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15 JUN 2011

Dear Mr Dunn

VICTORIAN DESALINATION PROJECT – APPLICATION FOR EXEMPTION FROM REQUIREMENT TO REGISTER AS A NETWORK SERVICE PROVIDER

I, as the Secretary to the Department of Sustainability and Environment, a body corporate created under section 6 of the *Conservation, Forests and Lands Act 1987* (Vic), request that, in accordance with section 13 of the *National Electricity (Victoria) Law*, the State of Victoria, Melbourne Water Corporation and I (each an Applicant and together the Applicants) be granted an exemption from:

- a) the requirement to be registered as a Network Service Provider under section 11 of the *National Electricity (Victoria) Law*; and
- b) the operation of Chapter 5 of the *National Electricity Rules*,

in relation to the State's proposed new electricity connection line being constructed between the Cranbourne Terminal Station in Cranbourne (CBTS) and the connection point at the desalination plant being constructed in Wonthaggi. For the purpose of this document, this application will be referred to as the Exemption Application.

For the reasons set out below, I submit that, having regard to the requirements of the Australian Energy Retailer's (AER) "Guidelines for Exemption from the Requirement to register as a Network Service Provider", it is appropriate that the Applicants be granted the exemptions requested in this Exemption Application.

By way of clarification, I make this Exemption Application, and seek the exemptions requested, to the extent necessary by reason of:

- a) each Applicant's involvement in or relationship with the project, including whether through its own conduct or that of its agents and contractors by operation of any law or regulation, any contract or other instrument or by reason of it undertaking its functions, responsibilities or obligations pursuant to any such law, regulation, contract or instrument; or

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- b) each Applicant's undertaking the project through the activities detailed or described in this Exemption Application,

and where such involvement or relationship falls within the scope of this Exemption Application.

You will note that this application has been signed for and on behalf of Melbourne Water, and I have authority to make this application on Melbourne Water's behalf. I am also making this application on behalf of myself and the State (which I have the authority to do).

BACKGROUND

The Project

The State entered into a contract with AquaSure Pty Ltd (ACN 135 956 393) on 30 July 2009 under which AquaSure agrees to design, construct, commission, operate and maintain the project for a 27-year period. The Desalination Project (Project) will have the capacity to produce approximately 150 GL of drinking water per year can be expanded to a capacity of 200 GL/year.

AquaSure has contracted the design and construction of the Project (including a high voltage alternating current (HVAC) underground connection and transmission system (ETCA) to connect the desalination plant to the Cranbourne Terminal Station (CBTS) to a joint venture between Thiess Pty Ltd and Degrémont Pty Ltd (a Suez Environnement company) (TDJV).

There is no sufficient existing electricity supply at the Wonthaggi site where the desalination plant will be located. Accordingly, AquaSure has undertaken to procure the construction of the ETCA.

The ETCA is being designed, constructed and commissioned by AquaSure and is expected to:

- a) be connected at the CBTS (with the connection services to be provided by the local Network Service Provider, SPI PowerNet Pty Ltd (ABN 78 079 798 173) (SPI));
- b) be a dedicated supply to the desalination plant and the associated booster pump station (located part way along the water transfer pipeline used to transfer desalinated water from the desalination plant to the Melbourne Water Network) and not provide any supplies to the local network (the transmission cable will not have an "n - 1" redundancy, but other components of it will);
- c) provide 165MW maximum capacity for the desalination plant and booster pump station (electrical losses within the ETCA would be in addition to this capacity);
- d) have a fully underground cable system located in one trench connecting the CBTS and the connection point(s) at the desalination plant and the booster pump station; and
- e) have capacity to supply electricity to the desalination plant and the booster pump station if the desalination plant's capacity were upgraded to 200 GL/year.

The State has the obligation under the Project Deed between the State and AquaSure to nominate a suitably qualified and registered transmission assets operator to carry out certain specified operational activities in relation to the ETCA from the energisation which could take place as early as September 2011 to the date of handover of certain elements of the ETCA to the State. The handover date is not to be before June 2012. The State has nominated SPI as the transmission assets operator.

AquaSure has nominated its design and construction contractor as the party with whom that agreement is to be entered into. SPI holds all relevant licences and authorisation in relation to assets like the ETCA.

After the handover date, the State proposes to licence for full value full economic ownership of the relevant components of the ETCA to SPI and to procure a long-term operation agreement between SPI and AquaSure in accordance with the Project Deed. SPI has executed a Deed Poll in favour of the State to that effect.

It is noted that the relevant assets are dedicated solely for AquaSure.

The design, review, inspection and testing of the ETCA by AquaSure is subject to review by an Independent Reviewer and Environmental Auditor and to independent design review.

In addition, the process of constructing the project (including the ETCA) has involved a comprehensive assessment of the project under the *Environmental Effects Act 1978* (Vic), approval of the project under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) and the approval for the desalination plant under the *Environment Protection Act 1970* (Vic). Construction and operation will be in accordance with relevant requirements and approvals.

The ETCA – Location

A plan which sets out the location of the CBTS, ETCA and desalination plant is in Attachment 1 to this document. These arrangements are generally described below.

Commencing from the desalination plant site, the underground electricity cable system will be co-located with the project's water transfer pipeline until it diverts for approximately eight kilometres along an existing electricity easement in order to connect to the CBTS.

Two areas of land will be required along the route of the co-located pipeline and electricity cable for compensation stations.

In order to permit the construction, operation and maintenance of the ETCA on the relevant land, I have:

- a) acquired easements for and on behalf of Melbourne Water in respect of the land where the water transfer pipeline and the underground electricity cable system are to be co-located (combined easement); and

- b) acquired easements for and on behalf of Melbourne Water in respect of the land where the remainder of the underground electricity cable system is to be located (Cranbourne extension easement).

The exception to these arrangements is where the co-located water transfer pipeline and electricity cable runs through land I have acquired for a compensation station, a surge vessel and the booster pump station. As I have acquired these areas of land, an easement will not be acquired for the water transfer pipeline and electricity cable on that land. I have also acquired the desalination plant site.

The Applicants

I seek an exemption for myself, the State and Melbourne Water in respect of the activities set out below.

The Secretary and the State

I seek an exemption for myself and for the State, from:

- a) the requirement to register as a Network Service Provider in respect of the activities of owning, controlling or operating a transmission system; and
- b) the operation of Chapter 5 of the National Electricity Rules including the requirements under section 5.6.6 (if applicable).

AquaSure is the entity which will be installing any electric lines, for or on behalf of the State or Melbourne Water.

Melbourne Water

The State has entered into an arrangement with Melbourne Water pursuant to which Melbourne Water may be involved in certain aspects of the project. For example, in undertaking some of the actions outlined in the section entitled – “The ETCA – Location” above, I act under powers delegated to me by Melbourne Water under the *Water Act 1989* (Vic).

For this reason, although I believe an exemption may not be required, to avoid any technical issues regarding compliance with the *National Electricity Rules*, I am seeking an exemption for Melbourne Water in respect of the same activities as the State, namely:

- a) from the requirement to register as a Network Service Provider in respect of the activities of owning, controlling or operating a transmission system; and
- b) from the operation of Chapter 5 of the National Electricity Rules including the requirements under section 5.6.6 (if applicable).

Relevant Network

The network (Relevant Network) to be constructed to provide the connection to the Victorian Transmission Network, and in respect of which I am seeking an exemption, is the network comprising the ETCA.

The State has negotiated, and AquaSure has executed, agreements to connect the ETCA to SPI's connection facilities at CBTS and to receive shared network services from the Australian Energy Market Operator (AEMO). These agreements are a Connection Services Agreement with SPI and a Use of System Agreement with AEMO.

In addition, provision is being made to ensure that the Victorian Electricity Transmission Network, and SPI's connection facilities at CBTS are not adversely affected by the connection of the project. For this purpose, SPI has constructed connection assets including:

- a) 220kV primary plant required to complete 220kV connection facilities at CBTS, including circuit breakers, remote operated isolators, capacitor voltage dividers, related connections and secondary systems; and
- b) (with the cable protection, provided by AquaSure) the interfaces with the SPI CBTS connection facilities and the shared Transmission Network protection schemes,

(together, the **SPI Connection Works**).

Please note that the electricity supplied at the connection point at CBTS will be purchased by AquaSure from AGL Sales Pty Limited who is a Registered Participant under the *National Electricity Rules*. Electricity will not be sold to third parties.

PRINCIPLES TO BE APPLIED BY THE AER

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

Under section 13 of the *National Electricity (Victoria) Law* and 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 may have regard to the Guidelines (rule 2.5.1(d)). 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.

I note that section 7 of the Guidelines provides that:

- a) where an applicant satisfies the AER that the principles in sections 6.1 to 6.4 have been met, exemption from the requirements of Chapter 5 will "generally be granted"; and

- b) if all principles are met to the satisfaction of the AER, full exemption will generally be allowed.

Section 6.1

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

The Relevant Network will be wholly contained within premises owned and/or controlled by the Applicants. The relevant premises and the Applicants' ownership or control of the premises can be described as follows:

- a) the majority of the underground electricity cable system will be constructed on land that is subject to the combined easement. The remainder will be constructed on land that is subject to the Cranbourne extension easement, and that I have acquired for the desalination plant or land that I have acquired for a compensation station, a surge vessel or booster pump station;
- b) AquaSure has received a land licence that grants AquaSure the full extent of the rights available under the combined easement and the Cranbourne extension easement to construct the underground electricity cable;
- c) AquaSure has received a land licence that grants AquaSure the right to construct the underground electricity cable on land that I have acquired for a compensation station, a surge vessel and the booster pump station;
- d) AquaSure has received a land licence to construct the reactive compensation stations on the compensation station land;
- e) AquaSure has been granted a lease of the desalination plant site; and
- f) each of the licences and the lease to AquaSure (as referred to above) will permit AquaSure to construct, and if necessary operate, the Relevant Network until AquaSure hands over the operation of the Relevant Network to the transmission assets operator. This operator will be given equivalent rights to those referred to above to in order to operate and maintain the ETCA.

Section 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 which the State and AquaSure will be engaging in as part of the project is the construction, commission, operation and maintenance of the desalination plant and the production of desalinated drinking water. The construction and operation of the Relevant Network is incidental to these activities.

Further, as set out above, the purpose of the Relevant Network is to supply electricity to the desalination plant for commissioning and operational purposes. No electricity is intended to be supplied to third parties.

Section 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 *National Electricity (Victoria) Law*, the *National Electricity Rules*, the *Electricity Industry Act 2000* (Vic) and the *Electricity Safety Act 1998* (Vic).

While I propose to seek an exemption for myself, the State and Melbourne Water from the requirement to hold a licence under the Electricity Industry Act, the State and Melbourne Water and I will remain subject to the provisions of the Electricity Safety Act regulating safety and technical matters.

In addition to the above regulatory controls, the State has negotiated and AquaSure has executed:

- a) a Use of System Agreement with AEMO, pursuant to which AEMO will provide shared network services and AquaSure will comply with certain technical and safety requirements, including the requirement for AquaSure to comply with all requirements of the National Electricity Rules relating to the ETCA and desalination plant which would be applicable to it as if AquaSure was a Registered Participant under the National Electricity Rules, and all requirements of the Victorian System Code applicable to it; and
- b) a Connection Services Agreement with SPI, pursuant to which SPI will provide connection services and AquaSure will comply with technical and operational requirements including complying with the National Electricity Rules that relate to the operation and maintenance of AquaSure's connection facilities as if AquaSure was a Registered Participant under the National Electricity Rules.

I submit that the requirements for AquaSure to comply with all requirements of the *National Electricity Rules* as outlined in section 6.3 of this Exemption Application will be adequate to ensure that the Relevant Network is operated in a safe manner and does not adversely affect the national electricity grid. While AquaSure remains responsible under the Use of System Agreement and the Connection Services Agreement, TDJV has certain obligations to AquaSure and the transmission assets operator may also assume certain relevant obligations to TDJV. In addition, after the handover date the longer-term electricity operator will accept certain obligations to AquaSure.

Section 6.4

The granting of the exemption should not unduly limit access of parties to the national electricity market contrary to the market objectives.

The Relevant Network will be a dedicated line serving only the desalination plant and not servicing third parties. Further, all electricity transmitted through the Relevant Network will be used and paid for by AquaSure.

In light of the above, I consider 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 National Energy Market of promoting a reliable, efficient, safe and secure electricity system. Further, I believe the ETCA is a dedicated line which would fall outside the scope of the identifier's National Market Objectives.

Section 6.5

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

Following extensive negotiations, the State and AquaSure have agreed commercial arrangements for the approach to charging for the ETCA that are detailed in the project documents. As mentioned in Section 6.4 above, the ETCA is being used for project-specific purposes instead of the market network.

In light of the above, I submit that the requirement that the charging regime balance the needs of the network provider and the end user is not relevant to the Relevant Network or this exemption application.

Section 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.

As explained above, the Relevant Network will be a dedicated service for AquaSure and the State. The State and AquaSure have concluded commercial arrangements in relation to the energy and other charges applicable to the Relevant Network. Further, AquaSure has entered into agreements with a registered electricity retailer to supply electricity to the connection point at Cranbourne. Those arrangements do not include on-selling of energy to third parties.

In light of the above, I submit that this requirement is not relevant to the Relevant Network or this exemption application.

Section 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.

I submit that this requirement is not relevant to the Relevant Network or this exemption application.

Firstly, I note that the State and AquaSure have, following extensive negotiations and documentation of the project arrangements, agreed their own dispute resolution arrangements for the project (including disputes relating to the Relevant Network). As such, I believe that the dispute resolution arrangements outlined in Chapter 8 of the Code are not applicable to this private asset.

Secondly, as set out above, the State expects a registered Network Service Provider to operate the ETCA from as early as September 2011 (Date of Energisation). During this period, access to dispute resolution procedures for disputes between the Network Service Provider and the end-user (AquaSure) will be unnecessary.

Section 6.8

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

As explained above, I have applied to the Victorian Governor-In-Council for certain exemptions for myself, the State and Melbourne Water under the Electricity Safety Act and the Electricity Industry Act.

INFORMATION TO BE PROVIDED UNDER SECTION 11 OF THE GUIDELINES

Section 11 of the Guidelines requires an applicant for an exemption to include certain information in its application. That information is provided below.

Section 11.1

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

As noted in section 6.8 above, I have applied to the Victorian Governor-In-Council for an exemption for myself, the State and Melbourne Water from the requirement to be licensed under the Electricity Safety Act and the Electricity Industry Act.

Section 11.2

Whether the applicant is seeking exemption from the requirement to register as a National Service Provider or just from the application of chapter 5.

I am seeking an exemption for the Applicants from the requirement to register as a Network Service Provider and from the operation of Chapter 5 of the *National Electricity Rules*.

Section 11.3

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

The Relevant Network is described above. AquaSure has submitted its designs for the ETCA. If requested the State can provide design documents. A line diagram is included as Attachment.

Section 11.4

What discussions have taken place between the applicant and the National Service Provider to which the relevant network will be connected?

As discussed above, the State has held negotiations with local Network Service Providers, AEMO and SPI to connect the ETCA to SPI's electricity transmission network at Cranbourne and to receive shared network services from AEMO. The State has also submitted formal connection applications to both AEMO and SPI under Chapter 5 of the *National Electricity Rules*.

Subsequently, AEMO and SPI executed agreements (Use of System Agreement and Connection Services Agreement, respectively) with AquaSure. Please refer to the further details provided in relation to these agreements in section 6.3 above.

Section 11.5

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

As noted above, AquaSure will be the sole user of the Relevant Network. Once an electricity operator is selected, the State and/or AquaSure will negotiate fees payable by AquaSure to the transmission asset operator.

Section 11.6

What arrangements are proposed for energy charges?

AquaSure will purchase electricity from AGL Sales Pty Limited, an existing registered electricity retailer. These arrangements do not include or constitute the sale of electricity by the State or AquaSure. AquaSure has negotiated the agreements for the supply of electricity with AGL Sales Pty Limited and agreed energy charges are part of those arrangements. As explained above, electricity will only be purchased by AquaSure and will not be sold to any other party. The contract between the State and AquaSure includes a locked-in price for electricity and renewable energy certificates.

Further clarification

As mentioned above in this application, plans showing the proposed layout of the desalination plant and the Relevant Network are attached for your information.

OTHER MATTERS

I understand that AquaSure (for itself and each of Thiess Pty Ltd and Degrémont Pty Ltd) has made application to the AER seeking either an acknowledgement that none of them require any licence or in the alternative that each of them be granted an exemption. I understand that the AER has confirmed to AquaSure, by a letter of 15 April 2011 to the effect the AER considers that none of AquaSure, Thiess Pty Ltd or Degrémont Pty Ltd are required to register as a network service provider in respect of the period between the date the ETCA is energised and the date of those assets or some of those assets are handed over by AquaSure.

The submission of the State is quite separate and independent from the application of AquaSure, Thiess Pty Ltd and Degrémont Pty Ltd and the State is of the view that the matters set out in this letter are complete and accurate. AquaSure will have full control of the relevant ETCA until the handover date and thereafter AquaSure will remain as the counterparty and primarily obliged under the Use of Systems Agreement and Connection Services Agreement with the relevant ETCA intended to be owned and operated by a third-party operator under a proposed operation agreement with AquaSure. That operator will acquire for full value a licence of the ETCA from the State.

Yours sincerely


for **Greg Wilson**
Secretary

Attachment 1 – Plan of Relevant Network and Desalination Plant
Attachment 2 – Single Line Diagram



Legend

- Cranbourne Extension Easement Land
- Combined Easement Land
- Transfer Pipeline Easement Land
- Transfer Pipeline Pipe Track Construction Land

- Existing Main
- Highway
- Major Road

- Locality
- Major Watercourse
- Lake
- Local Government Boundary

1:225,000
0 1.25 2.5 5 7.5 10
Kilometres (at A3)

Map Projection: Transverse Mercator
Horizontal Datum: Geocentric Datum of Australia 1994
Grid: Map Grid of Australia, Zone 55



Department of Sustainability and Environment
The Victorian Desalination Project
Project Land

Revision | A
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