

Application for Gas Industry Company's Recommendation on Proposed Amendments to the Maui Pipeline Operating Code

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Applicant: Maui Development Limited

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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 (**MDL** or **we**) sets down the details of, and the reasons for, MDL's proposed amendments to the Maui Pipeline Operating Code (**MPOC**).
- 1.2 By way of background, on 21 December 2015 First Gas Holdings Limited (formerly known as Odysseus Investments Limited) (**First Gas Holdings**) agreed to purchase the Maui Gas Pipeline (**Maui Pipeline**) and associated assets from MDL and the Maui Mining Companies (the **Maui Pipeline Acquisition**). First Gas Holdings is owned by funds and investors managed by Colonial First State Global Asset Managers (known outside of Australia as First State Investments).
- 1.3 The Maui Pipeline Acquisition is subject to certain conditions being satisfied, including First Gas Holdings receiving consent under the Overseas Investment Act 2005 (**OIA**), the amendment of the MPOC to record Vector Gas Limited (**VGL**) as the new transmission services provider of the Maui Pipeline (see paragraph 1.5 below) and the assignment and transfer to VGL of all the Transmission Services Agreements (**TSAs**) and the Interconnection Agreements (**ICAs**) entered into by MDL in connection with the operation of the Maui Pipeline, as required by section 36 of the MPOC.
- 1.4 By way of further background, First Gas Holdings also agreed on 9 November 2015 to purchase all the shares in VGL (the **VGL Acquisition**), the owner and operator of the Vector Gas transmission pipelines and the technical operator and system operator of the Maui Pipeline. The VGL Acquisition is conditional on First Gas Holdings receiving approval under the OIA which was obtained on 6 April 2016. VGL will be renamed "First Gas Limited" on completion of the VGL Acquisition.
- 1.5 Following completion of the VGL Acquisition, First Gas Holdings will nominate VGL to complete the Maui Pipeline Acquisition with the result that following completion of the Maui Pipeline Acquisition (which date is defined as the "Effective Date" in this application) VGL will own and operate the Maui Pipeline and directly carry out the role of technical operator, system operator and commercial operator of the Maui Pipeline.
- 1.6 The purpose of this application is to facilitate the change in the ownership and operation of the Maui Pipeline, including to notify the Shippers and the Welded Parties of the assignment of MDL's interests in, and the transfer of its obligations in respect of, the TSAs and the ICAs to VGL.
- 1.7 Please also find enclosed:
 - (a) a schedule setting out a summary of the proposed amendments to the MPOC;
 - (b) a marked-up copy of the MPOC (in effect as of 1 October 2015) showing the proposed amendments in full; and

- (c) pursuant to section 36 of the MPOC, a draft deed of covenant in connection with the assignment of MDL's interests in, and the transfer of its obligations in respect of, the TSAs and the ICAs to VGL.

1.8 As GIC is aware:

- (a) on 7 and 11 December 2015, MDL circulated to stakeholders for pre-consultation a draft and updated draft application, including a marked up draft MPOC showing the proposed amendments. As notified to GIC prior to Christmas, that draft application has been withdrawn by MDL and is replaced by this new application; and
- (b) on 11 February 2016, MDL circulated to stakeholders for pre-consultation a draft change request, including a marked up draft MPOC showing the proposed amendments. The documents enclosed with this application (see paragraph 1.7 above) incorporate the feedback received from stakeholders during that pre-consultation process.

1.9 MDL would be grateful if GIC could process this application in accordance with the two-week formal consultation process as notified by it to First State Investments and MDL.

2. **Proposed Amendments to the MPOC**

2.1 It is proposed that the changes to the MPOC take effect on and from the date on which they are approved by GIC, with those provisions in the MPOC that are expressed to apply or disapply from the "Effective Date" only taking effect on completion of the Maui Pipeline Acquisition. MDL has provided its written consent to this Change Request for the purposes of section 29.4 of the MPOC.

2.2 The MPOC contains several references to the "Maui Mining Companies". MDL proposes to remove the "Maui Mining Companies" definition and delete or replace the corresponding references, as appropriate in each case (other than the reference to "Maui Mining Companies" in paragraph 4.2 of Schedule 4 of the MPOC). In some cases, it is appropriate to delete sections altogether after the Effective Date. For example, paragraph 4.1(a) of Schedule 4, which relates to Confidential Information provided and received by the Maui Mining Companies.

2.3 We propose to replace applicable references to "MDL" with "Transmission Services Provider or TSP", defined as "the person that is the transmission services provider from time to time, currently being MDL, and on and from the Effective Date being VGL".

2.4 The Shipper Agreement Form and Welded Party Agreement Form in Schedules 2 and 3 respectively also contain references to "MAUI DEVELOPMENT LIMITED". We propose to replace these with "[Name of TSP]".

2.5 For the purposes of the Maui Pipeline Acquisition as described in paragraph 1.5 above, we propose to insert the following definitions:

- (a) "Effective Date" means the date notified by MDL in writing to GIC, Shippers and Welded Parties on which VGL completes the acquisition of the Maui Pipeline.
- (b) "VGL" means Vector Gas Limited."

2.6 We propose to substitute the proposed definition of "Balancing Agent" with the following:

"Balancing Agent" means either:

- (a) up until the Effective Date, the person appointed to that role by the TSP from time to time; or

- (b) on and from the Effective Date, VGL in its own right”.
- 2.7 We propose to substitute the proposed definition of “Technical Operator” with the following:
- “Technical Operator” means either:
- (a) up until the Effective Date, the person appointed to that role by the TSP from time to time;
or
- (b) on and from the Effective Date, VGL in its own right”.
- 2.8 We propose to substitute the proposed definition of “System Operator” with the following:
- “System Operator” means either:
- (a) up until the Effective Date, the person appointed to that role by the TSP from time to time;
or
- (b) on and from the Effective Date, VGL in its own right”.
- 2.9 We propose to substitute the proposed definition of “Commercial Operator” with the following:
- “Commercial Operator” means either:
- (a) up until the Effective Date, the person appointed to that role by the TSP from time to time;
or
- (b) on and from the Effective Date, VGL in its own right”.
- 2.10 We propose to substitute the proposed definition of “Incentives Pool Trustee” with the following:
- “Incentives Pool Trustee” means either:
- (a) up until the Effective Date, the person appointed to that role by the TSP from time to time;
or
- (b) on and from the Effective Date, VGL in its own right”.
- 2.11 We propose amending the definition of “Maui Pipeline” by adding the following words at the end of the definition “and excluding after the Effective Date the transmission system governed by the Vector Transmission Code”
- 2.12 We propose to amend the definition of “Methanex 20/20 Agreement” by listing the Maui Mining Companies in full as “Shell (Petroleum Mining) Company Limited, Shell Exploration NZ Limited, Energy Petroleum Investments Limited, Taranaki Offshore Petroleum Company of New Zealand Limited, Todd Petroleum Mining Company Limited and OMV New Zealand Limited”.

2.13 We propose to amend section 2.25 by adding at the end “provided that this section 2.25 does not apply on and from the Effective Date”.

2.14 We propose as a consequential change resulting from VGL’s ownership of the Maui Pipeline that a new section 24.1(b) be inserted as follows:

(b) On and from the Effective Date:

- (i) section 24.1(a) shall not apply for so long as TSP or any New Zealand Related Company of TSP does not become, or TSP does not become a Related Company of, a gas producer in New Zealand;
- (ii) TSP will ensure that:
 - A. it will not prefer or give any priority to any particular Shipper or Welded Party over other users of the Maui Pipeline except as expressly provided in the Operating Code;
 - B. it will not enter into any transactions, agreements, understandings or arrangements of any kind (whether in writing or not) which have the purpose or effect, or likely effect, of giving rise to, or maintaining, any preference or priority of the type prohibited under section 24.1(b)(ii)A;
 - C. when exercising powers or performing duties in connection with the Maui Pipeline or the Operating Code, it will not act in a manner which TSP knows or ought reasonably to know would give rise to, or facilitate, a preference or priority of the type prohibited under section 24.1(b)(ii)A;
 - D. it will provide open, arm’s length access to the Maui Pipeline in a manner consistent with the Operating Code; and
 - E. it complies with the confidentiality and other provisions set out in Schedule 4;
- (iii) TSP shall ensure and undertakes that the commercial functions for the Maui Pipeline relating to the formation and management of Balancing Gas and Fuel Gas contracts, and the role of Incentives Pool Trustee, are performed by TSP in a secure area and using secure systems that are only accessible by designated TSP employees who shall not perform any other services or functions for or on behalf of TSP which may put TSP in conflict with section 24.1(b)(ii) or this section 24.1(b)(iii);
- (iv) if TSP undertakes gas trading activities, it shall ensure that such gas trading activities are performed by TSP in a secure area and using secure systems which are only accessible to designated TSP employees who shall not perform any other services or functions for or on behalf of TSP which may put TSP in conflict with section 24.1(b)(ii) or this section 24.1(b)(iv);
- (v) if TSP or any New Zealand Related Company of TSP undertakes gas trading activities, TSP shall ensure that any confidential information it receives from Shippers or Welded Parties in respect of those gas trading activities that could be used to TSP’s or any New Zealand Related Company of TSP’s competitive advantage is kept on secure systems which are only accessible to designated TSP employees who shall not perform any other services or functions for or on behalf of TSP which may put TSP in conflict with section 24.1(b)(ii) or this section 24.1(b)(v); and
- (vi) without limiting section 24.6, TSP shall obtain and issue to Shippers and Welded Parties an annual compliance certificate from TSP’s external auditor confirming that TSP has complied in all respects with section 24.1(b)(ii), section 24.1(b)(iii), section 24.1(b)(iv) and section 24.1(b)(v).”

2.15 As consequential changes of section 24.1(a) not applying under VGL's ownership on and from the Effective Date, we propose the following amendments are made to Schedule 4: Confidentiality Protocol on and from the Effective Date:

- (a) amend paragraph 4.1 by adding at the end "provided that paragraph 4.1(a) shall not apply on or after the Effective Date;
- (b) amend paragraph 5.1(d), by adding at the end "provided that on and from the Effective Date this paragraph 5.1(d) shall be read as if the words "so that the Maui Mining Companies and/or their agents can only access information as a Welded Party or Shipper in accordance with this Operating Code" are deleted and replaced with "having regard to section 24 and the values set out in paragraph 3 of this Schedule"";
- (c) amend paragraph 5.1(e) by adding at the end "provided that this paragraph 5.1(e) shall not apply on and from the Effective Date"; and
- (d) a new paragraph 8.1 to be inserted as follows:

8.1 Subject to paragraph 8.4, on and from the Effective Date paragraphs 8.2 and 8.3 of this Schedule 4 shall no longer apply (with the matters provided for in paragraphs 8.2 and 8.3 being covered on and from the Effective Date by section 24.1(b)(ii)).
- (e) a new paragraph 8.4 to be inserted as follows:

8.4 Paragraphs 8.2 and 8.3 shall reapply if section 24.1(a) reapplies.

3. **Technical Update**

3.1 The only technical update we propose is to amend Schedule 8 to list the Welded Party and Metering Owner at Oaonui Meter Station as Shell Todd Oil Services Limited.

4. **Assignment pursuant to section 36 of the MPOC**

4.1 If this Change Request is supported by GIC, MDL also gives written notice to the Shippers and the Welded Parties of the assignment and transfer to VGL of MDL's interests and obligations in respect of all the TSAs and ICAs to which it is a party in connection with the Maui Pipeline with effect from the Effective Date.

4.2 In accordance with section 36.2 of the MPOC, MDL:

- (a) confirms that the assignment and transfer of all the TSAs and ICAs to which it is a party in connection with the Maui Pipeline is being made to VGL with effect from the Effective Date;
- (b) confirms that in its reasonable opinion VGL is capable of providing the Transmission Services in accordance with the provisions of the MPOC and the TSAs and the ICAs being assigned and transferred to VGL, and of any other agreements entered into by MDL under the MPOC which are the subject of an assignment to VGL from MDL; and
- (c) will, prior to the Effective Date and to take effect on and from the Effective Date, obtain from VGL and provide to the Shippers and the Welded Parties a deed of covenant enforceable by the Shippers and the Welded Parties under the TSAs and the ICAs in the terms required by section 36.2(c) of the MPOC, in the form of the attached draft deed of covenant.

5. **General**

5.1 We consider that all of the proposed amendments comply with the Commerce Act 1986 and all other relevant laws.

5.2 In this application:

- (a) unless otherwise defined in this application, 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.

Schedule: Summary of Proposed Amendments

#	Section	Proposed changes in text of two documents
1	Throughout	All applicable references to “MDL” changed to “TSP”.
2	1.1	Substitute the definition of “Balancing Agent” with the following: “Balancing Agent” means either: (a) up until the Effective Date, the person appointed to that role by the TSP from time to time; or (b) on and from the Effective Date, VGL in its own right.”
3	1.1	Substitute the definition of “Commercial Operator” with the following: “Commercial Operator” means either: (a) up until the Effective Date, the person appointed to that role by the TSP from time to time; or (b) on and from the Effective Date, VGL in its own right.”
4	1.1	Add a definition of “Effective Date” as follows “means the date notified by MDL in writing to GIC, Shippers and Welded Parties on which VGL completes the acquisition of the Maui Pipeline”.
5		Substitute the definition of “Incentives Pool Trustee” with the following: “Incentives Pool Trustee” means either: (a) up until the Effective Date, the person appointed to that role by the TSP from time to time; or (b) on and from the Effective Date, VGL in its own right.”
6	1.1	Definition of “Maui Mining Companies” deleted.
7	1.1	Definition of “Maui Pipeline” Add the following words at the end of the definition “and excluding after the Effective Date the transmission system governed by the Vector Transmission Code”.
8	1.1	Definition of “MDL charge” deleted.
9	1.1	Definition of “MDL Invoice” deleted.
10	1.1	Definition of “MDL IX” deleted.
11	1.1	Definition of “MDL’s Proposed Scheduled Quantity” deleted.
12	1.1	Amend definition of “Methanex 20/20 Agreement” by listing the Maui mining companies in full as follows “Shell (Petroleum Mining) Company Limited, Shell Exploration NZ Limited, Energy Petroleum Investments Limited, Taranaki Offshore Petroleum Company of New Zealand Limited, Todd Petroleum Mining Company Limited and OMV New Zealand Limited”.
13	1.1	Add a definition of “Related Company” as follows “has the meaning in the Companies Act 1993”.
14	1.1	Substitute the definition of “System Operator” with the following: “System Operator” means either: (a) up until the Effective Date, the person appointed to that role by the

		TSP from time to time, currently being VGL; or (b) on and from the Effective Date, VGL in its own right.”
15	1.1	Substitute the definition of “Technical Operator” with the following: “Technical Operator” means either: (a) up until the Effective Date, the person appointed to that role by the TSP from time to time, currently being VGL; or (b) on and from the Effective Date, VGL in its own right.”
16	1.1	Insert definition of “Transmission Services Provider”, “TSP” as follows “the person that is the transmission services provider from time to time, currently being MDL, and on and from the Effective Date being VGL”.
17	1.1	Insert definition of “TSP Charge” as follows “means an amount payable by the TSP to a Shipper or a Welded Party, as the case may be, under this Operating Code”.
18	1.1	Insert definition of “TSP Invoice” as follows “means an invoice issued to the TSP by a Shipper or Welded Party, as the case may be, in accordance with section 21.4, for a TSP Charge payable to that Party in respect of the previous Month, together with any outstanding amounts due and owing”.
19	1.1	Insert definition of “TSP IX” as follows “means the TSP information exchange that receives and displays the tolerances, nominations, Scheduled Quantities, incentives and fees, certain notices and other information in relation to the TSP’s operation of the open access regime for the Maui Pipeline and whose homepage is located at http://www.mauipipeline.co.nz when accessed using the user name provided by the TSP and the relevant password, or such other website as may be notified by the TSP to each Shipper and Welded Party from time to time”.
20	1.1	Insert definition of “TSP’s Proposed Scheduled Quantity” as follows “means, in respect of a Welded Point for a Day, the sum of Nominated Quantities for that Welded Point submitted by Shippers to the TSP for a Provisional Cycle or a Changed Provisional Cycle under sections 8.8 or 8.11 respectively, as amended as the result of changed Approved Nominations or new Nominated Quantities for that Welded Point during each Intra-Day Cycle”.
21	1.1	Insert definition of “VGL” as follows “means Vector Gas Limited”.
22	2.25	Amend section 2.25 by adding at the end “provided that this section 2.25 does not apply on and from the Effective Date”.
23	24.1(b)	Insert new section 24.1(b) as follows: (b) On and from the Effective Date: (i) section 24.1(a) shall not apply for so long as TSP or any New Zealand Related Company of TSP does not become, or TSP does not become a Related Company of, a gas producer in New Zealand; (ii) TSP will ensure that: A. it will not prefer or give any priority to any particular Shipper or Welded Party over other users of the Maui Pipeline except as expressly provided in the Operating Code; B. it will not enter into any transactions, agreements,

		<p>understandings or arrangements of any kind (whether in writing or not) which have the purpose or effect, or likely effect, of giving rise to, or maintaining, any preference or priority of the type prohibited under section 24.1(b)(ii)A;</p> <p>C. when exercising powers or performing duties in connection with the Maui Pipeline or the Operating Code, it will not act in a manner which TSP knows or ought reasonably to know would give rise to, or facilitate, a preference or priority of the type prohibited under section 24.1(b)(ii)A;</p> <p>D. it will provide open, arm’s length access to the Maui Pipeline in a manner consistent with the Operating Code; and</p> <p>E. it complies with the confidentiality and other provisions set out in Schedule 4;</p> <p>(iii) TSP shall ensure and undertakes that the commercial functions for the Maui Pipeline relating to the formation and management of Balancing Gas and Fuel Gas contracts, and the role of Incentives Pool Trustee, are performed by TSP in a secure area and using secure systems that are only accessible by designated TSP employees who shall not perform any other services or functions for or on behalf of TSP which may put TSP in conflict with section 24.1(b)(ii) or this section 24.1(b)(iii);</p> <p>(iv) if TSP undertakes gas trading activities, it shall ensure that such gas trading activities are performed by TSP in a secure area and using secure systems which are only accessible to designated TSP employees who shall not perform any other services or functions for or on behalf of TSP which may put TSP in conflict with section 24.1(b)(ii) or this section 24.1(b)(iv);</p> <p>(v) if TSP or any New Zealand Related Company of TSP undertakes gas trading activities, TSP shall ensure that any confidential information it receives from Shippers or Welded Parties in respect of those gas trading activities that could be used to TSP’s or any New Zealand Related Company of TSP’s competitive advantage is kept on secure systems which are only accessible to designated TSP employees who shall not perform any other services or functions for or on behalf of TSP which may put TSP in conflict with section 24.1(b)(ii) or this section 24.1(b)(v); and</p> <p>(vi) without limiting section 24.6, TSP shall obtain and issue to Shippers and Welded Parties an annual compliance certificate from TSP’s external auditor confirming that TSP has complied in all respects with section 24.1(b)(ii), section 24.1(b)(iii), section 24.1(b)(iv) and section 24.1(b)(v).</p>
24	38.2	Delete the words “the Maui Mining Companies or”.
25	Schedule 2	Delete “Maui Development Limited” and replace with “[Name of TSP]”.
26	Schedule 3	Delete “Maui Development Limited” and replace with “[Name of TSP]”.
27	Schedule 4	<ul style="list-style-type: none"> Amend paragraph 4.1 by adding at the end “provided that paragraph 4.1 (a) shall not apply on and from the Effective Date” Amend paragraph 5.1(d) by adding at the end “provided that on and from the Effective Date this paragraph 5.1 (d) shall be read as if the

		<p>words “so that the Maui Mining Companies and/or their agents can only access information as a Welded Party or Shipper in accordance with this Operating Code” are deleted and replaced with “having regard to section 24 and the values set out in paragraph 3 of this Schedule”;</p> <ul style="list-style-type: none"> • Amend paragraph 5.1 (e) by adding at the end “provided that this paragraph 5.1(e) shall not apply on and from the Effective Date” • Insert a new paragraph as 8.1 as follows: <p>8.2 Subject to paragraph 8.4, on and from the Effective Date paragraphs 8.2 and 8.3 of this Schedule 4 shall no longer apply (with the matters provided for in paragraphs 8.2 and 8.3 being covered on and from the Effective Date by section 24.1(b)(ii)).</p> <ul style="list-style-type: none"> • Insert a new paragraph 8.4 as follows: <p>8.4 Paragraphs 8.2 and 8.3 shall reapply if section 24.1(a) reapplies.</p> <ul style="list-style-type: none"> • All clause references in section 8 will be amended to reflect the insertion of new paragraph 8.1.
28	Schedule 8	Change Welded Party and Metering Owner at Oaonui Meter Station to “Shell Todd Oil Services Limited”.