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Regulation Branch  
attention: Mr. Matthew Lewer  
Commerce Commission  
PO Box 2351  
Wellington 6140

Dear Sir,

Please regard this letter as our cross-submission to the Commerce Commission ("the Commission") following earlier submissions on the Draft Reasons Paper for "Initial Default Price-Quality Paths for Gas Pipeline Businesses" and the accompanying Draft Determination for Gas Transmission DPP. In this letter I will use MDL to refer to the Gas Transmission Business (GTB) of Maui Development Limited.

Our cross-submission is based on a review of the submissions from others and follows up on our earlier submission. As a result we now offer comments under the following headings for the Commission, and will expand on each of those below.

- Quality standard and definitions
- Commencement date and regulatory period
- Mechanism to support new investment
- Ex-ante approach

### **Quality standard and definitions**

1. We note that all Gas Pipeline Businesses support the quality standard proposed by the Commission, but every one of them (including MDL) has recommended refinements to the specification and definitions. In addition to our own submission, we support the issues raised by GasNet, Powerco and Vector in relation to this. We assume none of these should be controversial and the Commission can make refinements as appropriate to address the issues that have been raised.

### **Commencement date and regulatory period**

2. In our original submission we indicated agreement with a starting date of 1 July 2012 and an ending date of 30 September 2016 for the regulatory period. This agreement was based on the following assumptions.
3. First, our preliminary calculations indicated that the outcome of the Commission's proposed approach would lead to acceptable initial results for MDL. We acknowledge, however, that this outcome is just a lucky result from applying historic prices and quantities in the permutations proposed by the Commission. It does not really indicate any intrinsic merit of that proposed approach.
4. Second, we assumed – and recommended – that the Commission would make price resets under section 55F(4) after Input Methodologies for Starting Price Adjustments were completed, if those SPA IMs would lead to materially different prices. We do not really consider that a continuing roll-over of prices based on those at 30 June 2010 is appropriate.

5. Based on those two assumptions MDL was able to support a 1 July 2012 commencement date for the regulatory period.
6. We have now reviewed the submissions from GasNet and Vector and can sympathise with those. We acknowledge that the outcome of the proposed approach for GasNet seems unreasonable and inequitable. It is also difficult to imagine how this outcome could benefit the long-term interests of GasNet's consumers.
7. We have also reviewed the concerns from Vector and their interpretation of sections 53P and 55F. We have not obtained legal advice on this. We also appreciate the process by which the Commission has come to the conclusions embodied in its draft decision. Nevertheless, we agree with Vector that the outcome of the Commission's currently proposed approach almost certainly would not have been intended by Parliament to apply to gas transmission pipelines.
8. We understand section 55E(2) requires the Commission to specify a DPP "as soon as practicable after 1 July 2010". We also note that the Commission believes that the approach it is being forced to adopt is less than optimal and has some unintended consequences.
9. GasNet have submitted that implementation of the Initial DPP be deferred until an SPA IM and reset decisions have been made. The regulatory period could then be set for a suitable interval after that date. (Monitoring of the quality standard could start earlier, as part of information disclosure.) We assume that if this course were followed the deferral and the regulatory period would be applied in the same way to GTBs as well as GDBs.
10. We submit that such a deferral, if adopted, would not create harm for MDL's consumers. MDL's setting of prices in the intervening period would remain subject to the constraints of the Maui Pipeline Operating Code.

### **Mechanism to support new investment**

11. Our submission already indicated our concern about the inability of a DPP as proposed by the Commission to provide a return on new investment. We note Vector's submission dedicated much more effort to illustrating (with numerical examples) the difficulty faced by a GPB to realise benefits from efforts to improve efficiency. In particular, Vector illustrated that if such efforts require even a relatively modest investment the payoff for a GPB may well be negative under the Commission's proposed approach.
12. If the Commission cannot find a way to accommodate new investment in the DPP then it will effectively discourage any investment that has a payback period beyond the end of a regulatory period. Moreover, this will tend to eliminate almost all investment towards the end of a regulatory period.
13. We urge the Commission to devote some more effort to meeting the objectives stated in section 52A(1)(a). Under the currently proposed approach we do not see how and where this is being considered. We have suggested possible mechanisms in earlier submissions.

## Ex-ante approach

14. With respect to the Commission's proposed ex-ante compliance approach to price setting we have noted that Powerco "is comfortable" with it, GasNet is not, and Vector has refrained from an opinion. We agree with the concerns expressed by GasNet; in addition to the illustration of disadvantages we submitted earlier.
15. We recommend the Commission reconsider its proposed ex-ante compliance approach to setting prices. We acknowledge that this approach does have some benefits. On balance, however, we do not believe those outweigh the disadvantages set out in our submission and submitted by GasNet. As a result we now suggest that a combined ex-post regime for quality and price assessment would be more practical and appropriate.
16. We continue to believe that an ex-post compliance regime should also be able to accommodate an unders and overs regime as MDL is operating currently. We believe such a regime reduces risks for MDL and increases benefits for consumers.
17. If the Commission does decide to continue with an ex-ante approach we reiterate the point from our previous submission that quantities used to determine notional revenues should be as recent as possible. In other words, the time lag should be as short as possible. This is to minimize: a) the risk to GPBs of actual quantities dropping below notional quantities, and b) the surplus paid by consumers if actual quantities are higher than notional quantities. If MDL were to set prices for a period starting on 1 October in a year, we expect we should be able to use quantities for a period ending on 30 June of that same year.

## Closing remarks

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

Yours sincerely,

A handwritten signature in purple ink that reads "D Gray". The signature is stylized with a large, looped initial "D" and a cursive "Gray".

Don Gray  
General Manager, Commercial Operator Maui Pipeline  
**for Maui Development Limited**