

FILE No: M2005/281-02

DOC: D08/040584

MARS/PRISM:

JOHNSON WINTER & SLATTERY
LAWYERSReceived 9/5
HR

Facsimile Transmission

To: Mr Paul Dunn
Australian Energy Regulator

Fax Number: (03) 9290 1457

From: Anthony Groom

Phone: (08) 8239 7124

Fax Number: +61 8 8239 7100

Date: 9 May 2008

Our Ref:

Total pages in this transmission: 11 (including this page)
If you do not receive all pages please contact us immediately

Dear Paul

Unfortunately the e-mail to Vani also bounced back.

Attached is the exemption application.

Regards

A Groom

This facsimile transmission is a confidential communication to the person named above. It may be subject to legal professional privilege or otherwise protected under applicable laws. The use of this transmission or the information and data comprising it by any person other than the named addressee is prohibited. If you have received this transmission but you are not the named addressee would you please telephone us on (08) 8239 7111, and forward the document produced as a result of this transmission by secure courier. Your costs of doing so will be refunded.

JOHNSON WINTER & SLATTERY
LAWYERS

Partner: Anthony Groom (08) 8239 7124
Email: anthony.groom@jws.com.au
Associate: Sarah Henderson (08) 8239 7152
Email: sarah.henderson@jws.com.au
Our Ref: 04371
Doc ID: ADL Trans: 70706.1

Posted 8/5/07
JAR

7 May 2007

Mr Paul Dunn
Australian Energy Regulator
Level 11
360 Elizabeth Street
Melbourne Victoria 3000

Dear Mr Dunn

Oxiana Prominent Hill Pty Ltd - Application for exemption from requirement to register as a network service provider under section 11 of the *National Electricity Law*

We act for Oxiana Prominent Hill Pty Ltd (**Oxiana**).

Oxiana requests that, in accordance with section 13 of the *National Electricity Law* (**Electricity Law**) it be granted an exemption from the requirement to be registered as a Network Service Provider under section 11 of the *Electricity Law* in relation to its proposed electricity transmission network between Olympic Dam and Prominent Hill and electricity network at Prominent Hill, South Australia.

For the reasons set out below Oxiana submits that, having regard to the requirements of the "Guidelines for Exemption from the Requirement to register as a Network Service Provider" (**Guidelines**), it is appropriate that Oxiana be granted an exemption.

Background

Oxiana is developing the Prominent Hill copper-gold project in South Australia. The project will include the development of an open-pit mine, a conventional grinding and flotation processing plant with an 8Mtpa capacity, construction of a permanent village to accommodate a steady-state workforce of approximately 400 people and construction of a haulage road, power line and bore field with associated electricity reticulation.

211 Victoria Square, Adelaide, SA 5000

GPO Box 2649, Adelaide, SA 5001

Telephone +61 8 8239 7111 • Facsimile +61 8 8239 7100

www.jws.com.au

SYDNEY

MELBOURNE

ADELAIDE

Liability limited by a scheme approved under Professional Standards Legislation

Mr Paul Dunn
AER

2

7 May 2007

Oxiana estimates its power requirements are 45MW (peak) for the Prominent Hill copper-gold project with an average electricity demand of around 40 MW.

Relevant Network

There is no existing electricity supply at the Prominent Hill mine. Accordingly, Oxiana is currently negotiating to connect to BHP Billiton Olympic Dam Corporation Pty Ltd's (BHPB) electricity transmission network at Olympic Dam. This means that Oxiana's electricity will travel from the Davenport Substation to the Olympic Dam West Substation and then new infrastructure will be built to allow it to then transfer to the Prominent Hill Substation.

A new 132kV overhead transmission line is being built from the Olympic Dam West Substation to the Prominent Hill Substation. The part of this line from the Olympic Dam West Substation to the boundary of the BHPB Special Mining Lease will be owned by BHPB.

In addition, provision is being made to ensure that the BHPB operations are not adversely affected by the connection of Oxiana. A new feeder bay, bus-coupler bay, 275/132 kV auto-transformer feeder bays line as well as the new 132 kV transmission line, and an extension of the existing double busbar are being constructed to extend the capacity of the existing Olympic Dam power supply.

The network ("**Relevant Network**") to be constructed by Oxiana, and in respect of which Oxiana seeks an exemption from the requirement to be registered as a Network Service Provider, comprises:

- (a) Single circuit 132kV overhead transmission line from the boundary of the BHPB Special Mining Lease to the substation at Prominent Hill (and connecting to the new 132kV overhead transmission line being built from the Olympic Dam West Substation to the boundary of the BHPB Special Mining Lease);
- (b) 132/11kV and 11/33kV substation at Prominent Hill;
- (c) 33 kV and 0.4 kV reticulation to the borefields, and
- (d) 11 kV and 0.4 kV reticulation within the Prominent Hill mining lease.

Please note that the electricity supplied through the Relevant Network will not be sold by Oxiana to third parties. When employees are resident in the village electricity will be supplied to them for free by Oxiana – that is, Oxiana will bear the costs of employees' usage of electricity. Similarly Oxiana will provide to third party contractors who perform work for Oxiana at Prominent Hill their electricity requirements without charge.

We also note that the Relevant Network is a purely radial network – the network is only capable of taking electricity from the Olympic Dam West Substation and does not have the capacity to supply electricity downstream of that Substation. No electricity from the Relevant Network will be supplied into the national grid and, given this and as noted below, arguably the Relevant Network will not form an "interconnection" with the national grid.

Mr Paul Dunn
AER

3

7 May 2007

Principles to be applied by AER

Section 11(2) of the *National Electricity Law* provides that a person must not engage in the activity of owing, controlling or operating a transmission system or distribution system that forms part of the interconnected transmission or distribution system unless a Registered participant or unless exempted by the AER from the requirement to be a Registered participant.

We note that, as the Relevant Network is a purely radial network and cannot supply electricity into the national grid (that is, can only take electricity from that grid), it is not clear that the Relevant Network is, for the purposes of section 11(2), part of the "interconnected" system. That is, it is arguable that Oxiana may not need to apply for an exemption from section 11(2) because it does not fall within that section. The matter depends on whether "interconnected" in section 11(2) simply means that there is a physical connection or whether the term implies an ability for electricity to be supplied from one part of the interconnected network to another part of that network.

For the purposes of this exemption application, Oxiana has assumed that its activities would fall with section 11(2).

Under rule 2.5.1 of the National Electricity Rules, the AER may exempt a person from the requirement to register as a Network Service Provider where, in the AER's opinion, the exemption is not inconsistent with the market objective.

In determining whether to grant such an exemption, the AER will have regard to the Guidelines (rule 2.5.1(e)). The Guidelines, in section 6, set out the principles which will be applied by the AER to determine whether an exemption is appropriate. Those principles are addressed below:

Clause 6.1

The relevant network should be wholly contained within premises owned or controlled by the applicant.

The Relevant Network is to be wholly contained within premises owned or controlled by Oxiana. The Relevant Network will be located within the area of miscellaneous purposes licences granted to Oxiana pursuant to the *Mining Act 1971*.

Clause 6.2

The provision of the network (and any supply of electricity to other parties) must be incidental to the business of the applicant.

The business of Oxiana is to mine the copper and gold at Prominent Hill. The construction, ownership and operation of the Relevant Network is incidental to these activities.

Clause 6.3

Standards or other regulatory controls should be in place in respect of the relevant network.

The Relevant Network will be regulated by the *Electricity Act 1996 (SA)*. While Oxiana

Mr Paul Dunn
AER

4

7 May 2007

proposes to seek an exemption from the requirement to hold a licence under that Act it will remain subject to the provisions of the Act regulating safety and technical matters.

Under section 60 of the *Electricity Act* Oxiana will be required to ensure the Relevant Network is safe and safely operated and operated in accordance with the technical and safety requirements set out in the *Electricity Regulations*.

Under the *Electricity Regulations* Oxiana may be required, by the South Australian Technical Regulator, to prepare a safety, reliability, maintenance and technical management plan for the Relevant Network which must be approved by the Technical Regulator and is audited from time to time.

Oxiana submits that these controls will be adequate to ensure that the Relevant Network is operated in a safe manner, which manner does not adversely impact on the national electricity grid.

Clause 6.4

The granting of the exemption should not unduly limit access of parties to the national electricity market contrary to the market objectives (clause 1.3 of the National Electricity Rules)

As the Relevant Network will be a dedicated line serving only Prominent Hill and will not service parties not associated in some way with the mining operations, Oxiana considers that the grant of the exemption sought will not limit the access of parties to the national electricity system or be contrary to the market objective of the NEM of promoting a reliable, efficient, safe and secure electricity system.

All electricity transported through the Relevant Network will be used and paid for by Oxiana. As noted above, the electricity will not be sold to third parties and where employees or third party contractors at Prominent Hill use the electricity the costs of that usage will be borne by Oxiana.

Oxiana also notes the following measures are to be implemented to ensure the Relevant Network does not impact adversely on upstream infrastructure, including BHPB's transmission lines or the lines into which BHPB's network connects:

- (a) the construction of a new 132 kV feeder bay, 132 kV bus-coupler bay, 275/132 kV auto-transformer feeder bays as well as the new 132 kV transmission line, and an extension of the existing 275 kV and 132 kV busbars;
- (b) the requirements of the *Electricity Act 1996 (SA)* noted above; and
- (c) Oxiana proposes to sub-contract construction, operation and maintenance of the Relevant Network to ETSA Utilities who are registered with NEMMCO and a Network Service Provider and experienced in the construction and management of this type of electrical infrastructure.

Mr Paul Dunn
AER

5

7 May 2007

Clause 6.5

The proposed charging regimes governing the NSP's network should balance the needs of the network provider and the end user.

The Relevant Network consists of a dedicated line to Prominent Hill that only Oxiana will be accessing. Therefore it will not be necessary to implement a charging regime in respect of the Relevant Network. The clause 6.5 requirement is not, therefore, relevant to Oxiana's circumstances.

Clause 6.6

An appropriate mechanism must exist for the setting of energy charges if users of the network cannot access retailers. Jurisdictional licence conditions or regulations govern the on-selling of energy

This criteria is not relevant in this circumstance given the costs of the only potential third party users of the electricity – i.e. employees and contractors to Oxiana – will be borne by Oxiana by electricity being supplied to such parties without charge.

Clause 6.7

End users should have appropriate recourse in the event of disputes, for example to the dispute resolution arrangements outlined in Chapter 8 of the Code.

For the reasons set out above, this criteria does not appear to be relevant to the Relevant Network. That is, as the electricity requirements of employees and contractors will be supplied without charge, it would not appear end users will require recourse to dispute resolution mechanisms.

Clause 6.8

The applicant should have obtained, or have applied for, exemption from relevant jurisdictional requirements (e.g. under licencing or other regulations).

Oxiana is currently applying to the Essential Services Commission of South Australia for an exemption from the requirement to be licensed to carry on operations in the electrical supply industry under section 15 of the *Electricity Act 1996 (SA)*.

Clause 11 Information

Clause 11 of the Guidelines requires an applicant for a specific exemption to include certain information in its application. That information is summarised below.

Clause 11.1

Whether they are seeking (or have received) exemptions from other codes or regulations governing the ownership or operation of networks, including details of those exemptions or applications for exemptions.

Mr Paul Dunn
AER

6

7 May 2007

As noted above, Oxiana has applied to ESCOSA for an exemption from the requirement to be licensed to carry on operations in the electrical supply industry under section 15 of the *Electricity Act 1996 (SA)*. A copy of Oxiana's letter to ESCOSA is attached.

Clause 11.2

Whether they are seeking exemption from the requirement to register as an NSP or just from the application of chapter 5.

Oxiana seeks an exemption from the requirement to register as a NSP.

Clause 11.3

The precise network to be subject to the exemption, including circuit diagrams if necessary.

The Relevant Network is described above. Oxiana will provide diagrams for the network as requested.

Clause 11.4

What discussions have taken place between the applicant and the NSP to which the relevant network will be connected.

The technical matters agreed between BHPB and Oxiana are noted above. The interface between the Relevant Network and BHPB's network will be recorded in a commercial agreement currently being negotiated between BHPB and Oxiana. BHPB is aware that Oxiana is seeking an exemption from the requirement to be registered.

Clause 11.5

What arrangements are proposed for setting network charges for parties using the network.

As noted above, Oxiana will be the sole user of the Relevant Network.

Clause 11.6

What arrangements are proposed for energy charges.

As noted above, Oxiana will not be on selling the electricity transported through the Relevant Network.

Further Clarification

Maps showing the general layout of the mine and village are enclosed for your information. If you require more specific technical diagrams or details please let us know.

If you require any further information please contact Anthony Groom on (08) 8239 7124 or Sarah Henderson on (08) 8239 7152.

Yours faithfully

Johnson Winter & Slattery