

31 March 2000

Dr Ken Michael  
Gas Access Regulator  
Office of Gas Access Regulation  
Level 6  
197 St Georges Terrace  
PERTH WA 6000

Dear Ken

## **APPLICATION FOR WAIVER OF CERTAIN RING FENCING OBLIGATIONS**

### **1. Background**

As you are aware, SAGASCO South East Inc (SAGASCO) is the Operator of the Tubridgi L9 Production Joint Venture, an unincorporated joint venture comprising five separate legal entities (Tubridgi Parties). The Tubridgi Parties own and operate the Tubridgi Pipeline System, which is comprised of two pipelines (Tubridgi Pipeline WA PL16 and Griffin Pipeline WA PL19). The Tubridgi Parties are also engaged in gas production from the Tubridgi reservoir, gas purchasing and gas selling.

SAGASCO has lodged with the Regulator several applications for extensions of time to comply with the ring fencing provisions of the National Third Party Access Code for Natural Gas Pipeline Systems (Code). The current deadline extends to 31 March 2000.

The applications for extension of time have been necessary to allow for discussions between SAGASCO and OffGAR on the Code's ring fencing provisions which, if applied literally to the Tubridgi Parties, would result in complex, costly and in some cases onerous outcomes for little, if any, public benefit.

OffGAR and SAGASCO have engaged in open dialogue to identify the best way forward with respect to satisfying the ring fencing obligations. Representatives of SAGASCO and OffGAR met as recently as 8 March 2000 to discuss this issue.

The purpose of this submission is to request waivers on behalf of each Tubridgi Party from specific obligations imposed by the Code.

### **2. Application for Waivers**

SAGASCO understands that the Regulator, in accordance with Section 4.15 of the Code, can provide waivers on the strict compliance with three of the nine ring-fencing provisions, which are specified at Sections 4.1(a) to (i) of the Code.

SAGASCO requests, on behalf of the Tubridgi Parties, the Regulator grant waivers from the strict compliance with Sections 4.1(b), 4.1(h) and 4.1(i) of the Code. However, whilst seeking a waiver from the obligations contained in the abovementioned sections, the Tubridgi Parties will undertake to comply with the intent of the Code in a manner which is cost effective and commensurate with the size of the Tubridgi Pipeline System in the context of the Western Australia pipeline system.

## **2.1 Composition and Structure of the Tubridgi Joint Venture**

In order that the Regulator can make an informed decision on the matter of granting waivers to each of the Tubridgi Parties in respect of Sections 4.1(b), 4.1(h) and 4.1(i) of the Code, SAGASCO has provided below a concise description of the composition and operation of the Tubridgi Joint Venture (TJV).

The Tubridgi Parties, five distinct legal entities, form the TJV, which engages in both gas production and gas transportation. The Tubridgi Parties regard their main business activity as producing natural gas from the Tubridgi reservoir. This gas is processed through the Tubridgi Gas Plant and sold to AlintaGas. The Tubridgi Parties also purchase gas from the Griffin Joint Venture and on-sell the majority of this gas to Alcoa of Australia Limited. Currently, the only third party gas transported through the Tubridgi Pipeline System (TPS) is on behalf of CMS Gas Transmission of Australia.

Details of the Tubridgi Parties are as follows:

Company	Address	Interest in the TJV
SAGASCO South East Inc (ARBN: 002 382 023)	1 King William Street ADELAIDE SA 5000	51.15 %
Origin Energy Petroleum Pty Ltd (ACN: 010 728 962)	1 King William Street ADELAIDE SA 5000	2.80%
Origin Energy Amadeus NL (ACN: 010 137 121)	1 King William Street ADELAIDE SA 5000	2.70%
Pan Pacific Petroleum NL (ACN: 000 749 799)	Level 3, Tandem House 76 Berry Street NORTH SYDNEY NSW 2060	43.00%
Tubridgi Petroleum NL (ACN: 076 850 881)	Level 3, Tandem House 76 Berry Street NORTH SYDNEY NSW 2060	0.35%
TOTAL		100%

SAGASCO, Origin Energy Petroleum Pty Ltd (OEP) and Origin Energy Amadeus NL (OEA) are wholly owned subsidiaries of Origin Energy Resources Limited (OER), which is in turn a wholly owned subsidiary of Origin Energy Limited, a company listed on the Australian Stock Exchange. SAGASCO, OEP and OEA own interests in a number of petroleum joint ventures in Australia. OER, which employs staff and contractors, performs the tasks of the Operator of the TJV on behalf of SAGASCO.

Pan Pacific Petroleum NL (Pan Pac) is a separately listed company on the Australian Stock Exchange and is a subsidiary of New Zealand Oil & Gas Limited, which is a company registered on both the Australian and New Zealand Stock Exchanges. Pan Pac, based in Sydney, NSW, is engaged in a number of upstream production and exploration joint ventures around Australia and in New Zealand.

Tubridgi Petroleum Pty Ltd is the sole trustee of the Radford Petroleum Trust. A director of this company is also a director of Pan Pac.

The Tubridgi Joint Operating Agreement (JOA) governs the operations of the TJV. This document specifies the rights and obligations of the Operator (SAGASCO) and the other Non-Operators, which comprise the TJV.

It is SAGASCO's duty to operate the TJV on behalf of all the Tubridgi Parties. OER, on behalf of SAGASCO, performs the day-to-day management of the gas production and gas transportation businesses. OER ensures the obligations under the various gas supply contracts are met, the Tubridgi Gas Plant is reliably operated in a professional and safe manner, and maintenance and capital works programs are carried out in accordance with budgets approved by the TJV. Operating Committee Meetings and Technical Committee Meetings, which comprise all the Tubridgi Parties, are held on a quarterly or half yearly basis.

The Tubridgi Parties contribute funds on a monthly basis (cash calls) to meet the expenditure requirements of the TJV and receive a share of revenue based on their percentage interests in the gas sold and transported.

The Operator receives all correspondence pertaining to the TJV. The Non-Operator parties receive monthly reports, which summarise the TJV's performance. The actions of the Operator must be in accordance with approved budgets otherwise it must seek ratification from the Non-Operator parties. Approval of all the Tubridgi Parties is required for all significant commercial arrangements entered into by the TJV for the purchase or sale of gas.

The Operator performs much of the work for the TJV, and is reimbursed by the Non-Operators for the cost in doing so. All TJV records, including invoices and correspondence, are kept and maintained by the Operator.

SAGASCO is willing to provide further details about the operation and management of the TJV to the Regulator if so required.

## **2.2 Section 4.1(b) Not Carry On a Related Business**

Section 4.15(a) of the Code specifies three separate arms which must all be met in order for Service Providers to be granted a waiver in respect of Section 4.1(b) which requires that Service Providers not carry on a related business ie essentially a business of producing, purchasing or selling natural gas.

Each Tubridgi Party believes it can comply with each arm of Section 4.15(a) of the Code and in doing so should be granted a waiver from having to assign its ownership interests in the Tubridgi Pipeline System into separate legal entities in order to provide a separation between related businesses. SAGASCO also maintains that the intent of the Code is better served by the proposal listed below.

### **2.2.1 Section 4.15(a)(i) Covered Pipelines Not a Significant Part of WA Pipeline System**

The first requirement of seeking a waiver from Section 4.1(b) of the Code is that the Covered Pipelines do not form a significant part of the Pipeline System in Western Australia.

The two pipelines, which comprise the TPS, are each approximately 90 kilometres in length and are remotely located. With a total capacity of 120 TJ/day, the TPS currently transports on average about 30 TJ/day. This load only represents approximately 5% of the gas transported in the South West region of WA on a daily basis, and is therefore an even smaller percentage of the total gas transportation market in WA.

Therefore, SAGASCO contends that neither on the basis of their capacity, their throughput or their location could the Covered Pipelines be considered a significant part of the WA pipeline system.

### **2.2.2 Section 4.15 (a)(ii) Administrative Costs Outweigh Any Public Benefit**

The second requirement in seeking a waiver from the related business requirement is that the administrative costs to the Service Providers and their Associates of complying with the related business obligation outweighs any public benefit arising from the Service Providers meeting the obligation, taking into account the compliance with the confidentiality requirements listed in Sections 4.1 (f) and (g) of the Code.

Despite being a relatively small-scale gas production/gas transportation business, the Tubridgi operation is complex, being governed by a large number of contracts involving many parties. Separating the gas production business, which is constrained due to limited economically recoverable reserves, from the gas transportation business would be a large task involving the renegotiation of many of the TJV's contracts and agreement to a number of new contracts. This would cause the Tubridgi Parties to incur large legal costs and require the commitment of significant internal resources and could take in excess of 12 months to complete. It has been estimated that the legal costs of separation alone would exceed \$200,000 and internal costs associated with this process could be equally as great.

Added to the significant initial costs that would be incurred in unbundling the operations of the Tubridgi Parties, a different company structure could potentially expose the Tubridgi Parties to higher taxation burdens.

The Tubridgi Parties believe the initial and ongoing administrative costs imposed on them would heavily outweigh any public benefit that may be achieved by the Tubridgi Parties transferring their respective ownership interests in the pipeline assets into separate legal entities. The public benefit is further minimised from this process by recognising that current gas sales and purchasing contracts are due to expire in 2004, leaving a limited time-frame for any public benefits to flow.

SAGASCO, in its role as Operator, is confident it can ensure Confidential Information pertaining to Users and Prospective Users of the Tubridgi Pipeline System Access Arrangement, the subject of Sections 4.1(f) and 4.1(g) of the Code, is not disclosed to its servants /consultants /contractors or agents who are involved in Tubridgi gas production. SAGASCO proposes to utilise the natural separation between OER's Perth and Adelaide offices and a separation of functions within the Adelaide office to ensure Confidential Information is appropriately handled.

Both the Perth and Adelaide OER offices contribute to the operation of the TJV. The Perth office is responsible for the management and day-to-day functioning and maintenance of the Tubridgi gas field, gas plant and pipelines. Three staff members in Perth are involved in commercial matters relating to gas production and gas purchasing. The Adelaide office provides just two commercial staff to support the gas production, gas trading and gas transportation activities of the TJV (the Manager, Marketing & Contracts and a Commercial Analyst).

It is proposed that the commercial support functions provided by the Adelaide office for the TJV will be separated into two areas - one for gas production and gas trading and the other for gas transportation. The Manager, Marketing and Contracts will continue to be responsible for providing the commercial support functions for the gas production and gas trading activities of the TJV and will report to the Perth based Manager, Exploration & Production (WA), for these activities. Administration of the Tubridgi Pipeline System Access Arrangement will be the responsibility of the Commercial Analyst based in the Adelaide office, who will report directly to the Manager, Exploration & Production (WA), for this activity. All correspondence relating to the Tubridgi Pipeline System Access Arrangement will be directed to and handled by the Commercial Analyst.

In doing so, Confidential Information provided by a User or a Prospective User, or Confidential Information obtained by the Commercial Analyst in the course of conducting the Tubridgi Parties' business which might reasonably be expected to affect materially the commercial interest of a User or Prospective User, will remain separated from the gas production /gas trading activities of the Tubridgi business.

The Manager, Exploration & Production (WA) and Non-Operator representatives who will receive this Confidential Information from the Commercial Analyst for management and joint venture review purposes, will also treat it in a confidential manner. Pan Pac has only one staff member who deals with the commercial matters arising in the TJV on a regular day-to-day basis. Tubridgi Petroleum Pty Ltd does not employ any staff.

If the Commercial Analyst believes for some reason it is necessary for information regarding the User or the Proposed User be disclosed to other members of OER staff or to other representatives of the Tubridgi Parties, then formal approval will first be sought from the User or the Proposed User prior to any disclosure being made.

Furthermore, as explained above, the Operator receives all correspondence regarding the TJV, and therefore it is highly unlikely that confidentially sensitive information regarding Users or Prospective Users would be provided in the first instance to Non-Operator parties.

The Tubridgi Parties recognise that compliance with the ring fencing provisions of the Code is ongoing and the proposed system would be updated continually to ensure the intent of the Code is met. The Tubridgi Parties note the responsibilities imposed by Sections 4.12 and 4.13 of the Code.

### **2.2.3 Section 4.15(a)(iii) Arrangement to Replicate Regulator Approval of Associate Contracts**

Compliance with the third arm of Section 4.15(a) of the Code requires an arrangement between the Service Providers and the Regulator, which the Regulator is satisfied, replicates the manner in which Section 7.1, which deals with Associates, would operate if the Service Providers did not carry on a Related Business. Section 7.1 of the Code deals with Associate contracts and gives the Regulator the power of veto over the Service Providers entering into contracts with Associates.

In order to meet the intent of this obligation, SAGASCO proposes that it provides the Regulator with evidence which substantiates the Tubridgi Parties, as gas shippers, are not acting in an anti-competitive manner should the gas production or gas trading business increase capacity on the TPS. That is, the Tubridgi Parties would not increase their own booked capacity in the Covered Pipelines without appropriate justification and in doing so thwart access by a bona fide third party seeking access.

Should the Tubridgi Parties require pipeline capacity in the TPS above 63 TJ/day, which is the current capacity required to meet existing gas supply contracts, then SAGASCO will notify the Regulator of the Tubridgi Parties' increased requirement and will provide the Regulator with information which supports the need for additional capacity.

### **2.3 Section 4.1(h) Marketing Staff of Service Provider not servants of an Associate that takes part in a Related Business AND Section 4.1(i) Marketing Staff of an Associate that takes part in a Related Business not servants of Service Provider**

Under Section 4.15(b) of the Code, the Regulator may waive the obligations of Service Providers under Sections 4.1(h) and 4.1(i). In order to provide these waivers, the Regulator must be satisfied that the administrative costs to the Service Providers of complying with the obligations imposed by Sections 4.1(h) and 4.1(i) outweigh any public benefit arising from the Service Providers meeting those obligations.

SAGASCO again refers to the small size of the Tubridgi Parties' operation and its inability to exert any influence over the gas transportation market in Western Australia, given it makes up less than 5% of the total load of the South Western region. Because of the foregoing, the Tubridgi Parties contend that there would be minimal, if any, public benefits in having the Tubridgi Parties comply with the obligations imposed by Sections 4.1(h) and 4.1(i) of the Code.

Considerable cost and disruption would be caused to each of the Tubridgi Parties if they were forced to comply with the obligations of Sections 4.1(h) and 4.1(i). For such a relatively small operation, it would be burdensome to have to create separate and discrete Marketing Staff positions within each of the Tubridgi Parties, especially when each of the parties would likely be required to employ an additional staff member to carry out such role. Not only would employment costs increase to each of the Tubridgi Parties, but also there are the associated costs of recruitment, training and separate office accommodation from the gas production Marketing Staff.

SAGASCO understands that it was for relatively small operations like that of the Tubridgi Parties that Section 4.15(b) was included in the Code.

Reference is made to section 2.2.2 above, in which a cost-effective alternative of separating the functions performed by Marketing Staff is addressed.

### **3. Period of Waivers**

As previously mentioned, a number of gas purchasing and gas sale contracts govern the current operations of the TJV. The last of these contracts has a termination date in 2004. The Tubridgi Parties believe it would be appropriate to have any waivers that are granted by the Regulator subject to review at the same time as the current related business contracts terminate. At that point in time, it is more likely that the Tubridgi Parties will not have the same related business issues as they currently face.

Should you have any questions or require further information in respect of the matters addressed above, please contact either the writer on (08) 8217 5721 or Grant Macauley on (08) 8217 5729.

Yours sincerely

**John Angus**  
Manager, Marketing & Contracts