

COMMERCE COMMISSION

Proposed Recommendation to the Minister that the Rimu Pipeline
be added to Schedule 6 of the Commerce Act 1986

Consultation Paper

11 February 2011



COMMERCE COMMISSION

Regulation Branch

Commerce Commission

Wellington

NEW ZEALAND

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SECTION 1 APPLICATION FOR EXEMPTION

Introduction

- 1.1 This paper proposes that the Rimu Pipeline (as described below) be included in the list of exempt pipelines in Schedule 6 of the Commerce Act 1986 (the “Act”). The effect of this inclusion would be to exempt the pipeline 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 that pipeline, Origin Energy Resources NZ (Rimu) Limited (“Origin Rimu”).

Overview of the Rimu Pipeline

- 1.2 Origin Rimu is the owner of the Rimu gas export pipeline (“Rimu Pipeline”). Petroleum produced by the Rimu and Kauri fields is processed at the Rimu Production Station and these facilities are also owned by Origin Rimu.
- 1.3 The Rimu Pipeline is a 600m long, 150mm nominal diameter pipeline which exports gas from the Rimu Production Station to an interconnection point with the Vector high pressure gas transmission system. It is a purpose built dedicated pipeline and is used almost exclusively for the purpose of transporting gas from the Rimu and Kauri fields to the Vector transmission system. Small amounts of gas are, however, occasionally imported through this pipeline from the Vector transmission system to enable the start-up of the Rimu Production Station after shutdown.
- 1.4 The Rimu Pipeline was acquired by Origin Rimu when it acquired oil and gas assets owned by Swift Energy New Zealand Limited in 2008.
- 1.5 The Pipeline was exempted from Regulations 6-27 (which contain all of the disclosure requirements) of the Gas (Information Disclosure) Regulations 1997 (“the Regulations”) pursuant to Regulation 28(2) by virtue of an exemption notice published in the Gazette dated 18 November 2004. This exemption was updated on 18 December 2008 to reflect the acquisition of the Pipeline by Origin Rimu.

Current Status of the Rimu 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 those gas pipelines that are exempt from the requirements of Part 4. The Rimu Pipeline is not currently listed in Schedule 6.
- 1.7 Origin Rimu has applied, via the Ministry of Economic Development, for the Rimu Pipeline to be added to Schedule 6. Origin Rimu has noted that the Rimu Pipeline is exempt from the Regulations 6-27 and considers that it should also be exempt from both information disclosure and price-quality regulation under Part 4 of the Act. The Commerce Commission (“Commission”) may, pursuant to section 55A(6) of the Act, make a recommendation to the Minister of Commerce (“the Minister”) that a pipeline be added to Schedule 6. The Minister must be 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, that the Commission has consulted with interested parties and that the Commission has made a recommendation to add the pipeline to Schedule 6.
- 1.8 The Commission has set-out its view of whether Origin Rimu holds a substantial degree of market power in respect of the gas pipeline services that are supplied

across the Rimu Pipeline in section 2 of this paper. The Commission seeks the views of interested parties on its conclusion that Origin Rimu does not hold such power in respect of such services and its proposal to recommend to the Minister that the Rimu Pipeline be added to Schedule 6 of the Act.

SECTION 2 COMMISSION'S PROPOSED RECOMMENDATION

2.1 On 29 November 2004, the Commission published the findings of its gas control inquiry¹ ("the Inquiry"). At that time, the Rimu Pipeline was owned by Swift Energy New Zealand Limited. The Inquiry found that:

*"Ownership of the pipeline gives Swift very little opportunity, if any, to exercise market power. Other suppliers of gas to the NGC transmission pipeline provide an effective constraint on the delivered price of Rimu gas. The Commission considers that there is likely to be little potential for a third party to use the pipeline. It will remain a dedicated pipeline. Consequently competition for pipeline services is not an issue relevant to this pipeline."*²

2.2 The Commission, therefore, concluded that, at the time of the Inquiry, competition was not limited in the relevant market and that the Rimu Pipeline should not be subject to regulatory price control.

2.3 In light of Origin Rimu's request and following further consideration, the Commission is of the view that the technical characteristics of the Rimu Pipeline, the purposes for which it is used and the relevant market (i.e: the provision of gas transmission and pipeline services), have not changed in any material way since the Inquiry.

2.4 Therefore, the Commission considers that Origin Rimu does not have a substantial degree of market power through the use of this pipeline, particularly given that this is a dedicated pipeline.

¹ "Gas Control Inquiry Final Report" Commerce Commission, 29 November 2004.

² *ibid*, paragraph 19.31.

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, 25 February 2011**; be supported by documentation and evidence where appropriate; and be sent to:
- Paul Mitchell
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- 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.

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.