

Final Decision



Alinta EA Pty Ltd access arrangement revisions for the Queensland Gas Pipeline

2 February 2005

File No:
S2005/8

Commissioners:

Samuel Martin
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Associate Commissioner:

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Summary

On 19 January 2005 the Australian Competition and Consumer Commission (ACCC) received an application from Alinta EA Pty Ltd (Alinta) to revise the access arrangement for the Queensland Gas Pipeline (QGP), which is also known as the Wallumbilla to Gladstone via Rockhampton Pipeline. The application was submitted under the *National Third Party Access Code for Natural Gas Pipeline Systems* (the Code).

The access arrangement currently lists three Duke Energy companies as joint service providers. Following its purchase of the QGP and other Duke Energy assets in 2004, Alinta has proposed to amend the access arrangement to remove all references to Duke Energy. Alinta also proposed a number of more minor changes.

The ACCC has concluded that:

- the proposed revisions meet the criteria in section 2.33 of the Code and that it does not consider it appropriate to require Alinta to provide revised access arrangement information or for the ACCC to undertake public consultation on this matter
- the access arrangement as revised would contain the elements and satisfy the principles set out in sections 3.1 to 3.20 (to the extent that they are reviewable by the ACCC at this time consequent to the Queensland Government derogation), and
- the revisions are consistent with the provisions of the access arrangement as it currently stands and with section 2.24.

Pursuant to section 2.46 of the Code, the ACCC approves the revisions proposed by Alinta on 19 January 2005.

The revised access arrangement will come into effect on 16 February 2005.

1. The application

On 19 January 2005 the Australian Competition and Consumer Commission (ACCC) received an application from Alinta EA Pty Ltd (Alinta) to revise the access arrangement for the Queensland Gas Pipeline (QGP), which is also known as the Wallumbilla to Gladstone via Rockhampton Pipeline. The application was submitted under section 2.28 of the *National Third Party Access Code for Natural Gas Pipeline Systems* (the Code).

The access arrangement currently lists three Duke Energy companies as joint service providers. Following its purchase of the QGP in 2004, Alinta has proposed to amend the access arrangement to remove all references to Duke Energy and to replace them, where appropriate, with references to the current service provider (which is defined as Alinta DEQP Pty Ltd and Alinta DQP Pty Ltd).

Alinta also proposed a number of more minor changes. These include:

- correction of an incorrect reference in clause 1.8 to section 2.26 of the Code (instead of section 2.28)
- amendments to section 1 of schedules 1, 2 and 3 to remove the implication that Alinta's standard terms and conditions are additional to the access arrangement
- correction of page numbering errors, and
- some formatting changes.

2. Background

The ACCC approved the access arrangement for the QGP on 31 October 2001.

The QGP is the subject of a Queensland Government derogation which establishes the reference tariffs and related areas of the access arrangement until the revisions submission date (31 August 2016). Consequently, the majority of the typically contentious aspects of an access arrangement are not open to ACCC consideration until that date. In particular, the ACCC is constrained from any assessment of reference tariffs or reference tariff policy.

Clause 1.4 of the access arrangement currently states that for the purpose of the access arrangement and the gas pipelines access legislation, Duke Australia Operations Pty Ltd is the service provider. It further states that the pipeline is owned by DEI Queensland Gas Pipeline Pty Ltd (ACN 083 050 104) and Duke Queensland Pipeline Pty Ltd (ACN 083 050 284) and that it is operated by Duke Australia Operations Pty Ltd as their agent.

In April 2004, Alinta Energy Holdings Pty Ltd (a wholly owned subsidiary of Alinta Ltd) purchased the QGP and other Duke Energy assets.¹ Alinta subsequently changed the names of the two Duke Energy companies which own the QGP to reflect its ownership of those companies. These two companies, Alinta DEQP Pty Ltd and Alinta DQP Pty Ltd own 25 per cent and 75 per cent of the QGP respectively. Alinta has advised that these two companies are now the service providers for the QGP. Alinta Network Services Pty Ltd provides management services to the service provider, while maintenance and construction services are carried out by National Power Services Pty Ltd.² Both of these companies are wholly owned subsidiaries of Alinta Ltd.

3. Criteria for assessing proposed revisions

Pursuant to section 2.33 of the Code, the ACCC may approve or not approve the proposed revisions to the access arrangement without requiring the production of access arrangement information or undertaking public consultation if:

- (a) the revisions have been proposed by the service provider other than as required by the access arrangement, and
- (b) the ACCC considers that the proposed revisions are not material and will not result in changes to reference tariffs or to the services that are reference services.

Pursuant to section 2.46 of the Code, the ACCC may approve revisions to an access arrangement only if it is satisfied that the access arrangement as revised would contain the elements and satisfy the principles set out in sections 3.1 to 3.20 of the Code, which are summarised below. Revisions to an access arrangement cannot be opposed solely on the basis that the access arrangement as revised would not address a matter that sections 3.1 to 3.20 of the Code does not require it to address. Subject to this, the ACCC has a broad discretion in approving or not approving revisions to an access arrangement.

An access arrangement, or a revised access arrangement, must include the following elements:

- a policy on the service or services to be offered which includes a description of the service(s) to be offered
- a reference tariff policy and one or more reference tariffs. A reference tariff operates as a benchmark as it sets out the specific tariff on which access to a specific service will be made available. Tariffs must be determined according to the reference tariff principles in section 8 of the Code
- terms and conditions on which the service provider will supply each reference service

¹ Other assets purchased include the Eastern Gas Pipeline, the Tasmanian Gas Pipeline and a stake in the Goldfields Gas Pipeline in Western Australia.

² Alinta Ltd, *Half Year Report to Shareholders: Six months to 30 June 2004*.

- a statement of whether a contract carriage or market carriage capacity management policy is applicable
- a trading policy that enables a user to trade its right to obtain a service (on a contract carriage pipeline) to another person
- a queuing policy to determine the priority that a user has in obtaining access to spare and developable capacity on a pipeline
- an extensions and expansions policy to determine the treatment of an extension or expansion of a pipeline under the Code
- a date by which revisions to the arrangement must be submitted, and
- a date by which the revisions are intended to commence.

The ACCC's approach to the assessment of the access arrangement as revised is discussed in chapter 5.

In assessing proposed revisions to an access arrangement, the ACCC must take into account the provisions of the access arrangement as it currently stands and, pursuant to section 2.24 of the Code, the following factors:

- the legitimate business interests and investment of the service provider
- firm and binding contractual obligations of the service provider or other persons (or both) already using the covered pipeline
- the operational and technical requirements necessary for the safe and reliable operation of the covered pipeline
- the economically efficient operation of the covered pipeline
- the public interest, including the public interest in having competition in markets (whether or not in Australia)
- the interests of users and prospective users, and
- any other matters that the ACCC considers are relevant.

The ACCC's assessment of the proposed revisions to the access arrangement is set out in chapter 5.

4. Alinta's submission

Alinta submitted that the revisions are to remove all references to Duke Energy and to replace them, where appropriate, with references to the appropriate Alinta companies. In addition, Alinta stated that it wishes to amend the access arrangement to 'rectify some minor formatting errors such as referencing and page numbers'.³

³ Alinta EA Pty Ltd, letter to the ACCC, 19 January 2005, p. 1.

Alinta provided the ACCC with a proposed revised access arrangement that incorporates the revisions. These are summarised in section 1 above.

5. ACCC's assessment

5.1 Multiple service providers

Sections 10.1 and 10.2 of the Code set out the principles that apply if there is more than one service provider for a covered pipeline. Where there are two or more participants as the service provider, the Code (under section 10.1) allows one of the participants to act on behalf of the other participants as required.

In this instance, the revisions to the access arrangement have been lodged on behalf of the two companies deemed to be the service providers (Alinta DEQP Pty Ltd and Alinta DQP Pty Ltd). The ACCC is satisfied that this proposal is in compliance with sections 10.1 and 10.2 of the Code.

5.2 Successor service providers

Section 10.3 of the Code sets out the provisions that apply if a person becomes a successor service provider in relation to a covered pipeline. Where there has been a change in the service provider for a covered pipeline, section 10.3 provides that the covered pipeline will remain a covered pipeline and the access arrangement approved (or any arbitration decision made) will continue to apply in the same way as before the change.

The ACCC considers that Alinta's proposal to revise the access arrangement to reflect the present service provider arrangements does not alter the application of the existing access arrangement and is consistent with section 10.3 of the Code.

5.3 Need for access arrangement information and public consultation

The ACCC is satisfied that Alinta proposed the revisions other than as required by the access arrangement and that the revisions are not material and would not result in changes to reference tariffs or to the services that are reference services. Consequently, pursuant to section 2.33 of the Code, the ACCC may approve or not approve the proposed revisions to the access arrangement without requiring the production of access arrangement information or undertaking any public consultation.

After considering the nature and extent of the proposed revisions, the ACCC has concluded that they do not warrant the production of access arrangement information. It has also concluded that they do not warrant a process of public consultation to be undertaken. In addition, the ACCC does not consider that the release of a draft decision document would assist the assessment process in this instance.

5.4 Compliance of the access arrangement as revised

The ACCC has considered whether the access arrangement as revised would contain the elements and satisfy the principles set out in sections 3.1 to 3.20.

It has concluded that the nature of the proposed revisions is such that approval of them would not impact on the elements and principles set out in sections 3.1 to 3.20.

In the context of section 2.46 of the Code, the ACCC considered a number of broader issues relating to the assessment of an access arrangement as revised in its evaluation of revisions proposed by GasNet in 2004.⁴ In particular, it noted the possibility that circumstances could change between the time an access arrangement is approved and the time revisions are subsequently lodged such that the access arrangement as revised would not continue to satisfy the requirements of sections 3.1 to 3.20 of the Code (including the requirements of section 8, as provided by sections 3.4 and 3.5). In that instance, the ACCC concluded that:⁵

In order to form a view that circumstances have changed such that the access arrangement as revised would no longer satisfy the requirements of sections 3.1 to 3.20, the ACCC would need to reassess various factors that contribute to the reference tariffs.

To the extent that such an assessment would be similar in scope to a scheduled review of an access arrangement, it would impose substantial costs on GasNet and interested parties.

The ACCC does not consider such a reassessment to be justified at this time given the nature and scope of the current proposed revisions.

The ACCC is of the view that these considerations are also relevant to its current assessment. However, the Queensland Government derogation prevents the ACCC from reviewing the QGP reference tariff and reference tariff policy (sections 3.3 to 3.5 of the Code) at this time. Accordingly, the ACCC is satisfied that the access arrangement as revised contains the elements and fulfils the principles set out in sections 3.1 to 3.2 and 3.6 to 3.20 of the Code.

5.5 Compliance of the revisions

The ACCC has considered the proposed revisions. It has concluded that each of the proposed changes to the access arrangement is appropriate. Given the non-controversial and minor nature of the proposed revisions the ACCC is satisfied that these revisions are benign and are not contrary to the provisions and principles of the Code.

The ACCC is satisfied that the proposed revisions are consistent with the provisions of the access arrangement as it currently stands and with the elements of section 2.24.

⁴ ACCC, *Final Decisions: GasNet Australia access arrangement revisions for the GasNet System*, 15 December 2004, pp. 5-10.

⁵ *ibid*, pp. 5-6.

5.6 Date of effect

Alinta has not proposed a date of effect for the revisions. The ACCC considers that a commencement date 14 days after its decision on this matter (consistent with section 2.48 of the Code) would be appropriate.

6. Decision

The ACCC has taken into account the factors described in section 2.24 of the Code and the provisions of the access arrangement, and is satisfied that the access arrangement as revised would contain the elements and satisfy the principles set out in sections 3.1 to 3.20 of the Code (to the extent that they are reviewable by the ACCC at this time consequent to the Queensland Government derogation).

Pursuant to section 2.46 of the Code, the ACCC approves the revisions proposed by Alinta on 19 January 2005.

The revised access arrangement will come into effect on 16 February 2005.