21 February 2012

Mr John Skinner
Director
AER
GPO Box 3648
SYDNEY NSW 2001

By email: john.skinner@aer.gov.au

Dear Mr Skinner

Application for exemption from ringfencing obligations under National Gas Law
Dawson Valley Pipeline

I refer to previous correspondence and enclose an application under section 146 of the *National Gas Law* for an exemption from the following minimum ring fencing requirements:

1. section 139 (prohibition on carrying on related business);
2. section 140 (segregation of marketing staff etc); and
3. section 141 (accounts)

in relation to the Dawson Valley Pipeline ("**DVP**").

The DVP is owned by the Meridian SeamGas Joint Venture and operated by WestSide Corporation.

This application is made by each of the participants in the Joint Venture and WestSide Corporation. I confirm that WestSide Corporation is authorised to lodge this application on behalf of the participants.

I also attach a submission demonstrating that the requirements of Rule 31 of the *National Gas Rules* are satisfied.

If you wish to discuss this letter, please contact Mr Garth Borgelt, Commercial Manager on 07 3020 0915 or by email at garth.borgelt@westsidecorporation.com

Yours faithfully

[SIGNED – JULIE BEEBY]

Julie Beeby
Chief Executive Officer

DAWSON VALLEY PIPELINE – APPLICATION FOR EXEMPTION FROM THE MINIMUM RINGFENCING REQUIREMENTS IMPOSED BY SECTIONS 139, 140 AND 141 OF THE LAW

APPLICATION

1. **WestSide CSG A Pty Ltd** ACN 138 989 358, **WestSide CSG D Pty Ltd** ACN 140 474 362 and **Mitsui E&P Australia Pty Ltd** ACN 108 437 529 (**"JV Participants**") are the participants in the Meridian SeamGas JV ("**JV**" or "**Meridian JV**"), which owns the Dawson Valley Pipeline ("**DVP**").

2. **WestSide Corporation Limited** ACN 117 145 516 ("**WestSide Corporation**") is the operator of the JV, including being the operator of the DVP.

3. For the purposes of this application, it is assumed that each of the JV Participants and WestSide Corporation are Service Providers.

4. Each of the JV Participants and WestSide Corporation apply for an exemption under section 146 of the National Gas Law ("**Law**") from the minimum ringfencing requirements under the Law.

The attached supporting submission is structured as follows:

- **A.** Background information on the DVP, the JV Participants and WestSide Corporation (sections 1-3).
- **B.** Application by the JV Participants for exemption from compliance with section 139, which prohibits them from carrying on a "related business" (section 4).
- **C.** Application by JV Participants and WestSide Corporation for exemption from compliance with section 140 which requires separation of "marketing staff" (section 5).
- **D.** Application for exemption from compliance with section 141 which requires maintenance of accounts (section 6).
- **E.** Technical information regarding the DVP including maps (section 7).

1. BACKGROUND – DAWSON VALLEY PIPELINE AND THE MERIDIAN SEAMGAS JV

The Meridian SeamGas Joint Venture

1.1. The DVP is owned by the Meridian JV, constituted by:

- WestSide CSG A Pty Ltd ("**WestSide A**") – 25.5%%
- WestSide CSG D Pty Ltd ("**WestSide D**") – 25.5%
- Mitsui E&P Australia Pty Ltd ("**MEPAU**") – 49%

1.2. The JV is engaged in the business of gas exploration and production in the Meridian SeamGas fields. It is also party to pre-existing contracts with customers for the supply of gas at downstream delivery points.

1.3. In July 2010, WestSide A, WestSide D and MEPAU acquired the Meridian SeamGas fields (then known as the Dawson CSG fields) from Anglo Coal (Dawson) Limited, Anglo Coal (Dawson Management) Pty Limited and Mitsui Moura Investment Pty Ltd. The WestSide entities acquired the 51% interest held by the two Anglo companies; the 49% interest held by Mitsui Moura was assigned to MEPAU. Following this acquisition, the fields were renamed the Meridian SeamGas fields.

1.4. The JV's assets comprise the DVP (PPL 26) together with the "**ML Pipeline**" (PPL 61), a petroleum lease (PL 94), gas rights in mining leases under a co-development agreement, and gas processing and compression infrastructure. Gas produced by the JV is delivered to the Queensland Nitrates Plant ("**QNP**") or into the Queensland gas infrastructure network through an interconnection with the Wallumbilla to Gladstone Pipeline (also known as the Queensland Gas Pipeline) ("**QGP**").

1.5. WestSide Corporation has been appointed the operator of the Meridian JV, and is responsible for all activities required for the operation of the JV and its assets, except for the promotion of gas for LNG export which is undertaken by MEPAU. The functions performed by WestSide Corporation include:

- Representing the JV in negotiating commercial agreements including for sale of gas produced by the JV
- Managing the JV, including preparation of accounts and management reports
- Operating the assets of the JV, including production assets and the DVP.

The Dawson Valley Pipeline and the Meridian SeamGas fields

1.6. The Meridian SeamGas fields are approximately 160 kilometres west of Gladstone in Queensland's Bowen Basin.

1.7. The DVP starts at the Dawson River Central Gas Processing facility and has 2 delivery points – the QNP and the QGP. The DVP is approximately 47 km long, 168mm (6") diameter, with a

3.7km long, 114mm (4”) off-take to the QNP facility. In its current configuration and based on the originally tested MAOP and to meet contractual delivery pressure requirements on the QGP, the DVP’s current capacity is approximately 21TJ/day. For operational reasons the capacity is deemed to be 18TJ/day under the current conditions. Maps of the DVP and its location are attached in section 7.

1.8. The ML Pipeline (PPL 61) runs from the Hillview Compressor Station to the QGP via the QNP. This pipeline was previously known as the Moura Pipeline. It is approximately 21 km long, and 220mm (8”) diameter, with a short offtake to QNP.

1.9. The DVP and the ML Pipeline both interconnect with the QGP at the same location. While there were originally 2 separate receipt points on the QGP, the configuration of the QGP was changed by the owner of the QGP (Jemena) before the acquisition of the DVP by the Meridian JV. The result of this change is that there is effectively a single receipt point. Gas delivered into the QGP from the DVP and the ML Pipeline is not separately measured and metering data does not differentiate between gas delivered through the two pipelines.

1.10. All gas transported through the DVP and the ML Pipeline is owned by the JV, and comes from three sources:

- **(a)** gas produced by the JV from its own activities on PL94;
- **(b)** gas produced under arrangements with the Molopo JV which subleases part of PL94 (see paragraphs 1.11 - 1.14);
- **(c)** gas produced under a co-development agreement with the holders of mining leases which adjoin PL94 (see paragraph 1.16).

1.11. The Meridian JV has subleased part of PL 94 to a joint venture (“**ATP564PJV**” or “**Molopo JV**”) comprising MEPAU (32.88%) and two subsidiaries of Molopo Energy Limited, Molopo (Queensland) LLC ACN 099 360 362 and Lowell Petroleum N.L. ABN 37 055 269 040.

1.12. Raw gas extracted by the Molopo JV is delivered through the Molopo JV’s network of low pressure gathering lines to the Moura compressor and processing facility (owned by the Meridian JV). The gas is processed, compressed and measured by the Meridian JV. A “gas processing fee” is paid by Molopo JV for this service. The Meridian JV then purchases the processed gas at the outlet of the processing facility.

1.13. A small quantity [confidential]TJ/day is currently processed for and purchased from Molopo JV under this arrangement.

1.14. [confidential]

1.15. The Meridian JV is also party to a Co-Development Agreement under which the JV de-gasses coal located on Mining Leases adjoining PL 94. The holders of the Mining Leases are Anglo Coal (Dawson) Limited, Anglo Coal (Dawson South) Pty Limited and Mitsui Moura Investment Pty Limited. The Meridian JV holds the rights to produce and own gas within this Co-Development Area. [confidential] All gas produced under this Co-Development Agreement is transported through the ML Pipeline.

1.16. At least during the time the DVP has been owned by the JV, neither the Molopo JV or the holders of the Mining Leases referred to in paragraph 1.16, have sought or enquired about a gas transportation service.

1.17. The DVP is currently operating significantly below its capacity. The JV's total production is approximately [confidential]TJ/day, and this total quantity is transported through the DVP and the ML Pipeline. A fairly typical example of a throughput on a day is from 5 October 2011, when approximately [confidential]TJ was produced, of which approximately 35% [confidential] was transported, at least in part, through the DVP:

- Moura – [confidential] approximately 20% of total volumes – transported through DVP (comprises gas produced by the JV on PL94 and gas processed and purchased under the arrangements with the Molopo JV);
- Dawson – [confidential] approximately 15% – transported through DVP (produced by the JV on PL94);
- Hillview – [confidential] approximately 60% – transported through the ML Pipeline (produced under the Co-Development Agreement).

1.18. Of this total quantity [confidential], approximately 98% [confidential] was delivered to QNP and approximately 2% [confidential] was delivered into the QGP. While the quantities and relativities change slightly from day to day, the quantities described in paragraph 1.18 are a reasonable example of the quantities of gas currently transported through the DVP and the ML Pipeline.

1.19. The JV is operating under a production drilling and workover program which aims to increase gas output toward 25TJ/day by late 2012. [confidential]

1.20. [confidential]

Gas Sales Contracts on the DVP

1.21. The JV has 2 contracts in place, both with AGL Sales (Queensland) Pty Limited ("**AGL**"). Under these agreements, the JV sells gas to AGL at nominated delivery points, being either the QNP facility or the inlet point on the QGP. [confidential] Both of these contracts pre-dated the establishment of the Meridian JV and were assigned to the JV as part of its acquisition of the Meridian SeamGas assets.

1.22. The majority of gas produced by the JV is delivered to QNP, with the balance delivered to the QGP. There are no facilities in place to determine what proportion of gas delivered to the QGP is delivered through the DVP or the ML Pipeline.

1.23. [confidential]

1.24. Gas in excess of the quantity required by QNP is delivered into the QGP on behalf of AGL. Generally, there is a small volume - [confidential]TJ/day - available for delivery into the QGP.

1.25. Where the JV does not produce sufficient gas to enable AGL to meet its contractual obligations to QNP, gas is delivered from the QGP under a backflow agreement for the ML Pipeline. This happens occasionally and is generally less than [confidential] TJ/d.

1.26. [confidential]

Regulatory Background

1.27. When the National Gas Pipelines Access Code ("**Code**") was introduced in 1998, the DVP was automatically covered. In 2000, the Minister revoked coverage of the DVP on the basis of a recommendation by the National Competition Council that regulated access to the DVP would not promote competition in another market or confer net public benefits.

1.28. In 2006, following an application by Molopo Australia Limited , the DVP was declared to be a covered pipeline under the Code and an Access Arrangement was approved by the ACCC in 2007. The DVP is now subject to full regulation under the NGL.

1.29. On 14 February 2007 the ACCC issued a notice under section 4.15 of the Code (**"Previous Waiver**"). The notice waived the requirements of section 4.1(b) of the Code in relation to the then-owners and operator of the DVP, being Anglo Coal (Dawson) Limited, Anglo Coal (Dawson Management) Pty Limited and Mitsui Moura Investment Pty Limited. The requirements in sections 4.1(h) and (i) of the Code with respect to marketing staff were also waived in relation to both of the Anglo parties.

2. BACKGROUND – WESTSIDE CORPORATION

2.1. WestSide Corporation (ASX code: WCL) is a publicly listed Brisbane-based coalseam gas explorer and producer with a diversified portfolio of projects in Queensland. WestSide A and WestSide D are both wholly owned subsidiaries of WestSide Corporation.

2.2. In addition to its interest in the Meridian JV, WestSide Corporation has the following investments:

- Elsewhere in the Bowen Basin, WestSide subsidiaries are currently operating an exploration and appraisal program at the ATP 769P (Paranui) and ATP 688P (Tilbrook and Mount Saint Martin) sites. WestSide's 50% interest in each area has reduced to 25.5% following the recent sale to MEPAU of a 24.5% interest. Subsidiaries of Queensland Gas Company holding the other 50%. Initial reserves have been certified but commercial reserves have not yet been demonstrated.

- WestSide subsidiaries are also the 51% owner of two exploration tenements in the Galilee Basin (Queensland), ATP 974P and ATP 978P. MEPAU holds the remaining 49% interest in each. WestSide Corporation operates these assets.

- No commercial or production activity is undertaken in relation to these investments as they are currently in the exploration phase.

- Neither of these investments are part of the Meridian JV and are undertaken by different subsidiaries in the WestSide group

2.3. As the companies involved in the activities described in paragraph 2.2 are all wholly owned subsidiaries of WestSide Corporation, they are associates of the covered pipeline Service Providers (being WestSide A, WestSide D and WestSide Corporation).

2.4. Since the commencement of 2011/12, WestSide has achieved restructuring of its agreements and participating interests with both QGC subsidiaries and MEPAU. MEPAU has now 'farmed in' to all of WestSide's operating interests in Queensland in the same ratio of 51% WestSide and 49%MEPAU, and WestSide Corporation is the operator for jointly held tenements. WestSide has also restructured agreements with QGC resulting in WestSide taking operatorship of all of ATP688 and a significantly larger portion of ATP769. At least in part this has been because QGC and MEPAU perceive WestSide as an efficient low cost operator.

2.5. In FY 2009/10, WestSide reported earnings/revenue of $3.2m and an operating loss after tax of $2.4m. In FY2010/11, WestSide reported earnings/revenue of $12.1m and an operating loss after tax of $9.4m.

2.6. WestSide employs approximately 50 people. The commercial activities of WestSide, including in relation to the domestic marketing of Meridian JV, are primarily undertaken by the Commercial Manager, WestSide Corporation.

2.7. The only companies involved in the production, marketing or sale of natural or processable gas are WestSide Corporation, WestSide A and WestSide D, all in connection with the activities of the Meridian JV.

2.8. Additional information is available on WestSide's website: http//: www.westsidecorporation.com

3. BACKGROUND – MITSUI E&P

3.1. Mitsui E&P Australia Pty Ltd is a subsidiary of one of Japan's biggest corporations, Mitsui & Co. Ltd. The Mitsui group has approximately 150 offices around the world, spanning 66 countries.

3.2. In addition to its interest in the Meridian JV, MEPAU's portfolio includes interests in a number of oil and gas fields, including the investments described in paragraph 2.2, in the Molopo JV described in paragraphs 2.11 and 3.3, and in the Exmouth/Browse Basin, Otway/Sorell Basin.

3.3. MEPAU is a member of the Molopo JV (specifically ATP564PJV described above in paragraph 2.11) which holds Authority to Prospect ATP564 and a sublease from the Meridian JV over part of PL94. Additionally, MEPAU and Molopo entities are in ATP602PJV, which holds Authority to Prospect ATP602. The respective holdings in this JV are MEPAU [confidential] Molopo and Lowell [confidential] Both of these Authorities are in the vicinity of the Meridian JV's fields.

3.4. The Meridian JV's arrangements provide for an employee of MEPAU to be seconded to WestSide Corporation to assist with its activities as operator of the Meridian JV. Practically, this person's primary focus and activities are in developing LNG opportunities although from time to time he joins the Commercial Manager WestSide Corporation in discussions with potential customers in relation to domestic gas sales. Additionally, he assists in monthly reconciliation and invoicing, including assembling metering information provided by Jemena and QNP.

3.5. Other than as described in paragraph 3.4 above, MEPAU has no active involvement in the operation of the JV.

3.6. The Mitsui group is a participant in the North West Shelf (NWS LNG Project) through a 50 per cent share in Japan Australia LNG (MIMI) Pty Ltd, which is one of seven shareholders in the NWS LNG Project.

3.7. Additional information is available on Mitsui's website: http://www.mitsui.com.au/MEPAUPage.htm

4. APPLICATION FOR EXEMPTION FROM REQUIREMENTS OF SECTION 139 (PROHIBITION ON CARRYING ON RELATED BUSINESS)

4.1. Section 139 of the NGL requires that a covered pipeline service provider must not carry on the business of producing, purchasing or selling natural gas or processable gas, other than for operational or balancing purposes.

4.2. Rule 31(3) provides that an exemption from compliance with section 139 is to be granted if the AER is satisfied of the matters set out in sub-Rules 31(3)(a) – (c). The applicants submit that each of these matters is satisfied, as discussed below:

- **(a)** Rule 31(3)(a) – paragraphs 4.4 – 4.7
- **(b)** Rule 31(3)(b) – paragraphs 4.8 – 4.18
- **(c)** Rule 31(3)(c) – paragraphs 4.19 – 4.33.

4.3. This application proceeds on the basis that WestSide Corporation is not engaged in "producing, purchasing or selling natural gas" within the meaning of the NGL. If the contrary view were to be taken, it is submitted that the arguments below are equally relevant and persuasive in relation to the grant of a waiver for WestSide Corporation.

<u>Rule 31(3)(a)</u>

4.4. ***Rule 31(3)(a) either:***

- ***(i)*** ***the relevant pipeline is not a significant part of the pipeline system for any participating jurisdiction; or***
- ***(ii)*** ***the service provider does not have a significant interest in the relevant pipeline and does not actively participate in the management or operation of the pipeline.***

4.5. In its Final Decision on the Previous Waiver, the ACCC stated:

> *"In their application the applicants addressed the first of these criteria, namely that the pipeline is not a significant part of the Queensland pipeline system. In the draft decision the ACCC considered 'that in terms of the number of current and potential customers, the volume of gas transported and its function, the DVP does not form a significant part of the gas transmission pipeline system currently operating in Queensland. As a result, the ACCC considered that the requirements of section 4.15(a)(i) were satisfied."*
>
> [ACCC, Final Decision, 14 February 2007, page 5].

4.6. Nothing has changed since the time of the Final Decision to alter the conclusion that the DVP is not a significant part of the pipeline system for Queensland. In particular, the DVP transports only a small percentage of total gas consumption in Queensland and it represents 47km of a total network of more than 2,700km. Overall, total pipeline capacity in Queensland

has increased since 2007 through expansion of the Queensland gas transmission network, including through the enhancement of the Ballera-Moomba interconnect by Epic Energy and the development of various pipelines interconnecting the Surat fields into the QGP. Additionally, the DVP currently has no third party users and there is no indication of potential third party users.

4.7. Accordingly, the applicants submit that the DVP is not a significant part of the pipeline system for the relevant jurisdiction, being Queensland. As the applicants consider that the requirement of Rule 31(3)(a)(i) is satisfied, this submission does not address Rule 31(3)(a)(ii).

Rule 31(3)(b)

4.8. Rule 31(3)(b) - the cost of compliance with the relevant requirement for the service provider and its associates would outweigh the public benefit resulting from compliance.

4.9. In the Final Decision on the Previous Waiver, the ACCC determined that in light of the small scale of current and forecast third party usage of the DVP, it was satisfied that the comparable test under the Code had been satisfied. The applicants submit that for the same reasons, and as discussed in paragraphs 4.9 – 4.16 below, the AER should now be similarly satisfied that Rule 31(3)(b) is satisfied.

4.10. Compliance with section 139 would require that none of the owners or the operator of the DVP carry on the business of producing, purchasing or selling natural gas or processable gas, other than for operational or balancing purposes. Accordingly, the JV Participants would be required to dispose of either the DVP or their exploration/production activities. Depending on the constraints in existing contracts and other legal arrangements (such as licensing, JV agreements, leases etc), it will be preferable to either transfer ownership of the DVP or to transfer ownership of the exploration/production activities. To obtain a clear understanding of the most efficient manner of effecting the legal separation between the “upstream” activities and ownership and operation of the DVP, it will be necessary to obtain detailed tax, accounting and legal advice.

4.11. Regardless of whether ownership and operation of the DVP or ownership of the production activities is to be transferred, the following activities would be required in some form:

(a) the establishment of new legal entities to either own and operate the DVP or to own and undertake gas production/sales activities.

(b) the transfer of all assets, contracts, licences, leases etc involved in the company/activity being transferred, which would require or involve significant internal commercial, financial and technical resources, as well as external legal and other fees;

(c) development of a gas transportation agreement between the DVP owner and the entities involved in gas production/sales;

(d) negotiations with contract counter-parties for their consent to the transfer and/or restructure of their contracts;

(e) applications to Government for transfer of licences and, if applicable, waiver of stamp duty payable on transfer of the assets.

4.12. The transaction and advisory costs to implement separation would be substantial. Even for a relatively straightforward separation, with no complexity in obtaining government or counterparty consent, the applicants estimate that the fees payable to external advisers would be in excess of $200,000. There would also be significant internal time and costs incurred. The separation would also involve ongoing annual administrative, governance and accounting costs.

4.13. If WestSide Corporation is regarded as engaging in "producing, purchasing or selling natural gas", then section 139 would mean that WestSide Corporation as operator of the DVP cannot also undertake those activities. In this case, another company would be need to be appointed to perform the functions of pipeline operator.

4.14. In its Draft Decision on the Previous Waiver, the ACCC stated:

"*the key public benefit of requiring compliance with* [section 139] is the *additional comfort and assurance (above that achieved through [the Code equivalent to section 137] to users and prospective users of a pipeline that confidential information will not inappropriately flow between a gas production business and a pipeline business.*")
[ACCC, Draft Decision, 20 December 2006, page 8]

4.15. The applicants submit that the same assessment is appropriate in this case – that is, that the key public benefit of compliance with section 139 is the potential for additional comfort and assurance to users and prospective users that their confidential information will not flow between the pipeline and gas production activities of the Meridian JV.

4.16. Section 137 of the Law contains obligations designed to ensure the proper treatment of users' and prospective users' information. Those statutory obligations are binding on the JV Participants and WestSide Corporation. Additionally, a protocol has been established by the JV and WestSide Corporation, outlining the manner in which they will act to ensure the protection and appropriate use of users' and prospective users' confidential information. The protocol has been approved by the Board of WestSide Corporation and is in the process of gaining approval of the JV Operating Committee.

4.17. The applicants submit that there is no public benefit in having "additional comfort and security" that users' information will be appropriately handled, in addition to the obligations and sanctions contained in section 137 of the NGL and the protocol adopted by the applicants. To the extent that such benefit exists, the applicants submit that this benefit does not

outweigh the significant up-front and on-going costs involved in separation of the pipeline and other activities.

4.18. Additionally, in granting the Previous Waiver the ACCC took into consideration the small scale of current and potential third party usage of the DVP [Draft Decision, page 9]. The applicants submit that the AER should similarly have regard to the fact there are no third party users on the DVP and, as discussed in paragraphs 1.17 and 1.21 above, no third parties have indicated an interest on acquiring pipeline services.

Rule 31(3)(c)

4.19. Rule 31(3)(c) - the service provider has, by arrangement with the AER, established internal controls within the service provider's business that substantially replicate, in the AER's opinion, the effect that would be achieved if the related business were divested to a separate entity and dealings between the service provider and the entity were subject to the controls applicable to associate contracts.

4.20. The controls applicable to associate contracts are set out in sections 147 and 148 of the NGL and in Rule 32 of the NGR.

4.21. Under sections 147 and 148 respectively, a covered pipeline service provider must not enter into, vary or give effect to an associate contract:

- that has the purpose, or would have or be likely to have the effect of, substantially lessening competition in a market for natural gas services, or
- is inconsistent with the comparative parity rule

unless it is an approved associate contract.

4.22. An "associate contract" is a contract, understanding or arrangement between a covered pipeline service provider and an associate in connection with the provision of a pipeline service, or certain arrangements between the covered pipeline service provider and third parties in connection with the provision of a pipeline service which provides a benefit to associates of the covered pipeline service provider.

4.23. Rule 32(1) provides for the service provider to seek approval to an associate contract. Under Rule 32(2), the AER must approve an associate contract

"...if the AER is satisfied that the contract ..:

(a) does not have the purpose, and is unlikely to have the effect, of substantially lessening competition in a market for natural gas services; and

(b) is not inconsistent with the competitive parity rule"

4.24. The “comparative parity rule” is set out in section 148(2) of the NGL as follows:

> ***(2) For the purposes of subsection (1), and any Rules made for the purposes of that subsection, the competitive parity rule is the rule that a covered pipeline service provider must ensure that any pipeline services that the covered pipeline service provider provides to an associate of the covered pipeline service provider are provided to that associate as if that associate were a separate unrelated entity.***

4.25. Under Rule 32(3), the AER is given discretion to approve an associate contract which is inconsistent with Rule 32(2) if the AER is satisfied that public benefits of the associate contract outweigh the public detriment.

4.26. The Code regime in relation to associate contracts was more prescriptive than the regime under the NGL and NGR, in that it required all associate contracts to be submitted for approval. In contrast, the NGL and NGR only requires that approval be sought for associate contracts which have a particular purpose or may have a particular effect.

4.27. The applicants submit that the differences between the NGL and the Code do not materially change the approach to be taken to assessing the application for a waiver, and that in assessing this application the AER should take a similar approach to that taken by the ACCC in granting the Previous Waiver.

4.28. In granting the Previous Waiver, the ACCC accepted that the comparable provision under the Code was satisfied by an undertaking from the service providers that they would submit for approval any new or revised arrangements for transport of the service providers’ gas on the DVP.

4.29. The protocol adopted by the applicants (see paragraph 4.16 above) provides that the applicants will submit to the AER for approval any new contracts, arrangements or understanding for the use of the DVP:

- **(a)** between the Service Providers;
- **(b)** between the Service Providers and other companies in the WestSide Group or other companies in the Mitsui Group; and
- **(c)** between the Service Providers and third parties

where the contract, arrangement or understanding would require approval under section 147 or section 148.

Further, the applicants are aware of the requirement under Rule 33 that all contracts, arrangements or understandings are to be notified to the AER within the time specified in Rule 33.

4.30. As part of granting the Previous Waiver, the ACCC also required that the service providers present a term sheet outlining the internal arrangements under which the service providers’ gas was transported. This was required in order to provide a “benchmark” or baseline to

enable the ACCC to assess the nature or effect of variations. The applicants have recently commenced preparation of a term sheet to similarly provide such a benchmark. While the applicants consider that the term sheet would not require approval under section 147 or 148, it will be provided to the AER for information prior to the making of the Final Decision on this application.

4.31. Consistent with the approach taken by the ACCC in the Previous Waiver, and having regard to the protocol developed by the applicants and described in paragraph 4.27, it is submitted that the AER should be satisfied that the applicants have *"established internal controls"* that meet the requirements of Rule 31(3)(c).

4.32. As the applicants consider there is no basis to conclude that compliance with the requirement would lead to increased competition in upstream or downstream markets, this submission does not address Rule 31(5).

Conclusion

4.33. The applicants submit that each of the criteria in Rule 31(3)(a), (b) and (c) are satisfied and that the AER should grant an exemption from the requirement for compliance with section 139.

5. APPLICATION FOR EXEMPTION FROM REQUIREMENTS OF SECTION 140 (SEPARATION OF MARKETING STAFF)

5.1. Section 140 requires that a covered pipeline service provider must ensure that:

(1) ***none of its marketing staff are officers, employees, consultants, independent contractors or agents of an associate ... that takes part in a related business" (section 140(1));*** and

(2) ***none of its officers, employee, consultants, independent contractors or agents are marketing staff of an associate ... that takes part in a related business." (section 140(2))***

5.2. "Marketing staff" is defined in section 138, and essentially refers to people (officers, employees, consultants, independent contractors or agents) "*directly involved in the sale, marketing or advertising of pipeline services*".

5.3. WestSide A and WestSide D produce, purchase or sell natural gas. No other companies in the WestSide Group, including WestSide Corporation, produce purchase or sell natural gas. MEPAU is involved in the production, purchase or sale of natural gas through the Meridian JV and other fields as described in section 3 above.

5.4. In the case of the DVP, the primary issue arising under section 140 is the role of WestSide's Commercial Manager, who undertakes all commercial activities for the WestSide group, including all general commercial activities for the Meridian JV.

5.5. If an enquiry were made for pipeline services on the DVP, the Commercial Manager would be responsible for responding to, and managing, that enquiry on behalf of the JV. Accordingly, the Commercial Manager may be regarded as being "marketing staff" of the Meridian JV participants. It is unclear whether the Commercial Manager is "marketing staff" of WestSide Corporation - WestSide Corporation's role is to operate the Meridian JV and its assets on behalf of the JV participants, but WestSide Corporation does not itself provide "pipeline services". However, this application proceeds on the conservative basis that the Commercial Manager could be regarded as "marketing staff" of WestSide Corporation.

5.6. The Commercial Manager is an employee of WestSide Corporation. While the situation is not clear, he may also be an officer or agent etc of the Meridian JV participants for the purposes of section 140. This application proceeds on the conservative basis that he could be so regarded.

5.7. Given paragraphs 5.5 and 5.6:

(a) the Commercial Manager is "marketing staff" of service providers of a covered pipeline, being the JV Participants – and under section 140(1) is therefore prohibited from being an officer, employee or agent etc of WestSide A or WestSide D; and

(b) the Commercial Manager is an officer, employee or agent etc of service providers of a covered pipeline, being the JV Participants and WestSide Corporation – and under

section 140(2) is therefore prohibited from being marketing staff of WestSide A or WestSide D.

5.8. An employee of MEPAU is on secondment to WestSide Corporation as described in section 3 above. This employee's role does not include activities or responsibilities in relation to the sale, marketing or advertising of pipeline services. Accordingly, that employee is not within the definition of "marketing staff" in section 138. If an enquiry were made, and it was necessary for the employee to become involved in responding to the enquiry, appropriate arrangements will be put in place to ensure compliance with section 140.

5.9. Accordingly a waiver is sought from the requirements of section 140 to enable the Commercial Manager, WestSide:

- **(a)** to be an officer or agent etc of WestSide A and WestSide D (being associates of the service provider which take part in a related business) – section 140(1); and
- **(b)** to be marketing staff of WestSide A and West Side D (being associates of the service providers which take part in a related business) – section 140(2).

5.10. Rule 31(4) provides that an exemption is to be granted from section 140:

: *.. if the AER is satisfied, on the application of a service provider, that the cost of compliance with the relevant requirement for the service provider and its associates would outweigh the public benefit resulting from compliance."*

5.11. To comply with section 140 would require the applicants to hire an additional resource to provide pipeline marketing services or respond to access requests, as follows:

- **(a)** as there is not sufficient demand for pipeline services to require a dedicated or permanent employee, the most cost effective way of managing pipeline marketing would be to retain an independent contractor to provide marketing services on an as-required basis;
- **(b)** this would require a skilled and knowledgeable person to be available when required, including at short notice if a request for pipeline services were made;
- **(c)** the applicants estimate that the fees payable to such a consultant on a daily basis would be approximately $2000/day, plus incidentals including travel;
- **(d)** the appointed consultant will need to have a reasonable level of experience and skills, and to keep up to date with developments. Given the limited number of possible consultants, combined with the intermittent nature of the work and the fact that services may be needed on short notice, the applicants believe they would need to pay a retainer of at least 2 days per month. These costs would not reduce the current costs of the applicants as the engagement of the consultant would not displace existing activities or costs of the Commercial Manager;
- **(e)** there would be an initial period required for the consultant to become familiar with the DVP and associated information, including the Access Arrangement, JV processes, and the nature of pipeline services available on the DVP having regard to its operating

characteristics and existing contracts, etc. This is a sunk cost and would be effectively replicating knowledge which is already held by the Commercial Manager. This initial period could reasonably be expected to be between 3-6 weeks, depending on the consultant's knowledge and experience.

(f) while the work involved in dedicated marketing of pipeline services will be low volume and irregular, the costs in paragraphs (d) and(e) above will be sunk costs, and need to be incurred regardless of the level of enquiries for pipeline services, if any.

5.12. The costs outlined in section 5.12 would be significant, particularly in the context of the DVP's revenue. Even assuming there continue to be no enquiries for pipeline services and there is no "active" work undertaken by the contractor, the costs of compliance would be between $30,000 - $60,000 for "set up costs", with annual retainer costs of $48,000 per year. This contrasts with the approved operating costs for 2011-12 of $424,000 per annum and forecast annual revenue of $1.09m under the approved Access Arrangement.

5.13. In relation to the public benefits of compliance, the applicants submit that the analysis undertaken by the ACCC in granting the Previous Waiver is still generally applicable [Draft Decision, 20 December 2006, pages 17-18], and is also consistent with the AER's recent decision in relation to the application for waiver by APT Pipelines NT Pty Limited. In particular:

(a) obligations relating to protection and proper treatment of confidential information will continue to apply to the service providers, and a protocol has been adopted specifically to ensure compliance with those obligations;

(b) the circumstances of the DVP and surrounding gas fields are such that the cessation of joint marketing can not be expected to encourage additional firms to enter the market;

(c) although there is spare capacity on the DVP, there are limited or no opportunities to actively market pipeline services and no formal or informal requests for access have been made;

(d) the DVP fields are relatively small compared with total Queensland production, resulting in coal seam gas producers in the Dawson Valley and surrounding fields being price-takers in the market;

(e) there is only one producer using the DVP to get its gas to market (being the Meridian JV). There is limited potential for new entrants into the fields which rely on the DVP, and thus there is limited potential for new users of the DVP to emerge.

5.14. Further, at the time of the Previous Waiver, there was a third party user of the DVP. That situation has now changed, and the DVP is used only by the Meridian JV. [confidential]

5.15. The applicants submit that there is no or limited identifiable public benefit from requiring separation of marketing staff. Accordingly, the applicants submit that the costs of compliance are not outweighed by any public benefit.

5.16. As the applicants consider there is no basis to conclude that compliance with the requirement would lead to increased competition in upstream or downstream markets, this submission does not address Rule 31(5).

6. APPLICATION FOR EXEMPTION FROM REQUIREMENTS OF SECTION 139 (MAINTENANCE OF REGULATORY AND SEPARATE ACCOUNTS)

6.1. Section 141 requires that "a covered pipeline service provider must prepare, maintain and keep:

(a) ***separate accounts in respect of pipeline services provided by means of every covered pipeline owned, operated or controlled by the covered pipeline service provider; and***

(b) ***a consolidated set of accounts in respect of the whole of the business of the covered pipeline service provider."***

6.2. Rule 31(4) provides that an exemption from compliance with section 140 is to be granted

"if the AER is satisfied ... that the cost of compliance ... for the service provider and its associates would outweigh the public benefit resulting from compliance"**.**

6.3. The Meridian JV participants seek a waiver of the obligation in section 141(a). To the extent that the obligation also applies to WestSide Corporation as the operator of the JV, WestSide Corporation also seeks a waiver.

6.4. WestSide A and West Side D seek a waiver of the obligation in section 141(b).

<u>Section 141(a) – separate accounts in respect of pipeline services</u>

6.5. As all of the service providers are involved in activities other than the ownership and operation of the DVP, preparation of accounts as required under section 141(a) will require identification of costs specific to the ownership and operation of the DVP compared to other assets and activities and, where costs are not specific to the DVP, an identification and allocation of those costs. Additionally, revenue will have to be allocated between pipeline services and other activities of the applicants.

6.6. The costs of undertaking this activity will not be immaterial particularly in the context of the allowed operating costs and forecast revenues of the DVP (see paragraph 5.13 above).

6.7. A detailed manual will have to be developed, outlining the methodology for keeping those accounts in light of regulatory requirements and the structure and activities of the JV and WestSide Corporation. This will involve identifying the various categories of costs applicable to the service providers and the services which could be provided by means of the DVP. On an on-going basis, accounts will then have to be prepared in accordance with that manual.

6.8. As the applicants have limited experience in this area, an external consultant will need to be employed for the specific purpose of developing the manual and then either preparing and maintaining the accounts on a regular basis, or else training an existing accounting resource in WestSide to prepare and maintain annual accounts. This will be an additional cost to the Meridian JV and will result in no saving to the applicants.

6.9. On an on-going basis, to ensure the continued availability of an experienced consultant with the appropriate accounting and regulatory understanding and knowledge, including ensuring the manual remains up to date with any changes in regulatory requirements, it may be necessary to pay a retainer in addition to the costs of the annual preparation of accounts.

6.10. The preparation of the manual and separate accounts will require the services of an accountant with experience in understanding and implementing regulatory accounts. At current contracting rates, such a consultant is expected to charge approximately $2,000 per day. Notwithstanding the small size of the DVP, the amount of work required will not be immaterial -- the applicants estimate that the work involved in preparation of the manual would be at least $30,000 and may be more depending on the expertise and regulatory knowledge of the accountant. There would also be substantial internal costs as commercial, operational and financial personnel in WestSide and MEPAU would have to be involved in developing the cost allocation and supporting methodologies. Additionally, on-going preparation and maintenance of accounts would cost approximately $24,000 per year, assuming that the accountant spent an average of a day per month updating accounts, and preparing regulatory accounts and supporting information.

6.11. If the costs of establishing the manual are apportioned over the remaining 3 years of the Access Arrangement period, this represents approximately $10,000 per year. Together with the annual "maintenance" costs of $24,000, this gives an average annual external cost of $34,000 for preparing and maintaining regulatory accounts, plus the applicants' internal costs.

6.12. The public benefit of preparation and maintenance of separate accounts for the services provided by the covered pipeline is, presumably, the facilitation of Access Arrangement reviews or the arbitration of access disputes, by ensuring that information in relation to the costs and revenues of the regulated pipeline are more readily available than may be the case if information were prepared at the time of the review or arbitration.

6.13. The applicants submit that this potential benefit is of very limited value in relation to the DVP including due to the length of time until the next Access Arrangement review, the extensive information-gathering powers the AER has on an Access Arrangement review and the absence of current or potential third party users.

6.14. Accordingly, the applicants submit that the costs of complying with the obligations in section 141(a) outweigh any public benefit of compliance.

Section 141(b) – Consolidated accounts in respect of the whole of the business of the service provider

6.15. WestSide Corporation maintains consolidated accounts for the WestSide group (WestSide Corporation and its subsidiaries, including WestSide A and WestSide D), audited to Australian Standards. MEPAU maintains accounts for the whole of its business.

6.16. Separate financial accounts are not maintained for the whole of the business of WestSide A and WestSide D as there is no regulatory or business requirement for such accounts, other than the requirement in section 140(2). WestSide A and WestSide D maintain financial records which simply reflect direct costs and revenues of the companies. These are not as comprehensive as accounts prepared to Australian standards.

6.17. The annual costs of maintaining separate accounts for the whole of the businesses of WestSide A and WestSide D are estimated at approximately $68,000, on the assumption that:

- **(a)** an accountant spends an average of 1 day per month preparing the accounts for each company, plus
- **(b)** audit/review costs for both companies $20,000.

6.18. The public benefit of the accounts is, presumably, to assist in an Access Arrangement review and any arbitration, as discussed above in section 6.12.

6.19. In light of the costs to WestSide A and WestSide D, and the limited public benefit, the applicants submit that the costs of compliance outweigh the public benefit.

6.20. As the applicants consider there is no basis to conclude that compliance with the requirement would lead to increased competition in upstream or downstream markets, this submission does not address Rule 31(5).

7. ATTACHMENTS

Attachments:

1. **Map**
2. **Map of PL94 & co-development area**