

APPLICATION FOR INDIVIDUAL EXEMPTION 3 JUNE 2020

INTRODUCTION

This is an application for an individual exemption from the requirement under the National Energy Retail Law to hold an electricity retailer authorisation.

The applicant is Transurban Operations Pty Ltd (**Transurban Operations**).

Transurban Operations is a wholly owned subsidiary of Transurban Limited, and a member of the Transurban group.

Transurban is one of the world's largest toll-road operators. Listed on the Australian Securities Exchange in 1996, Transurban was established in Melbourne with the development of CityLink, one of the city's major transport corridors. Today Transurban has 17 toll roads in Sydney, Melbourne and Brisbane, Australia, as well as in the Greater Washington Area and Montreal in North America. It also has 7 projects underway that will offer major improvements in the way motorists move around their cities.

Transurban Operations' application concerns the supply of electricity to the M4 Motorway and the WestConnex M5 in Sydney, New South Wales.

In particular:

- Transurban Operations has entered into long term power purchase agreements with the owners or operators of wind farms in New South Wales (**PPAs**).
- Transurban Operations proposes to enter into retail electricity agreements with authorised electricity retailers for the supply of electricity to the M4 Motorway and the WestConnex M5 (**Retail Electricity Agreements**).
- Transurban Operations proposes to enter into an agreement with WCX PHT Pty Ltd (**WCX**) under which Transurban Operations will on-sell to WCX the electricity that Transurban Operations has purchased under the Retail Electricity Agreements and also deliver large-scale generation certificates under the *Renewable Energy (Electricity) Act 2000* (Cth) and other nominated green products for each of the M4 Motorway and the WestConnex M5 (**On-Sale Agreement**). The On-Sale Agreement will be on terms which in effect will involve Transurban Operations passing through to WCX its rights and obligations under the PPAs and the Retail Electricity Agreements.
- WCX is the holding company of each of WCX M4 PT Pty Ltd (**M4Co**) and WCX M5 PT Pty Ltd (**M5Co**).
- M4Co is the concessionaire for the M4 Motorway.
- M5Co is the concessionaire for the WestConnex M5.
- WCX proposes to on-sell to M4Co and M5Co the electricity that WCX has purchased from Transurban Operations under the On-Sale Agreement, for the M4 Motorway and the WestConnex M5 respectively.

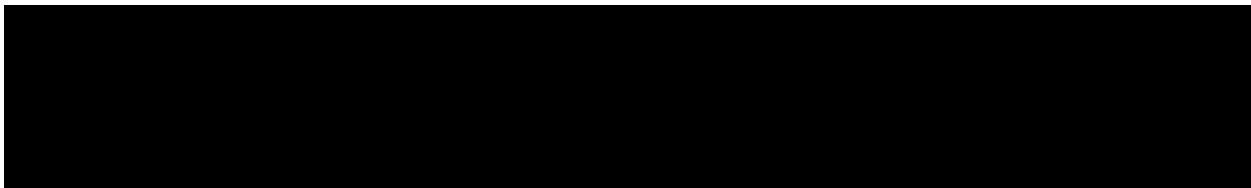
GENERAL INFORMATION REQUIREMENTS

1. **Legal name**
Transurban Operations Pty Ltd.
2. **Trading name**
Transurban Operations does not have a different trading name.
3. **Australian Business Number and Australian Company Number**
ABN 79 108 003 489.
ACN 108 003 489.

4. **Registered postal address**

Level 31, Tower Five, Collins Square
 727 Collins Street
 Docklands Victoria 3008

5. **Contact person**



6. **Why the Applicant is seeking an individual exemption, and why the Applicant believes that an exemption rather than a retailer authorisation is appropriate**

Transurban Operations will be selling electricity to one customer only, WCX.

Transurban Operations will be selling electricity at two sites only.

WCX is owned by Sydney Transport Partners (51%) and by the State of New South Wales (49%). Sydney Transport Partners is a consortium of four market-leading companies from the infrastructure and superannuation sectors: Transurban, AustralianSuper, Canada Pension Plan Investment Board and Tawreed Investments, a wholly owned subsidiary of the Abu Dhabi Investment Authority.

As such, WCX is sufficiently sophisticated and capable of negotiating the terms of the On-Sale Agreement.

Transurban Operations' behaviour in selling electricity to WCX therefore can be appropriately managed by the terms of the On-Sale Agreement, by the conditions on an individual exemption and by the requirements of other laws, rather than by requiring Transurban Operations to obtain a retailer authorisation.

7. **Site addresses**

The two sites at which Transurban Operations will be selling electricity are the M4 Motorway and the WestConnex M5 in Sydney, New South Wales, each of which is shown in the following map (as New M4 and M5 West respectively):



8. **The Applicant's primary activity**

Transurban Operations' only business activity is entering into long term power purchase agreements, retail electricity agreements and certain on-sale agreements with respect to the Transurban group, exercising its rights under those agreements and performing its obligations under them.

9. **Form of energy**

Electricity.

10. Other viable energy supply arrangements

Transurban Operations is not establishing, and has not established, energy supply in any area where there are no other viable energy supply arrangements available.

11. Date from when the Applicant intends to commence selling electricity

[REDACTED]

12. Mailing address for premises at the Applicant's site

WCX's mailing address is:

[REDACTED]

13. Experience in selling electricity.

The Applicant itself does not have any experience selling electricity and nor is there such experience elsewhere in the Transurban group.

14. Current and former electricity exemptions, retail licences or retailer authorisation

Nil.

15. Arrangements if the Applicant can no longer continue selling electricity

Each of M4Co and M5Co is able to enter into a retail electricity agreement with an authorised electricity retailer.

PARTICULARS RELATING TO THE NATURE AND SCOPE OF THE PROPOSED OPERATIONS**16. Will your customers be your tenants? If so, are they residential or commercial/retail**

No.

17. Are you providing other services (for example, accommodation/leasing of property) to persons on the site who you intend to sell energy to? Or will your only commercial relationship to persons on the site be the sale of energy? If you are providing other services, please specify what these services are, and the contractual or leasing arrangements under which these services are being provided.

Transurban Operations will not be providing any services other than those it provides to WCX under the On-Sale Agreement.

18. What is the total number of customers at the site? Please provide a breakdown between residential and business customers (and whether they are small or large as defined for the jurisdiction in which you intend to operate).

Transurban Operations will have one customer only, WCX.

19. Will you be on-selling energy (that is, selling energy purchased from an authorised retailer) or purchasing it directly from the wholesale market?

Transurban Operations will be on-selling electricity.

20. What is the estimated aggregate annual amount of energy you are likely to sell (kilowatt hours or megawatt hours for electricity and mega joules or gigajoules for gas) and the average expected consumption of customers for each type of customer you service (that is, residential customers and retail or commercial customers)?

Likely consumption at the M4 Motorway is [REDACTED]. Likely consumption at the WestConnex M5 is [REDACTED]. Therefore the estimated aggregate amount of electricity that Transurban Operations will sell is [REDACTED].

21. Will your customers be wholly contained within a site owned, controlled or operated by you? (For the purposes of this question, a body corporate may be taken to 'operate' premises it oversees).

No.

22. **Will each premises/dwelling be separately metered? If the application is for a new development or a redevelopment and customers will not be separately metered, please explain why not. For unmetered supply, state how you will determine energy charges?**

Each site will be separately metered.

23. **Will meters allow your customers to change retailers (i.e. not buy their energy from you) as required by the AER's Network Guideline?**

Yes.

24. **In what form and how often will customers be billed? Will you be issuing bills yourself or through a billing agent?**

Under the On-Sale Agreement, Transurban Operations will bill WCX monthly. Beyond including the single amount payable by WCX, bills will include a breakdown of all relevant cost amounts and an allocation of those costs attributable to the M4 Motorway and the WestConnex M5 respectively. Transurban Operations will issue bills itself.

25. **What dispute resolution procedures do you intend to put in place to deal with energy related complaints and issues? Confirm whether it is consistent with the Australian Standards: AS/NZS 10002:2014 Customer Satisfaction – Guidelines.**

The On-Sale Agreement will include conventional procedures for resolving disputes, including provision for good faith negotiations, possible expert determination and possible arbitration.

26. **Please provide any further information that you consider would assist us to assess your application.**

26.1 Class R5 exemption not applicable

Transurban Operations does not qualify for the class R5 exemption.

In particular:

- The class R5 exemption applies in favour of persons selling metered energy to large customers.
- The term "large customer" is defined in the Guideline as follows:

large customer means a business customer who consumes energy at business premises at or above the upper consumption threshold, as defined by the relevant jurisdiction. If no threshold is defined – 100 megawatt hours per annum for electricity or 1 terajoule per annum for gas, as per the National Energy Retail Regulations SA 2012.

- To be a large customer, therefore, a person must be someone who "consumes" energy at the relevant premises; the person must be an energy consumer or, put another way, the person must use the energy.
- Transurban Operations' customer will be WCX.
- WCX itself does not or will consume any electricity. Rather, it will on-sell the electricity it has purchased from Transurban Operations to M4Co and M5Co.¹ It is M4Co and M5Co that consume or will consume electricity.
- Therefore WCX is not a large customer.

26.2 Policy favours the grant of an individual exemption

It is for [REDACTED] reasons that it has been decided that Transurban Operations should sell electricity to WCX for WCX to on-sell to M4Co and M5Co, rather than have Transurban Operations sell electricity directly to M4Co and M5Co.

If instead Transurban Operations were to sell electricity directly to M4Co and M5Co, Transurban Operations would qualify for the class R5 exemption since, with likely consumption of [REDACTED] and [REDACTED] respectively, each of M4Co and M5Co is a large customer.

Given that WCX is the holding company of M4Co and M5Co, it should suffice from a policy viewpoint for WCX to have the same limited protections under an individual exemption that M4Co and M5Co instead would have if Transurban Operations were to sell them electricity under the class R5 exemption.

¹ That on-sale will be exempt under the class D9 exemption.

26.3 Management of Transurban Operations' behaviour

In deciding whether or not to grant Transurban Operations' application for an individual exemption, one particularly relevant exempt selling factor for the Australian Energy Regulator (**AER**) to take into account is the following factor provided for in section 115(1)(e) of the National Energy Retail Law:

- (e) *the extent to which the imposition of conditions on an exemption, or to which the requirements of other laws, would allow appropriate obligations to govern the applicant's behaviour rather than requiring the applicant to obtain a retailer authorisation;*

Transurban Operations will have no difficulty if the AER decides to impose conditions on its individual exemption corresponding to those that apply under the class R5 exemption, namely conditions 1, 11, 14 and 21.

Transurban Operations' behaviour in selling electricity to WCX will in any event be regulated by other laws including the Australian Consumer Law.

WCX has also negotiated for the following protections in the On-Sale Agreement:

