



*Office of the Regulator-General, Victoria*

## **Gas Full Retail Contestability**

*Final Decision:*

*Retail Gas Market Rules -  
Principal Transmission System*

**5 October 2001**

1<sup>st</sup> floor, 35 Spring Street, Melbourne 3000  
Telephone (+61 3) 9651 0222 Facsimile: (+61 3) 9651 3688  
Email: [reception@reggen.vic.gov.au](mailto:reception@reggen.vic.gov.au)  
Web site: <http://www.reggen.vic.gov.au>

## **FINAL DECISION**

### **APPROVAL OF RETAIL GAS MARKET RULES FOR THE PRINCIPAL TRANSMISSION SYSTEM**

#### **Application**

In accordance with section 62(3) of the *Gas Industry Act 2001* (the “Act”), on 8 August 2001 VENCORP submitted proposed Retail Gas Market Rules for the Principal Transmission System to the Office for its approval under section 65 of the Act.

#### **Consultation**

In addition to conducting its own analysis of the submitted proposed Rules, the Office undertook a consultation process with stakeholders and other interested persons in its usual manner.

On 31 August 2001 the Office issued an Issues Paper *Gas Full Retail Contestability Issues Paper: Retail Gas Market Rules – Principal Transmission System* and invited submissions on the paper and the proposed Rules generally. The Office received seven submissions, which it took into account in preparing a draft decision on whether or not to approve the proposed Rules.

#### **Draft Decision**

On 28 September 2001 the Office issued its Draft Decision which preceded this Final Decision.

In the absence of a power to approve the proposed Rules with amendments, the Office foreshadowed its intention to not approve the proposed Rules unless they were resubmitted with certain amendments relating to the timing and extent of release of Net System Load Profile Data (NSLP) by VENCORP (clauses 1.1.3 and 2.8.4).

#### **Resubmission**

On 4 October 2001 VENCORP resubmitted the Rules (version 9) with amendments to clauses 1.1.3 and 2.8.4 but otherwise identical to the form submitted on 8 August 2001 on which the Office conducted its consultations. The amended form of clauses 1.1.3 and 2.8.4 accord with the Office’s preferred position on the NSLP issue referred to in the Issues Paper and set out in the Draft Decision.

**Statement of purpose and reasons**

In making its determination which is set out in this Final Decision, the Office is exercising its statutory power under section 65 of the Act. The purpose of the determination is to approve the Retail Gas Market Rules submitted to the Office on 4 October 2001 to give them the necessary legal effect under the Act.

The Office's reasons for determining to approve the Rules are set out or referred to in this Final Decision document. The Office has considered the Rules in light of the principles set out in the Government's relevant Order in Council, the Office's statutory objectives and submissions received from interested persons. In light of each of these criteria, the Office considers that the Rules in their final form should be approved.

**Formal determination**

In accordance with section 65 of the Act, the Office determines to approve the Retail Gas Market Rules for the Principal Transmission System which were submitted to it by VENCORP on 4 October 2001 with immediate effect.

[ signed John C Tamblyn ]

**JOHN C TAMBLYN**

Regulator-General

**5 October 2001**

## 1. Executive Summary

The Office of the Regulator-General, Victoria (“the Office”) regulates gas distribution and retailing in Victoria pursuant to the *Gas Industry Act 2001* and the *Office of the Regulator-General Act 1994*. In accordance with its statutory obligations, the Office has evaluated the Retail Gas Market Rules (‘the Rules’) as submitted by VENCORP by considering any technical and commercial issues that might be inconsistent with the Office’s statutory objectives, and the guiding principles issued by the Victorian Government.

Based on its evaluation, the Office identified a number of issues related to the Rules where it sought further industry comment. Such comment was facilitated via the Office’s Issues Paper “*Retail Gas Market Rules –Principal Transmission System*”, dated August 31, 2001.

One of these issues related to the release of Net System Load Profile (NSLP) data. The Office had concern that this may impact on its objective of facilitating entry into the market. All other issues related to specific features of the Rules that, although broadly consistent with the Office’s objectives and guiding principles, had potential implications for the efficiency of particular industry processes.

Comments were invited from market participants on these identified issues. The Office’s draft decision paper (28 September 2001) considered these comments and outlined the Office’s Draft Decision relating to the proposed Rules.

The Office was of the view that approval of the Rules would only be given if they were amended to provide for the early release of NSLP data prior to the commencement of FRC. Of the other issues identified, the Office did not consider any to be critical for the approval of the Rules. In most cases, these issues relate to concerns of process efficiency, and therefore are issues that should be considered within a defined period after market start through the VGRRC rules amendment process.

A detailed discussion and analysis of the Office’s draft decision is available in the draft decision paper *Gas Full Retail Contestability – Draft decision Retail Gas Market Rules –Principal Transmission System (28 September 2001)* which is available on the Office’s website: [www.reggen.vic.gov.au](http://www.reggen.vic.gov.au).

On 4 October 2001 Vencorp resubmitted the Rules (version 9) with amendments to clauses 1.1.3 and 2.8.4 but otherwise identical to the form submitted on 8 August 2001 on which the Office conducted its consultations.

The amended form of clauses 1.1.3 and 2.8.4 accord with the Office’s preferred position on the NSLP issue referred to in the Issues paper and set out in the draft decision.

The following table provides a summary of the Office's final decision.

**Table: The Office's Final Decision**

TOPIC	THE OFFICE'S FINAL DECISION	SECTION
Release of net system load profiles	VENCorp submitted to the Office on 4 October 2001 an amended set of Retail Gas Market Rules (version 9). The amended clauses 1.1.3 and 2.8.4 accord with the Office's preferred position on the NSLP issue referred to in the Issues Paper and set out in the Draft Decision.	4.1
Provisions for a review of the Rules	The Office's final decision is that a full review of all the Rules will take place four years following FRC. The Office is of the view that this requirement should not hold up the current approval of the rules and accordingly will request the VGRRC to advise on when it could reasonably expect to accommodate this amendment to the Rules. It is noted that during the four-year period, participants may still raise issues through the amendment provisions to the Rules	4.2
Provisions for the implementation of rule changes	The Office decides that provisions for retrospective rule changes are not required.	4.3
Audit provisions	The Office decides that periodic audit will be via the participant license conditions, in a condition similar to that of electricity retail licence condition 15.  The Office believes that rules on audit provision are not necessary for the implementation of the Rules. If needed, a review of this issue can be requested through the VGRRC process.	4.4
MIRN data amendment provisions	The Office considers that this issue is not critical for approval of the Rules but should be reviewed by the VGRRC within twelve months of market start. Data amendment provisions can then be reviewed against historic performance in the first year of FRC.	4.5
MIRN discovery termination provisions	As the respondents largely did not see a need for such a process to terminate a MIRN discovery the Office decides that such provisions are unnecessary.	4.6
Maintenance and storage provisions for profiled energy data	The Office decides that the provisions of clause 5.1.6 of the MSOR requiring VENCorp to retain all information provided to it under the MSOR are sufficiently broad to cover profiled energy data.  The Office also notes that the participants on the whole did not indicate a need for any further requirement in the Rules for maintenance and storage of profile data.	4.7
Verification request provisions for profiled energy data	The Office decides that verification request provisions for profiled energy data are not necessary for the implementation of the rules. If live market experience demonstrates a need for such a process, a review can be requested through the VGRRC.	4.8
Verification process for profiled energy data	This is the process for carrying out a verification request as described in the previous section. Accordingly, the Office's decision is as for a verification request above.	4.9

TOPIC	THE OFFICE'S FINAL DECISION	SECTION
Provisions for a change in customer characterisation	The Office is satisfied that industry B2B arrangements will provide facility for this process, and given such, decides that provisions for such changes will not be required with the Rules. If needed, a review of these provisions can be requested through the VGRRC.	4.10
Provision for the transfer of a participant's FRO status	The Office decides that there should not be a provision for the transfer of a participant's FRO status. If this proves to be an issue based on the performance of the market after FRC start, market participants can raise the matter through the VGRRC process.	4.11
Adequacy of the Rules as a basis for providing the implementation of systems and procedures to facilitate FRC	The Office decides that the rules are adequate for the implementation of systems and procedures necessary to facilitate FRC.	4.12
Consistency of the Rules with other relevant regulatory requirements	The Office decides that industry can make necessary recommendations to the VGRRC that will be progressed through the normal consultation process. The Office does not believe that this is an issue that should affect market start.	4.13
Adequacy of the Rules in providing for the transfer of a customer to an alternative gas retailer where the customer's current gas retailer ceases to provide retail gas services	With respect to the issue of consistency between arrangements for gas and electricity in general, the Office decides that this is best facilitated via industry participation in decision-making forums such as the VGRRC. The Office does not believe that this is an issue that should affect market start.	4.14
The use of estimated meter reads as final meter reads for the purpose of facilitating the customer transfer process	The Office's decision is that actual meter reads will be used at present for the purposes of the customer transfer process. This decision to use actual reads is the result of a comprehensive consultation process and the Office believes it is the correct decision given the risks associated with retailing and that this is not an issue that effects approval of the Rules. The Office reserves the right to revisit this issue at a future date.	4.15

## 2. Introduction

VENCorp has made an application to the Office seeking approval of Retail Gas Market Rules for the Principal Transmission System (PTS). This application has been made according to section 62(3) of the *Gas Industry Act 2001* (formerly section 48MI of the 1994 Act), requiring VENCORP to develop retail gas market rules for the gas transmission system and the gas distribution system, comprising the principal transmission system (PTS), and to submit those rules to the Office for approval.

In its Issues Paper (31 August 2001) the Office examined the Retail Gas Market Rules, as submitted by VENCORP. In particular, it assessed the extent to which the Rules provided for the implementation of systems and procedures that facilitated Full Retail Contestability (FRC) and which also promote a competitive and efficient retail market for gas, in a manner consistent with the Office's objectives and guiding principles.

The Office received comments from interested market participants in response to the Issues Paper. The Office in formulating its decisions presented in the Draft and Final Decision Papers considered each of these submissions.

Retail market rules, when developed in the context of FRC, define the set of processes, responsibilities and obligations that are specific to a core group of industry arrangements which are necessary to support retail competition. These industry arrangements require cooperation between market participants, and define the basis for a considerable investment in systems and cooperative processes to effect competition at the retail level.

The Rules submitted by VENCORP have been developed to support the extension of contestability to the final tranche of customers, those with annual consumption below 5TJ. Given the lower rate of energy consumption of these smaller customers, the Office recognises that FRC systems and processes must have significantly lower transaction costs, thereby remaining consistent with the lower revenue streams these customers generate for market participants.

Moreover, the importance of low transaction costs, in addition to the need for FRC systems to be able to accommodate large numbers of smaller customers, supports the need for an automated system solution to provide a facility for effective competition in the mass market. This has implication for the complexity, extent of detail and expense associated with the process to effect full retail competition. The Office therefore is concerned as to whether the Rules submitted by VENCORP are complete, efficient and sufficiently detailed to support investment in systems and processes to provide for FRC.

The remainder of this paper is structured as follows:

- Part 4 provides a background discussion, explaining the Rules, including their purpose, within the context of competitive market reform, and the rules

---

development process. Part 4 also outlines the process the Office will follow in approving a set of retail rules for the gas market

- Part 5 presents each of the topics raised by the Office in its Issues Paper, summarises the comments received on them by the interested parties and gives the Office's final decision on each.

## 3. Background

### 3.1 Retail Gas Market Rules

The reform of the Victorian Gas Industry has been undertaken against a background of broader national developments in the natural gas industry. All Australian governments have committed to a concerted approach to implement pro-competitive reform in both gas and electricity markets.

In relation to the gas industry, a national gas reform framework to implement the free trade of gas both within and across jurisdictions was developed and agreed to by the Council of Australian Governments (CoAG) in 1994. This agreement acknowledged that the benefits of free and fair trade in gas come from the ability of gas consumers and producers being able to buy and sell gas on commercial terms, promoting the best possible use of Australia's gas resources and lower prices for consumers<sup>1</sup>.

Some of the 1994 reform parameters were re-affirmed, with amendments, in November 1997 when CoAG signed the Natural Gas Pipelines Access Agreement. The Agreement sets out:

- A uniform national framework for access to natural gas transmission and distribution pipelines;
- A timetable for the phase-in of competition (contestability timetables), and other transitional arrangements and derogations agreed among jurisdictions; and
- Agreed franchising and licensing principles.

In Victoria, the phase in of competition is legislated to occur in four separate tranches, or stages (see Table 1). As at 31 August, 700 of Victoria's largest gas customers were contestable. From September 1 2001, a further 600 large gas users joined them.

Plans for this tranche of customers to become contestable from 1 September 2000 were deferred while a more cost-effective metering solution was being developed. These concerns have been addressed by lower estimates of metering costs. The Government has also passed legislation to provide a safety net to ensure consumer interests are protected while competition is being introduced. Contestability for this group of consumers was deferred until 1 September 2001.

The final tranche of contestability, which involves some 1.4 million domestic and small business customers, was scheduled to occur on 1 September 2001. Given system development issues, however, this date has been delayed and FRC is now expected to commence in the latter part of 2002.

---

<sup>1</sup> See CoAG Working Group, *Progress Toward A Pro-Competitive Framework for the Natural Gas Industry, within and between Jurisdictions*, February 1994. These benefits were subsequently quantified by the Industry Commission in *The Growth and Revenue Implications of Hilmer and Related Reforms: A Report by the Industry Commission to the Council of Australian Governments*, March 1995.

---

**Table 1 Victorian Gas Contestability Timetable**

Tranche/ Stage	Date	Customer load (gigajoules)	Number of customers (% of total load)
1	1 October 1999	More than 500,000	35 (25%)
2	1 March 2000	100,000 to 499,999	110 (13%)
3	1 September 2000	10,000 to 99,999	600 (10%)
	1 September 2001	5,000 to 9,999	600 (2%)
4	Mid-Late 2002	All remaining	1,400,000 (53%)

Prior to the commencement of full retail contestability however, industry must develop and implement systems and processes to provide the mechanics by which effective competition can occur. A necessary precursor to this is the finalisation of the regulatory framework and supporting instruments that will shape the ultimate industry requirements for market competition.

This Final decision Paper relates to the Retail Gas Market Rules for the Principal Transmission System, which fits within this regulatory framework.

Retail market rules, when developed in the context of FRC, define the set of processes, responsibilities and obligations that are specific to a core group of industry arrangements which are necessary to support retail competition. These industry arrangements require cooperation between market participants, and define the basis for a considerable investment in systems and cooperative processes to effect competition at the retail level.

Often the systems to support these responsibilities and processes are external to participant businesses, requiring an investment in business interfaces between those systems required by the market rules, and the internal systems and processes of the participant. This interfacing requirement suggests a dependency of the internal systems readiness of participants with the completion and approval of the market rules.

At a generic level, the types of processes and responsibilities that are defined within retail market rules, include such activities as:

- Customer transfer processes;
- Processes for the exchange of customer and site information;
- Processes for the collection and exchange of meter information;
- Processes for the management of customer load apportionment;
- Processes for the management of disputes; and
- Processes for the administration and development of market rules

Indeed, the Victorian Retail Gas Market Rules provide for all of this functionality, and have been structured on the following basis:

- 1. General**
  - provisions governing the timing of implementation of various provisions of the Retail Rules;
  - dispute resolution procedures; and
  - procedures for subsequent changes to the Retail Rules.
- 2. Trading Rules**
  - meter reading;
  - data processing;
  - data storage;
  - access to/provision of data; and
  - profiling requirements/methodology.
- 3. MIRN (Meter Installation Registration Number) Discovery**
  - MIRN allocation;
  - making MIRN discovery requests; and
  - responding to MIRN discovery requests.
- 4. Customer Transfer**
  - making requests for customer transfers;
  - objections to transfer requests; and
  - processing/registration of customer transfers

The development of the Rules has occurred via a consultative process under the auspices of the Victorian Gas Retail Rules Committee (VGRRC).

The VGRRC is a consultative forum, including representatives of the Victorian gas industry. The VGRRC was established under the auspices of VENCORP to consider and make recommendations to the VENCORP Board on issues related to:

- (a) the development, review and maintenance of the Gas Retail Rules required for the efficient and effective operation and administration of gas FRC in Victoria; and
- (b) the development of recommendations on the principles for, and structure of, charges to be imposed by VENCORP, subject to regulatory approval by the Office, for the recovery of VENCORP costs incurred in the facilitation and operation of FRC.

Key roles of the VGRRC include:

- (a) ensuring the appropriate level of consultation takes place in the development of the Gas Retail Rules;
-

- (b) oversight of, and provision of the necessary input, to any regulatory approval processes as required for timely implementation of the Gas Retail Rules; and
- (c) validation of functional specifications for the development of systems and procedures to implement and facilitate FRC in accordance with the Gas Retail Rules.

A key objective of the VGRRC is to facilitate Gas Retail Rules development, approval and change control processes to establish investment certainty in a timeframe consistent with achieving delivery of outcomes in accordance with the defined project objectives and principles.

Drafting of the detailed Retail Rules was driven by industry working groups working under the VGRRC.

The Gas Trading Arrangements Working Group and Customer Transfer Protocol Working Group initially developed detailed drafting instructions and then worked collaboratively with legal experts to develop the Retail Rules.

A Government Legal and Regulatory Committee, involving representatives from DNRE, VENCORP, and legal advisers, also provided input to the process in terms of developing the legal and regulatory framework for the Retail Rules. The Office was an observer on this Committee. This group also provided advice and assistance in drafting of provisions in the Retail Rules with regard to rule change and dispute resolution processes and ensuring consistency with other statutory and regulatory instruments.

During this drafting process there was also consultation with end-use customer representatives and with the wider-based Victorian Gas Contestability Forum.

### **3.2 Approval process for the Rules**

In approving any rules developed pursuant to an approved scheme, the Office is required to have regard to its objectives under *the Office of the Regulator-General Act 1994*, and the *Gas Industry Act 2001* (Gas Act). As part of its approval process, the Office must also take into account any further guiding principles which may be determined by the Governor in Council. Section 61 of the Gas Act gives the Governor in Council the power to determine these principles by Order published in the Government Gazette. This Order in Council was published in the Government Gazette on 2 August 2001.

#### **4.2.1 The Office's Objectives**

The Office's objectives as prescribed under section 7(1) of the Office of the Regulator-General Act 1994 are:

- 
- To promote competitive market conduct;
  - To prevent misuse of monopoly or market power;
  - To facilitate entry into the relevant market;
  - To facilitate efficiency in regulated industries; and
  - To ensure that users and consumers benefit from competition and efficiency.

Under section 18 of the Gas Industry Act 2001, the Office has further specific objectives:

- To facilitate and promote open, efficient and competitive markets for and in relation to gas and to safeguard against misuse of monopoly power;
- To protect the interests of consumers with respect to gas prices and reliability and quality of gas supply;
- To facilitate the maintenance of a financially viable gas supply industry

These objectives require the Office to ensure that the benefits of competition and improved efficiency in the gas industry are passed through to customers. The Office's underlying goal in setting regulatory policy is to protect the interests of customers by setting regulations that ultimately contribute to effective competition, efficient prices, better quality service and service innovation.

It follows that the Office has concern that the Rules adequately define the responsibilities and processes of those industry activities that are necessary to facilitate competition in the retail market. The increase in transactional complexity for FRC arrangements for the mass market, make it particularly important that the Rules provide for full certainty of industry FRC processes and responsibilities, in a manner that is consistent with the objectives of the Office.

Achieving all of its objectives simultaneously is a difficult challenge, which requires the Office to exercise judgement in striking a balance between competitive goals and interests. When considering actions to redress the potential for market failure, the Office is conscious that the promotion of effective competition is a means towards the end of promoting efficiency in the delivery and pricing of energy services to the ultimate benefit of customers and the community.

The Office does not intend to propose regulation with the singular goal of facilitating competitive entry, irrespective of the social costs and benefits that may involve. Policies designed to facilitate competitive entry and effective competition must be weighed against the possibility that they will reduce customer benefits by eliminating existing economic efficiencies and/or imposing additional compliance costs.

#### **4.2.2 Guiding Principles**

As part of its approval process, the Office must also take into account any guiding principles which may be determined by the Governor in Council. Section 61 of the Gas Act gives the Governor in Council the power to determine these principles by Order

published in the Government Gazette. Principles prepared by Government were formally approved by Governor In Council and gazetted on 2 August 2001.

The guiding principles that have been determined under section 61(1) of the Gas Act relate to the introduction of full retail competition in the gas industry. Specifically, they relate to the establishment of rules providing for the implementation of systems and procedures necessary for the operation of the retail gas market in the context of full retail competition.

The following sets out the guiding principles. Broadly, they set parameters for the specific matters to be addressed in the rules developed for both the PTS and the non-PTS systems. These requirements include implementing systems and procedures to manage the transfer of customers between gas retailers and the management of metering data for retail billing and wholesale market settlement purposes. Consequently, these principles seek to provide sufficient flexibility to enable the most appropriate outcome to be achieved on all systems.

Principles for retail gas market rules

The Office of the Regulator-General must, in determining under section 65 of the Gas Act whether to approve retail gas market rules submitted to it by VENC Corp under section 62(3) of the Gas Act or by a gas distribution company under section 63(3) of the Gas Act, take into account the following principles:

- (a) The retail gas market rules should:
  - (1) provide for the implementation of systems and procedures which:
    - (i) facilitate full retail contestability; and
    - (ii) are consistent with other relevant regulatory requirements;
  - (2) provide for the implementation of systems and procedures to manage:
    - (i) the transfer of retail gas customers (“customer transfers”); and
    - (ii) the associated ongoing management of metering data (including the collection and delivery of metering data for retail billing and wholesale market settlement or pipeline balancing, as appropriate);
  - (3) provide for the implementation of systems and procedures which, to the extent that is it practical and cost effective to do so, have common business interfaces across all Victorian gas pipeline systems;
  - (4) clearly identify each party’s rights and responsibilities for each element of the processes for:
    - (i) customer transfers; and
    - (ii) the associated ongoing management of metering data;
  - (5) include procedures for the raising, management and resolution of disputes associated with the application of the retail gas market rules; and
  - (6) include procedures for making changes to the retail gas market rules which allow for adequate consultation with affected parties.
  
- (b) The retail gas market rules should, in respect of customer transfers:
  - (1) provide, at a minimum, procedures for the management of customer transfers in the following circumstances:
    - (i) the transfer of a customer between gas retailers where the customer consents to the transfer;
    - (ii) the transfer of a customer to an alternative gas retailer where the customer’s current gas retailer ceases to provide retail gas services;
    - (iii) a new customer connection where there is no existing gas retailer for the site; and
    - (iv) a site ceasing to take supply of gas; and

- (2) include, at a minimum, procedures in relation to:
    - (i) the allocation of unique identifiers for gas metering installations;
    - (ii) obtaining customer consent for the provision of customer information and to customer transfers;
    - (iii) access to and provision of customer information;
    - (iv) raising and resolving objections to customer transfers;
    - (v) the timing of customer transfers;
    - (vi) the metering data required to facilitate customer transfers; and
    - (vii) retrospective customer transfers for the purpose of wholesale market settlement or pipeline balancing, as appropriate.
  
  - (c) The retail gas market rules should, in respect of the ongoing management of metering data:
    - (1) include procedures for the collection and collation of data from accumulation meters which are uniform and common to all users on a single pipeline system;
    - (2) include procedures for the collection and collation of data from interval meters which are uniform and common to all users on a single pipeline system;
    - (3) include procedures for the delivery of energy data for the purpose of retail billing and wholesale market settlement or pipeline balancing, as appropriate;
    - (4) include procedures for the conversion of accumulated energy data to appropriate intervals for retail billing and wholesale market settlement or pipeline balancing, as appropriate; and
    - (5) include estimation and substitution procedures for use in the absence of adequate available metering data for retail billing and wholesale market settlement or pipeline balancing, as appropriate.
-

## 4. Discussion and Final Decision

The Office is broadly satisfied that the Rules are compliant with the Office's objectives and with the principles prepared by the government.

Based on its evaluation of the Rules, the Office identified in its Draft Decision (28 September 2001) a number of issues that it believed required further consideration in terms of the Office's objectives. One of these issues, the release of NSLP data, related to the objective of facilitating entry into the market. The others related to particular concerns of process efficiency, which, in many respects are issues that will need to be reviewed after a period of market operation.

Comments have been received from market participants on each of these identified issues. These are summarised under the relevant issue heading. Based on these, the Office reached its Draft Decision.

The issues fell into two categories. In one category is the issue of NSLP data. In its Draft Decision, the Office proposed not to accept the Rules unless specified changes were made to the Rules to address this issue.

In the other category are specific issues related to areas of process efficiency, of key functions or obligations under the Rules. Although important, the Office does not consider these critical for approval of the Rules. In most cases these issues relate to concerns of process efficiency, and therefore they are issues that should be considered within a defined period after market start through the VGRRC rules review process.

The amended Retail Gas Market Rules (Version 9 as provided by Vencorp on 4 October 2001) have accommodated the Office's draft decision. As such, the Office's final decision is to approve the Retail Gas Market Rules (version 9), as submitted on Thursday 4 October 2001.

### 4.1 Release of net system load profiles

#### The issue

Independent retailers are seeking publication of "non-daily metered loads" or "net system loads" by distribution area ahead of the FRC date to enable them to prepare for market entry at that time.

The Rules require VENCORP to publish NSLP data by distribution business area from the commencement date of FRC.

The submissions received by VENCORP on the issue largely focussed on whether the data falls within the category of "confidential information" under the MSO Rules and, therefore, whether VENCORP is permitted to release it under those rules.

---

Confidential information, according to clause 1.4.1 of the market rules, is information provided to VENCORP, each market participant, distributor and transmission pipeline owner pursuant to the market rules.

There was a further issue for VENCORP of whether, even if the information was not considered confidential, VENCORP was required to publish it.

There will, however, be an obligation on VENCORP to publish this data under clauses 2.8.4(b) and (c) of the Rules. Clauses 2.8.4(b) and (c) defines the form in which VENCORP must publish the NSL for each distribution area and when and where the data must be published. Assuming these rules receive the Office's approval, then in accordance with clause 1.1.3(a) this obligation on VENCORP will take effect on the FRC date.

VENCORP decided that since the obligation and timing for publication of this data has already been included in the Rules and these rules have to be approved by the Office, it is therefore appropriate that the Office be the regulator that makes the decision in this regard.

Broadly, the incumbent retailers believed that the NSL data was confidential and therefore should not be released to independent retailers. The independent retailers took the opposite view, asserting that the information was not confidential and was essential to them to create a level playing field in the market following FRC start.

#### The Office's preliminary view

The Office took the preliminary view that in considering this issue, it should have regard to both its objectives under the *Office of the Regulator-General Act 1994* and the *Gas Industry Act 2001*, and the principles that were prepared by the government and formally approved by Governor In Council and gazetted on 2 August 2001.

The Office believes that the successful introduction of FRC on terms that treat new entrant and incumbent retailers equitably plays an important role in the delivery of these objectives.

In regard to the specific issue of the publication of NSL data, all parties had agreed that the information enhances the prospect of competition. In addition, the Retail Rules already provided that this information should be released once FRC commences. In this context, it was difficult for incumbent retailers to sustain an argument that the information was commercially valuable and should not be released. The Office's preliminary view was that this commercial value only arises because not releasing the information would create a barrier to entry.

Given experiences in the electricity market, the Office expects that the marketing activities of retailers will commence some months prior to the commencement of FRC. It is during this period that retailers will prepare and price customer offers based on information available at the time. The Office recognises that an awareness of this NSL

---

---

data will be necessary to price offers accurately for non-interval metered customers. In fact, should a retailer not have full knowledge of this information, it would be difficult

for it to assess accurately the likely supply costs for the customer, requiring the retailer to accommodate a risk margin within the customer's offer. The relevant incumbent retailer would not face this same risk margin. The Office therefore acknowledged that this risk margin could distort the extent and nature of competition faced by particular customers.

It followed that incumbent retailers would therefore be presented with a temporary marketing and pricing advantage at a time when customers were commencing their consideration of competitive service offerings. Accordingly, for a temporary period, if this information is not released prior to market start, it would present a barrier to competition that disadvantaged the non-incumbent retailers. Moreover, such a situation would directly affect customers via an impact on market offers. Should customers agree to these offers prior to market start, this impact could have longer-term consequences.

The Office wished to ensure that barriers to entry would be reduced wherever practicable. The release of NSL data prior to the introduction of FRC would be likely to enhance competition and protect the interests of customers.

With regard to confidentiality, the Office took the view that the information represented an aggregation of customer data from more than one retailer. It was therefore not specific to any one customer or retailer, and was some steps removed from the original customer information.

The Office noted that similar information could be constructed from the public domain. As this is the case, the value of this information is somewhat reduced. Moreover, from the perspective of incumbent retailers, the view could be taken that they will benefit in a similar fashion to the relevant independent retailers when marketing to customers outside their current franchise areas.

It was acknowledged that the gas industry in New South Wales has chosen to release similar information prior to the scheduled commencement of FRC. This decision was made by the industry in which Victorian retailers took part. The Office was not aware that Victorian retailers raised objection to this decision, suggesting a position of consent by some incumbent retailers.

The Office's preliminary view was that the Retail Rules should be amended to enable VENCorp to release this NSL information prior to the date of FRC.

#### The participants comments on the Office's preliminary view

In submissions following the release of the Office's Issues Paper, the incumbent retailers reiterated their position that NSLP data is confidential and should not be made public until the introduction of FRC. However, Origin and Pulse were prepared to countenance releasing the data two to three months before FRC. Ergon and Energex continued to believe that release of the information was needed to enable them to compete on non-prejudicial terms with the existing retailers after FRC.

---

VENCorp commented that if a decision was taken to release NSL profile data prior to full retail contestability, this could not be achieved until the VENCorp system that will be used to produce the profile calculations has been built and tested. This would not be likely to happen before June 2002. The Office is of the view however, that should this information need to be released prior to June 2002, it could be calculated via a manual method.

Energex noted that NSW rules require three years' worth of historic NSLP data to be released.

#### The Office's draft decision

In reaching its draft decision, the Office was guided by its objective of facilitating entry into relevant markets, in this case the gas market. Particularly in the period leading up to the commencement of FRC, the Office recognised that knowledge of NSLP data will be essential for retailers to accurately assess the cost of supplying customers in each distribution area. Accordingly, the Office maintains its view that the early release of this information will be essential for enhancing competition, and levelling the competitive playing field between incumbent and independent retailers.

As the Office received no substantive new information or arguments from the retailers on this subject it maintained its preliminary decision in its Issues Paper.

The Office also acknowledged advice from participants relating to the decision of the New South Wales gas market to release three years worth of historic NSLP data. It is recognised that there is a significant heating load in Victoria; customer consumption can therefore vary significantly with respect to both weather seasonality, and the distribution of customers across network areas. The Office acknowledged a greater importance for retailers to have access to sufficient historical information to provide an appreciation for the consumption patterns of non-interval metered customers. In recognition that the use of Net System Load Profiling will be new to the market, and given that recent gas demand has differed from what is normal, the Office notes that access to sufficient historical information will be especially important to enable the development of market offers in preparation for competition.

The Office therefore proposed to determine not to approve the Rules unless they were resubmitted with:

- clause 1.1.3 amended so that clause 2.8.4 of the Rules comes into effect on 1 July 2002 or a later date to be determined by the Office (rather than FRC date);
- clause 2.8.4 amended to provide for release of NSLP data for the three year period ending on the date of its first release.

The Office proposed that the Rules refer to an alternative commencement date to be determined by it because although a date for FRC will be announced by the Government

---

well ahead of it occurring, there is no assurance that the requisite Order in Council under section 35 of the *Gas Industry Act 2001* (former section 48GC of the 1994 Act) will be published more than three months prospectively. The commencement date requires the certainty that will come from a fixed date or an Office determination that would be published and communicated in the usual manner.

#### The Office's final decision

Following careful consideration of the revised set of retail gas market rules (version 9) submitted by Vencorp on 4 October 2001, the Office has accepted the amendments that give effect to the intent of the Office's draft decision of 28 September 2001. Namely that clause 2.8.4 (b), 2.8.4 (c) and 2.8.4 (d) will come into effect on 1 July 2002 and that Vencorp makes available three years worth of NSLP data available to retailers on a three year rolling basis. The release of three years data on a rolling basis gives effect to the Office's desire to ensure new market entrants, on an ongoing basis, are not disadvantaged by lack of generally available information to incumbents.

As Vencorp accepted the Office's draft decision and resubmitted a revised set of Retail Gas Market Rules (version 9 submitted on 4 October 2001) satisfying the draft decision, the Office now provides final approval to the Retail Gas Market Rules Version 9 (as submitted to the Office on 4 October 2001).

The remaining points in this section relating to potential process inefficiencies are important, but they do not impact the acceptance of the Rules. Where indicated, it is suggested that these issues should be reviewed twelve months after market start via the VGRRC process.

## **4.2 Provisions for a review of the Rules**

#### The issue

There is provision in clause 1.6.1 of the Rules for the Office to undertake a review of the exclusive provisions that relate to distributors and VENCORP. This review must occur within six months of the second anniversary of FRC. However, there is no such provision for a broader review of the Rules.

Given that the majority of the provisions of the Rules have not been tested in a live market, there is a potential for the Rules to contain error or unintended consequence. In the interests of developing the market in accordance with the Office's objectives, the Office is therefore of the preliminary view that the Rules provide for a full review of all related provisions within this timeframe. A review after four years is suggested. Either VENCORP or the VGRRC could undertake this review.

#### The participants' views

---

VENCorp's view was that the Rules do not preclude ongoing industry review. The commercial need for efficiency is likely to provide the appropriate level of review using existing change mechanisms in-built in the rules.

The incumbent retailers thought that a broad review of the Rules was unnecessary. TXU commented that errors in the rules are likely to be identified at an early stage and so an overall four-year review would add little value. Pulse thought that rule change was adequately dealt with by clause 1.3 of the Rules. Origin believed that any significant rule changes needed to take place promptly and therefore contended that the formalised review period was not necessary.

UE considered the Rules on short-term review to be adequate and that any longer-term review requirement should be subject to a full consultation process. UE agreed with the Office that the proposed four-year term would be appropriate.

Energex also agreed on the four-year period, although it believed that VGRRC should not conduct the audit. Ergon agreed that the Rules should include a comprehensive review date, which it believed should be three years following the FRC date.

#### The Office's final decision

In reaching its final decision on this issue, the Office has been guided by its objective of facilitating efficiency in regulated industries. The Office is mindful that a full review of the rules will provide the basis for a thorough and consultative process, thereby facilitating the identification of issues that may not be readily apparent as part of the current rule amendment processes. Moreover, given that many of the business processes and responsibilities supported by the rules will be new to the market, the Office has some concern that without a full review, market experience may constrain the ability to consider rule amendment proposals with a full appreciation of their interrelated impacts with other provisions of the rules. A full and formal review process will therefore provide for a convenient checkpoint after market start to assess the broader adequacy of the rules in the context of market experience.

The Office's final decision is that a full review of the Rules will take place four years after the commencement of FRC. The Office is of the view that this requirement should not hold up the current approval of the rules, and accordingly will request the VGRRC to advise on when it could reasonably expect to accommodate this amendment to the Rules.

It is noted that during this four-year period, participants may still raise issues through the amendment provisions of the Rules.

### **4.3 Provisions for the implementation of rule changes**

#### The issue

The Office is broadly satisfied that the Rules provide for adequate consultation as part of the rules change process outlined in section 1.3. Much of the content of this section is

---

---

based on similar provisions in the current version of the Victorian MSOR. Accordingly, it is noted that the general provisions of 1.3 have been successfully tested in the Victorian wholesale market.

The Office does note however, that unlike the approach adopted by the MSOR, section 1.3 of the Rules does not explicitly anticipate an instance where an approved rule change may need to be implemented retrospectively. Given that Chapters 2 through 4 of the Rules are untested, it may be the case that after the commencement of FRC, the Rules contain manifest error, or may specify particular procedural requirements which have unintended consequences. In such instances it may be agreed by all affected participants that a retrospective change to the Rules is both feasible and desirable.

In the event that the Rules are amended to provide for the retrospective implementation of rule changes, section 67 of the Act may also need review to ensure it can accommodate this decision.

#### The participants' views

The retailers were strongly against retrospective rule changes on the grounds that it created unreasonable risk and could give participants a way of trying to reverse poor commercial decisions.

VENCorp was opposed to this suggestion as it would require substantial revisioning, would be expensive and could result in “winners and losers” with the subsequent possibility of legal proceedings.

UE was also opposed on the grounds that such rules allow retrospective implementation of rule changes tend to cause unnecessary complexity and expose participants to unreasonable risks.

#### The Office's final decision

In reaching its final decision on this issue, the Office has been guided by its objective of facilitating efficiency in regulated industries. The Office had noted tacit support for arrangements in the MSOR that provide for retrospective rule changes. Moreover, acknowledging that many provisions in the Rules are untested, the Office was of the view that there may be some circumstances when affected participants may desire facility for the retrospective implementation of a rule change should that be both feasible and desirable. The Office does acknowledge though, that there will be instances where a retrospective rule change may impose a degree of risk that is difficult to manage; this may outweigh the benefits of flexibility in the rules for particular participants. The true test of market efficiency requires a review of market experience. Accordingly, acknowledging the adequacy of the current rule amendment provisions, the Office accepts the views put forward by participants, and decides that this issue can be considered after market start should market experience suggest a need for such a provision.

## 4.4 Audit provisions

### The issue

The Rules do not expressly provide for any form of periodic audit. The Office is of the view that a periodic audit of particular responsibilities under the rules may be desirable. Such an audit may include key FRC processes and responsibilities such as the application of load profiling, the customer transfer process and the management of MIRN data. Particularly during the initial period after market start, such an audit may be warranted while participants are coming to terms with the new systems and arrangements that will provide for FRC.

To accommodate requirements for the periodic audit of responsibilities under the Rules, the Office notes that this could be effected either via the Rules or via licence conditions. If the latter, an option would be to adopt a similar licence condition to that of electricity retail licence condition 15.

### The participants' views

VENCorp believed that the audit provisions associated with the MSOR are likely to cover the services received and provided by VENCorp at the retail interfaces.

UE noted that distributors were already subject to audit provisions. They supported similar obligations being placed on retailers through licence conditions.

TXU also submitted that there was a current obligation under its distribution licence for operational and compliance audits. There was no need to include additional audit requirements in the rules.

Origin submitted that the retail licence conditions were the appropriate instruments to ensure compliance with the rules. Including any audit provisions within the rules would be unnecessary. Origin would prefer minor amendments to the retail licence conditions similar to electricity.

Energex also noted that there are audit conditions in other instruments, such as the retail licence. Pulse and Ergon made no comment.

### The Office's final decision

In reaching its final decision on this issue, the Office has been guided by its objective of facilitating efficiency in regulated industries. The Office maintains its view that audit requirements are will be necessary given that participants have new responsibilities for industry processes that can impact customers and other market participants. However, the Office acknowledges that audit requirements can be accommodated in alternative

---

---

instruments, and therefore it supports the recommendations that such be provided by via participant licence conditions.

The Office decides therefore that further audit requirements within the Rules will be unnecessary. Periodic audit will be via participant licence conditions, similar to that of electricity condition 15.

## **4.5 MIRN data amendment provisions**

### The issue

Although it is noted that clause 3.1 of the Rules provides for the update of the MIRN database, it is noted that there is no detailed procedure that defines a process whereby retail market participants can request and effect a change to MIRN data. The industry is expecting some issues of data inconsistency between the MIRN database and the data provided via the MIRN discovery process. This inconsistency is expected because of a lack of uniformity in the manner that particular details are recorded and because of general error or changed circumstance.

Given that retailers are expected to have the initial contact with customers via their marketing activities, which if successful will provide the basis for an ongoing relationship with customers, retailers may be better placed for identifying updates of MIRN data.

### The participants' views

There was no submission from VENCORP on this matter.

UE noted that the distributor owns and manages the MIRN database and therefore there is no need to have a formal process in the Rules for retailers to request and change the database.

Origin did not believe that this would be an issue as the distribution database would be the record of source for MIRN discovery and that VENCORP would seek an update of MIRN standing data from the distributor prior to every transfer which would ensure that the latest data is used.

Pulse made no comment.

TXU noted that distributors have an obligation under rule 3.1 to create, maintain and administer a MIRN database.

Energex was concerned that incumbent retailers/distributors were anticipating large-scale errors between the MIRN database and the MIRN discovery process. Energex suggested that the Office's compliance requirements for data accuracy be made more robust. Energex further noted that as the potential for large-scale errors in the MIRN

---

discovery process could add significantly to 2<sup>nd</sup> tier retailers' costs, it would be appropriate for the Office to levy material sanctions on incumbent retailers/distributors for systematic MIRN database inaccuracies.

Ergon supported an amendment to the Rules to incorporate a process for amending MIRN data.

#### The Office's final decision

In reaching its final decision on this issue, the Office has been guided by its objective of facilitating efficiency in regulated industries. While the Office notes that retailers may be best placed to identify issues of data inconsistency between the MIRN database and that provided via the MIRN discovery process, it does acknowledge that the rules provide for distributors to have ultimate responsibility for the accuracy of the MIRN database. Although the Office is concerned about the system (B2B) implications of MIRN data amendment, given the responses of affected businesses, it does not appear that the volume of errors will be great. Acknowledging the adequacy of the current rule

amendment process, the Office is of the view that the materiality of this issue can best be determined with reference to market experience.

The Office decides therefore that this issue is not critical for the approval of the Rules. This issue should however be reviewed by the VGRRC within twelve months of market start. Data amendment provisions can then be reviewed against historic performance in the first year of FRC.

## **4.6 MIRN discovery termination provisions**

### The issues

The Rules do not define the detailed arrangements that a participant must follow to request the termination of the MIRN Discovery process. The Office notes that in some circumstances a retailer may seek to proceed with MIRN discovery on the basis of a customer's verbal consent. This may occur with the assumption that written consent will follow as part of the customer transfer process.

In the event that the customer retracts its agreement for the retailer to proceed with MIRN discovery, there is presently no transparent process in the Rules that defines the termination arrangements for the MIRN discovery process. Given explicit informed consent (EIC) obligations, participants may find benefit in the provision of a timely and transparent method for terminating a MIRN discovery request.

Moreover, it is noted that even in the case when a customer provides written consent, a participant may similarly require the provision of arrangements to terminate the MIRN discovery process.

### The participants' views

---

There was no submission from VENCORP.

UE contended that verbal consent would also apply to termination of MIRN discovery.

TXU noted that under rule 3.3.2 distributors are required to respond to a MIRN discovery request by midnight on the first business day after the request is made. This would leave very little time for a retailer to make a termination request.

Origin also believed that such a process would be unnecessary as responses to MIRN discovery requests would be, in most cases, instantaneous. If EIC is withdrawn, the responsibility on the retailer not to store the data could be monitored by the Office, as part of its audit of retailers' conformance to EIC requirements.

Pulse agreed that MIRN discovery would happen in real time and therefore mechanisms could not be considered to abort the process. There would be a responsibility on the retailer to purge the data if EIC was withdrawn.

Energex restated its position that EIC should not be necessary for MIRN discovery.

Ergon supported amendment to the Rules to incorporate clear MIRN discovery termination provisions.

#### The Office's final decision

In reaching its final decision on this issue, the Office has been guided by its objective of facilitating efficiency in regulated industries. In this case, the Office acknowledges the view that within the timescale of a MIRN discovery request, it would be difficult to

have provisions for terminating the process. The Office is comfortable that participants are aware of requirements for explicit informed consent. Given that respondents do not acknowledge a need for a process to terminate a MIRN discovery request, the Office decides that such provisions are unnecessary.

## **4.7 Maintenance and Storage Provisions for Profiled Energy Data**

### The issue

It is not apparent that the Rules define any responsibilities for the storage and maintenance of the data that is required to estimate and apportion non-interval metered loads. Given that the systems and processes to provide for load profiling will be new to the market after the commencement of FRC, participants may have need to review calculations at some future point in time. Moreover, such calculations may need to be reviewed as part of an audit or dispute management process. Accordingly, the Office is of the view that it may be desirable for the Rules to explicitly define arrangements for the maintenance and storage of load profiling data.

---

### The participants' views

VENCorp submitted that the profiled energy data is only used as an input to the wholesale market settlement process and VENCorp has an existing obligation under the MSOR to maintain this data for seven years.

UE considered that the current MSOR provisions for the storage of this data are sufficient.

Origin also noted that clause 5.1.6 of the MSOR requires VENCorp to retain all information related to settlement for seven years. Origin believes that this rule satisfies the requirement raised in the issue paper.

TXU thought that this was an issue for VENCorp and the retailers and was best covered by the MSOR.

Pulse made no comment on this issue.

Energex had no objections to the Office's plan for long-term storage of data. Ergon supported amendment of the Rules to incorporate a process for verifying profiled energy data.

### The Office's final decision

In reaching its final decision on this issue, the Office has been guided by its objective of facilitating efficiency in regulated industries. The Office maintains its view that efficient market arrangements will provide facility for participants to review profiled energy calculations, particularly during the early period of full retail contestability.

The Office does note the comments of the participants however, and concurs that the provisions of clause 5.1.6 of the MSOR requiring VENCorp to retain all information provided to it under the MSOR are sufficiently broad to cover the relevant inputs for profiled energy data.

The Office decides therefore that this issue is not critical for the approval of the Rules.

## **4.8 Verification Request Provisions for Profiled Energy Data**

### The issue

Clause 2.7 of the Rules provides an arrangement for the FRO of a distribution point to request the verification of particular meter information. The Office is of the view that

---

---

the Rules should provide similar provisions whereby affected participants can request the verification of profiled energy data. Such provisions may be important during the early period of FRC when the market is still adapting to new load profiling arrangements.

#### The participants' views

VENCorp submitted that profiles can be verified at any time under the existing proposed arrangements.

UE noted that VENCORP already supplies this data. Where verification data was required, it would be appropriate that this was provided to participants at a rate that fully compensated the provider for the cost of the service.

TXU believed that this was an issue for VENCORP and retailers. Similar to the maintenance and storage provisions for profiled energy data, the basic read and the profile were the base level data. Profiling was a core process and verification could be obtained by running the process again.

There were no submissions from Origin or Pulse.

Energex understood that VENCORP's audit procedures under the MSOR were undertaken twice-yearly in a manner whereby 50% of the audited functions were reviewed in each half-year exercise. Rather than duplicating the audit requirements in the Rules to verify the profile energy data, Energex suggested that the Rules direct VENCORP specifically to include this activity as part of the first half-yearly audit of the MSOR following the commencement of FRC.

Ergon supported amendment to the Rules to incorporate a verification process for profiled energy data.

#### The Office's final decision

The Office is aware that participants in New South Wales were supportive of arrangements within the rules to provide for the verification of profiled energy data. In

reaching its final decision on this issue, the Office has been guided by its objective of facilitating efficiency in regulated industries. The Office believes that an explicit process to facilitate a request for the verification of profiled energy data could provide a more timely means for effecting the verification of this data. However, it notes that, apart from Ergon, the participants did not see a necessity for the explicit provision of this request process within the proposed version of the Rules.

Acknowledging the adequacy of the current rule amendment process, the Office is of the view that the materiality of this issue can best be determined with reference to market experience. The Office accepts that a requirement for a verification request provision for profiled energy data is not apparent. It is decided therefore that this issue is not critical for the approval of the Rules. If live market experience demonstrates a need for such a process, a review can be requested through the VGRRC.

---

## **4.9 Verification process for profiled energy data**

### The issue

Following the point raised in the preceding section of this paper, the Office is of the view that it may be desirable for the Rules to provide a verification process to support an FRO request for the review of particular profiled energy data.

The Office notes that this process was considered important to participants in NSW, and was included in the NSW FRC business rules.

### The participants' views

VENCorp, TXU and UE included their comments on this in the section above. Energex did not see a need for this facility. Origin and Pulse made no comment. Ergon supported the process.

### The Office's final decision

This is the process for carrying out a verification request as described in the previous section. Accordingly, the Office's decision is as for a verification request above.

## **4.10 Provisions for a change in customer characterisation**

### The issue

Under the provisions of section 2.8 of the Rules, an FRO for a distribution point must provide the distributor with a customer characterisation specific to the distribution point upon the request to install a meter, and as part of the Transition Implementation Plan.

The customer characterisation indicates whether the customer is metropolitan or non-metropolitan and whether that customer is business or residential. This classification has scope to change after the initial connection of the meter; such an instance may occur

for example, in the event that a customer manages a business from residential premises. Moreover, there is potential that some customers may incorrectly advise retailers of their status as a residential or business site.

Accordingly, the Office recognises that participants may require the Rules to explicitly provide a process that facilitates the change of a distribution point's customer characterisation.

### The participants' views

VENCorp thought that there did not appear to be a need for a specific rule that required providers of information to fix errors in the data they are responsible for providing. Provision of correct data was implicit.

UE supported the position of the Office with respect to this clause and noted that the matter of changes in customer characterisation had now been picked up as a parameter in the B2B process transaction.

Origin and TXU believed that a change in customer characterisation was not a common event and therefore did not justify a rule to provide for it.

Pulse observed that notification of changes in customer characterisation have now been included as a data item for a proposed B2B transaction.

Energex commented that a formal process was not warranted for a change in customer characterisation, as any error would be corrected when the customer's meter was read.

Ergon supported amendment to the Rules to incorporate a process for changing customer characterisation data.

### The Office's final decision

In reaching its final decision on this issue, the Office has been guided by its objective of facilitating efficiency in regulated industries. The Office maintains its view that a facility to effect a change in Customer Characterisation will at times be required by retailers. The Office is satisfied however, that this requirement has been identified by industry, and that a process is underway to provide for such within the industry B2B arrangements. The Office decides therefore that provisions to effect a change in Customer Characterisation will not be required within the Rules. If needed, a review of this issue can be requested through the VGRRC.

## **4.11 Provision for the transfer of a participant's FRO status**

### The issue

It is noted that in some instances a site may continue or commence the consumption of gas without having agreed to any contractual terms specific to that consumption. In these circumstances the default FRO is the FRO that previously supplied this site. This agrees with the default retailer arrangements that have been developed by the government and the Office.

To facilitate this, when a customer's retail contract terminates, the retailer that previously supplied that customer will continue to be the assigned FRO for the MIRN

---

---

until this responsibility can be transferred to another retailer via the customer transfer process.

The Office recognises an instance however, whereby the FRO that previously supplied this site may have ceased the provision of gas supply services to a particular segment or segments of the market. Accordingly, in such an instance it may be desirable for the Rules to provide a process to affect the transfer of FRO status between participants at a time that is separate from the customer transfer process.

#### The participants' views

VENCorp was of the view that there should be no customer transfers outside the formal customer transfer process.

UE also did not support the concept of FRO status transfer separate to the normal process. UE considered that this would be an issue that would normally be covered in a commercial agreement between retailers and any transfer should be enacted in a normal manner.

Origin could not foresee where this requirement would be required. It believed that rules should not be included to cover FROs that could not cover their contractual responsibilities. Pulse made no comment on this issue.

TXU thought transfer of FRO status was inconsistent with the obligation to supply, the only exception being in a SOLR event.

Energex also had serious concerns about multiple transfer mechanisms. It thought such approaches would add unnecessary complication and cost. Ergon made no comment on this issue.

#### The Office's final decision

In reaching its final decision on this issue, the Office has been guided by its objective of facilitating efficiency in regulated industries. It is acknowledged that requests of this nature will not be common, and can be adequately managed via a commercial arrangement between participants. The Office accepts the retailers' views on this issue and decides that there should not be a provision for the transfer of a participant's FRO status. If this proves to be an issue based on the performance of the market after the

commencement of FRC, market participants can raise this matter through the VGRRC process.

### **4.12 Adequacy of the Rules as a basis for providing the implementation of systems and procedures to facilitate FRC**

#### The issue

---

The Office is of the preliminary view that the Rules adequately define those processes, rights and responsibilities necessary to provide for the implementation of systems and procedures to facilitate FRC.

The Office has identified one issue related to the release of NSL data that will likely require a change to the proposed Rules. This is discussed elsewhere in this paper.

Putting this issue aside, the Office is broadly satisfied that the Rules are compliant with the Office's objectives, and with the draft principles prepared by the government.

#### The participants' views

VENCorp, UE, Pulse, Ergon and Origin made no comment on this.

TXU and Energex were satisfied that the Rules adequately provided for the implementation of systems and processes to facilitate FRC and that the Rules broadly satisfy the objective and principles of the Office.

#### The Office's final decision

In reaching its final decision on this issue, the Office has been guided by its objective of facilitating efficiency in regulated industries. The Office has not identified any material issues that would prevent the Rules from providing a basis for the implementation of systems and procedures to facilitate FRC. Moreover, it is acknowledged that the commercial readiness activities of participants provide that they are best placed to

appreciate any concerns of this nature. Given that participants generally agree that the rules satisfy this requirement, the Office decides that the Rules are adequate for the implementation of systems and procedures necessary to facilitate FRC.

### **4.13 Consistency of the Rules with other relevant regulatory requirements**

#### The issue

The Office acknowledges that the approval of the Rules will require some amendments to the MSOR. The industry has considered this and a process is presently in place for the ACCC to consider a set of proposed amendments to the MSOR to accommodate the anticipated approval of the retail gas market Rules.

The Office has reviewed other regulatory requirements that will be related to the Rules and has not identified any fundamental inconsistencies. It is noted, however, that as the Rules develop there will be an ongoing need to consider related impacts across all of those regulatory requirements that provide for FRC.

#### The participants' views

VENCorp, Pulse, Ergon and Origin made no comment on this point.

---

UE and TXU agreed that consistency across all relevant codes, licences and rules should be maintained and were satisfied that the Rules were generally consistent in this regard.

Energex thought that consistency with MSOR was being achieved, but did not believe that sufficient work had been done to achieve consistency between gas and electricity rules. It was particularly concerned about different rules in respect of EIC for MIRN/NMI discovery in the gas and electricity markets. As a result, dual-fuel retailers would have to manage carefully MIRN/NMI requests for the same customer to ensure compliance with the two regimes.

Energex noted the work being undertaken by the DNRE to harmonise the Gas Industry Act and the Electricity Industry Act. The company suggested a review of each aspect of the Rules against the equivalent aspect for electricity.

#### The Office's final decision

In reaching its final decision on this issue, the Office has been guided by its objective of facilitating efficiency in regulated industries. The Office believes that, wherever possible, the arrangements for gas should be consistent with those for electricity. This has been the Office's approach for the Retail Code, EIC and for other regulatory issues covering the two fuels. The current Rules were agreed by the industry through a consultative process in which both single-fuel and dual-fuel retailers participated.

The Office maintains its view that the Rules are not inconsistent with other relevant regulatory requirements.

With respect to the issue of consistency between arrangements for gas and electricity in general, the Office is of the position that this is best facilitated via industry participation in decision-making forums such as the VGRRC. The Office does not believe that this is an issue that should affect market start.

### **4.14 Adequacy of the Rules in providing for the transfer of a customer to an alternative gas retailer where the customer's current gas retailer ceases to provide retail gas services**

#### The issue

The Office is broadly satisfied that the Rules adequately define industry arrangements in instances when a current gas retailer voluntarily ceases to provide retail gas services.

However, in the instance when a current retailer involuntarily ceases to provide retail gas services, although the Office is satisfied that the Rules can facilitate the transfer of a customer, it has some concern that affected processes may not be the most efficient.

---

---

Instances when a current retailer involuntarily ceases to provide retail gas services may include fundamental business failures, or to a lesser extent, technical breaches of the MSOR where enforcement action results in VENCORP issuing a suspension notice under section 2.3 of the MSOR. The latter may relate to a breach of prudential obligations given exposure to a significant market event, or may be caused by other non-compliance matters. The effect of such action could result in a retailer losing their status as a market participant which can have follow-on effects via the Rules, and may also prevent the retailer from being able to service its retail portfolio.

The Office advises that it will shortly be releasing an issues paper that considers requirements for a Retailer of Last Resort scheme. Such will review arrangements to manage instances when a current retailer involuntarily ceases to provide retail gas services. Accordingly, it is noted that in the future, the Rules will need to be considered in association with the Retailer of Last Resort consultation process.

#### The participants' views

VENCORP, Origin and Pulse made no comment on this.

UE, TXU and Energex reserved comment until the SOLR provisions are released. Ergon wanted any rule changes that reflected this scheme to be made before the FRC start date.

#### The Office's final decision

In reaching its final decision on this issue, the Office has been guided by its objective of facilitating efficiency in regulated industries.

The decision of the Office is that this is not a material issue for the approval of the Rules as the Rules do facilitate the transfer of customers in these circumstances. However, the Office acknowledges that this issue will require review pending the industry's consideration of SOLR arrangements.

### **4.15 The use of estimated meter reads as final meter reads for the purpose of facilitating the customer transfer process**

#### The Issue

The Gas Rules allow transfer on a validated actual meter read only. In electricity, the Office intends to reconsider the use of estimated reads for transfer six months after the introduction of FRC. It is the Office's view that the arrangements in gas should mirror the principles in the electricity market as far as possible except where there are valid reasons for not doing so.

---

### The participants' views

VENCorp, TXU, UE, Pulse, Ergon and Origin support the use of actual read only.

Energex supported the use of an estimation process for final meter reads contingent on the second tier retailer being able to replicate the estimation.

### The Office's final decision

In reaching its final decision on this issue, the Office has been guided by its objective of facilitating efficiency in regulated industries. The Office maintains its view that the arrangements in gas should mirror the principles in the electricity market as far as possible. The Office acknowledges however, that the decision to use actual reads was the result of a comprehensive consultation process and the Office believes it is the correct decision given the risks associated with retailing.

The Office decides that this is not an issue that is material for the approval of the Rules, but notes that it reserves the right to revisit the issue of estimated reads at a future date pending the experiences of participants after the commencement of FRC.

The following sections represent additional points raised by Ergon.

## **4.16 VENCorp's consideration of proposed Rule changes**

Ergon notes that section 1.3.3(b)(iii) of the Rules requires that VENCorp must not approve amendments to the Rules unless it is satisfied that the amendment is not unreasonably costly to implement.

Ergon suggests that section 1.3.3 of the Rules should implement a requirement on VENCorp, not only to consult, but specifically to assess the cost impact of all Rule changes on current and future levels of competition in the Victorian gas market.

### The Office's view

The Office notes that it is part of the constitution of the VGRRC to make recommendations on the development of the Gas Market Rules with the aim of producing the maximum benefit from FRC and ensuring its efficient operation. This is to be achieved with the appropriate level of consultation with industry. Accordingly, the Office believes it is the responsibility of the VGRRC to consider the cost impact of Rule changes and make appropriate recommendations to VENCorp.

---

#### **4.17 Rejection of Rule change proposals**

Ergon observes that under the Rules, if VENCorp decides to reject a Rule change proposal, then that decision is final. Ergon believes that a rejection of a Rule change proposal by VENCorp should be subject to an appeals procedure as is the case in other energy market codes.

##### The Office's view

The Office acknowledges Ergon's point on this matter. The Office supports the right of VENCorp to reject a rule change proposal in the event that agreed industry consultation procedures were not followed in the development of that proposal. The Office notes that the agreed industry consultation process is supported via the VGRRC. Proposals for rule changes can be raised via the VGRRC, in which the Office is represented. The VGRRC operates in accordance with objectives and principles endorsed by the Office. The VGRRC constitution provides for an appropriate level of consultation with industry. While the Office does not anticipate an instance where VENCorp would reject a VGRRC rules change recommendation that was made in accordance with the provisions of both the VGRRC constitution, and the Rules, the Office would investigate if such an instance occurred.

Although the Office acknowledges Ergon's concerns relating to this matter, it does not believe this is an issue that should affect acceptance of the Rules.

#### **4.18 Estimated and substituted meter readings**

Ergon is concerned that the estimation meter read and substitution meter read methodologies are overly complex. Ergon recommends that VENCorp undertake a review of the operation of the estimation and substitution methodologies one year after the FRC date to assess whether they provide significantly more accurate data for the purposes of settlement and billing than more basic methodologies.

##### The Office's view

The Office acknowledges Ergon's point and agrees that where possible, arrangements should avoid unnecessary complexity. If after one year, arrangements appear to participants to be overly-complex, the matter should be raised via the VGRRC consultative process. At a minimum, problems would be picked up by the four year review.

#### **4.19 Meter reading information**

Ergon raises an issue relating to the situation where a distributor must provide an estimated read in instances when it is unable to provide the FRO with an actual meter

---

reading. Ergon recommends that in such instances there should be a requirement for the distributor also to inform the FRO of the date when an actual read will be provided.

#### The Office's view

The Office notes that clause 2.2.1 of the Rules provides for the publication of meter reading schedules. The Office acknowledges Ergon's comments, but does not believe that this is a matter affecting the acceptance of the market rules. Any issue regarding meter reading information may be raised via the rule amendment process, which is supported by the VGRRC.

## **4.20 Historical meter data for the purposes of providing quotes to customers**

Ergon draws attention to section 2.1.5(e) of the Rules which indicates that historical data for customers cannot be requested from the distributor until a party is registered as the FRO. In Ergon's view, retailers seeking to provide quotes to customers should be able to access historical meter data from the distributor, providing they have received the customer's consent to access this data.

#### The Office's view

The Office notes that the *Gas Retail Code (May 2001)* provides that a customer may request historical billing data from its previous (and current) retailer. Specifically:

#### ***19.2 Access to historical billing data***

- (a) *On request, a customer's current retailer must provide to the customer any of the customer's historical billing data then retained by the retailer for any period nominated by the customer. The retailer may impose an additional retail charge on the customer but only if the request is not the first request made by the customer within a year or the data requested extends beyond the previous two years.*
- (b) *If a customer has transferred to another retailer and requests historical billing data relating to the two years prior to the request from its previous retailer then, even though the customer's contract with the previous retailer may otherwise have terminated, the previous retailer must provide the customers with any of the data then retained by the retailer and requested by the customer. The previous retailer may impose an additional retail charge on the customer.*
- (c) *A retailer must use its best endeavours to provide historical billing data to a customer within ten business days of the customer's request or such other period they agree.*
- (d) *If historical billing data is required for the purposes of handling a genuine complaint made by a customer, in no circumstances may a retailer charge the customer for providing the data.*

Although a retailer cannot directly access this data, it is possible to request it via the customer. The Office believes that this is not an issue that is material to the acceptance of the market rules.

#### **4.21 Objection notices for retrospective transfers**

Ergon notes that section 4.3.1(c) indicates that a FRO may only object to a prospective customer transfer when there is a customer no-change statement and an aged debt is owing to the FRO. However, there are no criteria specified for the grounds on which a retrospective transfer can be objected to. On this basis, Ergon understands that any objection to a retrospective transfer, which is not withdrawn by the objecting party within 21 business days, would be upheld.

##### The Office's view

The Office agrees with Ergon that there is an internal inconsistency in this instance. The Office also notes that these rules have been developed via a comprehensive consultative process, including broad industry representation. While the Office does not agree that this issue should affect acceptance of the Rules, it does recommend that this issue be raised via the VGRRC for consideration and review.

-----