



**Information Disclosure under Part 4 of  
the Commerce Act 1986**

**Submission by  
Maui Development Limited**

**4 September 2009**

## 1. Introduction and background

Maui Development Limited (**MDL**) welcomes the opportunity to submit on the Commerce Commission (**Commission**) Information Disclosure Discussion Paper (**Discussion Paper**). MDL's intent by making this submission is to highlight the areas important to MDL and its Maui Pipeline business. Broadly speaking these can be categorised under three headings:

1. Implementation process and timing
2. Asset Management Plan requirement
3. Other reporting requirements

In addition, MDL considers a useful starting point is to describe the existing information disclosure regime as applied to Maui Pipeline, and also MDL's experience with the implementation and ongoing disclosure under those arrangements.

## 2. Gas (Information Disclosure) Regulations 1997

### **Existing Maui Pipeline information disclosure regime**

MDL is currently subject to information disclosure regulation under the Gas (Information Disclosure) Regulations 1997 (**GIDR**) and has complied with the regulations since it became a requirement for MDL following the commencement of the Maui Pipeline open access regime in October 2005.

The GIDR disclosures that MDL makes are published in the Gazette and since last year have been available on the Maui Pipeline website<sup>1</sup>. It is noteworthy that with the exception of the MED and Commerce Commission, in the time since the Maui Pipeline has been subject to information disclosure that MDL has never been approached directly by "interested parties" for information about its pipeline business.

Under the GIDR regime MDL is required to disclose information about pipeline capacity and financial and efficiency performance. The details these disclosures are expected to contain are defined in Part 2 Sections 15, 16, 17, 18, 20 and 23, and Schedule 1 Part 2, 3, 4, and 5 of the GIDR. As applied directly to Maui Pipeline the key characteristics of these disclosures are described below.

### ***GIDR r15&16 - Financial and efficiency performance measures***

Financial and efficiency performance information must be disclosed within 5 months after the end of the financial year<sup>2</sup>. Broadly, this disclosure includes

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<sup>1</sup> [www.mauipipeline.co.nz](http://www.mauipipeline.co.nz)

<sup>2</sup> MDL's financial year ends on 31 December

financial performance measures, efficiency performance measures, energy delivery efficiency, performance measures and statistics, unplanned interruptions in transmission systems, and the methodologies used for calculating tariffs.

MDL holds the Maui Pipeline assets as a bare nominee company and does not have access to the detailed accounts of the companies that jointly own the Maui Pipeline. However it does have access to accounting material for the Maui Pipeline. The best and most practical method of meeting the financial performance and efficiency disclosure requirements of the GIDR has been to derive notional stand-alone accounts for the Maui Pipeline business. The GIDR measures are then calculated from the Maui Pipeline notional accounts.

The Maui Pipeline notional accounts are constructed as follows:

- Income is derived from the tariff income for shipments through the pipeline. This includes tariffs charged for the shipment of gas sold under the Maui Gas Contract (Legacy Gas)<sup>3</sup>;
- Expenses are derived from the expenses charged by the Commercial, Technical and System Operators, including the cost of services provided to them, together with the expenses charged by the Balancing Agent and the Incentives Pool Trustee who operate under the terms of the MPOC. These are all considered to be pipeline related;
- Assets include any assets owned by MDL and used for pipeline related purposes, and include the ODRC value of the Maui pipeline assets which has been used for tariff calculations;
- Depreciation is charged on the MDL assets and the pipeline ODRC at the regulatory rate;
- Tax is charged at the normal company rate. This is assumed to be equal to the "Cash Tax" amount used for the purposes of calculating the accounting rate of profit. A corresponding tax payable is recognised in the balance sheet for the notional amount in the year it is incurred. Because no actual liability exists and the resulting cumulative balance is not required to be repaid, tax payable balances are reversed out through retained earnings in the subsequent period;
- The notional entity is assumed to have no debt. This is because any debt that may be held in the individual Maui Mining Companies is unable to be directly or indirectly attributed to the Maui pipeline;

The notional accounts do not include provision for the following costs:

- Costs associated with the governance of Maui Development Limited's pipeline business by the Maui Mining Companies. These governance services are currently provided at no charge. These costs are unlikely to be significant and have a minimal affect on financial performance;

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<sup>3</sup> The last Legacy Gas passed through Maui Pipeline in June 2009.

- Any costs associated with the provision of Balancing Gas Services for the Maui pipeline that have been supplied by the Maui Mining Companies at zero cost to pipeline users. Since the beginning of 2009 these “free” services have been progressively withdrawn and the price for balancing gas is now based on balancing gas market signals.

MDL notes that the approach proposed by the Commission in this area has many features in common with the approach adopted by MDL in meeting its GIDR obligations.

***GIDR r17 – Energy delivery efficiency performance measures***

The key indicators required for this disclosure include the load factor, unaccounted for gas ratio, and statistics on physical pipeline length, maximum monthly flow, total gas conveyed, total gas conveyed for wholesalers and retailers, and the total number of customers. A description of the way that these data are compiled is provided below:

- The calculation of Total Amount of Gas Conveyed for Wholesalers or Retailers is based on the quantity of gas supplied to Welded Points controlled by a wholesaler, but excludes gas supplied to Welded Points directly supplying electricity generation facilities, petrochemical plants or gas production facilities. It is based on gas metered out of the system;
- Total Amount of Gas Conveyed is gas metered into the pipeline system;
- Unaccounted-for gas (**UFG**) is the difference between gas metered out of the system and gas metered in after taking into account changes in the line pack inventory and gas used for compressor fuel;
- The customer numbers are averaged over the relevant period as required by the Regulations. There were 8 customers at the end of 2006 and 13 at the end of 2007 and 2008.

Most of these indicators are calculated using the gas flow figures from the Quarterly Statistical Returns filed with the MED and the Statistics Department.

***GIDR r18 - Reliability Performance Measures***

Under GIDR MDL must disclose the total number of hours of each unplanned interruption.

In the context of Maui Pipeline, the vast majority of interruptions are not due to the failure of the physical pipeline, rather they are caused when MDL must curtail pipeline users in response to line pack fluctuations outside operational limits, or the loss of supply at a receipt point. For example, an interruption

can be caused when a Welded Party either injects or off takes an amount of gas significantly greater or less than the quantity that has been scheduled for delivery through the pipeline.

There have been no interruptions due to the failure of actual physical pipeline equipment since Open Access came into force.

As highlighted in MDL's submission on the input methodologies, a complete loss of gas supply from the Maui Pipeline would be a very serious event, particularly if it resulted in loss of supply to gas distribution networks. It could take a substantial period of time to restore service to all users. The Gas Governance (Critical Contingency Management) Regulations 2008 have replaced an earlier industry agreement and give an appointed Critical Contingency Operator the power to declare a Critical Contingency and allocate the gas supplies available to prevent a loss of supply to gas distribution networks. Curtailment actions taken by MDL under the terms of the MPOC are intended to prevent a Critical Contingency from occurring<sup>4</sup>.

For GIDR purposes MDL has counted unplanned interruptions in three ways:

1. Historically, an interruption in the supply of Maui gas into the pipeline, whether or not there was any effect on users. Figures for this sort of interruption are available up to the end of October 2006. However, this measure became inadequate as substantial amounts of gas from non-Maui sources became available after the commencement of Open Access and is no longer used;
2. A curtailment of a nominated shipment through the pipeline for any reason. This measure has been used since November 2006. Most reasons for curtailment include matters outside the pipeline operator's control such as failure of a party to supply gas as scheduled, or failure of a party to take gas from the pipeline as scheduled, or force majeure events affecting pipeline injection or off take. A curtailment may only affect some pipeline customers, with others unaffected;
3. A curtailment or interruption due to the failure of the pipeline or pipeline equipment. As noted above, there have been no failures of this type in the periods reported on.

In MDL's view it would be helpful if the Commission's proposed information disclosure arrangements would acknowledge that an "interruption" has a different meaning depending on the industry or business in question. In most cases within the gas transmission industry, interruptions occur for reasons outside the control of the pipeline operator. A strict definition of an "interruption" as applied to the electricity industry may not be directly applicable to parts of the gas transportation industry. If the definition is too

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<sup>4</sup> See section 15 of the MPOC

rigid, then the disclosed information may be meaningless in terms of any evaluation of the service performed by the pipeline.

### ***GIDR r20 – Pricing methodology***

Transmission tariff charges for the Maui Pipeline are disclosed annually as is the methodology for calculating tariffs. MDL has a simple tariff system that applies to all users.

### ***GIDR r23 - Gas capacity***

MDL makes a disclosure on gas capacity within 2 months after the end of the financial year. Financial year end is 31 December for MDL. The disclosure is prepared by the Maui Pipeline Technical Operator, a role that is performed by Vector Gas Limited (**Vector**). The information required to be disclosed is described in Schedule 1 Part 5 Clause 1 of the GIDR regulations. Broadly this includes details about the physical location of the Maui Pipeline and its intake and offtake points, and critical points that could limit throughput. The methodology and data used to determine the critical points is also disclosed.

Generally, MDL has not had any difficulty preparing the capacity information disclosure. However, considerable time and effort is spent each year producing it, the cost of which is passed back to Maui Pipeline customers/consumers<sup>5</sup> as an operational cost through Tariff 2. A significant variable in understanding whether future capacity constraints are likely is supply and demand forecasts, but as highlighted in MDL's submission on the input methodologies, making these accurately is difficult. Large swings in both gas supply and gas demands are possible from year to year, and as a consequence the annual capacity requirement also varies substantially. MDL feels that on their own, the gas capacity statements produced for the GIDR are likely to be of limited value to interested parties.

### ***Certification of performance measures***

The performance measures and methodology by which the measures are calculated are certified by an auditor prior to disclosure.

### ***General comments on the GIDR regime in relation to proposed new arrangements.***

In MDL's view the current GIDR regime and the associated quarterly and annual statistical reports are a reasonable regime. Based on MDL's experience, the Commission should aim to achieve a disclosure regime that provides information that is genuinely useful and not merely included because it is a "nice to have". The cost of collection should always be an important factor.

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<sup>5</sup> There were 13 Maui Pipeline customers/consumers in calendar year 2008.

### **3. Implementation process and timing**

#### **Implementation**

Based on MDL's experience with implementation of regulations involving technical pipeline management issues, the regulator nearly always underestimates the time, cost, and general disruption to gas pipeline business (**GPB**) involved with setting up regulatory procedures. Under the proposed arrangements and particularly with respect to the requirement for an Asset Management Plan (**AMP**), it is MDL's view that the Commission will need to either avoid setting rigid unrealistic deadlines and information requirements, or ensure that a regulatory mechanism exists to make allowance for genuine problems that arise from the need to comply with a new information disclosure regime.

#### **Timing and process**

MDL notes that the Commission recognises that MDL's financial year is a calendar year and that it should report accordingly. This would mean that the first full "regulatory year" for MDL would be 2012 given that the default price path for GPBs will not be set until 1 July 2011<sup>6</sup>. MDL assumes that it will be continuing to report under the GIDR for 2009, 2010 and 2011 as the financial reporting disclosure measures will not be available until regulation commences. If the transition is to be made earlier, then the numbers that are used in the new disclosure regime period, (such as the Regulated Asset Base), must be available in time.

### **4. Asset Management Plans**

#### **Current approach to asset management planning**

The Maui Pipeline AMP specifically focuses on the operation, maintenance and replacement of the pipeline assets. It is intended for internal use to give visibility of the target reliability, performance, issues, limitations, and forecast expenditure to maintain the current capacity. In MDL's view this is a pragmatic and reasonable approach.

There are a number of areas under the Commission's proposed regime that the current Maui Pipeline AMP does not address, some of these include:

- Growth related investments and development plans;
- Corporate goals and business planning;
- Interaction with consumers and stakeholders;
- Corporate governance and responsibilities;
- AMP certification;

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<sup>6</sup> This is based on the revised timing published by the Commission in their 24 July "Process Paper". See [http://www.comcom.govt.nz/IndustryRegulation/Gas/ContentFiles/Documents/Gas%20DPP%20Paper%20-%20866981\\_1.pdf](http://www.comcom.govt.nz/IndustryRegulation/Gas/ContentFiles/Documents/Gas%20DPP%20Paper%20-%20866981_1.pdf)

- Justification for retaining assets;
- Reference to the regulatory asset base;
- Service levels & justification (some KPIs included);
- Consumer focused service levels;
- Emergency response and contingency plans;
- Expenditure reconciliation.

However, while there are gaps between the current Maui Pipeline AMP and what would be required under the Commission's proposed AMP regime, the contents of the current Maui Pipeline AMP would form a significant portion of the new regime disclosure.

It should be noted that the proposed Disclosure AMPs do not necessarily meet the internal business needs of GPBs.

A number of the objectives that the Commission has proposed are already addressed by the Health and Safety in Employment (Pipelines) Regulations 1999. The Regulations already require that the risks, integrity and associated management processes meet minimum standards. In this respect, applying electricity lines AMP principles to gas transmission pipelines, results in areas of duplication. Regulated industry arrangements are also already in place for management of critical contingencies.

### **Quality disclosure and statistics**

MDL has some concerns over the use of SAIDI and SAIFI statistics. These statistics are relevant to high frequency, low duration events but are not appropriate measures for a transmission pipeline where interruptions are very infrequent but the duration (usually measured as consumer-minutes) can be significant. This is especially true when the time taken to re-establish collapsed gas networks is considered. Based on this it may be more appropriate to measure the pipeline service quality in terms of available capacity.

### **Asset category breakdowns**

From an asset type/value perspective, compressor stations are quite different to other stations. Compressor stations are also the most likely asset to undergo upgrade or replacement. Finally, there seems little point in differentiating pipeline valves from the pipeline since they are both underground and have the same asset life.

### **Reasonableness of proposed arrangements**

MDL notes that under Section 53C(2)(h) of the Act, AMPs are an optional disclosure at the discretion of the Commission. Based on this MDL is concerned to ensure that the Commission carefully considers the costs and value of imposing AMPs as an obligation on GPBs. If the Commission sees AMPs as a desirable addition to the proposed information disclosure regime then the content required should, where possible, fit within the scope of asset management arrangements already developed by pipeline owners. In

addition MDL remains skeptical about the value that will be added by an external review of AMPs, whether by the Commission or external consultants.

### **Reporting frequency**

The reference in footnote 88 of the Discussion Paper to the 10 year period as being appropriate for electricity distribution businesses AMPs is not appropriate for GPBs. Whilst the 10 year forecast period might be appropriate for the electricity sector, it should not be assumed that adequate gas reserves will be available for transportation through Maui Pipeline by the end of the first 10 year period<sup>7</sup>.

### **Existing Maui Pipeline RPO obligations**

Maui Pipeline was built some 30 years ago to transport gas from the Maui gas field to market. The pipeline specification has always been certified, and there are strict rules for any party wishing to make a new interconnection. These are consistent with MDL's overarching obligation under the MPOC to act as Reasonable and Prudent Operator at all times.

### **Certification and review of AMPs**

MDL fails to see that there is any benefit to Maui Pipeline customers of the certification and review arrangement envisaged by the Commission. There is already a very strong incentive for MDL to ensure that its pipeline meets rigorous self-imposed asset management standards that are specifically applicable to the Maui Pipeline and the gas industry in New Zealand and overseas. As mentioned earlier, MDL has managed its asset for some 30 years without incident or the need for expensive oversight from any external authority. The Commission will need to weigh up very carefully whether or not the proposed AMP arrangement is likely to fulfill the purpose of Part 4 of the Act.

## **5. Other reporting requirements**

With respect to financial reporting, a key difference between the existing GIDR regime and the one proposed in the Discussion Paper will be the requirement for more detailed OPEX reporting. Under the proposed regime a break-down of specific categories would be required including:

- General management, administration and overheads;
- System management and operations;
- Maintenance;
- Pass-through costs;
- Other.

MDL's view is that this disclosure requirement should be achievable, but also that the additional information collected would be of limited value to

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<sup>7</sup> Refer to the 2009 MED Energy Data File section on gas reserves.

interested parties unless measured against a pipeline with similar characteristics to Maui Pipeline.

## **6. Summary**

MDL is of the view that the proposed information disclosure arrangements look reasonable and achievable where they fit within the scope of the existing GIDR regime, or existing business processes, and/or where they avoid a base level rise in annual operating costs.

MDL would welcome the opportunity to discuss with the Commission any of the points raised in this submission.

Yours sincerely,



Josh Adams.

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