Dispute will be borne equally by the Parties to the dispute
23.5	New subsection	Provides the guidelines for Expert Advisor when required to arbitrate on an Expert Dispute.	This new section requires the Expert Advisor to consider the merits of any Expert Dispute based on the principles contained in the Gas Act and other relevant legislation.
23.6	New subsection	Provides for the outcome of an Expert Dispute to be implemented	Following an Expert Dispute this new section provides for the implementation of the resolution of an Expert Dispute by if necessary amending the Code
29.1	Amended subsection	Changes to the Code may only be made in accordance with section 29	New section for clarity on the process on how the Code may be changed.

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29.2	New subsection	A new subsection is inserted requiring the Code signatories to participate in the new process set out in section 29 in good faith	This is intended to promote a collaborative process for change requests which should enable consensus between the Parties and MDL.
29.3	Amended subsection	Amends the provisions for Code amendments required by law to align with the new process. A notification of the legislative change will replace the Change Request Notification required for other change requests.	For compatibility with the other changes
29.4	New subsection	Apart from changes required by law (above) a change request must be initiated by a Change Request Notification. This notification forms the basis of the first opportunity for industry stakeholders to comment or request additional information on a change request proposal. The notification must contain a summary of the proposed changes, although it does not need to include a mark-up of the Code.	Mighty River Power believes that complex changes in particular may be better proposed in summary form so that the concept can be consulted on before the detail of the drafting is debated. Therefore, a mark-up is not required at this stage, although one may be provided if a Code signatory elects to do so. It is anticipated that straight-forward non-contentious changes would include a Code mark-up at this stage, along with a request to shorten timeframes (see further below)
29.5	New subsection	Additional information may be requested by any Code Signatory within 10 Business Days of a Change Request Notification. The proposer is required to timeously respond to all questions and/or requests for additional information on a change request and may also hold a workshop on the change request open to all interested parties.	For compatibility with the other changes.

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29.6	New subsection	<p>This new subsection together the new section 29.5 provides for an initial consultation – including i.e. the ability of all signatories to the Code, as well as the GIC and any other interested person – to provide a response to the proposed change. Submissions are optional at this stage of the process but, if made, must be made within 15 Business Days after the Change Request Notification.</p>	<p>This section introduces the first of 2 consultation stages. Although submissions at this stage of the process are optional – i.e. Code signatories do not lose voting rights if they do not provide one (see section 29.10) – Code signatories are still subject to the obligation to participate in the process in good faith.</p>
29.7	New subsection	<p>This provision sets out the requirements for a Draft Change Request, which forms the basis of the second stage of consultation. A Draft Change Request must include a summary of the propose change as well as a mark-up of the Code. It must also have regard for any responses made in consultation under section 29.6</p> <p>A Draft Change Request must be issued within 10 Business Days after the end of the 15 day initial consultation period or it will be treated as having been withdrawn</p>	<p>The intention is that at this stage of the process the concepts outlined in the Change Request Notification will have been confirmed or altered in accordance with that consultation. There is no requirement to respond specifically to points made during the initial consultation although the provision requires the proposing party to “have regard” to those responses. Note that a formal response is required to objections raised during the second round of consultation, and that Code signatories continue to be under an obligation of good faith throughout the process.</p> <p>To promote efficient progress of changes, the proposing party has only 10 business days after the end of the initial consultation to submit a draft change request or the proposed change will be treated as having been withdrawn. This recognises that a proposing Code signatory might decide, after receiving feedback on its proposed change, not to proceed with the</p>

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			proposed change, or to go back to the drawing board. Code signatories may seek extended timeframes under section 29.15 if additional time is required to prepare a draft change request.
29.8	New subsection	This section requires the Code signatories to consult in a similar manner to that described in section 29.5 on a Draft Change Request for 15 Business Days. In accordance with section 29.2, this must be done in good faith.	This provision is at the core of the new process – to achieve changes made through collaboration and consensus.
29.9	New subsection	This section sets out how responses to the consultation are to be provided. Any person may submit on the change, not just Code signatories. Responses must be provided within 15 Business Days after the Draft Change Request is published. Note that under section 29.10 (see below), a Code signatory who does not submit will be deemed to support the proposed change and will not be entitled to vote against it.	To facilitate consultation.
29.10	New subsection	A Code signatory who does not provide a consultation response under section 29.9 will be deemed to support the proposed change and will not be entitled to vote against it.	This is intended to ensure proper engagement by Code signatories on proposed changes so that changes can be achieved through consensus.
29.11	New subsection	This section provides for the publication of a Final Change Request, which will be treated as withdrawn if it is not published 5 Business Days after the conclusion of the second stage of consultation. The Final Change Request must include a summary of the proposed	This allows all matters arising during consultation to be taken into account, and ensures there is a final iteration of the proposed change formally issued so that Code signatories

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		changes and a final mark-up of the Code, as well as specifically addressing any substantive objections raised during the second round of consultation.	know exactly what they are voting on.
29.12 29.13	New subsection	<p>These subsections provide for voting on a change request, which mirrors the new Vector Transmission Code change request process – 75% of Code signatories approval plus MDL’s consent is required plus:</p> <ul style="list-style-type: none"> • Where a single Code signatory makes up 25% of Code signatories, at least 2 Code signatories must vote against a Change Request for it to fail – this is to prevent hold-out by a single Code signatory. • A Code signatory who does not vote is deemed to consent to the change. • A change request becomes effective when passed irrespective of whether a dispute is raised against it. This prevents the use of the disputes process to delay implementation of a change. 	To prevent Code signatory hold-out and for compatibility with the new process.
29.14	Amended subsection	The section deals with the grounds on which MDL’s consent may be withheld. The existing grounds remain, with the addition of a ground enabling MDL to withhold consent where it reasonably considers a Code signatory has breached the obligation of good faith.	This is to avoid the anomaly of MDL having to consent to a change and then raise a dispute against a change it has consented to, if it believes a Code signatory has not acted in good faith. It ensures that all Code signatories have the ability to dispute on the grounds of lack of

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		The amended subsection also requires MDL to provide written reasons for withholding consent.	good faith.
29.15	New subsection	This section allows Parties to seek extension or truncation of timeframes. A reduction to a time limit requires consent from MDL and all Code signatories. Extensions require a simple majority.	Mighty River Power has endeavoured to put in place time limits that give adequate time for consideration of most proposed changes, while trying to avoid too lengthy a process. However, we recognise that sometimes Code signatories will require additional time and that when that occurs, extending time limits should be straightforward. It is important that Code signatories be given a fair opportunity to submit on a change. There is also the ability to shorten time frames but because of the impact that would have on the ability of Code signatories to submit, all Code signatories must agree. It is envisaged that shortened timeframes would be used for short non-contentious changes.
29.16	New subsection	Under the new process the GIC will no longer be the party approving or rejecting a change request or not. This section therefore allows for any objections on the outcome of a change request to be disputed using the standard dispute resolution procedure under the Code.	The new process provides for change requests to be disputed under normal contractual terms and removes the prohibition on the GIC from participation in the change request process. The GIC will now be able to engage with Code signatories on proposed changes, and make submissions on those changes in accordance with the new process set out in section 29.
29.17	New subsection	Under the new process, proposed changes, submissions, revised changes and votes are all to be	This is to ensure all interested parties can

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		published on a publically accessible website where anyone can request to be notified of new publications. In the first instance this will be OATIS.	participate in the change request process.