30 November 1998

Victorian Third Party Access Code for Natural Gas Pipeline Systems: Access Arrangement for the Principal Transmission System by Victorian Energy Networks Corporation

C/983240078

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ACCESS ARRANGEMENT FOR THE TRANSMISSION SYSTEM BY VICTORIAN ENERGY NETWORKS CORPORATION

1. Introduction

1.1 Purpose of this Document

This *Access Arrangement* ("Access Arrangement") was submitted on 3 November 1997 by Energy Projects Division of the Department of Treasury and Finance, Government of Victoria ("EPD") on behalf of Victorian Energy Networks Corporation ("VENCorp" or the "Service Provider") to the Australian Competition and Consumer Commission (the "Regulator") in accordance with section 2.2 of the Victorian Third Party Access Code for Natural Gas Pipelines (the "Victorian Access Code").

The Regulator delivered a draft decision on this Access Arrangement on 28 May 1998 and a Final Decision I (in accordance with section 2.16(b) of the Victorian Access Code) on 6 October 1998. An amended Access Arrangement was submitted by EPD on behalf of the Service Provider on 30 November 1998 and was approved by the Regulator in Final Decision 2 (in accordance with section 2.19 of the Victorian Access Code) on 16 December 1998.

This Access Arrangement describes the terms and conditions on which VENCorp will grant access to the *Principal Transmission System* to third parties.

Transmission Pipelines Australia (Assets) Pty Ltd as owner of the *Principal Transmission System* and Transmission Pipelines Australia Pty Ltd as offeror of certain *Services* in respect of the *Principal Transmission System* (together "TPA"), are required to submit a separate Access Arrangement in relation to that system.

The Victorian Access Code provides for application to multiple Service Providers in respect of a *Covered Pipeline*. Section 9.2 provides as follows:

> ***Section 9.2*** *Where:*
>
> *(a) there is more than one Service Provider in connection with a Covered Pipeline;*
>
> *(b) one is the owner and another is the operator; and*
>
> *(c) responsibility for complying with the obligations imposed by this Code on the Service Provider is allocated among them by their Access Arrangements, or their Access Arrangement Information,*
>
> *each Service Provider is responsible only for complying with the obligations allocated to it.*

Pursuant to section 9.2 of the Victorian Access Code, there has been an allocation of obligations between TPA and VENCorp which is reflected in their respective access arrangements.

The wording of each section of the Victorian Access Code is reproduced in italics and then followed by a statement explaining where the particular section is satisfied in this Access Arrangement.

1.2 Composition of Access Arrangement

This Access Arrangement comprises this document, together with the description of *Principal Transmission System* and maps contained in Appendix 1, the pro-forma Gas Transportation Deed attached as Appendix 2 and the descriptions of the Initial Authorised *MDQ* Allocation Procedures set out in Appendix 3 as well as the sections of the *MSO Rules* to which this Access Arrangement refers and the sections of the *Tariff Order* to which this Access Arrangement refers.

In addition, *Access Arrangement Information* ("Access Arrangement Information") was submitted by VENCorp in accordance with section 2.2 of the Victorian Access Code.

1.3 Effective Date

This Access Arrangement will come into effect on:

(a) the date on which the Regulator's decision to approve this Access Arrangement takes effect; or

(b) the date on which the *MSO Rules* take effect,

whichever is later.

2. Interpretation

In this Access Arrangement, where a word or phrase is italicised it has:

(a) the definition given to that word or phrase in the Victorian Access Code; or

(b) the definition given to that word or phrase below,

unless the context otherwise requires.

"**MSO Rules**" means the Market and System Operations Rules (as amended from time to time) made under section 48N of the Gas Industry Act 1994.

"**Principal Transmission System**" means the Gas Transmission System as defined in the Gas Industry Act 1994 excluding any significant extension in respect of which a notice under clause 5.7.1(c) of TPA's Access Arrangement has been given even if an agreement under section 5(3) of the Gas Industry Act 1994 has been entered into in respect of that extension.

"**Tariff Order**" means the Order in Council (Victorian Gas Industry Tariff Order 1998, as amended from time to time) made under section 48A of the Gas Industry Act 1994.

"**Initial transmission tariffs**", "**initial VENCorp tariffs",** "**MDQ**", " "**tariffed transmission services**", "**transmission tariffs**", "**VENCorp tariffs** and "**tariffed VENCorp services**" have the meaning given to those words or phrases in the *Tariff Order*.

3. Contact Details

The contact officer for further details on this Access Arrangement is:

Company Secretary
VENCorp
433 Smith Street
North Fitzroy, Vic, 3068

Telephone: 9481 9222

Facsimile: 9481 9269

4. Prior contractual rights

Notwithstanding anything to the contrary contained in this Access Arrangement, no provision in this Access Arrangement deprives any person of a contractual right which was in existence prior to 3 November 1997 (being the date on which this Access Arrangement was first submitted to the Regulator) other than an *exclusivity right* which arose on or after 30 March 1995.

5. Elements set out in Section 3 of the Victorian Access Code

This section, in compliance with section 2.5 of the Victorian Access Code, includes the elements set out in section 3.1 to 3.22 of the Victorian Access Code which are applicable to VENCorp.

5.1 Access Arrangement

Section 3.1	*An Access Arrangement submitted by a Service Provider to the Relevant Regulator must be in writing and may specify Relevant Regulatory Instruments or a class of Relevant Regulatory Instruments with which the Service Provider will comply. Except where the Relevant Regulatory Instrument or the Access Arrangement expressly provides otherwise, an amendment to, or a supplementation or replacement of, a Relevant Regulatory Instrument specified in an Access Arrangement by a Service Provider under section 3.1 is not a change to the Access Arrangement for the purposes of section 2.49.*
Section 3.2	*Without limiting the effect of section 3.1, a Service Provider must have sufficient rights in respect of the Covered Pipeline the subject of its Access Arrangement to enable the Service Provider to make available its Services in accordance with its Access Arrangement.*

5.1.1 VENCorp will comply with the following *Relevant Regulatory Instruments* (where applicable):

(a) the Victorian Access Code;

(b) the *MSO Rules*; and

(c) the *Tariff Order*.

VENCorp has sufficient rights in respect of the *Principal Transmission System* (including under the Pipelines Act 1967 (Vic), Gas Industry Act 1994 (Vic) and any relevant agreements between it and TPA) to enable it to make available its *Services* in accordance with this Access Arrangement.

5.1.2 In the event that the *MSO Rules* become subject to an exemption under section 51(1) of the Trade Practices Act 1974, any amendment to, or supplementation or replacement of, the *MSO Rules* will, to the extent to which the *MSO Rules* are part of this Access Arrangement, constitute a change for the purposes of the Victorian Access Code and will not be effective to change this Access Arrangement unless and until the procedure in section 2 of the Victorian Access Code is followed.

5.2 Services Policy

Section 3.3	*An access arrangement must include a policy on the Service or Services to be offered (a **Services Policy**).*
Section 3.4	*The Services Policy must comply with the following principles:*
	(a) The Access Arrangement must include a description of one or more Services that the Service Provider will make available to Users or Prospective Users, including:
	(i) one or more Services that are likely to be sought by a significant part of the market; and
	(ii) any Service or Services which, in the Regulator's opinion, should be included in the Services Policy.
	(b) To the extent practicable and reasonable, a User or Prospective User must be able to obtain a Service which includes only those elements that the User or Prospective User wishes to be included in the Service.
	(c) To the extent practicable and reasonable, a Service Provider must provide a separate Tariff for an element of a Service if this is requested by a User or Prospective User.

5.2.1 VENCorp will make *tariffed VENCorp services* available to *Users* or *Prospective Users* of the *Principal Transmission System* at the *Reference Tariffs*, on the terms and conditions, and in accordance with the *Reference Tariff Policy* described in clauses 5.3 and 5.4 below.

5.2.2 The *Services* are likely to be sought by a significant part of the market, being the three initial gas retailers.

5.3 Reference Tariffs and Reference Tariff Policy

Reference Tariffs

Section 3.5	*An Access Arrangement must include a Reference Tariff for:*
	(a) at least one Service that is likely to be sought by a significant part of the market; and
	(b) each Service that is likely to be sought by a significant part of the market and for which the Regulator considers a Reference Tariff should be included.
Section 3.6	*Unless a Reference Tariff has been determined through a competitive tender process as outlined in sections 3.23 and 3.40, an Access Arrangement and any Reference Tariff included in an Access Arrangement must, in the Regulator's opinion, comply with the Reference Tariff Principles described in section 8.*

5.3.1 For providing the *tariffed VENCorp services* to *Users*, VENCorp will charge the *VENCorp tariffs*, as well as *transmission tariffs* (together the "*Reference Tariffs*").

5.3.2 The *initial VENCorp Tariffs* are the *VENCorp tariffs* (as defined in the *Tariff Order*), being the tariffs for *tariffed VENCorp services* specified in Schedule 1, paragraph 4 of the *Tariff Order*.

5.3.3 Pursuant to the allocation of obligations between TPA and VENCorp under section 9.2 of the Victorian Access Code, a description of the *initial transmission tariffs* is set out in clause 5.3.1 of TPA's Access Arrangement.

5.3.4 Any change to the *Reference Tariffs* will not be incorporated in this Access Arrangement unless and until the procedure in section 2 of the Victorian Access Code is followed.

The *Reference Tariff Policy* is set out below.

Reference Tariff Policy

Section 3.7	*An Access Arrangement must also include a policy describing the principles that are to be used to determine a Reference Tariff (a **Reference Tariff Policy**). A Reference Tariff Policy must, in the Regulator's opinion, comply with the Reference Tariff Principles described in section 8.*

5.3.5 The *Reference Tariff Policy* applying to the *VENCorp Tariffs*, as set out in clause 6.1(a)(2) of the *Tariff Order*, provides for tariffs for *tariffed VENCorp services* to be adjusted in the light of actual outcomes to ensure that the tariffs recover the actual costs of providing the *tariffed VENCorp service*.

5.3.6 Pursuant to the allocation of obligations between TPA and VENCorp under section 9.2 of the Victorian Access Code, a description of the *Reference Tariff Policy* applying to *transmission tariffs* is set out in clauses 5.3.2 to 5.3.8 of TPA's Access Arrangement.

5.4 Terms and Conditions

Section 3.8	*An access arrangement must include the terms and conditions on which the Service Provider will supply each Reference Service. The terms and conditions included must, in the Relevant Regulator's opinion, be reasonable.*
Section 3.9	*To the extent permitted by the law of a jurisdiction outside Victoria, the terms and conditions of the Access Arrangement of a Service Provider who provides Services by means of a Covered Pipeline or system of Covered Pipelines which are situated both in Victoria and in another jurisdiction:* *(a) must not differentiate between that part of the Covered Pipeline or Covered Pipelines situated in Victoria and that part of the Covered Pipeline or Covered Pipelines situated outside Victoria merely because they are situated in different jurisdictions; and* *(b) must comply with the provisions of the Code.*

5.4.1 VENCorp will operate the *Principal Transmission System* made available to it by TPA (pursuant to TPA's Access Arrangement), for *Users* in accordance with the *MSO Rules*. In order to access the *Principal Transmission System*, *Users* will register as Market Participants under the *MSO Rules*. *Users* will be required to enter into a Gas Transportation Deed (in the form of Appendix 2) with VENCorp, under which they

agree to pay certain market fees to VENCorp, and VENCorp directs them to pay directly to TPA the transmission charges charged by TPA to VENCorp in return for the services performed by VENCorp for the *Users.*

5.4.2 Details of the terms and conditions on which VENCorp will supply each *Reference Service* are contained in:

(a) at entry into the Market as a Participant (or Market Participant) the registration provisions of the *MSO Rules* and thereafter, the entirety of the *MSO Rules*;

(b) Chapter 5 and paragraph 4 of schedule 1 of the *Tariff Order*, which sets out the initial *VENCorp tariffs*, and clause 6.1(a)(2) of the *Tariff Order*, which sets out the way in which the *VENCorp Tariffs* will be calculated for each year of the *Access Arrangement Period*; and

(c) the pro-forma Gas Transportation Deed attached as Appendix 2.

5.4.3 No part of the *Principal Transmission System* is situated in another State, except the Interconnect more particularly described in clause 5.7.1(f) of TPA's Access Arrangement.

5.5 Capacity Management Policy

Section 3.10 *An Access Arrangement must include a statement (a* ***Capacity Management Policy****) that the Covered Pipeline is either:*

(a) a Contract Carriage Pipeline; or

(b) a Market Carriage Pipeline.

5.5.1 The *Principal Transmission System* is a *Market Carriage Pipeline.*

5.5.2 *Market carriage* allows parties to transport gas almost any time (subject to system security constraints), even if they do not possess authorised *MDQ*. However, under the *MSO Rules*, unauthorised *Users* will face a substantially greater share of uplift payments in the event of transmission constraints. VENCorp's allocation of initial authorised *MDQ* to *Users* is governed by clause 5.3.2(a) of the *MSO Rules*. The procedures used by VENCorp to initially allocate *MDQ* are set out in Appendix 3.

5.6 Queuing Policy

Section 3.14 *An Access Arrangement must include a policy for determining the priority that a Prospective User has, as against any other Prospective User, to obtain access to a Service provided by means of a Covered Pipeline and the Developable Capacity of a Covered Pipeline (and to seek dispute resolution under section 6) (a* ***Queuing Policy****).*

Section 3.15 *The Queuing Policy must*:

(a) set out sufficient detail to enable Users and Prospective Users to understand in advance how the Queuing Policy will operate;

(b) accommodate, to the extent reasonably possible, the legitimate interests of the Service Provider and of Users and Prospective Users;

	and
	(c) generate, to the extent reasonably possible, economically efficient outcomes.
Section 3.16	*The Regulator may require the Queuing Policy to deal with any other matter the Regulator thinks fit, taking into account the matters listed in section 2.24.*
Section 3.17	*Notwithstanding anything else contained in this Code, the Service Provider must comply with a Queuing Policy specified in the Service Provider's Access Arrangement*

5.6.1 *MSO Rules provision for Queuing Policy*

The *Queuing Policy* for the *Principal Transmission System* is described in the *MSO Rules*.

A *Queuing Policy* is provided for in the *MSO Rules* (clause 5.3.4) as a means to allocate *Spare Capacity* when it does become available. The *MSO Rules* provide for the details to be developed. The *MSO Rules* propose an auction process as the means by which available *Spare Capacity* will be "rationed" (ie, allocation of authorised *MDQ*) if its availability does not match demand.

5.6.2 *Register of MDQ applications*

(a) VENCorp as the operator of the *Principal Transmission System* is to establish and maintain a formal register for all applications for new or additional *MDQ* allocations under clauses 5.3.4(d) and 5.3.4(e)(2) of the *MSO Rules*:

The register shall contain:

(1) date of the application;

(2) quantity requested;

(3) customer's name and postal address; and

(4) the name and postal address of the authorised agent representing the customer (if applicable).

(b) VENCorp will formally provide to the customer acknowledgment of the receipt of its application and will copy that acknowledgment to the authorised agent, if applicable.

5.6.3 *Auction process*

(a) When additional capacity is made available VENCorp will conduct a open auction of the whole of that capacity and to allocate that capacity in order of highest bids received. The auction shall be conducted over a period of 10 business days and shall only be open to those persons registered with VENCorp. At any time during the 10 day auction period a person may bid or alter a bid once each day. Bids and rebids received by the end of the 10th business day shall form the basis of VENCorp's allocations of *MDQ*.

(b) The auction process shall be as follows:

(1) VENCorp is to:

(A) advertise the auction on each of three separate occasions in a newspaper with state-wide distribution, advising that it will be necessary to register with VENCorp in order to bid at the auction. A closing date shall be included; and

(B) formally notify all names on the register (both customer and authorised agent) of the capacity being made available and seek bids for that capacity. An opening and closing date shall be included.

(2) Bids shall be limited to one bid per customer comprising a price and quantity to which the price shall apply and must be received by VENCorp between the auction dates notified by VENCorp (not less than 10 business days). A bid may be altered by the bidder at any time during the 10 day auction period.

(3) At the end of each day VENCorp will post the results of each day's bids and rebids on the VENCorp internet site for viewing by bidders. Bids shall not be identifiable.

(4) VENCorp shall allocate the additional available capacity in order of the highest bids and rebids received, and shall inform each person who was entitled to bid of:

(A) the price of the highest and lowest bids that were successful in being allocated *MDQ* (bids shall not be identifiable); and

(B) if successful, the *MDQ* allocated to that person.

5.7 Extensions/Expansions Policy

Section 3.18 *An Access Arrangement must include a policy (an **Extensions/Expansions Policy**) which sets out:*

(a) the method to be applied to determine whether any extension to, or expansion of the capacity of, the Covered Pipeline:

(i) should be treated as part of the Covered Pipeline for all purposes under the Code; or

(ii) should not be treated as part of the Covered Pipeline for any purpose under the Code.

(for example, the Extensions/Expansions Policy could provide that the Service Provider may, with the Relevant Regulator's consent, elect at some point in time whether or not an extension or expansion will be part of the Covered Pipeline or will not be part of the Covered Pipeline);

(b) specify how any extension or expansion which is to be treated as part of the Covered Pipeline will affect Reference Tariffs;

(for example, the Extensions/Expansions Policy could provide:

(i) Reference Tariffs will remain unchanged but a Surcharge may be levied on Incremental Users where permitted by sections 8.25 and 8.26; or

(ii) specify that a review will be triggered and that the Service Provider must submit revisions to the Access Arrangement pursuant to section 2.28);

(c) if the Service Provider agrees to fund New Facilities if certain conditions are met, a description of those New Facilities and the conditions on which the Service Provider will fund the New Facilities.

The Regulator may not require the Extensions/Expansions Policy to state that the Service Provider will fund New Facilities unless the Service Provider agrees.

5.7.1 Pursuant to section 9.2(c) of the Victorian Access Code, responsibility for complying with the obligation imposed by section 3.18 of the Victorian Access Code to include an *Extensions/Expansions Policy* in an Access Arrangement has been allocated to TPA.

5.8 Review of the Access Arrangement

Section 3.19 *An Access Arrangement must include:*

*(a) a date upon which the Service Provider must submit revisions to the Access Arrangement (a **Revisions Submission Date**); and*

*(b) a date upon which the next revisions to the Access Arrangement are intended to commence (a **Revisions Commencement Date**).*

In approving the Revisions Submissions Date and Revisions Commencement Date, the Regulator must have regard to the objectives in section 8.1, and may:

(a) determine an earlier Revisions Submission Date and Revisions Commencement Date than proposed by the Service Provider in its proposed Access Arrangement;

(b) define specific major events that trigger an obligation on the Service Provider to submit revisions prior to the Revisions Submission Date.

Section 3.20 *An Access Arrangement Period accepted by the Relevant Regulator may be of any length. However, except in the case of an initial Access Arrangement which has a review date before 1 January 2003, if the Access Arrangement Period is more than five years, the Regulator must not approve the Access Arrangement without considering whether mechanisms should be included to address the risk of forecasts on which the terms of the Access Arrangement were based and approved proving incorrect. These mechanisms may include:*

(a) requiring the Service Provider to submit revisions to the Access Arrangement prior to the Revisions Submission Date if certain events occur, for example:

(i) if a Service Provider's profits derived from a Covered Pipeline exceed a certain amount or if the value of Services reserved in contracts with Users are outside a specified range;

(ii) if the type or mix of Services provided by means of a Covered Pipeline changes in a certain way; or

(b) a Service Provider returning some or all revenue or profits in excess of a certain amount to Users whether in the form of lower charges or some other form.

Where a mechanism is included in an Access Arrangement pursuant to this section 3.20(a), the Relevant Regulator must investigate no less frequently then once every five years whether a review event identified in the mechanism has occurred.

Section 3.21 *Nothing in section 3. 21 shall be taken to imply that the Relevant Regulator may not approve an Access Arrangement Period longer than 5 years if the Relevant Regulator considers this appropriate, having regard to the objectives of section 8.1.*

Section 3.22 *An Access Arrangement submitted under section 2.3 may include a date at which time the Access Arrangement will expire. If an Access Arrangement submitted under section 2.3 expires, the Covered Pipeline the subject of the Access Arrangement, shall cease to be Covered. The Service Provider must notify the Office of the Regulator-General if a Principal Transmission System ceases to be covered under this section and the Office of the Regulator-General must update the Public Register accordingly.*

5.8.1 The *Revisions Submission Date* will be 31 March 2002.

5.8.2 The *Revisions Commencement Date* will be 1 January 2003.

Appendix 1:

Description of the Transmission System

The *Principal Transmission System* as at 11 December 1997 as indicatively described in the table below and by the maps (which were current as at 30 June 1997) attached.

Pipeline Licence	Location/Route	Length km	Pipe Diameter mm
	Principal System		
	Longford to Dandenong and Wollert System		
Vic:68	Healesville-Koo-Wee-Rup Rd	1.2	80
Vic:91	Anderson St, Warragul	4.8	100
Vic:107	Pound Rd to Tuckers Rd	2.0	100
Vic:50	Supply to Jeeralang	0.4	300
Vic:50	Morwell to Dandenong	126.8	450
Vic:75	Longford to Dandenong	174.2	750
Vic:117	Rosedale to Tyers	34.3	750
Vic:120	Longford to Rosedale	30.5	750
Vic:135	Bunyip to Pakenham	18.7	750
Vic:141	Pakenham to Wollert	93.1	750
Vic:121	Tyers to Morwell	15.7	500
Vic:67	Maryvale	5.4	500
	Wollert to Wodonga/Echuca/ Bendigo System		
Vic:101	Keon Park to Wollert	14.1	600
Vic:40	Keon Park East - Keon Park West	0.6	450
Vic:101	Wollert to Wodonga	269.4	300
Vic:101	Euroa to Shepparton	34.5	200
Vic:132	Shepparton to Tatura	16.2	200
Vic:136	Tatura to Echuca	21.3	200
Vic:152	Kyabram to Echuca	30.7	150
Vic:143	Wandong to Kyneton	59.5	300
Vic:128	Mt Franklin to Kyneton	24.5	300
Vic:131	Mt Franklin to Bendigo	50.6	300
Vic:78	Ballan to Bendigo	90.8	150
Vic:125	Guildford to Maryborough	31.4	150
	Brooklyn to Ballarat System		
Vic:76	Brooklyn to Ballan	66.6	200
Vic:78	Ballan to Ballarat	22.7	150
Vic:134	Ballan to Ballarat	22.8	300
Vic:122	Derrimut to Sunbury	24.0	150
	Brooklyn to Geelong System		
Vic:81	Brooklyn to Corio	50.7	350
Vic:162	Laverton to BHP	1.6	150

Pipeline Licence	Location/Route	Length km	Pipe Diameter mm
	Dandenong to West Melbourne / Brooklyn System		
Vic:36	Dandenong to West Melbourne	36.2	750
Vic:108	South Melbourne to Brooklyn	12.8	750
Vic:129	Princess Hwy, to Henty St	0.2	500
Vic:129	Dandenong to Princess Hwy	5.0	750
Vic:56	Princess Hwy to Regent St	0.8	200
Vic:164	Supply to Bay St to Unichema	0.4	150
Vic:124	Supply to Newport Power Station	1	450

Appendix 2
Pro-forma Gas Transportation Deed

30 November 1998

Gas Transportation Deed

Victorian Energy Networks Corporation

and

Shipper

FREEHILL
HOLLINGDALE
& PAGE

101 Collins Street Melbourne Victoria 3000 Australia
GPO Box 128A Melbourne 3001
Telephone (03) 9288 1234 Facsimile (03) 9288 1567 DX 240 Melbourne
Reference: SET:RAC

MELBOURNE SYDNEY PERTH CANBERRA BRISBANE SINGAPORE HANOI HO CHI MINH CITY
CORRESPONDENT OFFICE IN JAKARTA

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Gas
Transportation Deed

Date of this Deed: **1998**

Parties to this Deed:

1. **Victorian Energy Networks Australia,** of 433 Smith Street, North Fitzroy, Victoria ("**VENCorp**")

2. **[ ] (ACN) of [ ]** ("**Shipper**")

Background:

A. TPA Assets owns the Gas Transmission System and TPA leases the Gas Transmission System from TPA Assets.

B. VENCorp is established under the Act, among other things:

(b) to control the security and operation of the Gas Transmission System; and

(c) to operate the market under the MSO Rules.

C. Clause 2.1(e)(6) of the MSO Rules requires the Shipper, as a Market Participant within the meaning of the MSO Rules, to enter into and continue to be a party to an agreement for payment of transmission charges associated with the provision of services by a Transmission Pipeline Owner within the meaning of the MSO Rules under a service envelope agreement.

D. TPA and TPA Assets as Transmission Pipeline Owner of the Gas Transmission System have entered into the Service Envelope Agreement with VENCorp.

E. Pursuant to the Service Envelope Agreement Tariffed Transmission Services are provided by TPA and TPA Assets to VENCorp.

F. Pursuant to the Tariff Order, tariffs are payable for provision of the Tariffed Transmission Services.

This Deed witnesses that in consideration of, amongst other things, the mutual promises contained in this Deed, the parties agree:

1. Definitions and Interpretations

1.1 In this Deed:

Access Arrangement means VENCorp's arrangement for access by third parties to the Principal Transmission System lodged by VENCorp with the Relevant Regulator for approval under the Access Code.

Access Code means the Victorian Third Party Access Code for Natural Gas Pipeline Systems or where and when applicable, subject to sections 24A and 24B of the Gas Pipelines Access (Victoria) Act, the new Access Code more particularly described in section 24A of that Act.

Act means the *Gas Industry Act* 1994 (Vic).

Deed means this Deed and the schedules annexed to it.

Business Day has the same meaning as in the MSO Rules.

Charges means the charges set out in Schedule 1.

Confidential Information means all information disclosed by any party under this Deed which has been notified by a party in writing to the other party as being confidential information prior to its disclosure to the other party.

Corporations Law means the Corporations Law of Victoria.

Dispute Resolution Panel means the panel established in accordance with clause 14.

Dispute Resolution Procedure means the dispute resolution procedure set out in clause 14.

Force Majeure Event means an event or cause beyond the reasonable control of the party claiming force majeure including:

(a) act of God, lightening, storm, flood, fire, earthquake, volcanic eruption or explosion;

(b) act of public enemy, war (declared or undeclared), sabotage, blockade, revolution, riot, insurrection, civil commotion; and

(c) prolonged major power, gas or water shortage; and

(d) any like or analogous event.

Gas Transmission System has the same meaning as in the Service Envelope Agreement.

Insolvency Event means an order is made by a court under section 459B of the Corporations Law that a body corporate be wound up for insolvency or a body corporate resolves to wind itself up or to dissolve or any like or analogous events.

Market has the same meaning as in the MSO Rules.

MSO Rules means the Rules made under section 48N of the Act.

Regulator means the Australian Competition and Consumer Commission.

Regulatory Instrument means any Act, law, code, rule, order or sub-code regulating the gas industry in Victoria, or elsewhere if applicable, whether made under the Act or other applicable legislation having jurisdiction over the relevant party.

Service Envelope Agreement means the agreement between TPA, TPA Assets and VENCorp entered into pursuant to clause 5.3.1 of the MSO Rules.

Tariff Order means the Victorian Gas Industry Tariff Order.

Tariffed Transmission Service has the same meaning as in the Tariff Order.

Tariffed VENCorp Service has the same meaning as in the Tariff Order.

TPA means Transmission Pipelines Australia Pty Ltd (ACN 079 089 268).

TPA Assets means Transmission Pipelines Australia (Assets) Pty Ltd (ACN 079 136 413).

1.2 **Interpretation**

In this Deed unless the context requires otherwise:

(a) headings are only for convenience and do not affect interpretation;

(b) words in the singular include the plural and the other way around;

(c) words of one gender include any gender;

(d) if a word or phrase is defined, another grammatical form of that word or phrase has a corresponding meaning;

(e) an expression indicating a natural person includes a company, partnership, joint venture, association, corporation or other body corporate and a governmental agency;

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(f) a reference to a party to this Deed includes that party's executors, administrators, successors and permitted assigns;

(g) a promise or agreement by 2 or more persons binds them jointly and individually;

(h) a promise or agreement in favour of 2 or more persons is for the benefit of them jointly and individually;

(i) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this Deed and a reference to this Deed includes any annexure, exhibit or schedule;

(j) a reference to a thing (including, but not limited to, a right) includes any part of that thing;

(k) a reference to a right includes a remedy, power, authority, discretion or benefit;

(l) a reference to legislation includes any amendment to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it;

(m) a reference to an agreement other than this Deed includes an undertaking, agreement, deed or legally enforceable arrangement or understanding, whether or not in writing;

(n) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;

(o) examples are descriptive only and not exhaustive;

(p) a provision of this Deed must not be construed against a party solely because the party was responsible for preparing this Deed or that provision;

(q) a reference to a body, other than a party to this Deed (including, but not limited to, an association, authority, corporation, body corporate or institution), whether statutory or not:

(1) which ceases to exist;

(2) is reconstituted, renamed or replaced; or

(3) whose powers or functions are transferred to another body,

is a reference to the body which replaces it or which serves substantially the same purposes or has the same powers or functions;

(r) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and

(s) where the day on or by which something must be done is not a Business Day, that thing must be done on or by the next Business Day.

(t) a reference to a Regulatory Instrument or an agreement is a reference to that Regulatory Instrument or agreement (as the case may be) as amended, varied, repealed and revoked from time to time.

2. Term

This Deed comes into operation and effect on the day it is executed and continues until [ ] unless terminated earlier in accordance with clauses 8 or 9.

3. Charges payable by Shipper

3.1 Promise to pay

Shipper promises to pay the Charges.

3.2 Direction to Pay and deal with TPA

(a) VENCorp directs Shipper to pay all the Charges directly to TPA without deduction or set off.

(b) Shipper acknowledges and agrees that pursuant to the Service Envelope Agreement:

(1) all Charges payable pursuant to this Deed will be invoiced by TPA and paid to TPA;

(2) all inquiries in relation to such invoices will be directed to TPA;

(3) TPA may initiate legal proceedings or alternative dispute resolution procedures in the name of VENCorp to recover such Charges from Shipper and for such purposes TPA is VENCorp's attorney;

(4) TPA is authorised by VENCorp to negotiate with Shipper in relation to such Charges and in relation to other matters relevant to the provision of services provided by VENCorp pursuant to this Deed;

(5) TPA is required to provide details of such Charges and of the other matters referred to in clause 3.2(b)(4) to VENCorp, subject to the confidentiality requirements more particularly set out in the Service Envelope Agreement;

(6) VENCorp may not vary or waive any term of this Deed without prior written consent of TPA;

(7) TPA may require VENCorp to exercise its rights under this Deed, in any case where Shipper jeopardises the safety or integrity of the facilities comprising the Gas Transmission System, in order to ensure that Shipper:

(A) complies with this Deed; or

(B) takes remedial action,

as the case may be.

3.3 Billing and Payment

(a) On or before the eighteenth Business Day of each month, TPA will invoice Shipper for the Charges payable by Shipper in respect of the preceding month **("Relevant Month"),** together with any amounts in respect of any month, before the Relevant Month and any adjustments in respect of such a month.

(b) The failure to invoice Shipper in accordance with clause 3.3(a) does not prejudice the right to recover payment for Charges.

(c) If Shipper receives an invoice on or prior to the eighteenth Business Day of the month, Shipper will pay to TPA the aggregate amount stated in the invoice not later than the last Business Day of the month in which the invoice is received. Payment will be made in such manner as may be agreed from time to time.

(d) If Shipper receives an invoice after the eighteenth Business Day of the month, Shipper will pay to TPA the aggregate amount stated in the invoice not later than 10 Business Days after having received the invoice. Payment will be made in such manner as may be agreed from time to time.

(e) If Shipper disputes an invoice or part of an invoice, Shipper may, at any time within 10 Business Days of receiving the invoice, notify TPA that it disputes the invoice, identifying the disputed amount and giving reasons why it disputes the invoice. Shipper must pay the undisputed amount when it is due in accordance with clause 3.3(c). The parties agree to meet in good faith and to use all reasonable endeavours to resolve the dispute. Upon resolution of the dispute, Shipper must promptly pay any amounts which it has been determined that it is liable to pay. In default of resolution, the Dispute Resolution Procedure will apply.

(f) If at any time a party claims that Shipper has been overcharged or undercharged, then the parties will agree to meet in good faith to determine the amount of the overcharging or undercharging (as the case may be). The party liable to pay the agreed amount must pay that amount within 30 Business Days of that amount being determined. In default of agreement the Dispute Resolution Procedure shall apply.

(g) If a Shipper does not pay an amount payable under this Deed when due, then Shipper agrees to pay interest on the defaulted amount at a rate equal to the aggregate of two percent and the National Australia Bank Limited's overdraft rate applicable at that time. Interest shall accrue on the daily balance of the defaulted amount and shall be payable on demand.

(h) If the parties have agreed under clause 3.3(f) that a party has been overcharged, the party who has received the benefit of the amount being overcharged agrees to pay interest on the overcharged amount from the time it was paid by the other party until the time it was returned to that party under clause 3.3(f), at a rate equal to the aggregate of two percent and the National Australia Bank Limited's overdraft rate applicable at that time. Interest shall accrue on the daily balance of the overcharged amount and shall be payable on demand.

4. Ownership of facilities

4.1 No right or title to facilities

Shipper does not acquire any right to, title to, or interest in the Gas Transmission System or any part of the Gas Transmission System pursuant to this Deed.

4.2 No portion of facilities

VENCorp is under no obligation pursuant to this Deed to dedicate any particular portion of facilities forming part of the Gas Transmission System to the provision of Tariffed Transmission Services to Shipper.

5. Shipper's acknowledgment

Notwithstanding any other provision of this Deed, if:

(a) VENCorp fails or omits, in whole or in part, to provide the Tariffed VENCorp Services; or

(b) TPA fails or omits, in whole or in part, to provide the Tariffed Transmission Services or otherwise fails or omits in whole or in part to comply with its obligations under the Service Envelope Agreement, thereby causing VENCorp to fail or omit to provide, in whole or in part, the Tariffed VENCorp Services,

Shipper acknowledges and agrees that it will not bring any legal action (including actions based on negligence) against TPA in respect of such failure and:

(c) TPA's sole exposure is limited to uplift payments which it may be required to make in accordance with clause 3.6.8 of the MSO Rules and subject to any cap and conditions on the level of such payments provided for in the Service Envelope Agreement; and

(d) without limiting the generality of clause 5(c), Shipper must continue to pay VENCorp the Charges in relation to the Tariffed VENCorp Services actually provided.

6. Limitation of liability of VENCorp

Shipper acknowledges and agrees that VENCorp's liability under this Deed is limited in accordance with and pursuant to the MSO Rules.

7. Confidentiality

Except as otherwise provided in this Deed:

(a) each party must treat Confidential Information as confidential and must take all reasonable precautions to ensure that its employees maintain such confidentiality; and

(b) the confidentiality provisions of the MSO Rules apply to all Confidential Information under this Deed.

8. Force Majeure Event

8.1 General position

Non-performance by a party of any obligation or condition required by this Deed to be performed by that party due to a Force Majeure event affecting that party:

(a) will be excused during the time and to the extent that performance is prevented, wholly or in part, by a Force Majeure event; and

(b) will not to that extent give rise to any liability to the other party for any losses or damages arising out of, or in any way connected with, such non-performance.

8.2 Notification to other Party

Except as set out in this Deed, if either party seeks relief from performance of an obligation or condition under this Deed due to a Force Majeure event, the party must:

(a) as soon as reasonably practicable but in any event within two days, give notice to the other party of the occurrence of the event or circumstance claimed to be Force Majeure, including:

  (1) full particulars relating to the event or circumstance and the cause of such failure to perform; and

  (2) an estimate of the period of time required to remedy such failure to perform;

(b) provide the other party with a reasonable opportunity and assistance to examine and investigate the relevant event or circumstance which constitutes the Force Majeure event and failure to perform;

(c) exercise reasonable efforts to mitigate or remove the effects of the relevant event or circumstance but excluding any measures which are not economically feasible for the parties; and

(d) give notice immediately to the other party upon termination of the event or circumstance of Force Majeure.

8.3 Industrial disturbance

Nothing in this Deed requires a party to adjust or settle any strike, lockout or other industrial disturbance against the will of that party.

8.4 Right to terminate

If despite reasonable efforts on the part of the party affected by the event or circumstance of Force Majeure to mitigate or remove the effects of that event or circumstance, non-performance continues substantially unabated for a period of 90 days from the date of notice under clause 8.2(a), then either party may terminate this Deed upon 30 days notice without prejudice to any antecedent rights of the parties which survive termination of this Deed in other respects.

8.5 Qualifications

No Force Majeure affecting the performance of any obligation or condition under this Deed by a party operates:

(a) to prevent a cause of action arising from and after the expiration of the period of time within which by the exercise of reasonable diligence and the employment of all reasonable means, that party could have remedied the situation preventing its performance; or

(b) to relieve a party from any obligation to make payment of money due under this Deed except where the services in respect of which that money is due are not being provided by reason of Force Majeure.

9. Termination

9.1 Defaults by Shipper

Where:

(a) Shipper defaults in the performance of any of its material promises or obligations under this Deed; or

(b) there is an Insolvency Event in relation to Shipper,

then Shipper is in default and VENCorp may give notice of its intention to terminate this Deed, which notice shall identify the default or Insolvency Event as the case may be.

9.2 VENCorp ceasing to have certain responsibilities

Shipper may terminate this Deed at any time by notice in writing to VENCorp, if VENCorp ceases to:

(a) be responsible for controlling the security and operations of the Gas Transmission System; or

(b) operate the Market under the MSO Rules.

9.3 Shipper's actions

If Shipper:

(a) jeopardises the safety or integrity of the Gas Transmission System; and

(b) Shipper is reasonably able to stop the action which jeopardises the safety or integrity of the Gas Transmission System,

VENCorp may:

(c) send a written notice to Shipper:

(1) specifying the action which jeopardises the safety or integrity of the Gas Transmission System;

(2) specifying a reasonable period of time within which Shipper must take all reasonable actions within its control either to:

(A) ensure that the action which jeopardises the safety or integrity of the Gas Transmission System; or

(B) ensure that the action which jeopardises the safety or integrity of the Gas Transmission System is not repeated,

whichever is applicable; or

(d) if Shipper has not complied with the terms of the notice sent under clause 9.3(c) within the time specified in that notice, send a written notice to Shipper:

(1) stating that VENCorp intends to terminate this Deed if the breach is not rectified within 30 days; and

(2) specifying the cause for terminating this Deed; and

(e) if the breach is not rectified by Shipper within 30 days of receiving the notice specified in clause 9.3(d), immediately terminate this Deed.

9.4 Effects of termination

Termination of this Deed for any reason does not affect:

(a) any rights of a party against the other party which:

(1) arose prior to the time at which the termination occurred; or

(2) otherwise relates to or may arise at any future time from any breach or non-observance of that other party's obligations under this Deed occurring prior to termination; and

(b) the rights and obligations of the parties under this Deed or in respect of any moneys outstanding under this Deed.

9.5 Force Majeure

Nothing in this clause 9 affects the right to terminate for Force Majeure.

10. Assignment

10.1 Assignment generally

A party may not assign its rights under this Deed unless it has the other party's written consent, and the other party must not unreasonably withhold its consent.

10.2 Transfer by State entity

Nothing in this clause prevents a party ("the first party") transferring the whole of its rights under this Deed where:

(a) immediately prior to the transfer the party is ultimately controlled by the State of Victoria (the "State"), a State instrumentality or a statutory authority;

(b) the transfer is to an transferee selected by the State; and

(c) the proposed transferee assumes all the obligations of the party under this agreement,

and following any such transfer by that party, the other party must execute and deliver to the first party a deed under which the other party releases the first party in respect of the obligations assumed by the transferee .

10.3 Assignment not a restriction on securities

Nothing in this Deed prevents a party from pledging, mortgaging, encumbering or assigning by way of security its rights under this Deed provided that the chargee or mortgagee must first acknowledge in writing to the other parties that upon it realising its charge or mortgage, it will be bound by the terms of this Deed.

11. Change in taxes

(a) If at any time after this Deed is executed a sales tax, use tax, consumption tax, goods and services tax, value-added tax or any similar tax, impost or duty is levied upon the Tariffed VENCorp Services or Tariffed Transmission Services, whether that tax, impost or duty is levied under legislation of the Commonwealth of Australia or any State or Territory, the parties agree to renegotiate in good faith any provision of this Agreement which any party reasonably considers to have been affected by that change in taxes, including but not limited to any charges payable under this Agreement.

(b) If the negotiations referred to in clause 11(a) do not result in an agreement between the parties within 20 Business Days after such negotiations have commenced, the parties must:

(1) refer a dispute concerning charges payable under this Deed to the Regulator and request the Regulator to decide on a fair and reasonable variation in those charges; and

(2) resolve any other dispute in accordance with the Dispute Resolution Procedure.

(c) The parties must comply with:

(1) any decision of the Regulator relating to charges payable under this Agreement; and

(2) a resolution of any other matter in accordance with the Dispute Resolution Procedure.

12. Disputes

(a) If any dispute arises between the parties touching or concerning the interpretation or application of this Deed then that dispute shall be referred for resolution in accordance with the Dispute Resolution Procedure, and the chief executive officers of VENCorp and Shipper, or, where paragraph (b) of Schedule 1 applies the chief executive officer of TPA (as VENCorp's attorney) and Shipper, must:

(1) appoint a Dispute Resolution Panel as soon as practicable after the dispute is brought to the attention of either of them; and

(2) refer that matter to the Dispute Resolution Panel as soon as practicable after that Dispute Resolution Panel is appointed,

(b) A matter referred for resolution under clause 12(a)(2) must be arbitrated in accordance with this clause 12 and the Commercial Arbitration Act 1984 (Victoria).

(c) A Dispute Resolution Panel appointed under clause 12(a)(1) is to comprise:

(1) a person who is:

(A) independent of Shipper and VENCorp or TPA (as the case may be);

(B) legally qualified;

(C) has an understanding of the gas industry;

(D) has a detailed understanding and experience of alternative dispute resolution practice and procedures which do not involve litigation; and

(E) has the capacity to determine the most appropriate dispute resolution in the particular circumstances of the dispute; and/or

(2) two persons:

(A) one of whom is appointed by Shipper and one of whom is appointed by VENCorp or TPA (as the case may be);

(B) who have an understanding of the gas industry; and

(C) who have technical qualifications appropriate to resolve the dispute including but not limited to a technical understanding of matters relevant to operation of gas transmission pipelines.

(d) A person who has previously served on a Dispute Resolution Panel is not precluded from being appointed to another Dispute Resolution Panel established in accordance with clause 12(a).

(e) If the chief executive officers of VENCorp or TPA (as the case may be) and Shipper are unable to reach agreement as to the composition of the Dispute Resolution Panel to be appointed in accordance with clause 12(a), they must ask the Adviser appointed under clause 7.2.2(a) of the MSO Rules to appoint the Dispute Resolution Panel in accordance with clause 12(a) and must pay the reasonable costs of the Adviser in relation to the making of those appointments.

(f) When a matter is referred to a Dispute Resolution Panel under clause 12(a)(2), the person appointed to the Dispute Resolution Panel under clause 12(c)(1) must select the form of, and procedures to apply to, the dispute resolution process which is, in the opinion of that person, reasonable, and which:

(1) is simple, quick and inexpensive;

(2) observes the rules of natural justice; and

(3) encourages resolution of disputes without formal legal representation or reliance on legal procedures.

(g) For the purposes of any award of the Dispute Resolution Panel, the parties may agree that as part of the award, the Dispute Resolution Panel may settle the terms and conditions of any amendments required to be made to this Deed or any agreement or deed replacing this Deed.

13. Emergency

For the avoidance of doubt, nothing in this Deed affects Part 6A of the Act, chapter 6 of the MSO Rules or any like or analogous applicable emergency law and, without limiting the foregoing, Shipper acknowledges and agrees that VENCorp may interrupt, reduce or curtail gas supply or transmission in any case where the Act, MSO Rules or such emergency laws allow or require.

14. Curtailment during maintenance

Despite any provision of this Deed, VENCorp may curtail or interrupt Shipper in order for any person to effect any repairs, testing, maintenance, replacement or upgrading or any other work related to the Gas Transmission System which is reasonably required, provided that VENCorp:

(a) notifies Shipper of its intention to curtail or interrupt as early as reasonably practicable prior to the curtailment or interruption;

(b) makes reasonable endeavours to agree with Shipper as to the timing and extent of the intended curtailment or interruption; and

(c) makes reasonable endeavours to minimise the period in which Shipper is curtailed or interrupted.

15. Notices

15.1 How notices may be given

A notice, request, demand, consent or approval (each a notice) under this Deed:

(a) must be in writing;

(b) may be signed for the party giving it by the party's authorised officer, attorney or solicitor;

(c) may be delivered personally to the person to whom it is addressed, or left at or sent by prepaid post to the person's address, or faxed to the person's fax number, given below:

(1) if to Shipper:

Address: [ ]

Fax: [ ]

Attention: [ ]

(2) if to VENCorp:

Address:

Fax:

Attention: Chief Executive

15.2 When notice taken as given

A notice is taken as given by the sender and received by the intended recipient:

(a) if posted, 3 days after posting; and

(b) if faxed, on completion of the transmission as evidenced by receipt by the delivering party of a delivery report confirming the fax has been transmitted,

but if delivery or receipt is on a day which is not a Business Day of a party or is after 5.00pm at the place of delivery or receipt, it is taken as given at 9.00am on the next Business Day.

15.3 Change of address or fax number

A party may change its address or fax number for notices by giving notice to the other parties.

16. General

16.1 Approvals and consents

Subject to the express provisions of this Deed, whenever in this Deed the agreement, approval or consent of party is required, the agreement, approval or consent may be withheld at the party's sole discretion, delayed or given subject to any condition.

16.2 Costs and expenses

Each party must pay its own legal costs and expenses for the negotiation, preparation, completion and stamping of this Deed.

16.3 Governing law and jurisdiction

(a) This Deed is governed by the law of Victoria.

(b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria and courts hearing appeals from them.

(c) A party must not object to the jurisdiction of a court merely because the forum is inconvenient.

16.4 Waiver

(a) A party waives a right under this Deed only if it does so in writing.

(b) A party does not waive a right simply because it:

(1) fails to exercise the right;

(2) delays exercising the right; or

(3) only exercises part of the right.

(c) A waiver of one breach of a term of this Deed does not operate as a waiver of another breach of the same term or any other term.

16.5 Further action

Each party must promptly sign any document and do anything else that is necessary or reasonably requested by the other party to give full effect to this Deed.

16.6 Whole agreement

This Deed:

(a) replaces all previous agreements, representations, warranties or understandings between the parties concerning the subject matter of this Deed; and

(b) contains (except where otherwise apparent on its face) the whole agreement between the parties.

16.7 Unenforceable provision

If a provision in this Deed is wholly or partly invalid or unenforceable in any jurisdiction, that provision or part must, to that extent and in that jurisdiction, be treated as deleted from this Deed. This does not affect the validity or enforceability of the remaining provisions in that jurisdiction, or of the deleted provision in any other jurisdiction.

16.8 Counterparts

This Deed:

(a) may be executed in a number of counterparts; and

(b) comprises all the counterparts, taken together.

16.9 Survival of provision

A provision of this Deed that has not been met on, or can have effect after, completion of the transaction contemplated by this Deed, or termination of this Deed, continues to apply after completion or termination.

16.10 Specific performance

Nothing in this clause limits the right of the parties to enforce this Deed by seeking an order for specific performance in any court of competent jurisdiction.

16.11 Amendment

Except as set out in the MSO Rules or as required by the Regulator, and subject to obtaining any necessary approval from the Regulator, this Deed may only be amended or supplemented in writing, signed by the parties. For the avoidance of doubt, nothing in this Deed prevents the submission by TPA or VENCorp of revisions to their Access Arrangements pursuant to section 2 of the Access Code. In the event that such revisions are approved by the Regulator and to the extent that this Deed requires amendment consequential or subsequent thereto this Deed shall be amended accordingly. In default of agreement on the amendment, the Dispute Resolution Procedure shall apply.

EXECUTED by the parties as a deed:

THE OFFICIAL SEAL of VICTORIAN ENERGY NETWORKS CORPORATION
is affixed to this document:

_____	_____
Secretary/Director	Director
_____	_____
Name *(please print)*	Name *(please print)*

THE COMMON SEAL
of
is affixed to this document:

_____	_____
Secretary/Director	Director
_____	_____
Name *(please print)*	Name *(please print)*

SCHEDULE 1:
CHARGES PAYABLE BY SHIPPER

(a) The charges payable by Shipper are those set out in, or determined in accordance with, the Tariff Order, being the tariffs for the Tariffed Transmission Services.

(b) For the avoidance of doubt, in any case where the Tariff Order is silent as to any matter relating to calculation of charges, TPA and Shipper may agree that matter so as to enable effective calculation of those charges. In default of such agreement the Dispute Resolution Procedure will apply.

(c) Also for the avoidance of doubt, nothing in this Deed prevents the application of charges calculated pursuant to clause 5.7.2 of TPA's Access Arrangement for the Principal Transmission System.

Appendix 3

Initial Authorised MDQ allocation procedures

Refer to separate document - confidential materials have been excised.

Non-confidential version

Independent Panel Review: Report to VENCorp on Provisional Allocations of Authorised MDQ

12 October 1998

Table of contents

1 Executive Summary

1.1 Background

An Independent Review Panel appointed by VENCorp (Jim Gallaugher of Gallaugher and Associates and Susan Taylor of Freehill Hollingdale and Page) received 80 submissions from customers to whom Authorised MDQ had provisionally been allocated by VENCorp in preparation for the commencement of the Victorian gas market.

Following a staged review of each of these submissions, the Independent Review Panel has reached its conclusions on these submissions and now provides to VENCorp its recommendations.

In this report the Panel sets out:

- the methodology adopted;
- the process followed; and
- the Panel's conclusions and recommendations.

The confidential attachments to this report provide:

- the Panel's recommendations for each submission and abbreviated reasons for them;
- an index of the submissions and the database the Panel used to record and collate relevant data;
- copies of letters forwarded by the Panel to customers who made submissions.

These attachments are confidential as they contain commercially sensitive customer information. The Panel has been conscious of the need to ensure that this commercially sensitive information is not revealed to any person who may have an interest in that information. It is understood that the attachments will therefore be detached from the main body of the report before it is released either to the Board of Directors of VENCorp or to any other person to whom VENCorp wishes to disclose it.

Note: all submissions received are documents in respect of which confidentiality and restriction on publication are claimed. Thus, as per the above paragraph, confidentiality and restriction on publication are claimed on all the attachments, which have been detached.

1.2 Reasons for recommended increase in provisional allocation of Authorised MDQ

Where the Panel recommends that the provisional allocation of Authorised MDQ should be increased prior to market start, one or more of the following reasons apply:

(1) Contractual amendment

A bona fide contractual amendment has been made to increase the customer's contractual MDQ and the Panel considers that the customer's Authorised MDQ should be consistent with the amended contract.

7 submissions fell into this category.

(2) Historical use

The historical pattern of use of the customer demonstrated that there is an implied contract between the customer and the Retailer which reflects an MDQ in excess of both the formal contractual MDQ and the provisional allocation of Authorised MDQ.

In these cases, the Panel applied a formula to metering data supplied by the relevant Retailer to provide an indication of whether an historical pattern of use could be demonstrated to an extent that warranted a higher Authorised MDQ being allocated.

29 submissions were in this category.

(3) Summer MDQ

The Panel considers a Summer peak demand should be recognised in the MDQ allocation process, as most customer contracts reflecting materially increased seasonal requirements in Summer provided for a separate Summer and Winter contractual MDQ.

7 submissions were found to fall into this category.

(4) Committed expansions

The Panel agreed that an increased Authorised MDQ should be recommended to VENCorp where the customer has been able to demonstrate that a committed expansion project exists. This was demonstrated to the Panel's satisfaction where the customer had actively involved the relevant Retailer in discussions relating to the additional MDQ requirements that would result from the expansion.

11 submissions were in this category.

These recommendations, however, are subject to a further recommendation that VENCorp enter into an agreement with each of these customers under which the customer agrees to surrender any amount of the revised Authorised MDQ which remains "unused" within a reasonable period after the nominated expansion is complete.

1.3 Other Panel responses/recommendations/decisions

The Panel also received submissions in respect of which it was determined that other responses or recommendations should be made. These submissions fell into the following categories:

(1) Tradeability of Authorised MDQ

Where customers raised the issue of whether Authorised MDQ could be traded, this was addressed by the Panel in letters to the customers explaining that the present version of the Victorian Gas Industry Market and System Operations Rules ("the MSO Rules") does not provide for this.

(2) Pre-market start reallocations between sites

The Panel recommends to VENCorp that before the market starts, three customers identified in this report should be given the opportunity to transfer Authorised MDQ between their sites, depending on the gas pipeline capacity and capability. The Authorised MDQ of two customers is to be surrendered to allow increases at new sites, after the sites which currently have an Authorised MDQ are closed. This surrender would also be subject to a side agreement with VENCorp relating to the forfeiture of any "unused" amount of the newly allocated Authorised MDQ.

(3) Future growth

Many customers sought additional Authorised MDQ to satisfy unspecified future growth in demand. The Panel decided that no change to the provisional allocation of Authorised MDQ should be made on this basis and responded accordingly.

13 submissions were within this category.

(4) No change justified

Finally the Panel has recommended no change to the provisional allocation of Authorised MDQ of 11 customers, either because a review of the provisional allocation was not sought or because the Panel was not satisfied that an increase was justified on the basis of the information received by the Panel.

2. Independent Review Panel Methodology

The Independent Review Panel appointed by VENCorp (Jim Gallaugher of Gallaugher and Associates and Susan Taylor of Freehill Hollingdale and Page) received 80 submissions from customers to whom Authorised MDQ had provisionally been allocated by VENCorp in preparation for the commencement of the Victorian gas market.

2.1 The Independent Review Panel's task

(a) VENCorp's proposed scope of work

The consultancy services sought by VENCorp were for suitably qualified and experienced consultants to review submissions on the provisional allocation of Authorised MDQ and make recommendations to the VENCorp Board for the initial allocation of Authorised MDQ for market commencement.

This work was expected to include:

- review of the appropriate provisions of the Market and System Operations Rules dealing with the allocation of Authorised MDQ (primarily clause 5.3);
- review of the Ernst and Young report "Proposal for the Initial Allocation of Authorised MDQ", May 1998;
- review of written submissions by end-use customers (and/or by their Retailers on their behalf) and other interested parties;
- meetings/discussions (as required) with parties who made submissions, Ernst and Young, EPD and VENCorp; and
- preparation of a report detailing conclusions and recommendations in respect of the methodology for the allocation of Authorised MDQ and amendments, if any, to the provisional allocations of Authorised MDQ made by VENCorp to individual parties.

(b) Approach

The Independent Review Panel established a database to include all written submissions regardless of their content or merits, with the objective of providing an "audit trail". This database is attached as confidential attachment 2.

The data included (where applicable):

(1) correspondent details for response (name, company, address, title etc);

(2) customer details (customer name, supply address, Retailer name, log no, provisional allocation of Authorised MDQ - provided for up to three customer entries);

(3) categorisation of matters raised by correspondent:

(A) seeking an increased Authorised MDQ;

(B) higher Summer requirement;

(C) existence of an implied contract based on actual usage;

(D) recent contract amendments;

(E) future committed expansion;

(F) already committed future growth discussed with Retailer/Government;

(G) clarification in relation to future increases;

(H) transferability between sites; and

(I) tradeability or buyback by Retailer;

(4) summary of additional material provided by the customer in response to a written request by the Panel;

(5) summary of the Panel's proposed recommendations pending any comments received from the customer and the Panel's final recommendations where these differ from the initial proposals.

A summary list of the criteria used by VENCorp to make the initial allocations was developed and provided to each customer to assist them in the preparation of the additional material requested by the Panel.

The Panel prepared a definitive checklist of information needed to enable a proper review of any request to increase the provisional allocation.

Submissions were then categorised into the following groups:

(1) Those outside the scope of the independent review process, which were to be handled directly by VENCorp and/or EPD - these were returned to VENCorp for processing.

(2) Those for which additional information/evidence was required in order to undertake a review, in which case the Panel wrote to the correspondent requesting the relevant material, and a copy of that letter was also sent to the relevant Retailer.

(3) Those for which sufficient detail was already available to make a preliminary finding, in which case the Panel then wrote a simple acknowledgment letter indicating the submission was being considered and contact would be made in due course.

2.2 The Submissions

The submissions raised various issues - the majority of the submissions sought additional allocations of Authorised MDQ for a variety of reasons. However, a number of the submissions raised issues which the Independent Review Panel considered were beyond the scope of their review. The following submissions fall into this category:

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These submissions were referred back to VENCorp without further action or review by the Independent Review Panel.

The remaining submissions raised the following issues:

(1) the customer's gas supply contract had recently been amended to reflect a different contractual MDQ than that which VENCorp provisionally allocated to them;

(2) the provisional allocation of Authorised MDQ by VENCorp matched the contractual MDQ but the customer claimed that they had consistently withdrawn gas in amounts which exceeded the contractual MDQ;

(3) the customer's peak gas demand occurs during Summer and, in most of these cases, the customer's contract reflects a separate Summer and Winter contractual MDQ with the higher amount applicable in Summer;

(4) the customer has embarked on a committed expansion project which will result either in a new facility being built or an expansion to an existing facility, in both cases resulting in increased gas consumption;

(5) the customer has two or more sites and proposes to or has already started to restructure its facilities so that gas usage will shift between sites; and

(6) future prospective but uncommitted growth.

2.3 The Panel's response

After discussion with VENCorp, it was considered appropriate for the Panel to correspond to each customer (and to provide a copy of that correspondence to the customer's Retailer) to advise the customer of the recommendation which the Panel proposed to make to VENCorp.

In circumstances in which the Panel proposed to recommend to VENCorp that the customer's provisional allocation of Authorised MDQ should be increased, the Panel made it clear to the customer that this recommendation would be subject to VENCorp's approval and, in some cases, would also be subject to technical capability and capacity. This process provided customers with the opportunity to discuss the Panel's proposed recommendation with either or both members of the Panel.

The Panel was prepared to accept additional supporting evidence from customers at this time for further review if the Panel considered this to be appropriate.

2.4 Methodology

(a) Amendment to contract

Where a customer claimed that the customer's gas supply contract had been amended to reflect an MDQ which was different to that which was provisionally allocated by VENCorp, the Independent Review Panel sought evidence of this amendment. In most cases, the amended contract, or the relevant parts of it, were sent to the Panel for review. Where the Panel was satisfied that an amendment had been made and there was no evidence that the amendment had not been made in good faith, the Panel agreed to recommend to VENCorp that the customer's provisional allocation of Authorised MDQ should be revised to reflect the amended contractual amount.

(b) Historical pattern of use exceeds contract MDQ

In circumstances in which the customer claimed that gas withdrawals had consistently exceeded contractual MDQ amounts, the Panel sought evidence of gas usage from that customer's Retailer. In most cases, the Retailers were able to supply the monthly metered MDQ for each customer based on historical meter readings used for billing purposes. In some cases, the information the Panel received from Retailers reflected clear discrepancies or gaps in the data and in those cases, the Panel used the remaining information to the extent possible.

In assessing whether an implied contract based on a clear pattern of use had been established, the Panel considered it important to ensure that the following two matters were demonstrated by the data received:

(1) that a pattern of use had been demonstrated, and not just sporadic peaks on extraordinary occasions; and

(2) if a demonstrated pattern of use could be confirmed, that an amount which is appropriately representative of the historical pattern is used as the basis of the Panel's recommendation, rather than merely accepting the highest MDQ recorded.

To satisfy these two criteria, the Panel applied a formula whereby it accepted the highest monthly MDQ recorded only where that amount was within 10% of the next three highest monthly MDQ amounts in the historical billing data. Where that test was not satisfied, the Panel assessed whether the second-highest monthly MDQ amount was within 10% of the next three highest monthly MDQ amounts and so on.

In some cases, the highest recorded monthly MDQ amount which was within 10% of the next three highest monthly MDQ amounts was lower than the contractual amount and therefore, the test would fail in those circumstances and the Panel has recommended to VENCorp that no change to the provisional allocation of Authorised MDQ should be made.

In some other cases, the application of the formula yielded an MDQ which was higher than the provisional allocation of Authorised MDQ determined by VENCorp, but lower than the amount requested by the customer. In these circumstances, the Panel has recommended to VENCorp that the MDQ yielded by the formula should be allowed to the customer, but not the higher amount requested by the customer.

In some cases, the application of the formula yielded an MDQ which was not only higher than the provisional allocation of Authorised MDQ determined by VENCorp, but was also higher than the amount requested by the customer. In these cases, the Panel determined that the amount requested by the customer is the appropriate amount of Authorised MDQ for that customer.

(c) Peak gas demand during Summer

Some submissions made it clear that the peak demand for gas occurs during Summer. In most of these cases, the customer's contract reflects a separate Summer and Winter contractual MDQ with the higher amount applicable to Summer.

Where a customer claimed a higher MDQ in Summer, the Panel sought evidence of contractual arrangements which reflected this and looked at historical gas usage based on metered amounts obtained from the customer's Retailer.

In circumstances in which the customer's contract reflects a lower MDQ for Winter and a higher MDQ for Summer, the Panel has recommended to VENCorp that VENCorp should allocate Authorised MDQ to match the amounts reflected in the contract.

In certain circumstances, the customer claimed that they had a Summer MDQ, but required a greater allocation of Authorised MDQ than reflected in their contract. In these circumstances, the Panel applied the same formula as was applied in relation to submissions dealt with in section 2.4(b) above to determine the Panel's recommendations for the appropriate Authorised MDQ for Summer and Winter, respectively, for these customers.

After discussion with technical advisors at VENCorp ********* ***Confidential - Restriction on Publication In Part Claimed*** ********* the Panel determined that an appropriate period over which a Summer Authorised MDQ should be applicable would be 1 November - 30 April, inclusive. The Winter Authorised MDQ for seasonal customers would apply to the remaining months of the year. It should be noted that some of the retail contracts with a separate Summer and

Winter contractual MDQ do not use the November - April period for applying the higher Summer MDQ. However, the Panel considered that, for administrative simplicity, it would be preferable to standardise a consistent Summer period for the Summer MDQ applicable to all seasonal customers.

(d) Committed expansion projects

A number of customers claimed that they had committed expansions and would require additional MDQ to service those expansions. The Panel determined that it would only be appropriate to consider future expansion plans where those future expansion plans were clearly committed, where they had been discussed with the customer's Retailer (or with a predecessor gas authority), where the Retailer had indicated that the increased gas supply required could be provided at the relevant site and where there is a clear commitment by the customer to proceed.

Evidence to support these factors was sought from the customers and their Retailers. If the Panel was satisfied, on the basis of the evidence received, that:

- there was at least some form of understanding or agreement between the Retailer and the customer relating to the future gas supply requirements of the customer as a consequence of the proposed expansion; and
- that the customer is fully committed to implement the expansion,

the Panel has accepted the estimated amount of MDQ required by the customer in respect of that expanded site and has recommended to VENCorp that the Authorised MDQ requested by the customer should be allocated.

However, in most cases, the Panel determined that although additional Authorised MDQ should be allocated to service the committed expansion, the estimate provided could not be substantiated. The Panel took the view that it is not within the Panel's role to undertake a detailed technical assessment to determine whether the estimate provided was realistic. In these circumstances, the Panel considers it appropriate that the customer be allocated the amount of Authorised MDQ requested. However, this allocation should be subject to the customer entering into an agreement with VENCorp whereby the customer agrees to surrender any "unused" amount of the Authorised MDQ based on actual billing data within a reasonable period after the committed expansion is completed and gas consumption has stabilised at the new, higher level. This "unused" amount of MDQ can then be allocated to other customers under clause 5.3.4(d) of the MSO Rules.

(e) Tradeability

Some submissions raised the issue of tradeability. In response to this, the Panel has made it clear to such customers that version 2.0 of the MSO Rules provides, in clause 5.3.5(a), that Authorised MDQ allocated to a customer under clauses 5.3.2 or 5.3.4 of the MSO Rules is valid only for withdrawals of gas made at the delivery point in respect of which it was first allocated. The Panel also alerted customers to the fact that the only scope for trading Authorised MDQ under the Rules is where that Authorised MDQ has been allocated as a consequence of an augmentation made to the gas transmission system by TPA (or another pipeline owner) under clause 5.3.3 of the Rules.

However, where restructuring of a customer's facilities had taken place, it was the view of the Panel that the customer should be entitled to "swap" Authorised MDQ between its sites **prior to the commencement of the market** subject to there being no local gas supply constraints. In those circumstances, the Panel has recommended to VENCorp that the customer be entitled to nominate to VENCorp how it wishes the total amount of Authorised MDQ allocated to its sites to be divided between those sites for market start. This would be subject to an understanding by the customer that once the market commences, no further tradeability would be allowed. In these cases, the customers have been advised that, if there are technical reasons why the transfer cannot be accommodated by VENCorp, their request will be denied.

(f) Future growth

In circumstances in which a customer has requested additional Authorised MDQ to include a general provision to satisfy future growth in demand, the Panel has determined that no change to the provisional allocation of Authorised MDQ should be made.

The Panel's rationale for this decision is that it would be expected that many customers would experience growth in the future and, unless committed expansion plans are underway and can be demonstrated, there is no justification for allocating additional Authorised MDQ to customers who expect to experience growth but who are unable to say how, when or where that growth will occur.

3. Independent Review Panel Process

Receipt of submissions from VENCorp

The Independent Review Panel received 80 submissions from customers via VENCorp in relation to the provisional allocations of Authorised MDQ which had been communicated to customers by VENCorp.

Requests for further information

In most cases, VENCorp wrote to the correspondents requesting certain further information where it was considered by the Panel that such information would be necessary to enable the review to be undertaken. These letters were forwarded to correspondents with copies sent to Retailers on 17 July 1998.

The letters sent by VENCorp to these customers included the following information:

- an explanation of the Panel's role;
- an indication of the criteria used by VENCorp for making its initial allocations; and
- a checklist marked with the relevant further information sought from the customer.

The letters also noted that information received as a result of the Panel's request for information would be treated with due commercial sensitivity and confidentiality.

Each of the correspondents was requested to provide the further information sought by 29 July 1998.

The information sought in the checklist was divided into the following categories:

(1) Current customer/Retailer contract.

(2) Details of contractual amendments.

(3) Evidence of historical usage.

(4) Evidence of any implied contracts.

(5) Evidence of administrative errors.

(6) Evidence of changes in circumstances.

(7) Evidence of future expansion of business.

(8) Evidence relating to rationalisation/relocations of the business or part of it.

Late submissions

Some submissions were received by the Panel after 17 July 1998 (ie after the date on which VENCorp sent the letters requesting further information.) In these cases, the Panel sought any further information it considered necessary by telephone.

Discussions with Retailers

The Panel also offered to attend at the various Retailers' premises to view the information needed and suggested that the Retailers contact either of the Panel members by 3 August 1998 to make any necessary arrangements.

Preliminary issues for consideration

Following receipt of further information from customers and Retailers, the Panel commenced its review process.

Several key issues arose at the outset. These issues, and the way in which the Panel determined that the issues should be addressed, are outlined below:

3.1 Seasonal allocations

The Ernst and Young recommendations were that seasons were only to be taken into account in allocating Authorised MDQ in cases where existing contractual rights differentiate between seasons. It was noted that a different Summer/Winter MDQ would be too burdensome administratively.

A number of submissions requested different allocations between seasons, which was either not recognised in existing contracts or in the provisional Authorised MDQ allocations.

Where historical use or the terms of a customer's contract demonstrate a seasonal variation with a Summer peak, the Panel has generally recommended a seasonal Authorised MDQ for Winter and Summer.

3.2 Implied contracts

In light of the past practices of the Gas and Fuel Corporation and the Retailers in amending contractual MDQ, a question arose as to whether the Panel should accept that a course of conduct can have the effect of creating an implied contract which varies the terms of an existing contract or whether a strictly legal approach should be adopted.

The Panel determined that it should accept that a clear pattern of historical use (which differs from the provisions of a customer's contract) should be taken into account in determining that customer's Authorised MDQ.

3.3

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3.4 Transferability

The Panel's initial view was that there ought be no transferability across sites as the MSO Rules clearly did not allow for this. However, the Panel considered that there could be amalgamation of MDQ for one site with different meter points. The Panel considered that this accorded with the MSO Rules.

However it should also be noted that many of the customers exhibited ignorance about the concept of Authorised MDQ and its effect on gas supply. It appeared to the Panel that some customers were of the view that they could not withdraw gas in excess of the Authorised MDQ figure. The Panel endeavoured to make it clear to all customers who had made submissions that the Authorised MDQ figure does not generally represent a physical limitation on gas supply.

The Panel undertook a review of each submission on its merits. This review commenced on 11 August 1998 and continued until final letters were forwarded to customers on 4 September 1998. Responses from

the Panel to some later submissions received were sent later than this, with the last letter being sent on 5 October 1998.

During this period each of the Retailers were provided with lists of their customers who had made submissions and relevant log numbers so that they could provide consumption data for the Panel to consider. Comprehensive data was not received for some customers until late August.

During this intensive review process, one or other of the Panel members telephoned or visited certain customers or Retailers to clarify various facts and obtain further information where necessary. For example contract MDQ figures were verified, details of expansion under way were sought and clarification of the dates on which certain sites were closing and new sites opening were sought.

Each letter sent to customers provided an indication of whether the Panel was proposing to recommend to VENCorp that the customer's provisional Authorised MDQ should be increased or not and the reasons for the recommendation. It was made clear that the Panel's final recommendations would be subject to VENCorp's approval. Each letter also invited the customer to discuss the proposed recommendations with either of the Panel members.

Approximately 6 customers took this opportunity and telephoned one of the Panel members. This was usually when the Panel had declined a request for an increase based on future use requirements and the customers wished to discuss this. The discussions were co-operative and ended in all but one case with the customer acknowledging and accepting the reasons for the Panel's decision. For the remaining case, the Panel has modified its recommendation following further discussion with the customer and the relevant Retailer.

No further written submissions were received and the Panel considers that its recommendations are now final. Those recommendations are included in the confidential attachments to this report.

Finally, a copy of the letters sent to each Retailer's customers was sent to that Retailer.

4. Conclusions and recommendations

4.1 Conclusions

The Panel's recommendations for each submission and the abbreviated reasons for them are contained in confidential attachment 1.

An index of the submissions made and the database are contained in confidential attachment 2.

Copies of the letters forwarded to the customers who made submissions are contained in confidential attachment 3. These detail the reasons for the recommendations made.

4.2 Recommendations

(a) Summary Recommendations

The Panel has recommended an increase to a customer's Authorised MDQ where it was shown to the Panel's satisfaction that:

- actual usage exceeded the provisional allocation of Authorised MDQ on a consistent basis,
- recent contractual amendments should be recognised,
- an agreement or understanding to supply gas to a committed expansion was established, or
- the customer had a contract which reflected a separate Summer and Winter MDQ and requested that this be recognised in the Authorised MDQ process.

If these recommendations are accepted by VENCorp, the net increase in Winter Authorised MDQ would be:

16,671,479 MJ

In addition, the Panel's recommendations would also introduce a Summer MDQ which, in the case of ********* ***Confidential - Restriction on Publication In Part Claimed*** ********* is higher than might otherwise have been the case.

However, as the recommended increases for many customers are based on historical usage, actual demand is not expected to increase by this amount even if the Panel's recommendations are approved.

(b) "Use it or lose it" recommendation

Where the Panel recommends an increased Authorised MDQ based on committed future expansion, it also recommends that the increase should be subject to an agreement to surrender any "unused" amount to allow VENCorp to issue that "unused" amount to other customers under the MSO Rules. This recommendation can be effected by an agreement between the customer and VENCorp. The customers subject to this recommendation are as follows:

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(c) Transferability before market start

Several submissions raised questions of tradeability and transferability. These have been addressed within the Panel's responses.

The Panel recommends allowing transferability between sites by negotiation with the relevant Retailers and VENCorp **before market start** for the following customers:

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(d) Surrender Sites

The Panel recommends Authorised MDQ be surrendered to allow increases at new sites, after site closures. The sites affected are:

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(e) Increase in future

In one case the Panel recommends that VENCorp allocate any spare MDQ if the Authorised MDQ is exceeded next Winter due to uncertainties about future gas needs, but clear evidence of a committed expansion for which increased gas will be required. The customer to whom this recommendation applies is

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(f) No response

The Panel has made no recommendations in respect of the following submissions and nor has it responded to these correspondents. In these cases, no response was required or the matter was referred to VENCorp.

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(g)

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