

PROPOSED RECOMMENDATION TO THE MINISTER THAT TAG OIL'S SIDEWINDER PIPELINE BE ADDED TO SCHEDULE 6 OF THE COMMERCE ACT 1986

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COMMERCE COMMISSION

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SECTION 1 APPLICATION FOR EXEMPTION

Introduction

- 1.1 This paper proposes that TAG Oil's Sidewinder gas export pipeline ("Sidewinder Pipeline") be included in the list of exempt pipelines in Schedule 6 of the Commerce Act 1986 (the "Act"). If the Sidewinder Pipeline was included in Schedule 6 it would be exempt from the requirements of information disclosure and price-quality regulation under Part 4 of the Act. The exemption has been sought by the owner of the pipeline, TAG Oil (NZ) Limited ("TAG Oil").

Overview of the Sidewinder Pipeline

- 1.2 TAG Oil is the owner of the Sidewinder field and plans to commence production of oil and gas from the field. TAG Oil is building a production station which will process the gas to a specification that will allow it to be injected into the Vector gas transmission system.
- 1.3 TAG Oil is also building the Sidewinder Pipeline. It is being designed and constructed as a dedicated pipeline to transport gas produced by the Sidewinder field over a distance of approximately 3.35km from the Sidewinder Production Station to an interconnection point on Vector's high pressure gas transmission system.
- 1.4 TAG Oil will be the owner of the Sidewinder Pipeline. Petroleum produced from the Sidewinder field will be processed at the Sidewinder Production Station and these facilities will also be owned by TAG Oil.
- 1.5 The Sidewinder Pipeline will be a 200mm nominal diameter pipeline which exports gas from the Sidewinder Production Station to an interconnection point with the Vector high pressure gas transmission system. It will be a purpose built dedicated pipeline that is used exclusively for the purpose of transporting gas from the Sidewinder field to the Vector gas transmission system.

Current Status of the Sidewinder Pipeline under the Act

- 1.6 Gas pipeline services are subject to information disclosure and price-quality regulation under Part 4 of the Act. Schedule 6 of the Act identifies gas pipelines that are exempt from the requirements of Part 4. The Sidewinder Pipeline is not currently listed in Schedule 6.
- 1.7 TAG Oil has applied, via the Ministry of Economic Development, for the Sidewinder Pipeline to be added to Schedule 6. TAG Oil considers that the pipeline should be exempt from both information disclosure and price-quality regulation under Part 4 of the Act. Section 55A(6) of the Act allows the Minister of Commerce ("the Minister") to make a recommendation to the Governor General that a pipeline be added to Schedule 6. The Minister must be satisfied that:
- the Commerce Commission ("Commission") has made a recommendation to add the pipeline to Schedule 6;
 - the gas pipeline services are supplied in a market where the owner of the pipeline does not have a substantial degree of market power; and
 - the Commission has consulted with interested parties.

- 1.8 The Commission sets out its view as to whether the Sidewinder Pipeline services are supplied in a market where TAG Oil holds a substantial degree of market power in Section 2 of this paper. The Commission seeks the views of interested parties on its view that TAG Oil does not hold such power and its proposal to recommend to the Minister that the Sidewinder Pipeline be added to Schedule 6 of the Act. Details as to how to make submissions are set out in Section 3 of this paper.

SECTION 2 PROPOSED RECOMMENDATION RATIONALE

2.1 Section 55A of the Act requires the Minister to make a recommendation to add a pipeline to Schedule 6 only if the Minister is satisfied that “*the gas pipeline services are supplied in a market where the owner of the pipeline does not have a substantial degree of market power*”.

Market Power

2.2 Two potential markets could be considered with respect to this requirement:

- a market for the gas pipeline services over the Sidewinder Pipeline, in which the conveyance of natural gas over the Sidewinder Pipeline is provided in isolation from any other service; and
- a market for wholesale natural gas in which gas is sold at the point at which gas is injected into a gas transmission system, i.e. in this case at the downstream end of the Sidewinder Pipeline.

2.3 In the case of the Sidewinder Pipeline, there is no market for the gas pipeline service alone as the pipeline is only used for conveying the owner’s gas. TAG Oil has advised that it expects the pipeline will be used for conveying only its Sidewinder gas, and that it is not aware of any potential third party user of the pipeline in the vicinity of the upstream end of the pipeline.

2.4 All gas injected into the gas transmission systems is part of a single wholesale gas market. The open access regimes for both the Vector and MDL gas transmission systems in Taranaki allow gas to be conveyed through the Taranaki gas transmission systems without significant constraint and for well defined prices. This means that all gas sold at injection into the gas transmission systems in Taranaki is sold into a single market. It is this gas market that is the relevant market with respect to s55A(6)(b).

2.5 The conveyance of gas through the Sidewinder Pipeline is a necessary part of the service of providing gas for sale in the gas market. The Sidewinder gas competes against all other gas injected into the transmission system. Suppliers could substitute the gas supplied by TAG Oil for that of any other supplier.

2.6 The expected capacity of the Sidewinder Pipeline to convey gas has been indicated by TAG Oil as 30 million standard cubic feet per day¹, which corresponds to 12.67² PJ per annum if gas were to flow continuously. The smallest annual total natural gas supply over the years 1986 to 2009 was in 2005 and amounted to 144.82 PJ in that year.³ If this figure is taken as an indicative lower bound of the market size, the maximum feasible supply of gas flowing through the Sidewinder Pipeline represents less than 9% of the minimum annual gas supply. TAG Oil expects the initial, actual supply to be significantly less than this.

¹ This value reflects the pipeline capacity, rather than the expected initial flow which is a fraction of this amount.

² This assumes a calorific value of 40.85MJ/m³, which is the midpoint of the calorific value range in Note 3 to Table 2 of NZS 5442:2008.

³ Energy Data File 2010, Table E.4, Ministry of Economic Development

2.7 The Commission considers that TAG Oil could not exercise a significant influence on the wholesale price of natural gas by having less than 9% of the total market. TAG Oil would not have a substantial degree of market power. The competition from other gas suppliers referred to in paragraph 2.5 above will constrain any influence of TAG Oil on market prices.

Proposed Recommendation

2.8 The Commission's proposal to recommend that the Sidewinder Pipeline should not be subject to control under Part 4 of the Act is based on the view that:

- as discussed above, the Commission does not consider that TAG Oil has a substantial degree of market power in the market for natural gas sales;
- the relevant market is the market for natural gas sales;
- it is likely that the Sidewinder Pipeline will be used only to convey gas from the Sidewinder Production Station, and that it is therefore unlikely that the pipeline will be used to provide for the conveyance of gas for a third party. In the unlikely event of a third party wishing to transport gas through the Sidewinder Pipeline, the Commission could consider recommending that the pipeline could be removed from Schedule 6 of the Act; and
- if the pipeline were to be subject to control, the price and quality of the pipeline service provided by TAG Oil to itself would be controlled, as the pipeline will be a dedicated pipeline for conveying gas for the pipeline owner. This would be a perverse outcome as no separate pricing for the pipeline service would be able to be identified and it is difficult to see how control would promote the purpose of Part 4, as set out in s52A of the Act, in these circumstances.

2.9 The Commission invites interested parties to make submissions on any of these views.

SECTION 3 SUBMISSIONS

- 3.1 The Commission seeks the views of interested parties on its proposed recommendation to the Minister.
- 3.2 Submissions must be provided no later than 11am Friday, 17 June 2011; be supported by documentation and evidence where appropriate; and be sent to:
- Paul Ware
Senior Analyst
Regulation Branch
Commerce Commission
P.O. Box 2351
Wellington
paul.ware@comcom.govt.nz
- 3.3 To foster an informed and transparent process, the Commission intends to publish all submissions on its website. Accordingly, the Commission requests an electronic copy of each submission and requests that hard copies of submissions not be provided (unless an electronic copy is not available). The Commission also requires that these electronic copies be provided in an accessible form (i.e., they are ‘unlocked’ and text can be easily transferred). If the submission contains confidential information or if the submitter wishes that the published version be ‘locked’, an additional document labelled “public version” should be provided.

Confidentiality

- 3.4 The Commission discourages requests for non-disclosure of submissions, in whole or in part, as it is desirable to test all information in a fully public way. The Commission is unlikely to agree to any requests that submissions in their entirety remain confidential. However, the Commission recognises that there will be cases where interested parties making submissions may wish to provide confidential information to the Commission.
- 3.5 If it is necessary to include such material in a submission the information should be clearly marked and preferably included in an appendix to the submission. Interested parties should provide the Commission with both confidential and public versions of their submissions. The responsibility for ensuring that confidential information is not included in a public version of a submission rests entirely with the party making the submission.
- 3.6 Parties can request that the Commission makes orders under s 100 of the Act in respect of information that should not be made public. Any request for a s 100 order must be made when the relevant information is supplied to the Commission and must identify the reasons why the relevant information should not be made public. The Commission will provide further information on s 100 orders if requested by parties, including the principles that are applied when considering requests for such orders. A key benefit of such orders is to enable confidential information to be shared with specified parties on a restricted basis for the purpose of making submissions. Any s 100 order will apply for a limited time only as specified in the order. Once an order expires, the Commission will follow its usual process in response to any request for information under the Official Information Act 1982.