



# Issues Paper

**To Assist with Submissions on the  
Proposed Waiver of Ring Fencing  
Arrangements**

**for the  
Tubridgi Pipeline System**



## 1. INTRODUCTION

The purpose of this paper is to assist interested parties in making submissions on the application by Origin Energy Resources Ltd (Origin Energy) to waive ring fencing obligations for the Tubridgi Pipeline System.

On 31 March 2000, Origin Energy on behalf of the Tubridgi Joint Venture Parties submitted an application for a waiver of ring fencing obligations for the Tubridgi Pipeline System (Licence Numbers WA: PL 16 and 19). This application was made under section 4.16 of the *National Third Party Access Code for Natural Gas Pipeline Systems* (the Code).

A copy of this application for waiver is available at no cost from the Office of Gas Access Regulation (*OffGAR*) web site ([www.offgar.wa.gov.au](http://www.offgar.wa.gov.au)). Printed copies of the documentation are also available for \$10.00 per set. Requests for the documents can be made to:

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A notice was issued to interested parties on Friday 7 April 2000 and advertisements were published in the *West Australian* and the *Australian* newspapers on Wednesday 12 April 2000, advising that the application for waiver of ring fencing obligations had been lodged.

The notice and advertisements invited public submissions to be lodged with *OffGAR* by 4pm Monday 8 May 2000 (WST).

Within 14 days after the last day for submissions specified in the notice published under section 4.17(b) of the Code, the Regulator must issue a Draft Decision stating whether or not a notice is intended to be issued to waive the ring fencing obligations (section 4.15).

At the time when the Draft Decision is issued, the Regulator is required (section 4.21b) to request submissions from persons who request a copy of the Draft Decision.

Within 21 days after the last day for submissions on the Draft Decision, the Regulator must (section 4.23) issue a Final Decision stating whether or not a notice, as provided for under section 4.15, will be issued to waive the ring fencing obligations.

## **2. BACKGROUND**

### **2.1 The Pipeline System**

The Tubridgi Pipeline System consists of two pipelines. These are the Tubridgi Pipeline (Licence Number WA: PL 16), which is a 150 mm diameter pipeline constructed in 1991 and the Griffin Pipeline (Licence Number WAPL19) which is a 250mm pipeline that became operational in 1994. Both are 87 km long and run along the same easement, from the Tubridgi gas field to Compression Station 2 of the Dampier to Bunbury Natural Gas Pipeline (DBNGP).

### **2.2 Waiver of Ring Fencing Obligations**

Section 4 of the Code details the requirements for the ring fencing of pipelines covered by the Code. The goal of these provisions is to sequester or segregate the natural monopoly transmission and distribution portions of the gas supply chain from upstream and downstream activities to prevent market inefficiencies in potentially competitive parts of the gas market. Minimum ring fencing requirements are specified in section 4.1 of the Code and require a pipeline service provider to:

- (a) be a legal entity;
- (b) not carry on a related business (essentially a business of producing, purchasing or selling natural gas);
- (c) establish and maintain separate accounts for the activity that is the subject of each Access Arrangement;
- (d) establish and maintain a consolidated set of accounts for all the activities undertaken by the Service Provider;
- (e) allocate costs shared between different accounts in a fair and reasonable manner;
- (f) ensure that confidential information provided by a User or a Prospective User is used only for the purposes for which it is provided and is not disclosed without the User or the Prospective User's consent;
- (g) ensure that confidential information obtained by a service provider which might reasonably be expected to materially affect the commercial interests of a User or Prospective User is not disclosed to any person without the permission of the User or Prospective User to whom the information pertains;
- (h) ensure that marketing staff of a Service Provider are not also working for an Associate that takes part in a related business; and
- (i) ensure that marketing staff of an Associate that takes part in a related business are not also working for the Service Provider.

The Regulator may also require a pipeline service provider to meet additional ring fencing obligations, but no such obligations are currently under consideration in respect of the Tubridgi Pipeline System.

Section 4.15 of the Code provides for certain ring fencing obligations to be waived. These are:

- the requirement that the Service Provider does not carry out a related business (section 4.1 (b)); and
- The requirement that marketing staff of a Service Provider and Associate are separate (sections 4.1(h) and (i)).

Origin Energy has applied for a waiver of all of these obligations for which a waiver is available.

### **3 ISSUES FOR CONSIDERATION**

#### **3.1 Related Businesses**

A waiver of the requirement that the Service Provider does not carry out a related business is subject to the Regulator being satisfied of three essential aspects. These are outlined in section 4.15(a) of the Code and discussed below. It should be noted that all three of the elements discussed in 3.1.1 to 3.1.3 below must be satisfied before a waiver is granted to avoid the need for a Service Provider to comply with the requirement not to carry out a related business.

##### **3.1.1 Significance of the Pipeline or the Owners Stake in the Pipeline**

Section 4.15(a)(i) states that a service provider may have the obligation that it not carry out a related business waived if the Regulator is satisfied that either:

- the Covered Pipeline is not a significant part of the pipeline system in the State; or
- that the Service Provider does not have a significant interest in the Covered Pipeline and does not actively participate in its management and operation.

Origin Energy notes that the two pipelines, with a capacity of 120 TJ/day, currently transport approximately 30TJ/day, representing approximately 5% of the gas transported to the South West of the State. On this basis, Origin Energy proposes that the Tubridgi Pipeline System should not be considered a significant pipeline.

Interested parties are invited to comment on the measure of significance proposed by Origin Energy. In particular, comment would be helpful on whether the measure of significance should be based on actual throughput or capacity.

Interested parties are also invited to comment on how the market has been defined by the Service Provider, and whether in actuality, the Service Provider is able to influence competition in the market (including upstream or downstream markets), despite its seemingly small market share.

Origin Energy has not addressed the second aspect raised by section 4.15 (a)(i) of whether the Service Provider has a significant interest in the pipeline. Although each of the joint venturers may have a small stake in the pipeline, the application for waiver is being sought in aggregate for all of the joint venturers together. As such the second aspect raised by this section of the Code does not appear to be relevant in this case..

### **3.1.2 Administrative Costs vs Public Benefits**

Section 4.15(a)(ii) states that a Service Provider may have the obligation that it not carry out a related business waived if the Regulator is satisfied that the administrative costs to the Service Provider outweigh any public benefit arising from the Service Provider meeting this obligation. This includes taking into account any arrangements put in place by the Service Provider to ensure that confidential information is not disclosed to the servants, consultants, independent contractors or agents of the Service Provider who take part in a related business.

Origin Energy states that, due to its relatively small size and complex structure, separation of the gas production business would be a significant task. Origin Energy estimates that such separation would take 12 months, with \$200,000 in legal costs and similar internal costs. In addition, Origin Energy suggests that an alternative company structure could potentially expose the joint venturers to higher taxation burdens.

Origin Energy has not provided details of the potential public benefits of a separate company structure, but believes these to be minimal and notes that current gas sales and purchasing contracts are due to expire by 2004, leaving a limited timeframe for any public benefits to accrue.

Origin Energy proposes that the confidentiality requirements referred to in this section of the Code will be satisfied utilising the natural separation of the Perth and Adelaide offices and that the gas production and trading and gas transportation support staff in the Adelaide office will be separated and report to different managers in Perth.

Origin Energy has estimated the costs of separating its related businesses as in excess of \$400,000. Interested parties are invited to comment on the derivation of these separation costs.

More difficult is the quantification of public benefits. In a previous Final Decision on ring fencing, IPART in NSW identified the following possible public benefits of not granting the waiver:

- stronger competition in the gas transmission marketplace through more market players having access to essential infrastructure; and
- a reduction in any actual or perceived market advantages for the incumbent in terms of its ability to offer a “one stop shop” of gas services.

Quantifying these and other benefits can be a very challenging exercise. Interested parties are invited to comment on potential public benefits in relation to the ring fencing obligations, which are the subject of this waiver application and to provide evidence in support of their comments where possible.

The relevant timeframe must be considered in calculating the net present value of benefits and costs. Origin Energy postulates that 2004 should represent the end point of such calculations. Interested parties are invited to comment on the appropriateness of this timeframe, both in terms of the costs and benefits involved and for the duration of the waiver itself.

### **3.1.3 Associated Contracts**

Section 4.15(a)(iii) states that a service provider may have the obligation that it not carry out related businesses waived if the Regulator is satisfied that an arrangement has been established between the Service Provider and the Regulator which replicates the manner in which Section 7.1 of the Code would operate if the Service Provider complied with the obligation not to carry out related business.

Under Section 7.1 of the Code, a Service Provider may not enter into an Associate Contract without first obtaining the approval of the Regulator. This approval may not be granted on the grounds that the contract would have, or would be likely to have, the effect of substantially lessening, preventing or hindering competition in a market.

A Service Provider carrying out a related business by implication involves an Associate Contract, hence the requirement in Section 4.15 that the Regulator must be satisfied that the form of any such related business will not breach the conditions of Section 7.1 of the Code outlined above.

Origin Energy has proposed that, to satisfy this requirement, it will not increase its booked capacity (or that of its Associates) without justification or thwart access by a bona fide third party seeking access. It has also proposed to provide the Regulator with evidence that substantiates the fact that it is not acting in an anti-competitive manner.

Interested parties are invited to comment as to whether the proposals by Origin Energy are sufficiently detailed, and/or of form to satisfy section 4.15(a)(iii) of the Code.

### **3.2 Separation of Marketing Staff**

Section 4.15(b) states that a service provider may have the obligation that it separate marketing staff (Section 4.1(h) and (i)) waived if the Regulator is satisfied that the administrative costs to the Service Provider and its Associates of complying with these obligations outweigh the public benefits of the Service Provider meeting the obligations.

Origin Energy suggests that, due to its small size and complex structure, additional marketing staff would be unnecessarily burdensome. In particular, the nature of the joint venture is such that each of the joint venturers may be required to appoint additional staff, increasing the burden.

No specific estimate of the cost of compliance is provided, nor is a solution suggested. However, it is proposed that a cost effective method of separation would be the same as that suggested to ameliorate the issue of confidentiality as discussed under Section 3.1.1 above.

In a similar manner to Section 3.1.2 above, the essential issue relates to assessing Origin Energy's estimates of the costs of compliance against the benefits to the public. Interested parties are invited to comment along the lines discussed in part 3.1.2 above.

## **4 MAKING A SUBMISSION**

Submissions are invited from all interested parties on the proposed waiver of ring fencing obligations which must be received by 4pm Monday 8 May 2000, WST.

### **4.1 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 Regulator considers that the release of this information would not be 'unduly harmful' to the legitimate business interests of any party, the Regulator will return the submission to the party making the submission and provide that party with the option of revising or withdrawing its submission.

### **4.2 Format for Submissions**

Submissions with comments on the application for a waiver of ring fencing obligations should be in both written and electronic form and addressed to Mr Mike Jansen at the address given above.