

# **Decision**

## **Application for amendment**

### **Access Arrangement by Victorian Energy Networks Corporation for the Principal Transmission System**

**Date: 31 January 2001**

**Authorisation no:**  
A90646, A90647 and A90648

**Commissioners:**

**File no:**  
C2000/680-02

## 1. The application

On 16 November 2000 the Australian Competition and Consumer Commission (the Commission) received an application from the Victorian Energy Networks Corporation (VENCorp) for amendment of its Access Arrangement for the Principal Transmission System (PTS). The application was submitted under the National Third Party Access Code for Natural Gas Pipeline Systems as it applies in Victoria (National Access Code).<sup>1</sup>

The application for amendment relates to proposed changes to the Market and System Operations Rules (proposed rule changes). These proposed rule changes appear in Annexure A to this decision, and are outlined below.

- The definition of “distributor” is to be amended to include all distributors whose distribution pipelines are connected to the transmission system (as defined in the Victorian Industry Act);
- Clauses 3.6.6, 6.6.5 and 6.7.6 are to be amended to align the timing of VENCORP’s payment of compensation amounts to participants (compensation paid as a consequence of VENCORP having intervened in the operation of the market or the application of an administered price cap) with VENCORP’s recovery of those amounts from the market;
- Clause 3.6.23(a) is to be amended to refer to all payments of interests on moneys due not just to payment of interest; and
- Clause 6.6.5 is to be amended to extend the period within which a participant may lodge a claim for compensation as a consequence of VENCORP having intervened in the operation of the market.
- Clause 5.1.7, schedule 7.1 and the definition of “market auditor” and “review” are to be amended to clarify that the market auditor conducts a “review” of the systems rather than an “audit”.
- Clauses 5.2.1, 5.2.2 and 5.2.4 are to be amended to remove the requirements of Biannual Planning Review and insert a requirement for supplementary reports to the Annual Planning Review wherever there is a material change in the supply, demand, capacity or outlook of the Victorian Gas Market.

## 2. Background

The Access Arrangement for the PTS by VENCORP was approved by the Commission under section 2.19 of the Victorian Third Party Access Code for Natural Gas Pipeline Systems (the Victorian Access Code) on 16 December 1998.

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<sup>1</sup> The National Access Code came into force in Victoria on 1 July 1999 with the coming into force of the *Gas Pipelines Access (Victoria) Act 1998*. Section 25 of that Act repeals Part 4B of the *Gas Industry Act 1994* pursuant to which the Victorian Third Party Access Code for Natural Gas Pipeline Systems (Victorian Access Code) was established. However, certain provisions of the Victorian Access Code continue to apply, such as section 2.33, which is discussed below.

Clause 5.1.2 of the Access Arrangement provides that:

‘in the event that the MSOR becomes subject to an exemption under section 51(1) of the Trade Practices Act, any amendment to, or supplementation or replacement of, the MSOR will, to the extent to which the MSOR are part of this Access Arrangement, constitute a change for the purposes of the Code and will not be effective to change this Access Arrangement unless and until the procedure in section 2 of the Code.

On 21 November 1998, the *Gas Industry Act 1994* (Vic) was amended by the insertion of section 62PA which statutorily authorises the making of the MSOR (including any amendment to the MSOR) and things done or conduct engaged in by VENCORP, participants or market participants pursuant thereto. Section 62PA came into force on 2 December 1998. The MSOR are subject to an exemption under section 51(1) of the *Trade Practices Act 1974* (Cth). The proposed changes to the MSOR concern rules that are part of the Access Arrangement. For these reasons, the proposed rule changes constitute proposed revisions to the Access Arrangement.

### **3. Procedure for assessing proposed revisions**

VENCORP lodged its application for amendment pursuant to section 2.33 of the Victorian Access Code.<sup>2</sup> Section 2.33 of the Victorian Access Code allows the Commission to approve proposed revisions to the Access Arrangement without requiring production of Access Arrangement information or public consultation if:

- (a) the revisions have been proposed by the Service Provider other than as required by the Access Arrangement; and
- (b) the Relevant Regulator considers that the revisions proposed are not material.

VENCORP argued that these proposed revisions (as constituted by the proposed rule changes) do not impact on the Access Arrangement in any material respect.

In the course of its public consultation relating to an application by VENCORP for minor variation of the authorisation of the MSOR, the Commission sought the views of interested parties on whether the proposed rule changes are material to the Access Arrangement (insofar as they constitute proposed revisions).

One submission was received from Energex but this did not address the materiality issue.

The Commission accepted the view that the proposed revisions are not material to the VENCORP Access Arrangement and decided to dispense with the requirement to produce Access Arrangement Information and the consultation process outlined in section 2 of the National Access Code.<sup>3</sup>

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<sup>2</sup> Section 24A(3) of the *Gas Pipelines Access (Victoria) Act 1998* provides that section 2.33 of the Victorian Access Code continues to apply in respect of an access arrangement in force before the repeal of Part 4B of the *Gas Industry Act 1994* until the first review of the access arrangement under section 2 of the National Access Code (31 March 2002, clause 5.8.1 of the Access Arrangement). The VENCORP Access Arrangement was in force prior to the repeal of Part 4B of the *Gas Industry Act 1994* and hence VENCORP requested the Commission consider this application under section 2.33 of the Victorian Access Code.

<sup>3</sup> Section 2 of the National Access Code prescribes a more comprehensive public consultation process than that undertaken by the Commission in the course of its assessment of the application by VENCORP for minor variation of the authorisation of the MSOR.

## **4. Criteria for assessing proposed revisions**

Section 2.46 of the National Access Code provides that the Commission may approve proposed revisions to an Access Arrangement only if it is satisfied the Access Arrangement as revised would contain the elements and satisfy the principles in sections 3.1 to 3.20 of the Code. In assessing proposed revisions, the Commission must take into account:

- the factors described in section 2.24 of the Code; and
- the provisions of the Access Arrangement.

### **4.1 Requirements of section 2.24**

Section 2.24 requires that the Access Arrangement contains the elements and satisfies the principles set out in sections 3.1 to 3.22. These sections set out the elements that an Access Arrangement must include as a minimum – namely a services policy, Reference Tariffs, terms and conditions, a capacity management policy, a trading policy, a queuing policy, an extensions/expansions policy and a review date.

Section 2.24 also requires that the Commission take into account:

- (a) the legitimate business interests of the Service Provider;
- (b) firm and binding contractual obligations of the Service Provider or other persons (or both) already using the Covered Pipeline;
- (c) the operational and technical requirements necessary for the safe and reliable operation of the Covered Pipeline;
- (d) the economically efficient operation of the Covered Pipeline;
- (e) the public interest, including the public interest in having competition in markets (whether or not in Australia);
- (f) the interests of Users and Prospective Users; and
- (g) any other matters that the Relevant Regulator thinks are relevant.

The Commission considers that these proposed revisions in question do not remove any of the elements of the VENCORP Access Arrangement that was approved under section 2.19 of the Code on 16 December 1998. Moreover, the Commission considers that the proposed revisions do not affect the substance of the Access Arrangement in such a way that takes it outside the principles set out in sections 3.1 to 3.22.

The Commission has taken the matters set out in section 2.24 into account and considers that the proposed revisions do not impact on the Access Arrangement in such a way that the Commission should no longer consider that the Access Arrangement contains the elements and satisfies the principles set out in sections 3.1 to 3.20 of the National Access Code.

### **4.2 The provisions of the Access Arrangement**

The minimal effect of the proposed revisions on the substance of the Access Arrangement means that the provisions of the Access Arrangement do not require any redrafting.

## **5. Decision**

The Commission has taken into account the factors described in section 2.24 of the National Access Code and the provisions of the Access Arrangement, and is satisfied that the revised Access Arrangement contains the elements and satisfies the principles set out in sections 3.1 to 3.20 of the National Access Code.

Pursuant to section 2.46 of the National Access Code, the Commission approves the proposed revisions which are the subject of this application.

**Annexure 1 - Proposed MSO Rule Changes**

**Revised definition of “distributor”**

**Chapter 11 Glossary**

<b>Distributor</b>	A person who owns (whether legally or equitably) or operates the whole or any part of a <i>distribution pipeline</i> .
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## **Timing of compensation payments and interest due**

### **3.6.6 Compensation payments**

(c) If *VENCorp* determines that an amount is payable by the *Market Participant* under this clause 3.6.6 then *VENCorp* must seek the direction the Board of Directors of *VENCorp* as to the manner by which that amount is to be paid to *VENCorp* by that *Market Participant*. *VENCorp* must seek that direction at the next meeting of the Board for which submissions are still being received. The Board may determine that the payment be paid in instalments or deferred for a specified period of time.

(ca) If the Board of Directors of *VENCorp* under clause 3.6.6(c):

- (1)
  - (A) fails to make a determination at the Board meeting to which *VENCorp* has made a submission, or
  - (B) determines not to defer the amount payable, and
  - (C) determines not to allow the payment of the amount payable by instalment,

then *VENCorp* must include the whole of the amount payable in the next preliminary statement issued to that *Market Participant* in accordance with clause 3.6.14 following the Board of Directors meeting.

(2) determines that:

- (A) the amount payable shall be paid in instalments, or
- (B) the payment of the amount payable shall be deferred for a specified period of time

then *VENCorp* must include in the next preliminary statement to a *Market Participant* issued in accordance with clause 3.6.14 following the Board of Directors determination, the details of the total amount to be paid by that *Market Participant*, the instalment amounts to be paid and the dates by which each instalment is to be paid or the deferred date by which whole amount is to be paid, as the case may be.

(d) Market Participants must pay interest on amounts determined in accordance with this clause 3.6.6 at the *interest rate* from the day following the date of the next payment of *settlement amounts* following the determination of the *compensation panel* to the date when the *Market Participant* actually pays the amount to *VENCorp*. Interest is to be calculated on a daily basis and aggregated for the period.

### **6.6.5 Compensation of Market Participants in respect of intervention**

(g) If the *compensation panel* makes a determination that compensation should be paid to the *Market Participant*, *VENCorp* must compensate the *Market Participant* in accordance with the determination of the *compensation panel* and must advise the *Market Participant* as soon as practicable of the determination and of the date *VENCorp* intends to pay the *Market Participant*.

- (ga) *VENCorp* must pay interest on the amounts determined in accordance with clause 6.6.5 at the *interest rate* from the day following the date of the next payment of *settlement amounts* made under clause 3.6.7 following the determination of the *compensation panel* to the date when *VENCorp* actually pays the *Market Participant* the amount of the compensation determined. Interest is to be calculated on a daily basis and aggregated for the period.

**6.7.6 Compensation due to the application of an administered price cap**

- (g) If the *compensation panel* makes a determination that compensation should be paid to the *Market Participant*, *VENCorp* must compensate the *Market Participant* in accordance with the determination of the *compensation panel* and must advise the *Market Participant* as soon as practicable of the determination and of the date *VENCorp* intends to pay the *Market Participant*.
  - (ga) *VENCorp* must pay interest on the amounts determined in accordance with clause 6.7.6 at the *interest rate* from the day following the date of the next payment of *settlement amounts* made under clause 3.6.7 following the determination of the *compensation panel* to the date when *VENCorp* actually pays the *Market Participant* the amount of the compensation determined. Interest is to be calculated on a daily basis and aggregated for the period.
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**Correction of a typographical error in clause 3.6.23(a)**

**3.6.23 Interest on overdue amounts**

- (a) A *Market Participant* or *VENCorp*, as the case may be, must pay interest on any unpaid moneys due and payable by it under this clause 3.6.
  - (b) The rate of interest payable under clause 3.6.23(a) is the *default interest rate* calculated as simple interest on a daily basis from the date payment was due, up to and including the date on which payment is made, with interest compounding on monthly rests on the last day of each month whilst the unpaid moneys remain outstanding.
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## **Extension of period for lodging claims for compensation due to intervention**

### **6.6.5 Compensation of Market Participants in respect of intervention**

(a) Where:

- (1) *VENCorp* requires a *Market Participant* to inject gas; and
- (2) that *Market Participant* experiences a net auditable financial reduction as a direct result of making that injection,

then that *Market Participant* may claim compensation from *VENCorp* in respect of the injection.

(b) A *Market Participant* who wishes to make a claim under clause 6.6.5(a) must submit notice of its claim to *VENCorp* within fifteen *business days* of the day on which the *Market Participant* made the injection of gas referred to in clause 6.6.5(a).

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## Clarification of the intent of the market audit

### 5.1.7 Market Auditor's Review

- (a) *VENCorp* must arrange for a *Review* to be conducted at least annually by a *Market Auditor*.
- (aa) *VENCorp* shall appoint a *Market Auditor* who in *VENCorp's* reasonable opinion is independent and suitably qualified to conduct the required *Review*.
- (b) The *Review* must examine compliance by *VENCorp* with its procedures and the effectiveness and appropriateness of systems utilised in the operation of the *market*, including but not limited to:
  - (1) the calculations and allocations performed by the *metering* and *settlements* systems;
  - (2) billing and information systems;
  - (3) the *scheduling* and pricing processes;
  - (4) processes for software management;
  - (5) the *linepack account*; and
  - (6) *VENCorp's* compliance with these Rules.
- (ba) *VENCorp* must establish and implement a consultative process that enables *Market Participants* to provide input into the development of the scope of the *Review* on an annual basis.
- (c) *VENCorp* must ensure that the person who conducts the *Review* prepares a report in which the results of the *Review* are set out.
- (d) The report prepared by the *Market Auditor* in accordance with clause 5.1.7(c) must be made available by *VENCorp* to *Participants* on request.

### Schedule 7.1 Classification of the Rules

5.1.7	<i>VENCorp</i> must arrange for a <i>Review</i> .	RP
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### Chapter 11 Glossary

Market Auditor	A person appointed by <i>VENCorp</i> to carry out a <i>Review</i> under clause 5.1.7.
Review	An examination in accordance with the standard specified for a "review" in Auditing Standard AUS106: "Explanatory

	Framework for standards on Audit and Audit Related Services” prepared by the Auditing Standards Board of the Australian Accounting Research Foundation, as varied from time to time.
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## **Removal of the requirement for Biannual Planning Reviews**

### **5.2.1 Purpose**

- (a) Under this clause 5.2:
  - (1) *Participants* are required to provide information to *VENCorp* in relation to certain aspects of their operations in accordance with clauses 5.2.4(b), (c) and (d); and
  - (2) *VENCorp* is required to use the information disclosed to it by *Participants* to:
    - (A) prepare and provide to *Participants* *annual planning reviews* for the purposes set out in clauses 5.2.1(b) and (c); and
    - (B) coordinate the *maintenance* operations of *Transmission Pipeline Owners* and *Storage Providers* to ensure that *system security* is maintained and is not threatened by the *maintenance* of *pipeline equipment*.
- (b) *VENCorp* is required to provide *annual planning reviews* under clause 5.2.2 for the purpose of allowing *Participants* to make informed decisions relating to:
  - (1) planning for capital investments;
  - (2) developing *market* strategies;
- (c)
  - (3) *maintenance*;
  - (4) storage;
  - (5) *pipeline* operation; and
  - (6) pricing.
- (d) *VENCorp* must use its reasonable endeavours to ensure that the *annual planning reviews* it prepares under this clause 5.2 accurately reflect the information provided to *VENCorp* by *Participants* under clauses 5.2.4(b), (c) and (d), but in no circumstances is *VENCorp* to be liable for any loss or damage suffered or incurred by a *Participant* or any other person as a consequence of any error, omission or inaccuracy in an *annual planning review*.

### **5.2.2 Annual planning reviews**

- (b) Each *annual planning review* must contain annual forecasts by *system withdrawal zone* of the matters set out in clause 5.2.2(c) for each year of the five years and for each month of the twelve months in the period commencing from 1 January in the year immediately following the year in which the *annual planning review* is provided to *Participants*.

- (e) If *VENCorp* becomes aware of any information that materially alters the most recently *published annual planning review*, *VENCorp* must update that *annual planning review* as soon as practicable, and provide *Participants* with the details of that update.

#### **5.2.4 Participant disclosure obligations**

- (a) All *Participants* must provide to *VENCorp* forecasts in respect of the matters set out in clause 5.2.4(b) as follows:
    - (1) annual forecasts for each year in the five year period commencing on 1 January in each year must be provided to *VENCorp* by 30 September in the immediately preceding year; and
    - (2) monthly forecasts for each month in the twelve month period commencing on 1 January in each year must be provided to *VENCorp* by 30 September in the immediately preceding year.
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