



5 December 2002

Russell Phillips
Acting General Manager
Regulatory Affairs – Gas
Australian Competition and Consumer Commission
GPO Box 1199
DISCKSON ACT 2602

Dear Russell,

RE: Application for Authorisation – Nos A90831 to A90833

Thank you for providing the opportunity to make comment on the ACCC's Draft determination in respect of VENCORP's MSO Rules application. As you are aware, ENERGEX has written two separate submissions regarding this matter and we have actively participated in the Commission's pre determination conference held in Melbourne in November.

In respect of the two principal issues raised by the Consumer Groups who called the predetermination conference, we make the following observations.

Statutory Review versus Authorisation period

As VENCORP has indicated in their response, the Victorian Government must undertake a Statutory Review of the Victorian gas access regime as part of its obligations under the Gas Industry Act. The authorisation process and statutory review are separate and distinct exercises driven by different legislative instruments. The statutory review (likely to be completed towards the later part of 2007) will have one of three outcomes.

A recommendation to scrap the existing market carriage and a return to contract carriage; or

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A recommendation for the continuance of the then prevailing design elements of market carriage (whatever they might be); or

A recommendation to adopt a mutation of Market carriage in existence at the time of the review (ie transmission property rights operating in a full nodal market with hourly trading periods and fully tradeable linepack hedges).

Regardless of which option is adopted, it is important that the ACCC authorisation process does not impede the consultative mechanisms implemented by the Victorian Government during their review. ENERGEX maintains that it is crucial for the State process (which we assume will be fully consultative) to be undertaken in a stable and clearly understood federal regulatory environment. For this reason, it is imperative for the authorisation period to be at least ten years.

ENERGEX believes that it is also worth remembering that the principal bearer of risk in the gas market is the Retailer. Unlike electricity, gas market Retailers invariably take a substantial “long” market position by forward contracting with a producer for a volume of gas (usually over a significant period of time). Because the geological and physical nature of the commodity and the limited competitive environment in the upstream markets, contracts with upstream producers usually contain significant take-or-pay risks for the Retailer often spanning many years. Once a retailer commits to a contract, the delivery risk for the commodity via the approved carriage regime falls predominantly on the retailer sector.

Given this reality, ENERGEX believes that the ACCC should overtly acknowledge that all responses to the Commission from retailers supported the proposed 10-year authorisation period. The importance of this universal support amongst Retailers should not be undervalued in the Commission’s subsequent consideration of the suggestion by the consumer groups that the authorisation period should be shortened. It is ENERGEX’s view that the clear and compelling message from Retailers is that the 10-year authorisation period is required to ensure a stable regulatory platform in which to operate these long-term contracts.

ENERGEX urges the commission to retain the 10-year authorisation period in its final determination.

Customer advocacy matters raised by the Consumer groups

ENERGEX agrees that consumer support for wholesale energy markets is becoming increasingly important. However, whilst we applaud the efforts of the various consumer groups in inputting into emerging wholesale market issues, ENERGEX does not support the proposal for funded consumer participation in the Victorian and National gas industry. ENERGEX agrees with the Commission's observations in their draft determination regarding the differences between the NEM and the Victorian gas market that makes adoption of the electricity approach to consumer advocacy inappropriate for the VENCORP authorisation.

ENERGEX has had direct involvement with the establishment of the NECA Advocacy Panel and based on this experience, it is our view that the most significant issue in this matter is how to obtain a truly representative view for Victoria's 1.4 Million customers. To date, the tendency of Regulators (both Federal and the State) has been to select customer representation from the most organised associations. Whilst we believe that the views of these associations are important, we nevertheless believe that comments made by these groups need to be considered in the context of their actual constituency. Moreover, we believe that an equally crucial consideration for the ACCC is the likely majority of customers whose views are not shared by these associations. For example, we are aware of quite diverse views amongst individual customers in the industrial and commercial sector. A case in point is the position of VISY (a large gas user with direct pool price exposure as a wholesale market participant) as articulated in their submission to the Commission. VISY has clearly supported a 10-year authorisation period in contrast to the position of the association representing large gas consumers.

As a way forward in this matter, we agree with the ACCC's suggestion that an additional seat be made available for customer representation on

the Gas Market Consultative Committee (GMCC). This option allows customers a specific voice directly on the group responsible for considering Code changes to the MSO Rules. ENERGEX believes that this is a more efficient and more effective mechanism for consumers (albeit the problem of correct representation of all customer views will remain problematic).

In addition to making comments on the two principal issues raised in the predetermination conference, we draw the Commissions attention to the following items, which we consider to be errors of fact, or matters requiring additional clarification in the draft determination.

Page 36

The draft determination states

“TXU maintain gas-fired generators are listed in Table 1 of Gas Load Emergency Curtailment Rules, which means that they are among the first users to be curtailed in the event of a system constraint.”

Whilst it is strictly true that gas fired generation does not have winter AMDQ, this plant can attract AMDQ credits and thereby have a priority in load shedding events (the nature of the fault permitting).

Page 40

The draft Determination states,

“AMDQ confers a right on a participant to withdraw a specified amount of gas from the PTS. AMDQ rights were initially allocated to gas customers.”

AMDQ has two components; it is a quasi property right conferring withdrawal right on the holder and it is a priority right in times of curtailment

Gas customers only hold AMDQ (as an individual allocation) if their consumption is more than 10 TJ/yr. For all “V” tariff customers, AMDQ is held communally on behalf of end consumers. It is arguable whether end use customers or retailers hold this AMDQ since VENCORP has not issued the

attendant script to either retailers or end use customers however, “V” tariff AMDQ is not tradeable, nor can the AMDQ be relinquished.

Page 42

The draft determination states

“The Commission appreciates TXU’s concern that some customers, particularly Tariff V customers, appear reluctant to relinquish AMDQ for periods when they are not using it”

Individual “V” tariff customers do not hold AMDQ as a determined quantity. These rights are held communally and are effectively apportioned to all “V” tariff customers based on their individual withdrawals as a proportion of the whole on the day of a constraint. Because of this “socialisation”, the amount held by individual consumers varies with each gas day and a particular “V” tariff customer can not trade “AMDQ”.

Page 42

The draft determination states,

*“In relation to ENERGETX’ concerns, the Commission considers:
“it is irrelevant that AMDQ exceeds the amount traded under the Gascor contract because AMDQ can be utilised in relation to gas purchased directly from Esso, and can also be used in relation to gas injected at sources other than Longford”*

AMDQ cannot be utilised for gas purchased directly from ESSO or any other gas injected at sources other than Longford. By definition, AMDQ is not tied to injection sources of any kind. It is a concept devoid of the link between injection capacity and pipeline capacity. This is precisely the problem that ENERGETX identifies in its submission.

Further in the draft determination, the Commission states’

“AMDQ and AMDQ credit are appropriately valued relative to each other because they can both be used either to hedge against uplift, or to obtain ancillary payments”

AMDQ cannot be used to obtain ancillary payments (as can AMDQ credits). AMDQ holders have a hedge against constraint uplift that is (by definition) not commutable to Ancillary Payments. AMDQ can not be commuted to Ancillary Payments because the paradigm does not rely on injected gas creating pipeline capacity. Since there is no link between AMDQ and the bid that was dispatched as an injection source, there can be no ability to relate unused AMDQ to Ancillary Payment.

Page 42

The draft determination states;

“The Commission considers that, since AMDQ and AMDQ credit are fully tradeable and transferable, their respective prices reflect their value to the market.”

Only “D” tariff AMDQ is truly tradeable - and there are important differences in the transferability of AMD and AMDQ credits. For example, whilst AMDQ credits are theoretically tradeable, the fact that the transaction is not undertaken by the central clearinghouse means that in reality, AMDQ credits can not be effectively traded amongst participants. The mechanism stopping AMDQ Credit trades “outside the market” is the fact that without the facility for the trade to be settled by VENCORP’s internal billing process, the counter parties can not correctly value the traded commodity (unless the selling party’s bid is the marginal bid in the price stack).

Page 72, Appendix A - Submissions

The list of submissions fails to acknowledge ENERGETEX’s supplementary submission written in response to TXU’s position paper on the events of 22nd July 2002

Yours sincerely

Don Vigilante

Energy Regulation Manager