



22 September 2000

Ms Kanwaljit Kaur  
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Our Ref: R-00-231

Dear Ms Kaur

### **APPLICATION FOR AUTHORISATION OF JOINT MARKETING BY PNG GAS PRODUCERS**

We refer to your letter dated 13 September 2000 inviting Ergon Energy Pty Ltd ("Ergon Energy") to comment on the Application for interim and final authorisation of joint marketing lodged by the PNG Gas Producers on 12 September 2000 (the "Application"). We understand that the Application is stated to apply only up to the time of Financial Close on the PNG Gas Project.

#### **Background to Comments**

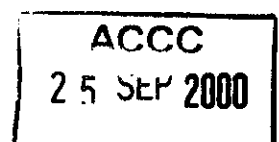
Ergon Energy has been negotiating with the PNG Gas Producers since May 1999 and has executed a Conditional Gas Sale Agreement for the supply of Kutubu and Hides gas from a Target Delivery Date, being 30 June 2003. Since that Conditional Gas Sale Agreement was signed, Ergon Energy and the PNG Gas Producers have undertaken extensive negotiations to replace the Conditional Gas Sale Agreement with a more comprehensive agreement.

One of the principal difficulties in those later negotiations has been the resolution of questions regarding the ownership of gas offered for sale and the obligations and responsibilities of the various PNG Gas Producers to develop the PNG resources, and the necessary infrastructure to deliver gas throughout the proposed contract term.

Ergon Energy recognises the latest proposed changes to the structure of the PNG Gas Producer group as positive developments designed to ensure that purchasers of PNG gas will be dealing directly with the parties responsible for field and infrastructure development and the parties that own, and can pass title to, the relevant gas. From a buyer's perspective this is a substantial advance on the "Marketco" model set out in the Authorisation granted to a sub-group of the current applicants in August 1998.

#### **Comments on Application**

While Ergon Energy supports the Application it is concerned that the Application should not create a precedent applicable to the marketing of PNG gas by the PNG Gas Producers after Financial



Close. Whether or not separate marketing is a viable option after Financial Close will depend to a large extent on whether the PNG Gas Producers design their joint venture arrangements around joint or separate marketing. It is important that the form of the Interim and Final Authorisations facilitate the development of a Joint Venture Agreement which contemplates (but does not necessarily enshrine at this time) separate marketing after Financial Close.

Further, Ergon Energy is not convinced by the argument set out in the attachments to the Application that PNG gas will not compete with existing Queensland gas supplies. It is true that a significant portion of the PNG Project gas is earmarked by the PNG Gas Producers for use in power generation. However, a not insignificant quantity (relative to current markets) of the proposed PNG gas volumes will compete in existing gas markets.

Indeed, the volume of gas that is proposed to be used in electricity generation by the PNG Gas Producers may have a significant adverse impact on the electricity pool price and as a consequence encourage the diversion of this gas into other applications. If this gas can be successfully diverted to non-generation applications it will contest existing and new gas markets in Queensland and interstate.

We submit that Exxon and Santos, as Applicants and as PNG Gas Producers, will have access to sensitive commercial information regarding the terms on which PNG gas is to be sold into Australian markets in which Exxon and Santos currently have a substantial position and exercise significant market power. Such knowledge could potentially be used to manipulate markets and frustrate competition.

We therefore request that any Authorisation granted in response to the application include a specific condition for Santos (being Santos Ltd, Lavana Ltd and Zan Star Ltd) and Exxon (being any Australian domiciled or registered subsidiary) to develop satisfactory arrangements whereby they quarantine (ie ring-fence) knowledge of the terms of sale of PNG gas so that sensitive commercial information is narrowly disseminated within the companies and in particular is not available to executives responsible for Queensland and other relevant gas market operations.

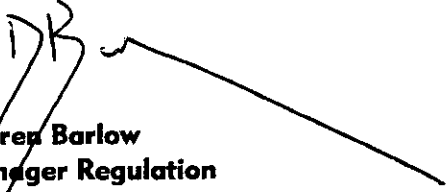
We do recognise that such behaviour would not be consistent with the objective of promoting the entry of PNG gas into the market, and note the Applicants' statement that the PNG Gas Producers generally would not accept joint venture arrangements which allowed Santos or Exxon to dictate terms of an anti-competitive nature.

Whilst Ergon Energy seeks the inclusion of this condition in any Authorisation granted in response to the application, we fully appreciate that it would be unreasonable to expect either Exxon or Santos to proceed with the PNG Gas Project without an Authorisation which allows them the opportunity to fully evaluate the commercial terms of the arrangement. Should that be the outcome of the Application we would be concerned that the PNG Gas Project may proceed no further.

Notwithstanding the qualifications cited above, Ergon Energy is of the view that the need to co-ordinate the development of a green field project makes it necessary for there to be joint marketing of PNG gas up to the point of Financial Close. Further, in order for gas buyers to secure the necessary degree of certainty regarding complex commercial issues including the passing of good title to gas, the development obligations of the parties and the implementation risk of the PNG Gas

Project, joint marketing is considered essential at this time. Ergon Energy, therefore, supports the Application.

Yours sincerely



**Darren Barlow**  
**Manager Regulation**