



Final Recommendation on 13 April 2016 MPOC
Change of Ownership Change Request (COCR)

6 May 2016

Executive Summary

The Maui Pipeline is conditionally¹ to be sold. On 13 April 2016 the existing owners submitted a Change Request to Gas Industry Co proposing changes to the Maui Pipeline Operating Code (MPOC) to facilitate the change in ownership and operation of the pipeline.

On 14 April 2016, Gas Industry Co published the Change Request, together with a Draft Recommendation supporting it, and called for submissions. Submissions from Vector Limited, and Methanex New Zealand Limited, both concur with the Draft Recommendation supporting the COCR. The submission from Genesis Energy Limited raises some issues which are addressed in this Final Recommendation. We conclude that, while Genesis has raised valid concerns, they are not of sufficient weight to prevent us supporting the COCR.

This Final Recommendation supports the Change Request.

¹ Including Overseas Investment Office approval.

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1. Introduction

1.1 Purpose of the proposed MPOC change

On 13 April 2016, Gas Industry Co received an application from Maui Development Limited (MDL) seeking Gas Industry Co's support of proposed amendments to the Maui Pipeline Operating Code (MPOC). The proposed amendments aim to facilitate a change in the ownership and operation of the Maui Pipeline. We refer to the set of documents associated with MDL's change request proposal as the Change of Ownership Change Request (COCR). The COCR comprises:

- Application for Gas Industry Co's recommendation;
- red-lined MPOC; and
- a Deed of Covenant for the assignment of contracts to the new owner.

Among other matters the COCR:

- removes references to MDL;
- provides that the new owner can carry out the Technical Operator, System Operator, Commercial Operator, Balancing Agent and Incentives Pool Trustee roles; and
- adjusts the ring-fencing arrangements to be appropriate for the changed circumstances.

1.2 Background

In November 2015 the conditional sale of Vector Gas Limited was announced. This was followed, in December 2015, by an announcement that the Maui Pipeline would also be sold. The prospective new owner of both pipelines are infrastructure funds and investors managed by Colonial First State Infrastructure Managers (Australia) Limited, Colonial First State Management Infrastructure Limited and First State Infrastructure Managers (International) Limited, collectively known outside of Australia as First State Investments (FSI).

The acquisition of Vector Gas Limited was completed on 20 April 2016, and the company has been renamed First Gas Limited. First Gas Limited will now complete the acquisition of the Maui Pipeline, subject to Overseas Investment Office clearance.

More detailed background information is provided in MDL's COCR Application.

1.3 Gas Industry Co's role under the MPOC

Section 29 of the MPOC assigns Gas Industry Co a role in respect of any MPOC change request; to consult on the change request with the gas industry and determine whether or not to support it.

For further information on Gas Industry Co's role under the MPOC please refer to Gas Industry Co's website at <http://gasindustry.co.nz/dmsdocument/4144>

1.4 Process

In January 2016, Gas Industry Co discussed early drafts of the COCR with the current and prospective owners, MDL and FSI. In the following months the COCR was refined through discussions between the owners and pipeline users until the owners were confident that the COCR was in a form acceptable to the Maui Pipeline Shippers and Welded Parties.

Given the limited scope of the COCR and the extent of pre-consultation, FSI asked Gas Industry Co to consider an expedited process. Gas Industry Co agreed that an expedited process was appropriate, providing no substantive issues are raised by stakeholders at any stage.

Accordingly, Gas Industry Co published the COCR together with a Draft Recommendation supporting the COCR on 14 April 2016 and called for submissions.

Gas Industry Co received three submissions on the COCR and Draft Recommendation. These are considered in this Final Recommendation.

Given that this Final Recommendation continues to support the COCR we would expect the amendments to take effect no sooner than 14 May, that being '... not less than 30 Days after receiving... [the] "Change Request"...' (MPOC s29.4).

1.5 Use of capitalised terms in this Final Recommendation

Terms that are capitalised are terms that are defined either in the current MPOC or in the MPOC as modified by the COCR, as the context dictates.

2. Assessment of matters raised in submissions

Submissions on the COCR and Draft Recommendation were received from:

- Vector Limited (Vector);
- Methanex New Zealand Limited (Methanex); and
- Genesis Energy Limited (Genesis).

These are all available on Gas Industry Co's website.

Vector and Methanex concur with the Draft Recommendation supporting the COCR.

Genesis has '... three issues with the drafting of the proposed change that need to be addressed...'. They are:

1. The definition of the Maui Mining Companies is to be deleted, but the term is still used in clause 2.25 and Schedule 4 Confidentiality Protocols.
2. There should be an explicit clause stating that information cannot be passed by a third party between the pipeline operations staff and the pipeline marketing staff, to put into effect the 'no conduit' rule.
3. Schedule 4 Confidentiality Protocols should make it clear that no information is to be shared by the trading and transmission teams.

Regarding MPOC references to the Maui Mining Companies, none of these will be relevant after the Effective Date. But we agree with Genesis that the COCR would result in there being a period of time, between implementation of the COCR and the Effective Date, when the Maui Mining Companies would be referred to by the MPOC using a term not defined in the MPOC. We consider that this is untidy, but not a significant issue because:

- the term Maui Mining Companies is not ambiguous or controversial. In the unlikely event of a situation arising where the definition became critical, reference would surely be made to the deleted definition and/or other references to the Maui Mining Companies, such as in Shell's 22 December 2015 press statement description: 'MMCs: Shell 83.75%, OMV NZ 10% and Todd Energy 6.25%.²
- the untidiness will only prevail for a limited period, which is likely to be days rather than months.

² <http://www.shell.co.nz/aboutshell/media-centre/news-and-media-releases/2015/mining-companies-sell-north-island-pipeline.html>

Nonetheless, to satisfy the Genesis concern, we will ask MDL to leave the definition of Maui Mining Companies in place and append it with the words: ‘... provided that this definition will be deemed to be deleted from the Effective Date since it will no longer be relevant’, or similar. We consider this to be a minor and technical correction, and our Final Recommendation is not dependent on it being made.

Regarding the addition of a clause to put into effect the ‘no conduit’ rule³, we agree with Genesis that this is an addition to the MPOC which should be considered. Before introducing the rule in the United States there was extensive public debate, and we think that any proposal to include new provisions would similarly need to be debated here in New Zealand. From the viewpoint of the COCR, the important point is that there is currently no such provision in the MPOC, so the COCR is not degrading the MPOC in any way by not including one.

Also, we consider that the new provisions of clause 24.1(b), including the addition of an annual compliance certificate, do add substance to the confidentiality provisions of the MPOC. While they stop short of including ‘no conduit’ provisions, we consider that the COCR does provide a net benefit over the current MPOC in respect of the Gas Act objective of minimising barriers to competition, as discussed in the Draft Recommendation.

In respect of the suggestion that the Schedule 4 Confidentiality Protocols should make it clear that no information is to be shared by the trading and transmission teams, we think that two points are relevant:

- the new clauses 24(b)(iii) and (iv) provide strong undertakings that forming and managing gas contracts and gas trading (for balancing gas etc.) will be done in a secure area, using secure systems and staff that are not involved in any conflicting functions. So we believe that the Genesis concern is already addressed by the COCR; and
- before long, the revised MPOC clause 24 and Schedule 4 Confidentiality Protocols will need to be aligned with VTC clause 19 Confidentiality. In our view that will be the right context for an in-depth discussion about confidentiality.

In summary, while Genesis has raised valid concerns we are not persuaded that any is of sufficient weight to prevent us supporting the COCR.

³ Essentially the rule is that no third party may convey information between the company's pipeline operations and pipeline marketing function staff. The marketing function includes ‘Incidental purchases or sales of natural gas to operate interstate natural gas pipeline transmission facilities’ (Committee of the Federal Register section 358.3(c)(2)(ii) <https://www.law.cornell.edu/cfr/text/18/358.3>)

3. Final Recommendation

Our Final Recommendation is to support this change request.

ABOUT GAS INDUSTRY CO.

Gas Industry Co is the gas industry body and co-regulator under the Gas Act. Its role is to:

- develop arrangements, including regulations where appropriate, which improve:
 - the operation of gas markets;
 - access to infrastructure; and
 - consumer outcomes;
- develop these arrangements with the principal objective to ensure that gas is delivered to existing and new customers in a safe, efficient, reliable, fair and environmentally sustainable manner; and
- oversee compliance with, and review such arrangements.

Gas Industry Co is required to have regard to the Government's policy objectives for the gas sector, and to report on the achievement of those objectives and on the state of the New Zealand gas industry.

Gas Industry Co's corporate strategy is to 'optimise the contribution of gas to New Zealand'.

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