



Shell (Petroleum Mining) Company Limited  
3 Queens Wharf  
PO Box 1873  
WELLINGTON

OMV New Zealand  
Level 27, Majestic Centre  
100 Willis Street  
PO Box 2621  
WELLINGTON

13 August 2004

Gas Pipelines Inquiry  
The Commerce Commission  
PO Box 2351  
Wellington

## **Cross-submission in response to Gas Pipelines Inquiry Conference**

### **Introduction**

1. Shell (Petroleum Mining) Company Limited and OMV New Zealand Limited (SPM/OMV) note that Contact Energy Limited ("Contact") has taken the position that the Commission should conduct an inquiry into the proposed open access regime for the Maui pipeline as part of the Gas Pipelines Inquiry. In particular Contact submits that the type of carriage offered under that regime is relevant to the inquiry.
2. We believe that the Commission does not have jurisdiction to consider open access issues as it is outside of the terms of reference for this inquiry. Without prejudice to this view, we set out our reasons as to why the proposed form of carriage is to be preferred to that advocated by Contact for the Maui open access regime.

### **Open access regime is being considered in other fora**

3. Before doing so, we would bring to the Commission's attention that development of the Maui open access regime is being progressed in other fora, one of which is subject to Ministerial oversight.
4. The open access regime has been developed by the Maui Joint Venture parties over the last 2 years. The Government has expressed an interest in the matter, including in its "Government Policy Statement: Development of New Zealand's Gas Industry". The Minister of Energy has appointed Mr Ross Cartey from PriceWaterhouseCoopers, Australia, to oversee the Government's interest. Further, the Maui Joint Venture parties have engaged Mr Cartey to sit on their Open Access Steering Committee, as an independent expert. The appointment of an independent expert allows the Minister to monitor development of the open access arrangements and alert the Maui Joint Venture parties to any aspects of the proposed regime that may be inconsistent with Government policy.
5. The Open Access Steering Committee has sought input on its proposal from the industry. Submissions have been received from a number of parties, including Contact. Via its webpage,

Maui Development Limited (MDL) has responded to those submissions in some detail. Further consultation is scheduled.

6. In addition, the Gas Industry Steering Group ("GISG") established by the gas industry is a body mainly of Chief Executives that has been working on industry governance matters over the last approximately 12 months. The Commission will be aware that, after considerable work, the GISG recommended to the Minister of Energy that a co-regulatory model be adopted for the gas industry, and that the Minister accepted that recommendation. The model accordingly forms part of the Electricity and Gas Industries Bill, which is currently before Parliament.
7. As the second stage of its work programme, the GISG will be examining specific work streams relating to industry governance, including pipeline access matters. The GISG proposes to develop open access proposals. Such proposals will be placed before the Minister of Energy for his consideration and either acceptance or not.
8. In summary, open access matters are being thoroughly reviewed by the Maui Open Access Steering Committee. The Gas Industry Steering Group is likely to consider access issues generally for the industry. Given the considerable work being done in those two fora, and given the Ministerial oversight in each case, there is no need for the Commission to consider these issues in the context of the gas pipelines inquiry.

#### **Maui Open Access Regime – proposed carriage v contract carriage**

9. SPM/OMV have publicly stated that we have no in-principle objection to the adoption of a contract carriage regime and have made our intention clear that we will consider moving to such a model, assuming industry demand, in the post-Maui environment.
10. However, for a number of reasons, we have in the first instance opted to support another model, which is a combination of common and contract carriage. It is contract carriage in respect of the capacity that is, and must be made available to the Crown, under the Maui Gas Contract each and every day. If the Crown requires, then the Mining Companies must make all the capacity available to it. Accordingly, all the capacity in the line is already subject to contract carriage. In the proposed open access regime, available capacity will be made available to other parties, provided that capacity on a day is not called upon the Crown. That capacity will also be made available on a hybrid contract/common carriage basis. In the event of a capacity on a day being less than demand, the capacity will be rationed, with those who use the line the most having a superior position in respect of such rationing. Accordingly it would be incorrect to describe the issues raised by Contact as contract versus common carriage.
11. Providing a contract carriage regime requires an essential pre-requisite. The pipeline operator must be able to guarantee the "firm service"; otherwise we are faced with the unusual prospect of selling "interruptible" capacity. In the case of the Maui Pipeline, the rights of the Crown under the Maui Gas Contract create a situation in which the Crown (and hence Contact, NGC and Methanex) has pre-emptive rights to all the pipeline capacity up to the deliverability of the Maui Field. The result is that firm capacity, in its normal definition, is not available and this creates a more complex commercial situation.
12. We are mindful of the need to create low entry barriers to new players in the industry whilst ensuring economic efficiency. In proposing and supporting the regime, we have taken economic advice and this supports the proposed approach. Further details in support of this argument can be found on the MDL Open Access webpage.
13. The question of capacity can be a difficult subject, because capacity is a function of a large number of assumptions. On the basis of a number of assumptions, and for as long as Maui

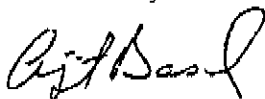
supply limits the injection pressure, the pipeline capacity is about 450 TJ/day until the expiry of the term of the Maui Gas Contract. Beyond that time, capacity may be considerably greater. Our view is that this capacity is more than sufficient for forecast gas supply.

14. We are mindful of industry expressions of concern in relation to certainty of gas transportation capability. We consider these concerns can largely be addressed by:
- looking first at the capacity potential of the existing Maui pipeline relative to near term market demand, and making clear our willingness to maintain system capacity
  - the adoption of measures that will not only provide assurance to "regular long-term customers" that they will not be unfairly curtailed in favour of short-term "spot" sales or opportunistic trades, but also provide encouragement to new entrants seeking to market gas in new and flexible ways without being burdened by any undue requirement to enter into long-term capacity commitments.
15. It has taken some 24 months of hard commercial negotiations to agree the proposed contractual design of the Maui Open Access Regime. The process has now almost reached the stage of maturity, where we can start necessary investment to put into place supporting IT infrastructure. Switching at this stage to an alternative capacity model would involve delays of many months at minimum. These delays would stem from the need to restart commercial negotiations, agree new open access processes and then implement those design changes within the supporting open access IT systems.

#### Summary

16. We are sympathetic to industry concerns that have been expressed but consider the proposed regime to be reasonable given the Maui legacy arrangements we are obliged to accommodate and the additional considerations outlined above.

Yours sincerely



Ajit Bansal  
Commercial Manager  
Shell (Petroleum Mining) Company Limited



George Goodsir  
Commercial and Legal Manager  
OMV New Zealand Limited