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21 August 2015

Ms. Keston Ruxton
Manager, Market Assessment and Dairy
Regulation Branch
Commerce Commission
PO Box 2351
Wellington 6140

Dear Keston,

Please regard this letter as our submission to the Commerce Commission ("the Commission") on the "Invitation to contribute to problem definition" for the Input Methodologies Review. In this letter we will use the terms "MDL", "we", "us" or "our" to refer to the Gas Transmission Business (GTB) of Maui Development Limited.

As requested in the Commission's invitation, we will focus on topics and problems that we would particularly like to be addressed by the IM review. Some of those will be common among regulated entities. Several are specific to Gas Transmission Businesses. Given our unique business structure and history, a few are specific to MDL. We have not directly matched our list of problems to the themes and topics in the invitation paper, but we have attempted to put them in an order approximately consistent with those. That order does not reflect our relative priorities.

Our submission presents the issues we would like to include as part of the IM review under the following headings.

- How to accommodate auction-based revenue?
- Clarification of Recoverable Costs for balancing
- Our compressors are primarily used for balancing
- A symmetrical IRIS would be problematic for GTBs
- Line Pack should be included in MDL's asset base
- MDL's opex does not include all of MDL's costs
- Declining throughput leads to permanent under-recoveries
- CPP cannot be renewed or reset
- CPP process can be unnecessarily wide in scope
- CPP process is excessively expensive and cumbersome
- Should the Commission establish Pricing Principles for GTBs?
- Standard Physical Asset Lives do not match with asset categories for GTBs
- IM assume every regulated entity is subject to income tax

We close this submission with our views on the subsequent questions and issues raised by the Commission in relation to its decision-making framework.

MDL topics and problems

How to accommodate auction-based revenue?

We recently provided a briefing note to Commission staff, dated 20 July 2015, on options to introduce auction-based pricing for allocations of longer-term products for priority capacity (AQ) on the Maui Pipeline. As stated in that note, our intended approach is largely consistent with proposals set out by Gas Industry Co (GIC) in a paper[1] it released in March 2015.

AQ auctions would be held periodically, with products offered for a range of allocation periods. They could be for a long-term duration, e.g. a 5-year allocation, or for a shorter term, e.g. a monthly allocation. The price for each capacity product would be expected to be set at auction for its entire duration; whether that be a month or multiple years[2].

We are currently reviewing how such arrangements can fit within the context of our current price-quality path. We anticipate solutions are possible for auctions of annual capacity allocations that are conducted in advance of setting prices for an Assessment Period. Within our current regulatory period we may not yet be conducting auctions for multi-year capacity products, although we would like to consider potential solutions for that as well.

It is not clear to us whether, under the current IM, capacity auctions can be conducted during the course of a Pricing Period. If not, this would prevent auctions for shorter-term capacity products close to their allocation period. This in turn would make it difficult for auction prices to reflect up-to-date short-term supply and demand trends.

We are still working through the design process for introducing such new capacity products. We would hope to engage with the Commission during that process to ensure that the IM for GTBs can accommodate the plans and features for such products as well.

We would like to mention that using auctions to allocate gas transmission capacity is common in many jurisdictions. It will be mandatory throughout the EU from 1 November 2015, pursuant to the EU Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems (EU Capacity Code). Article 26.6 of that code states:

> "National regulatory authorities shall approve over and under recovery mechanisms. Where a price cap regime is applied, the national regulatory authority shall approve the usage of revenues from capacity prices exceeding the respective tariff."

We note that an obvious approach to deal with surpluses or shortfalls from auctions held during a Pricing Period would be a wash-up arrangement. However, other arrangements can be considered as well. This could be in line with suggestions in the Framework Guidelines[3] from the EU Agency for the Cooperation of Energy Regulators (ACER) made in relation to the EU Capacity Code. Paragraph 3.1.3 of that document states:

> "Auction revenues exceeding the allowed revenue, or values determined by the National Regulatory Authority ... shall be used for different aims subject to the approval by the National Regulatory Authority, such as lowering network tariffs, removing congestion by investments or providing incentives to the Transmission System Operators to offer maximum capacity."

As part of the IM review for GTBs we would like to explore whether similar arrangements can be accommodated in New Zealand.

[1] "Design option – MPOC Authorised Quantity Product"

[2] Note that a capacity allocation and its associated price from an auction can extend across multiple regulatory periods.

[3] Framework Guidelines on Capacity Allocation Mechanisms for the European Gas Transmission Network, 3 August 2011.

Clarification of Recoverable Costs for balancing

We are grateful for the clarification that the Commission recently provided, in a letter to us and to Vector dated 12 May 2015, about the inclusion of cash-outs as a recoverable cost for balancing. This was in response to requests for such clarification by us and by Vector. In our request letter to the Commission, dated 9 April 2015, we provided details of our balancing regime as set out in the Maui Pipeline Operating Code (MPOC). We also noted that "balancing gas" is not defined in any of the Commission's determinations.

We hasten to add that we do not advocate for the development of such a definition. Balancing is a highly complex activity and the balancing regimes on the Maui and Vector pipelines are different. Even the recently promulgated European Union Network Code on Gas Balancing of Transmission Networks[4] (EU Balancing Code) does not contain such a definition.

Nevertheless, it would be helpful to clarify recoverable costs for balancing (currently in clause 3.1.3(c) of the IM for GTBs) to cover all aspects of any balancing regime that we and Vector may have in place. This can include the following:

- balancing actions for line pack management;
- cash-outs of welded point or connection point imbalances[5];
- charges for shipper mismatch or shipper imbalances;
- charges or incentives for within-day obligations, which could include
    - incentives pool debits and credits,
    - peaking charges,
    - other charges for exceeding within-day tolerances,
    - charges or incentives in relation to operational flow orders.

It is also relevant to note that most items listed above can be an income as well as a cost. Balancing actions, cash-outs and mismatch charges can all be positive or negative, i.e. consist of a sale or a purchase of gas. This means the aggregate result of such sales and purchases, as well as within-day charges and incentives, may end up as a net income for the GTB.

Having a net income is not a problem by itself. It can simply be treated as a negative Recoverable Cost for tariff calculations. However, the receipt and timing of payments contributing to a net income can be uncertain. Aspects for this are as follows.

- Clause 3.1.3(c) of the IM for GTBs refers to: "... a cost or credit arising...". With respect to timing we expect this means the cost or credit is intended to be accounted for when it actually arises, i.e. on the relevant transaction date.
- In Schedule 6 of our DPP determination, however, there seem to be conflicting references to timing. Within that schedule:
    - clause 1(a) states that each Recoverable Cost must "be ascertainable at the time the GTB sets its Prices for that Pricing Period";
    - clause 5(a) refers to "Recoverable Costs claimed during the Pricing Period";
    - clause 5(a) also refers to costs that "have been paid or will be paid";
    - clause 5(b)(ii) refers to a cost amount that "was paid or will be paid".

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[4] European Commission Regulation (EU) No 312/2014 of 26 March 2014

[5] These result from the Operational Balancing Agreement (OBA) Principles that are embedded in the MPOC.

- We would like to be led by the language in the IM itself and use the actual transaction dates as default timing for balancing Recoverable Cost accounting. In most cases this should not pose any problems. When pipeline users owe balancing transaction payments to us, however, we are exposed to risk of late or missed payments.
- We expect that balancing transactions with late or missed payments should not be included in Recoverable Costs for the period in which such a transaction arose. Conversely, when we do receive late payments for such transactions we expect that the associated interest income[6] will also be included in the Recoverable Costs for the period when payment was received.

We should raise one other issue in this context.

- The IM seems to implicitly assume that a GTB will tally up all its balancing related costs and credits for a period and apply the net sum to a subsequent Pricing Period. That approach would indeed be consistent with our current treatment of balancing.
- In future, however, we can envisage an approach with a more frequent wash-up of balancing costs and credits among pipeline users. This could be consistent with the Neutrality Arrangements in Chapter VII of the EU Balancing Code[7]. Such wash-up arrangements might allow a more considered allocation to pipeline users than a generic allocation to Recoverable Costs. A higher frequency of balancing wash-ups should also eliminate concerns about time-value-of-money adjustments.
- The neutrality charges arising from such a balancing wash-up regime, which could consist of monthly neutrality debits and credits, would also need to be taken into account for the balancing Recoverable Cost. Ideally, the ultimate result would be to ensure that the net Recoverable Cost for balancing is always zero.

Finally, we suggest the Commission may wish to review clause 3.1.3(2) of the IM for GTBs. This covers a potential approval process for balancing costs and credits. We note that after introduction of our market-based balancing regime, starting on 1 October 2015, the number of balancing transactions may exceed more than a thousand per year. This is because cash-outs for Welded Point imbalances in excess of tolerances will be made on a daily basis. Information on all such transactions, as well as on all Balancing Gas Calls and Puts, will be published on a new balancing gas information platform (BGIX) that will be publicly available.

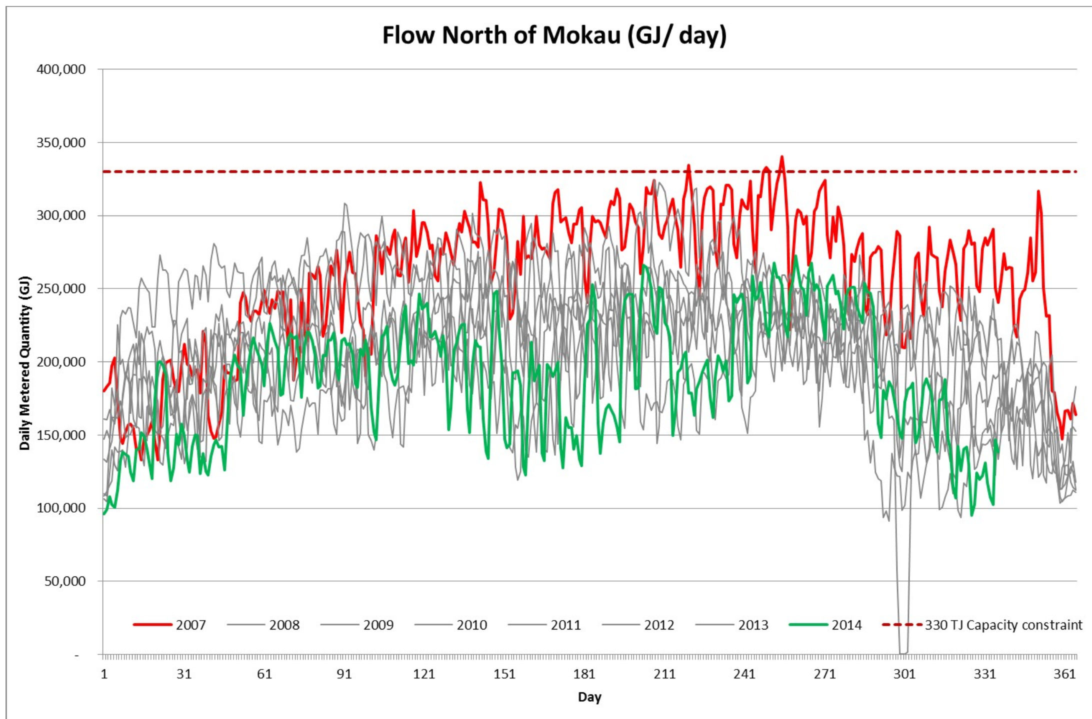
Our compressors are primarily used for balancing

An important component missing from Recoverable Cost provisions for GTBs is the cost of compressor fuel gas. It seems this may not have been considered when the IM were originally developed. Several issues are related to this.

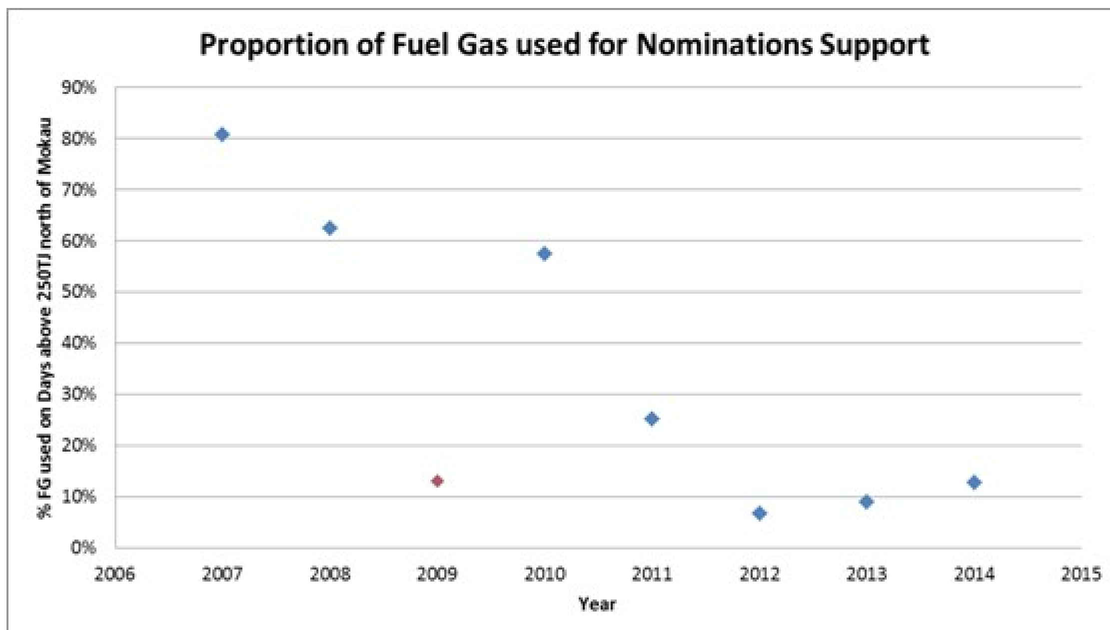
- Our compressor station at Mokau was put in place to support deliveries to the North. A compressor is needed on days when flows in excess of 250 TJ are scheduled to Welded Points North of Mokau. In the absence of other considerations, this implies we would have a compressor running only on such days.
- This makes expenses for compressor fuel gas difficult to predict. They do not scale linearly. The number of days when a compressor is needed is outside of our control. Daily flows North of Mokau are presented in the graph[8] below.

[6] Section 21.14 of the MPOC provides for interest at a defined rate on payments that are late.

[7] The EU Balancing Code served as inspiration for the market-based balancing regime that is taking effect in the MPOC on 1 October 2015. We may propose to adopt additional elements from the EU Balancing Code at later stages, which will require additional amendments to the MPOC.



- The graph shows that throughputs North of Mokau have been declining since 2007 (more on that later). The 2014 line (in green) also shows significantly more variability from week to week than the 2007 line (in red). The number of days in which flows North of Mokau exceed 250 TJ are now rare and unpredictable.
- A key point is that compressors are also used to efficiently manage pressure. In view of the declining throughput to the North that is now their main role on the Maui Pipeline.
- This is demonstrated by the declining proportion of compressor fuel gas that is needed to support nominations exceeding 250 TJ North of Mokau in the following graph.



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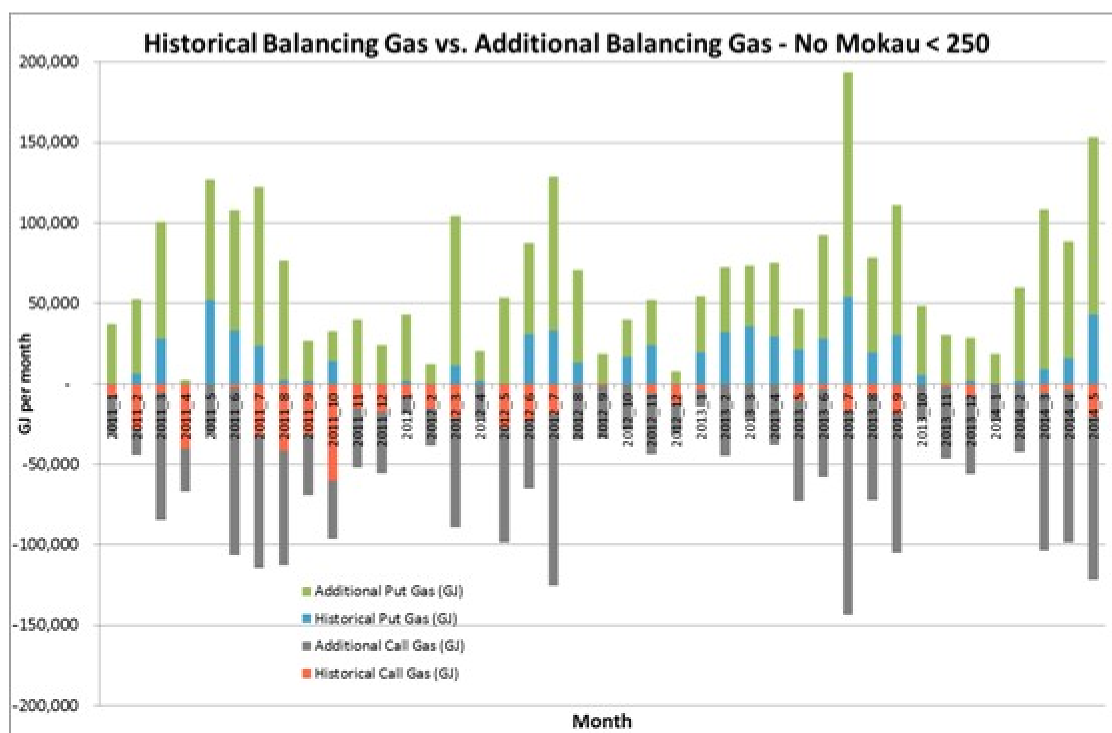
8 The line at 330 TJ represents the assessed maximum capacity of the Mokau compressor station under normal pipeline conditions running only the lowest rated unit of two available compressors.

- Approximately 90% of compressor fuel gas used over the last 3 years has been for pressure management instead of supporting nominations North of Mokau.
- As per section 3.1(a) of the MPOC version coming into effect on 1 October 2015: "maintaining Line Pack and/or pressure on the Maui Pipeline within operational limits, or returning them towards the operating range within those limits" is a component of operational balancing.
- MDL is not required to use the compressor for pressure management. Our pressure management objectives could in most cases be achieved by balancing actions using Balancing Gas Calls and Puts instead.
- Our estimates[9] of the additional Balancing Gas Calls and Puts that would have been required to compensate if compressors were not used for pressure management (on days when flows North of Mokau were less than 250 TJ) are presented in the graph below. This is on a monthly basis from January 2011.



- The cost of such additional Balancing Gas Calls and Puts is difficult to estimate and depends on the spread between sale and purchase prices. Based on prices from our Balancing Gas eXchange for the months presented in the graph we estimate that additional costs for pipeline users would have been around $ 3 million per year during that period.

Although we avoided such costs in the past, we now have a perverse incentive to use balancing actions for pressure management even when compressor use would be more economical. This is because balancing gas sales and purchases are part of our Recoverable Costs, while the cost of compressor fuel gas – which is also used to deal with imbalances and peaks in gas flows that are outside of our control – must be treated as operating expenditure.

[9] Estimates were made by modelling Line Pack and simulating additional balancing actions when set limits were breached. The operational limits used for the modelling were set as the minimum and maximum Line Pack that the pipeline could sustain while remaining within a Target Taranaki Pressure operating range (without Mokau running).

A symmetrical IRIS would be problematic for GTBs

We note the Commission recently published its decision[10] to not make amendments to the incremental rolling incentive scheme (IRIS) applicable to gas pipeline businesses "at this time". In that decision the Commission indicated its intention to have more consultation and to consider any amendments as part of the IM review process.

We set out our views on the Commission's paper for "Proposed amendments to input methodologies: Increment Rolling Incentive Scheme" in our submission to the Commission dated 29 August 2014 and in our cross-submission dated 12 September 2014. Our main points in those included the following.

- A symmetric IRIS must be based on unbiased forecasts
- A DPP should not include a symmetric IRIS
- Uncontrollable costs should remain excluded

We consider that our previous submissions remain relevant and applicable. As part of the current problem definition phase we submit that the concept of a symmetrical IRIS is likely to remain problematic and inappropriate for GTBs.

In the context of a DPP we consider that a symmetrical IRIS would be incompatible with any approach by the Commission to impose caps on forecast expenditures. If such an approach were adopted then GTBs would be put in double jeopardy. The cap by itself would eliminate any return on expenditures made by the GTB in accordance with its own forecasts but in excess of the cap applied by the Commission. Adding a symmetrical IRIS would then lead to a penalty on the GTB for actually undertaking such expenditure (again, in accordance with its own forecasts but in excess of the Commission's cap). The effect would be to disincentivise investment.

In the context of a CPP the issue needs to be considered more carefully. In principle, we could support a symmetrical IRIS if it applied to expenditures that were determined on the basis of reliable and unbiased forecasts. (Imposing a cap on such forecasts would impose a bias.) We expect we could make such forecasts for business-as-usual type of expenditures. The problem, of course, is that CPP applications are made for situations that are not business-as-usual. This means that even in the context of a CPP it will be important to make a careful distinction between controllable expenditures for which reliable and unbiased forecasts are available, and other types of expenditures that have less certainty. It is most likely the latter type of expenditures for which a CPP is being sought.

We note that an IRIS needs to accommodate contingent and unforeseen projects as well. It is also important to avoid distortions potentially caused by large investment projects, such as our upcoming Whitecliffs pipeline relocation that we have described in previous submissions. In such cases there could be a large impact from the double jeopardy that an IRIS could impose.

Overall, we would like to point out that making reliable forecasts for GTBs is likely to be more difficult than for regulated entities in other sectors. Compared to distribution businesses, our throughputs are more difficult to predict and our expenditures can be much 'lumpier'. Compared to a transmission business like Transpower we are much smaller in scope and individual activities or projects may have a much larger relative impact on our business.

[10] Gas Pipeline Services (Incremental Rolling Incentive Scheme) Input Methodology Amendments Determination 2015 dated 9 June 2015.

Line Pack should be included in MDL's asset base

An anomaly in the Regulatory Asset Base (RAB) for GTBs is that it does not explicitly provide for the inclusion of Line Pack[11]. A minimum quantity of Line Pack is necessary to be able to provide Transmission Services (an empty pipeline would not be able to transport gas) and to provide for contingencies as well. Under the Vector Transmission Code the required level is set by the lower Line Pack limit of the Acceptable Operational Limits for each Vector pipeline. Under the MPOC, it is calculated for each nomination cycle on the basis of Approved Nominations in that cycle.

MDL and Vector have approached this issue differently.

- Our understanding is that Vector made an adjustment to its initial RAB to include its Line Pack as of 30 June 2007. This adjustment was made as a result of a 232,399 GJ Line Pack transfer on that day from the Vector Wholesale Group to the Vector GTB at a price of 6.15 $/GJ. The price was based on a gas tender price just prior to the transfer date. In order to calculate the RAB roll forward Vector had to assume a physical asset life for its Line Pack. We understand this was set equal to the average remaining life of Vector's transmission pipelines. We assume revaluation is done on the same basis as all other assets.
- In MDL's case there was no transfer of Line Pack from any other entity and no apparent basis for its valuation. Accordingly, Maui Line Pack was not included in our RAB.

We submit that both approaches are problematic.

- Requiring Vector to treat Line Pack as a depreciating asset with a finite life time makes little sense. In reality, Line Pack is a non-depreciating asset.
- Treating Line Pack as a fixed quantity is strange. It actually changes all the time, depending on the rates of intakes and offtakes on each transmission pipeline[12].
- The current value of Line Pack should depend on the current wholesale price of Gas. A tender from 2007 would not be expected to have much relevance for this purpose. While the current price will indeed be impacted by inflation since 2007, it is likely to be much more dependent on current trends in supply and demand for gas.
- In our case Line Pack has not been attributed with a value at all because it is not included in our RAB.

We note that obtaining valuations for Line Pack is now much easier than when the IM for GTBs were first determined. A wholesale gas spot market has been operating since late 2013. With the advent of market-based balancing on 1 October 2015 we anticipate that trading volumes will increase significantly. As a result, it should become possible to base Line Pack valuations on a publicly available wholesale gas market price index.

MDL's opex does not include all of MDL's costs

An unusual feature of our business is its joint venture structure. This means that not all of the expenses associated with the Maui Pipeline are carried by MDL. Instead, several types of expenditure are retained by the Maui Mining Companies[13] and do not show up in MDL's accounts or Information Disclosures.

[11] Line Pack means the quantity of gas that is held in a pipeline.

[12] Hourly Line Pack data for the Maui Pipeline and each Vector pipeline is publicly available from the Open Access Transmission Information System at www.oatis.co.nz .

[13] These are 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 or their respective successors in title.

The most significant of these relates to insurance. Prior to the determination of our initial DPP we provided the Commission with (confidential) information on quotes we obtained for insurance of the Maui Pipeline. This was in our response dated 1 February 2013 to a section 53ZD notice. Subsequently it was decided not to obtain such insurance for the Maui Pipeline separately, because it continued to be more economical for MDL's shareholders to hold that insurance as a part of their overall insurance portfolios. However, this does not mean that the insurance costs for the Maui Pipeline have been eliminated.

The problem to address is how such costs can be realistically included for our future DPP determinations. We acknowledge this may pose a bit of a conundrum. However, to ignore such costs would imply a cross-subsidisation for other Maui Pipeline users by MDL's shareholders.

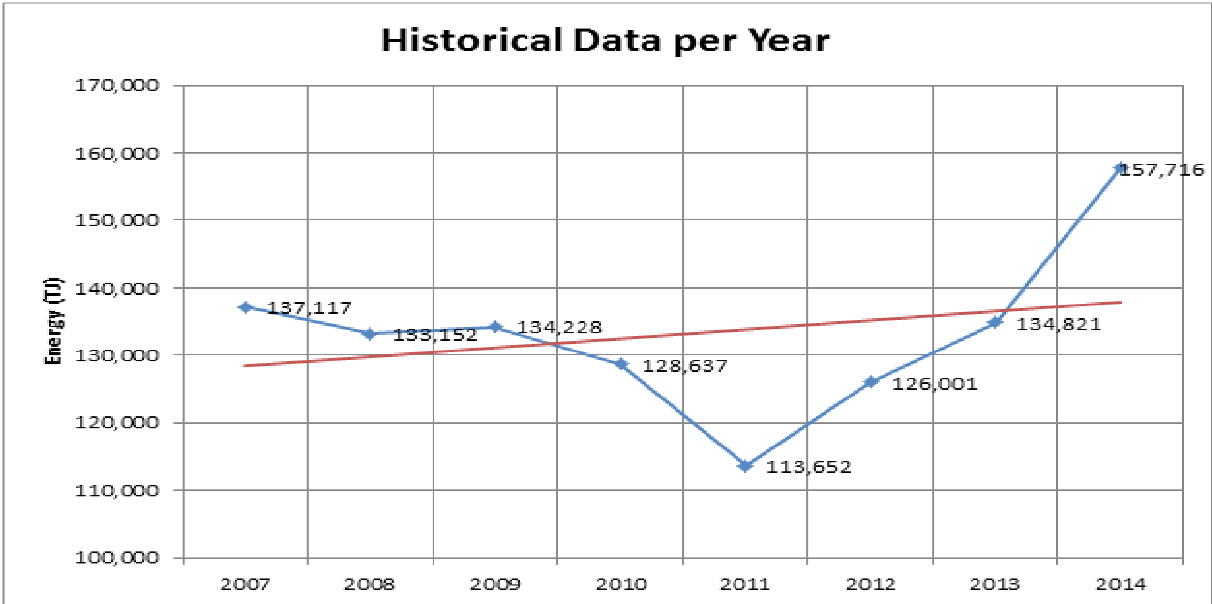
Declining throughput leads to permanent under-recoveries

The concept of a revenue cap based on notional quantities causes a major problem for us. This concept requires us to maintain compliance with an allowable notional revenue cap by setting our prices on the basis of notional price quantities. Those notional quantities are the historical price quantities from 2 years ago. The effect is that when price quantities are increasing a GTB can set its prices based on quantities from 2 years ago and realise a windfall profit over the additional revenue from the increased quantities. Conversely, when quantities are declining the GTB is required to base its prices on the higher quantities from 2 years ago and must suffer a loss of revenue from the decline. There is no need to subsequently adjust for such a windfall profit; conversely, we are not able to obtain subsequent compensation when we incur such a loss.

In our case revenues are derived only from throughput in the Maui Pipeline. Schedule 10 of the MPOC requires us to:

- recover our cost and return of capital from a Tariff 1 per GJ.km that is applied over the quantities of Gas transported multiplied by the transport distance; and
- recover our operating expenditure from a Tariff 2 per GJ that is applied over the quantities of Gas delivered.

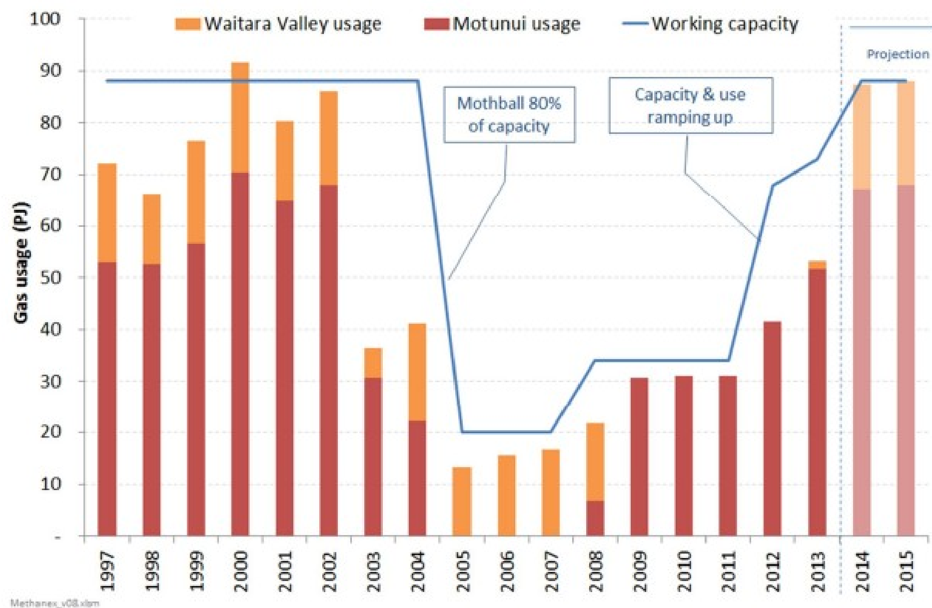
The historical trends in those throughput quantities are presented in the graphs below. The first graph shows the delivered gas quantities per calender year used for our Tariff 2.



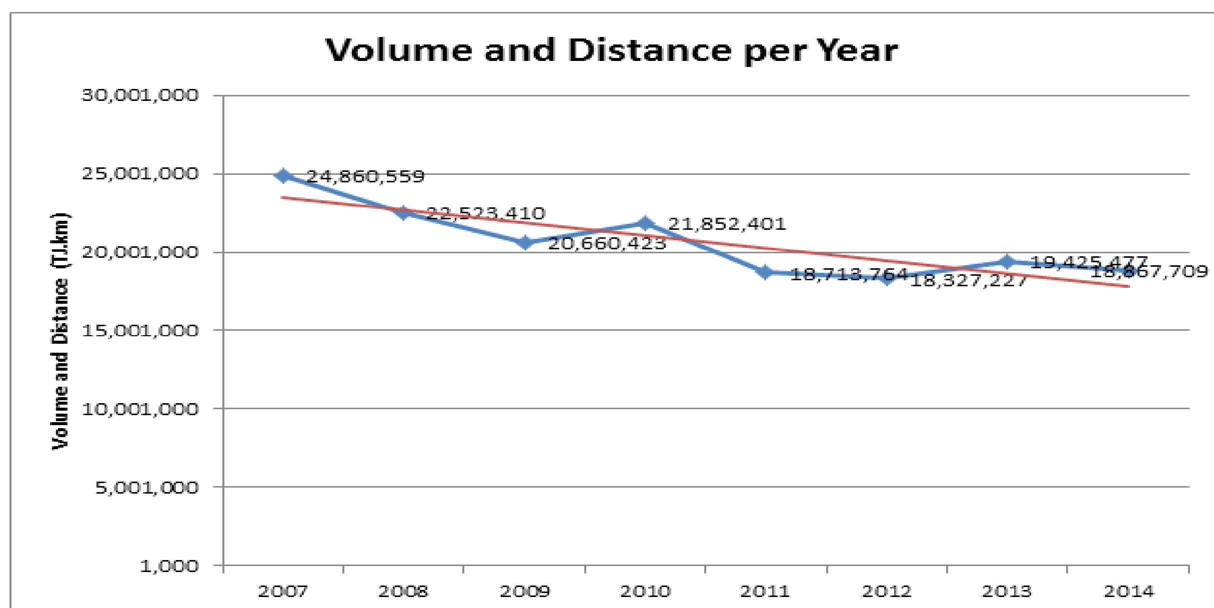
After a slow decline lasting until 2011 this graph shows increased deliveries that result mainly from additional methanol productions trains being put back into service. With Methanex now back at full capacity we do not expect any further increases in throughput. Instead, with the imminent shutdown of the Otahuhu power station and the decommissioning of the Southdown power station later this year, and the declining use of gas for power generation expected in future years, we expect to be faced with declines again.

The impact that Methanex by itself can have is presented in the following graph[14].

Figure 25: Methanex gas use and working capacity since 1997



The next graph shows the distance-based transported quantities used for our Tariff 1.



[14] Source: Gas Industry Co, "Long term gas supply and demand scenarios", prepared by Concept Consulting Group Ltd., September 2014

This shows a clearly declining trend in our Tariff 1 quantity. The increased deliveries to Methanex did little to alleviate this trend because gas delivered to its methanol plants travels only a short distance through the pipeline. The declining production from the Maui fields and the declining use of gas for power generation in the Auckland region is expected to lead to a continuing decline.

We also need to point out that the declines in Tariff 1 quantities have a much greater impact on our revenues than any trends in Tariff 2 quantities. This is because the proportion of our revenues from Tariff 1 is much larger than from Tariff 2. Our Tariff 1 and Tariff 2 revenues for calendar year 2014 were 30.2 and and 13.6 million $ respectively.

The expected result from these trends is that if the Commission continues to base a revenue cap on historical notional price quantities then we would expect to suffer continuing losses of revenue and a continuing under-recovery of our costs. We would not consider that a reasonable outcome.

CPP cannot be renewed or reset

Other than allowing for customised forecasts of expenditure, a CPP can offer additional advantages. Aspects that we consider particularly important are the opportunity for us to:

- include contingent projects;
- apply for reconsideration of our price-quality path if an unforeseen project becomes necessary; and
- request a variation to an IM[15] that would be applicable in the determination of our CPP.

All of those expire, however, at the end of a CPP period. This means IM variations are lost, contingent projects can no longer be provided for, and we would face hurdles in responding to unforeseen events after transitioning back to a DPP.

In our thinking about making an application for a CPP we considered whether it would be possible to renew, roll-over or reset a CPP with existing IM variations and contingent and unforeseen projects. The current IM do not seem to provide for such a scenario. We expect the CPP regime can be considerably enhanced and improved if solutions for this can be found.

DPP does not provide sufficient flexibility

A corollary of our previous point is that a DPP is not sufficiently flexible. We realise that the option for an IM variation is limited by the Act to a CPP. However, we consider that the IM for GTBs can be improved by providing for contingent and unforeseen projects in a DPP as well.

Considering that there are only 2 GTBs, for which even the DPP determinations are based on somewhat customised forecasts, we expect this may be manageable.

A particularly useful concept for GTBs would be the inclusion of 'listed projects', similar to those in the price-quality path determination for Transpower's transmission business. This would acknowledge the reality that GTBs can be faced with significant projects for which reliable costs and starting dates cannot yet be assessed when a DPP is determined. The 'lumpy' nature of investments is a normal feature of a transmission business. It should not require a full-scale business-wide CPP evaluation to include such a type of investment.

We note the IM already allow the Commission to reconsider a DPP if there was an error that has an impact equivalent to at least 1% of allowable notional revenue. Conceptually, the omission of a project with such an impact could be regarded as a type of error as well. We expect the IM for GTBs can be considerably improved by allowing some flexibility to reconsider a DPP for a transmission project with a significant impact on the price-path.

[15] Under section 53V(2)(c) of the Act.

CPP process can be unnecessarily wide in scope

We note this problem is not unique to us. There are many scenarios in which the current CPP process would be metaphorically similar to the use of a sledge hammer to crack a nut. Any application for a CPP assumes that details can be provided on at least 5 projects or programmes and that a verifier must be able to select 10 projects or programmes. All of those need to be assessed and reviewed. In our case, given the scale and scope of our business, we would not have so many projects and programmes to begin with. More importantly, it is not clear why all this work would need to be undertaken if a CPP application were driven by only a single significant project or issue.

CPP process is excessively expensive and cumbersome

We believe this problem has already been widely acknowledged. It applies to all types of businesses that may seek a CPP. Without claims for completeness, some of the issues we believe should be addressed include the following.

- The requirements and scope for consumer consultation should be reviewed. From our perspective it is relevant to review what should be specifically appropriate for a GTB.
- The Commission's expectation[16] "that the expenditure categories that have been developed for CPPs will be consistent with expenditure categories used for information disclosure" has not been realised. Significant effort has been devoted since that time to make the information disclosure requirements more appropriate and relevant. We propose that the required schedules for a CPP application should now be amended to match the schedules and categories in the updated Information Disclosure requirements.
- The role of a verifier appears to be problematic, and even redundant if the Commission subsequently retains its own consultants to evaluate a CPP application anyway. We would also like to point out that the number of parties that can perform such roles for GTBs in New Zealand is very small. We suggest the role and requirements for a verifier should be reconsidered.
- As we already indicated, the opportunity to request an IM variation can be an important benefit of applying for a CPP. However, this sits uneasily with the lack of any provisions in the IM that acknowledge that such a variation can be made. At the extreme, this requires an applicant to prepare and submit two sets of application documents: with and without the requested IM variations. We would hope to explore solutions that could alleviate this problem.
- Clause 5.5.6(5) of the IM for GTBs imposes a range of requirements in relation to providing forecasts of weighted average growth in quantities by demand group. These requirements are highly problematic for us.
  - To begin with, we do not have any demand groups. The MPOC requires us to provide Transmission Services to all Shippers on substantially the same terms.
  - Making long-term forecasts for gas transmission is very difficult, other than in a scenario format. Unlike a distribution business, an assumption for smooth consumption trends cannot be made. In our case, a single customer like Methanex or a power generator can make decisions on plant openings or closings that have significant impacts on transmission demand. Unless we receive advance notification, we would not be capable of forecasting such decisions.

[16] Stated in paragraph 9.5.24 of the Reasons Paper accompanying the IM determinations in December 2010.

- We currently do not have any fixed component in our prices. Our revenues are currently derived from variable throughput only.
- We would be introducing a fixed component in our prices if AQ capacity products were allocated. As we indicated already, however, the allocations and the prices for AQ are expected to be set in periodic auctions. Volumes to be allocated in each auction are expected to be determined in periodic Release Plans (subject to approval from GIC). It may be anticipated that AQ volumes would gradually increase over time, but we have not considered how to establish a forecast for that in advance or how reliable any such forecast would be.

- We invite the Commission to reconsider whether the requirements in clauses 5.5.28(c) and (d) of the IM for GTBs are really necessary.

Should the Commission establish Pricing Principles for GTBs?

A slightly odd problem facing us is the inclusion of pricing principles in the IM for GTBs. In our case, Tariff Principles are prescribed in Schedule 10 of the MPOC. Other provisions in the MPOC require us to offer Transmission Services on substantially the same terms to all Shippers. These MPOC requirements do not appear to fit well with the current pricing principles in the IM.

As part of the IM review we would like to consider the following issues and questions.

- Should pricing principles for GTBs be identical to those for GDBs?
- Should the application of pricing principles from an IM be mandatory or voluntary for GTBs? In this context we note that sections 29.2 and 29.3 of the MPOC require us to make changes in order to comply with applicable regulation. We are obviously not required to make changes to comply with voluntary principles. We should also note that we have never received any request or comment from any pipeline user with respect to the tariff principles in the MPOC since the start of Part 4 regulation for us.
- If the application of pricing principles under a DPP remains voluntary, why could they become mandatory under a CPP?
- If the Commission were to impose a mandatory pricing methodology under a CPP how would this be determined?
- If the Commission were to impose a mandatory transitional pricing methodology then who determines the accompanying transition plan?
- Is it useful to include pricing principles for GTBs in their IM at all?

Standard Physical Asset Lives do not match with asset categories for GTBs

The IM for GTBs requires us to use standard physical asset lives for assets in accordance with Schedule A. The items relevant for us in that schedule are:

ASSET DESCRIPTION	STANDARD PHYSICAL ASSET LIFE (YEARS)
HP PIPELINES – various diameters	80
STATIONS - Site Development and Buildings	50
METERS – 25 to 60 cubic metres / hour	15
Other station equipment	35
HP Pipeline Valves (includes Pits and Covers)	80
SCADA Master Station; telecom systems	10

In practice we do not consider this table particularly useful. Practically all our assets end up as either a pipeline or valve with an 80 year life, or as "other station equipment" with a life of 35 years. We suggest that the Commission review Schedule A and consider whether the asset categories used for Information Disclosure could be more useful for price-quality path determinations as well.

IM assume every regulated entity is subject to income tax

We have significant problems with respect to the application of IM provisions relating to tax information and calculations for MDL. We appreciate that the Information Disclosure Determination already provides some exceptions for us. We also appreciated the additional exemption the Commission provided us for our last Information Disclosure for the calendar year ending December 2014. We must point out that under the current determinations we will need such exemptions on an on-going basis.

As a result of the structure of the Maui Joint Venture arrangements, established in the 1970s, MDL is not subject to income tax[17]. This means we never had and do not maintain any income tax records. As a result we do not have and cannot provide MDL information:

- on tax losses, whether utilised or not[18];
- on deferred tax;
- in relation to permanent or temporary differences;
- on tax depreciation;
- on tax asset values.

We explained the approach we took to provide proxy information for prior information disclosures in our exemption request letter to the Commission dated 8 May 2015. As we stated in that letter we do not expect we can continue with that approach.

The root problem is that the IM assume that every regulated entity is subject to income tax and has relevant information in relation to that. In our case that assumption is invalid, and has led to increasing problems. We hope these can be resolved during the current IM review.

Decision-making framework views

The Commission has also invited views on its decision-making framework for the review, and for making IM changes more generally. Our overall impression is that the Commission appears to be making its decision-making framework too difficult and complicated.

Our views are presented under the following headings.

- We support a 2-stage approach
- We see no statutory threshold for amendments
- The Commission can create new IMs
- The Commission should not impose restrictions on amendments
- Distinctions between categories of amendments are mostly irrelevant
- Timing across sectors can be different

[17] Instead, the Maui Mining Companies are taxed on their respective shares in ownership and income of MDL. They prepare tax returns, pay taxes and make claims as applicable for each individual company.

[18] Note that each of the Maui Mining Companies could have different tax losses and different utilisations.

We support a 2-stage approach

We support the 2-stage approach proposed by the Commission. We agree it is useful to conduct a broad review stage prior to delving into solutions and proposing specific changes.

With respect to the conceptual steps within each stage, as set out in the Commission's discussion draft of 22 July 2015, we have some concerns.

- Within the review stage, we understand the logic of the steps described by the Commission. However, it seems to us they may not apply to every issue that arises. We anticipate some issues may be fairly simple or mechanical to deal with, without much need for deeper policy considerations. In those cases, the proposed type of analysis may be overkill.
- Within the change stage we disagree with some of the underlying assumptions. More on that below.

We see no statutory threshold for amendments

We agree with the Commission that we see no statutory threshold for making changes. The "materially better" phrase is only included in section 52Z(4) of the Act, as a requirement on the court in exercising its powers during appeals against IM determinations. We do not see anything in the Act that imposes such a restriction on the Commission itself.

It could even be argued that section 52X implies that the Commission can make non-material changes, for which section 52V need not apply.

The Commission can create new IMs

We disagree with the Commission's view that it cannot create new IMs. The Commission seems to be inferring this from section 52U(1), which requires the Commission to determine input methodologies no later than 30 June 2010. However, we see nothing in the Act that prohibits the Commission from determining any additional IMs after that date. We have not reviewed the legislative history, but would be very surprised if the intent was that the Commission would have only one shot at developing all IMs for all of eternity. If, for some strange reason, a prohibition on new IMs had been the intent then such a provision could have been made explicitly.

We consider it more plausible to infer from the Act that the Commission can create new IMs.

- Sections 52V and 52W do not include any references to a time limit for making an IM.
- Section 52Y(4) states that: "Section 52W applies if ... an input methodology is replaced or amended". The word "replaced" implies that something new must have been created for the replacement.
- Section 55F(4) starts with: "If an input methodology is published after a section 52P determination ... is made ...". This wording is not restricted to an amendment and implies that new input methodologies are possible.

In light of that consideration, we consider it mostly[19] irrelevant whether proposed changes represent the creation of a new IM or an amendment of an existing IM.

[19] It could be argued that section 52V requires a separate notice if the Commission begins work on a new IM in addition to an amendment. We expect the Commission can do that if necessary.

The Commission should not impose restrictions on amendments

The Commission's paper proposes to restrict amendments to those that would promote the purpose of sections 52A or 52R more effectively, or would significantly reduce compliance or regulatory costs or complexity. We support a focus on those types of amendments, but see no need for the restriction.

We consider that the purpose of the section 52Y review is to facilitate improvements to the input methodologies. As with the statutory threshold, we see nothing in the Act that limits the section 52Y review to material issues or improvements. From our perspective, small reductions in costs and complexity are welcome too. In other words, we see no reason to reject potential improvements because they are not significant enough.

This means we also consider the correction of any drafting errors and ambiguity as being within the scope of section 52Y amendments. We see no need to establish a separate framework for that, and no need to restrict or reject such corrections on grounds of significance. To the contrary, if such corrections are not made as part of a section 52Y review, when will they ever be made otherwise?

Distinctions between categories of amendments are mostly irrelevant

We do not support the framework set out in Attachment B of the Commission's discussion draft dated 22 July 2015.

To begin with, we do not understand the relevance of attempting to make distinctions between amendments under section 52X or 52Y. We already know the Commission is making a section 52Y review. It could classify all of its proposed changes under this heading if it wished to do so. Nothing in section 52Y prohibits the Commission from reviewing IMs at a shorter interval than 7 years (provided it maintains the purpose of section 52R). At a stretch, section 52X could be considered redundant.

More importantly, it makes no difference whether an IM is amended under section 52X instead of 52Y. Sections 52V and 52W apply equally under both. Nothing else in the Act depends on a distinction. Accordingly, we see no need for the Commission to identify which section it is using[20].

As a logical follow up to this view, we consider it even less relevant for the Commission to attempt a design for categories of IM changes. Firstly, we see no need or benefit for having such categories. Secondly, the discussion paper already illustrates the risks and costs from attempting to create such a taxonomy. In paragraph 33.3 the Commission asks if its proposed 'Category 3' should be split into separate categories for 'workability and effectiveness' and 'predictability'? We consider this a good example of the Commission making its work unnecessarily complicated.

Having said that, we could support a practical categorisation of proposed IM amendments for evaluation purposes. As proposed by Transpower in its submission on 31 March 2015, it could be useful to make a distinction for amendments that have: a) high, b) medium, or c) little or no impact on value or prices. However, we submit that such a categorisation can be done at a later stage, after problems have been identified. We do not support an a priori development of a taxonomy for types of changes.

Timing across sectors can be different

The Commission has also invited views on the cross-sector approach and timing for the IM reviews. In that regard, we offer the following views.

[20] We note that section 52V does not require the Commission to indicate under which section of the Act it is conducting work on an IM.

- We acknowledge that a wide range of issues are cross-sectoral and probably should be coordinated. For example, EDBs are now faced with the prospect of declining and increasingly 'peaky' throughputs as well and will presumably also want to address the resulting problems.
- As a GTB, however, we are also faced with a range of issues unique to our sector. Examples are Line Pack valuation, balancing, and capacity auctions. Our experience thus far has been that we are relegated to playing second fiddle when our specific issues are reviewed simultaneously with those of other sectors.
- A completion date of December 2016 (or earlier) is important for our price-quality path reset. We do not consider that the current regime is working well. We consider it important that the current IM review can address the issues and problems for our sector in time, without unnecessary distractions or delays caused by issues for other sectors that are less urgent.

Conclusion

We have appreciated the opportunity to provide this submission. For any additional questions or clarifications please do not hesitate to contact us.

Yours sincerely,

Jelle Sjoerdsma
Commercial Operator, Maui Pipeline
for Maui Development Limited