

## OFFICE OF GAS ACCESS REGULATION

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### NOTICE

#### **APPLICATIONS FOR WAIVER OF RING FENCING REQUIREMENTS THE PARMELIA PIPELINE AND THE TUBRIDGI PIPELINE SYSTEM**

On 31 March 2000, CMS Gas Transmission Australia (CMS) made application under section 4.16 of the *National Gas Pipelines Access Code for Natural Gas Pipeline Systems* (the Code) for waiver of certain ring fencing obligations in respect of the Parmelia Pipeline (WA: PL 1-3, 5 & 23). On the same day Origin Energy Resources Ltd (Origin) also made application for waiver of the same ring fencing obligations for the Tubridgi Pipeline System (WA: PL 16 & 19).

Draft Decisions were issued on 22 May 2000 indicating that the Regulator did not intend issuing a notice under section 4.15 of the Code granting a waiver of ring fencing obligations. The Draft Decisions noted that there were a number of issues requiring additional information. These issues were not able to be resolved in the time frame allowed by the Code prior to issuing the Draft Decisions. It was proposed that the outstanding issues would be resolved during the public consultation period from 23 May 2000 and closing on 31 August 2000.

The purpose of this notice is to assist interested parties in making submissions on the two Draft Decisions by providing details of additional information and advice that was sought by the Regulator in relation to this matter.

#### **Conditional Waivers**

One of the issues that required further consideration was whether a waiver of the ring fencing requirements granted by the Regulator could be made subject to specified conditions. Section 4.15 of the Code sets out a number of tests, which must be met before a waiver can be granted. If these tests are met to the satisfaction of the Regulator, the Code allows that the waiver may be granted.

However, as the Regulator is not obliged to grant a waiver where the tests of section 4.15 of the Code are met, the Regulator retains a discretion to refuse to grant a waiver or to grant a waiver that is subject to specified conditions.

In considering the applications for waiver of ring fencing obligations lodged by CMS and Origin, consideration will be given in the Final Decision to the granting of waivers that are made subject to specified conditions.



## **Term of Waiver**

Another issue that required additional consideration was whether a waiver, once granted, can be reviewed at a later date and the ring fencing requirements of the Code reimposed.

Since a waiver of ring fencing obligations can be made subject to conditions, a limit can be imposed to provide that the waiver will expire at a specified time or upon the occurrence of a specified event.

The possibility of granting a waiver, which is subject to a specified time limit or the occurrence of a specified event, will also be considered in respect of the applications by CMS and Origin in arriving at a Final Decision.

## **Retrospectivity**

A third issue to be addressed was that if no waiver is granted, do the ring fencing obligations apply to contracts in existence prior to the time that the obligations are imposed by the legislation? As the Code does not make specific provision for the retrospective application of section 4.1(b) (that a service provider not carry on a related business), there is no requirement for a pipeline service provider to implement the obligations of section 4.1(b) in respect of pre-existing contracts.

However, the Code envisages that the obligations imposed by sections 4.1(h) and (i) would be imposed in respect of all contracts for the haulage of gas on a pipeline from the time that the obligations become effective should a waiver not be granted. These obligations require that the marketing staff of a pipeline service provider have no involvement in a related business and that the marketing staff of a related business have no involvement in the business of a pipeline service provider.

Therefore, in preparing the Final Decision, consideration will be given to the costs imposed on CMS and Origin of complying with the obligations imposed by sections 4.1(b), (h) and (i), taking the retrospectivity of these obligations into consideration.

## **Submissions**

Submissions close at 4PM (WST) on 31 August 2000. Final Decisions on the two applications for waivers of the ring fencing requirements are scheduled to be made by 21 September 2000.

## **Confidentiality**

In general, all submissions from interested parties will be treated as in the public domain and placed on the *OffGAR* web site. Where an interested party wishes to keep part or all of the contents of a submission confidential, it should indicate these parts clearly. However, where the information is not considered to be 'unduly harmful' to the legitimate business interests of any party, the submission may be returned to the party making the submission with the option of revising or withdrawing it.

In making a submission, the Respondent warrants to the Regulator that its submission does not contain information, which the Respondent is under an obligation of confidentiality to any person not to disclose.

## **Format for Submissions**

Submissions with comments on the proposed Access Arrangement should be in both written and electronic form and addressed to:

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**KEN MICHAEL**  
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18 August 2000

