



A 90833

## FORM E

## COMMONWEALTH OF AUSTRALIA

*Trade Practices Act 1974 - Sub-section 88(8)*

## EXCLUSIVE DEALING:

## APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88(8) of the *Trade Practices Act 1974*<sup>1</sup> for an authorisation under that sub-section to engage in conduct that constitutes or may constitute the practice of exclusive dealing.

- 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

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

- 2 (a) **Description of the goods or services in relation to the supply or acquisition of which this application relates** Gas supplied and services provided by or to Participants<sup>2</sup> under the Victorian Gas Industry Market and Systems Operations Rules ("**MSO Rules**"). A copy of the MSO Rules (including proposed amendments) is provided as an attachment to VENCORP's submission ("**Submission**") to the Australian Competition and Consumer Commission lodged in support of this application dated 17 May 2002.
- (b) **Description of the conduct that would or may constitute the practice of exclusive dealing**
- (i) Making the MSO Rules, to the extent that making the MSO Rules is making a contract or arrangement or arriving at an understanding that contains provisions that would or may constitute the practice of exclusive dealing, and participating under the MSO Rules;
  - (ii) giving effect to each and any provision of the MSO Rules that would or may constitute the practice of exclusive dealing; and
  - (iii) engaging in each and any practice required under a provision of the MSO Rules, being a practice that would or may constitute the practice of exclusive dealing.
- 3 (a) **Class or classes or persons to which the conduct relates** The classes of persons are:
- (i) VENCORP;
  - (ii) all Participants registered with VENCORP under the MSO Rules whose names and addresses are listed in Appendix A to this Form E; and
  - (iii) any other persons who register with VENCORP under the MSO Rules; and
  - (iv) all persons involved in, or who seek to be involved in the transmission of gas as well as those involved in, or who seek to be involved in, the provision and use of gas transmission systems.
- This application is made on behalf of VENCORP . In addition:
- (a) the authorisation being applied for by this application is, in accordance with section 88(8AA) of the Act, to be expressed so as to

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<sup>2</sup> "Participants" means all those persons registered with VENCORP under the MSO Rules and all persons who are registered in the future.

apply to VENCORP and every person who is registered as a Participant as at the date of this application (being the persons identified in Appendix A to this Form E), and in relation to each other person who becomes a Participant by registering with VENCORP; and

(b) this application is 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), 88(14) and 88(15) of the Act.

**(b) Number of those persons**

**(i) At present time**

VENCORP	1
Participants	22
Others described in 3(a)	unknown

**(ii) Estimated within the next year**

VENCORP	1
Participants	unknown
Others described in 3(a)	unknown

(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses

The names and addresses of all Participants are listed in Appendix A to this Form E.

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 respect of those grounds are set out in the Submission

5 (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 applications being made?

Not applicable.

6 Name and address of person authorised by the applicant to provide

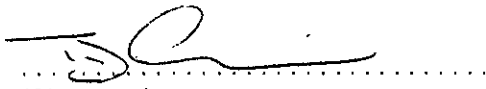
Mr Terry Grimwade  
Executive Manager Energy Markets

additional information in relation to  
his application.

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



(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
Esso 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 <sup>th</sup> 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 in the course of which the conduct is engaged in.
4. Where particulars of a condition or of a reason of the type referred to in sub-sections 47(3) to (9) (inclusive) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be furnished with the application.
5. In item 3(a), describe the nature of the business carried on by the persons referred to therein.
6. In item 3(b)(ii), state an estimate of the highest number of persons with whom the applicant is likely to deal in the course of engaging in the conduct at any time during the next year.

### NOTICE

1. In relation item 4, your attention is drawn to sub-section 90(6) 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 understanding, 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;
- (a) the proposed covenant were given, and were complied with; or
- (b) the proposed conduct were engaged in,

as the case may be."