



RAC0009SFB

A90832

FORM B

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Sub-section 88(1)

AGREEMENTS AFFECTING COMPETITION:

APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88(1) of the *Trade Practices Act 1974* for an authorisation under that sub-section:

- (a) to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act¹; and
- (b) to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

- 1 (a) **Name of applicant** The Victorian Energy Networks Corporation ("VENCorp").
- (b) **Short description of business carried on by applicant** VENCorp is a statutory body established under the *Gas Industry (Further Amendment) Act 1997* on 11 December 1997. VENCorp is wholly owned by the Victorian Government and is responsible to the Minister for Energy and Resources for:
- the operation of the Victorian gas transmission network and the development, implementation and operation of the Victorian gas "spot" market; and
 - the planning and directing of augmentation of the Victorian electricity transmission system.
- (c) **Address in Australia for service of documents on the applicant** C/O Mr Terry Grimwade
Executive Manager Energy Markets
Level 2
Yarra Tower
World Trade Centre
Siddeley Street
MELBOURNE VIC 3005

¹ References in this application to the Act also include the Competition Code of Victoria as defined in the *Competition Policy Reform (Victoria) Act 1995 (Vic)*.

- 2 (a) **Brief description of contract, arrangement or understanding and, where already made, its date**
- Any contract, arrangement or understanding constituted between VENCORP and Participants² or between such Participants under the Victorian Gas Industry Market and System Operations Rules (the "**MSO Rules**"). A copy of the MSO Rules (including proposed amendments) is provided as the attachment to VENCORP's submission ("**Submission**") to the Australian Competition and Consumer Commission lodged in support of this application dated 17 May 2002.
- (b) **Names and addresses of other parties or proposed parties to contract, arrangement or understanding**
- VENCORP and every person registered with VENCORP under the MSO Rules as a Participant as at the date of this application and whose names and addresses appear as Appendix A to this Form B, as well as any future Participants, who apply to be registered as Participants under the MSO Rules. The names and addresses of future Participants are not known at this time.
3. **Names and addresses (where known) of parties and other persons on whose behalf application is made**
- This application is not made on behalf of any other corporations or other person. However VENCORP requests that any authorisation granted pursuant to this application be expressed so as to apply to or in relation to each Participant who:
- (a) in the case of an authorisation to make a contract, arrangement or understanding constituted by or under the MSO Rules, is a party to that contract, arrangement or understanding or becomes a party at any time in the future;
- (b) in the case of an authorisation to give effect to a provision of a contract, arrangement or understanding constituted by or under the MSO Rules, is a party to the contract, arrangement or understanding or becomes a party by registering with VENCORP as a Participant at a time after the authorisation is granted within the meaning of section 88(10) of the Act.
- Further, to the extent that the MSO Rules constitute a contract, arrangement or understanding between VENCORP and Participants or between Participants, the authorisation be expressed to be made also in relation to other proposed contracts, arrangements or understandings that will be in similar terms to the MSO Rules within the meaning of sections 88(13), (14) or (15)


² "Participants" means all persons registered with VENCORP under the MSO Rules and all persons who are registered in the future.

- of the Act.
4. (a) **Grounds for grant of authorisation** Authorisation is sought on the grounds set out in the Submission.
- (b) **Facts and contentions relied upon in support of those grounds** The facts and contentions relied upon in support of these grounds are set out in the Submission.
5. **This application for authorisation may be expressed to be made also in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understanding, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.**
- (a) **Is this application to be so expressed?** Yes. See above.
- (b) **If so, the following information is to be furnished:**
- (i) **the names of the parties to each other contract, arrangement or understanding** VENCORP and every person registered as a Participant as at the date of this application and whose names and addresses are listed in Appendix A to this Form B, within the meaning of section 88(10) of the Act.
- (ii) **the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application** VENCORP. The other parties to each other proposed contract, arrangement or understanding for the purposes of section 88(13), (14) and (15) of the Act will be every person registered as a Participant as at the date of this application and whose names and addresses are listed in Appendix A to this Form B and any other persons who subsequently register as Participants. The names of future Participants are not known at this time.
6. (a) **Does this application deal with a matter relating to a joint venture (See section 4J of the Trade Practices Act 1974)?** No.
- (b) **If so, are any other applications being made simultaneously with this application in relation to that joint venture?** Not applicable.
- (c) **If so, by whom or on whose behalf are those other application being made?** Not applicable.
7. **Name and address of person authorised by the applicant to provide additional information in relation to this application.** Mr Terry Grimwade
Executive Manager Energy Markets
Level 2
Yarra Tower
World Trade Centre
Siddeley Street

MELBOURNE VIC 3005
Telephone (03) 8664 6500
Facsimile (03) 8664 6510

Date: 17 May 2002

Signed on behalf of VENCORP


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(Signature)

Mr Terry Grimwade
Acting Chief Executive Officer
VENCORP

*** Note:** References in this application to the Act are references to the *Trade Practices Act 1974* and also include the Competition Codes of New South Wales, Victoria and the Australian Capital Territory as defined in the Competition Reform legislation in force in each jurisdiction.

APPENDIX A
PARTICIPANTS

AGL Energy Sales & Marketing Ltd AGL Centre 111 Pacific Highway North Sydney NSW 2060	Retailer
Albury Gas Company Level 10 81 Flinders St Adelaide South Australia 5000	Distributor
Allgas Energy Ltd Level 6 Anzac Square Bldg 200 Adelaide Street Brisbane Queensland 4000	Retailer
BHP Petroleum (Bass Strait) Pty Ltd 120 Collins St Melbourne Victoria 3000	Producer
CitiPower Pty Ltd 628 Bourke St Melbourne Victoria 3000	Retailer
Coastal Gas Australia Pty Ltd Level 2 11 Queens Rd Melbourne Victoria 3004	Interconnected Pipeline Owner
Coastal Pipelines Level 22 505 Bourke Street Melbourne Victoria 3000	Transmission Pipeline Owner
Country Energy 30 Morissett St Queanbeyan NSW 2620	Trader

Duke Energy Aust Trading & Marketing Pty Ltd Level 33 Waterfront Place 1 Eagle St Brisbane Queensland 4000	Trader
Energy Australia 570 George St Sydney NSW 2000	Retailer
Envestra Victoria Pty Ltd Level 10 81 Flinders St Adelaide South Australia 5000	Distributor
Ergon Energy Gas Pty Ltd Ground Floor 61 Mary Street Brisbane Queensland 4000	Retailer
Eso Australia Resources Ltd 12 Riverside Quay Southbank PO Box 400C Melbourne Victoria 3006	Producer
GasNet Australia (Operations) Pty Ltd 180 Greens Road Dandenong Victoria 3175	Transmission Pipeline Owner Storage Provider
Multinet Gas Pty Ltd 422 Warrigal Road Moorabbin Victoria 3189	Distributor
Origin Energy Petroleum Ltd 6 th Floor AMP Centre 1 King William St Adelaide South Australia 5000	Producer

Origin Energy (VIC) Pty Ltd
Level 11
AMP Centre
50 Bridge St
Sydney
NSW 2000

Retailer

Pulse Energy Pty Ltd
Level 8
IBM Tower
60 City Road
Melbourne
Victoria 3000

Retailer

TXU Networks (Gas) Pty Ltd
Level 17
452 Flinders St
Melbourne
Victoria 4000

Distributor

TXU Pty Ltd
Level 33
385 Bourke St
Melbourne
Victoria 3000

Retailer

Western Underground Gas Storage Pty Ltd
Level 4
Atrium Tower
459 Collins St
Melbourne
Victoria 3000

Storage Provider

Visy Paper Pty Ltd
13 Reo Cr
Campbellfield
Melbourne
Victoria 3061

Distribution Customer

DIRECTIONS

- 1 Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
- 2 Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
- 3 In item 1(b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
- 4 Furnish with the application particulars of the contract, arrangement or understanding in respect of which the authorisation is sought. Those particulars shall be furnished:
 - (a) in so far as the particulars or any of them have been reduced to writing - by lodging a true copy of the writing; and
 - (b) in so far as the particulars or any of them have not be reduced to writing - by lodging a memorandum containing a full and correct statement of the particulars that have not been reduced to writing.
- 5 Where the application is made also in respect of other contracts, arrangements or understanding which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangement or understanding referred to in item 2.

NOTICES

- 1 In relation to item 4, your attention is drawn to sub-sections 90(6) and (7) of the *Trade Practices Act 1974* which provides as follows:
 - "(6) The Commission shall not make a determination granting an authorisation under sub-section 88(1), (5) or (8) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a proposed contract, arrangement or undertaking, in respect of a proposed covenant, or in respect of proposed conduct, unless it is satisfied in all the circumstances that the provision of the proposed contract, arrangement or understanding, the proposed covenant, or the proposed conduct, as the case may be, would result, or be likely to result, in a benefit to the public and that that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if:
 - (a) the proposed contract or arrangement were made, or the proposed understanding were arrived at, and the provision concerned were given effect to;
 - (b) the proposed covenant were given, and were complied with; or
 - (c) the proposed conduct were engaged in,as the case may be.

- (7) The Commission shall not make a determination granting an authorisation under sub-section 88(1) or (5) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a contract, arrangement or understanding or, in respect of a covenant, unless it is satisfied in all the circumstances that the provision of the contract, arrangement or understanding, or the covenant, as the case may be, has resulted, or is likely to result, in a benefit to the public and that benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision or complying with the covenant.”
- 2 If an authorisation is granted in respect of a proposed contract, arrangement or understanding, the names of the parties to which are not known at the date of application, the authorisation shall, by sub-section 88(14) of the *Trade Practices Act 1974*, be deemed to be expressed to be subject to a condition that any party to the contract, arrangement or understanding will, when so required by the Commission, furnish to the Commission the names of all the parties to the contract, arrangement or understanding.