



AUSTRALIAN ENERGY
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26 November 2008

Mr Paul Callander
Manager, Regulatory & Gas Market
APA Group
181 Greens Road
Dandenong VIC 3175

Dear Mr Paul Callander

Variation to GasNet Australia's Access Arrangement

I write in relation to GasNet Australia Pty Limited's (GasNet's) proposed variation to its Access Arrangement 2008-12 for the Principal Transmission System.

After consideration of GasNet's proposed amendments dated 29 October 2008 the AER approves the amendments to the Payment Deed Principles contained in Schedule 6 of the Access Arrangement as outlined in the AER's decision document. A copy of the AER's decision and statement of reasons is enclosed.

The AER is required under rule 67(e) of the National Gas Rules 2008 to publish these amendments to the access arrangement on its website, which is available at: www.aer.gov.au.

If you have any issue regarding this matter please feel free to contact Adam Petersen on (08) 8213 3458.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'A. Pattas', is written over the closing text.

Chris Pattas
General Manager
Network Regulation South



DECISION AND STATEMENT OF REASONS

Decision

The AER approves the variations to GasNet Australia (Operations) Pty Ltd's (GasNet's) amended Access Arrangement for the Principal Transmission System in relation to the payment deed principles, as set out in Schedule 6 of GasNet's Revised Access Arrangement.

Date of effect of the amendment

1 December 2008.

Statement of Reasons

Background

GasNet is the owner and operator of the gas transmission network, transporting natural gas within Victoria and New South Wales. The Australian Competition and Consumer Commission (ACCC) approved GasNet's revised Access Arrangement for the provision of tariffed transmission services for the Principal Transmission System (PTS) on 25 June 2008¹ (ACCC decision).

GasNet's access arrangement included payment deed terms based on the VENCORP gas Transportation Deed Principles (TDP) which existed from the time VENCORP was required to submit an access arrangement.

On 29 October 2008, GasNet submitted an Access Arrangement Variation Proposal to the GasNet Australia Access Arrangement of 1 January 2008 (Variation Proposal), to reflect the final TDP to be executed by GasNet and all market participants. It is proposed that a standard deed will apply to all current and future users.

Revised payment deed principles

Term

The deed no longer expires on 2012 but rather continues until it is terminated by the parties.

¹ Final decision – GasNet Australia Revised Access Arrangement 2008-12

Payment

The following amendments have been made to the payment principles:

- The obligation to pay regulated transmission charges includes any applicable surcharge approved by the regulator;
- Instead of all monthly invoices being issued by the 20th business day, withdraw tariff invoices will be issued on the 20th business day and invoices for injection tariffs on the 12th business day; and
- Instead of payments by the end of the month in which the invoices have been received or 10 business days after receipt of an invoice, payments are now required within 10 business days after receipt.

Credit Support

An additional payment deed principle has been inserted into the current payment deed to enable GasNet to recover amounts in default from market participants.

GasNet can require a market participant to provide credit support if the market participant:

- does not hold an investment grade credit rating (or its obligations under the deed are not guaranteed by an entity with such a credit rating); and
- the Market Participant has failed to meet past payment obligations.

The credit support must be in the form of a bank guarantee, letter of credit or performance bond for:

- an amount, not exceeding three times the average monthly charges incurred by the market participant during the previous twelve months; or
- if the market participant has not been a user of the PTS for at least 12 months prior to GasNet giving notice that the Market Participant must provide credit support, an amount equal to GasNet's reasonable estimate of the highest aggregate charges likely to be incurred by the market participant over a consecutive three month period during the 12 month period following the notice.

Force Majeure

This principle has been deleted. Parties are no longer excused for non-performance by reason of force majeure.

Limitations

Liability for services provided to market participants and VENCORP is limited to uplift payments under the clause 3.6.8 of the MSOR and in addition, has been amended to be subject to any conditions on the level of such payments provided for in the Service Envelope Agreement (SEA) between GasNet and VENCORP.

Termination

This principle has been expanded to include termination by either party in the event that there is a change in law which means GasNet is no longer required to provide the Tariffed Transmission Services.

Other

The deed has been amended to allow assignment by a party to a related body corporate provided the assignee is a market participant and satisfies the required credit support terms and conditions.

Formatting errors

Formatting errors in relation to the numbering of the paragraphs in clauses 3.1 of Schedule 3 and 4.1 of Schedule 4 have been identified and corrected in the Revised Access Arrangement.

Reasons

GasNet's revised payment deed principles have arisen as a result of the removal of the obligation for VENCORP to submit an Access Arrangement. The change in the VENCORP arrangements has changed the existing relationship between GasNet, VENCORP and users of the PTS, with users now required to enter into contracts for gas transportation services with GasNet instead of VENCORP. These changes were considered in the ACCC's decision concerning the non-tariff elements of GasNet's Access Arrangement.

The relevant provisions concerning the power to vary an Access Arrangement are contained in Part 8, Division 10 of the National Gas Rules (NGR).

Rule 65(3) of NGR provides that GasNet's variation proposal must be in writing, state the variation sought and the reasons for it, and if the services provider considers the variation non-material, a statement of the reasons to this effect. The AER considers that GasNet's variation proposal complies with the requirements of rule 65 of the NGR.

Rule 66(1) of the NGR requires the AER, within 20 business days of receiving an access arrangement variation proposal, to decide whether or not it considers the variation to be non-material. If the AER considers the variation non-material, the AER may, without consultation, approve the proposal.

Rules 67(b) of the NGR requires the AER to state the terms of the decision in addition to the reasons for it and under 67(c), if the variation is considered non-material, the AER is required to state the terms of the approved variation and the commencement date.

The AER decision is to approve the variation proposal as a non-material variation, commencing 1 December 2008.

The National Gas Law (NGL) or NGR do not define 'material'. In the absence of such guidance, the AER is required to form a view on the relevant considerations in making an assessment of what is material and there are a number of factors that can be considered in this respect. The fact that GasNet has undertaken negotiation directly with effected parties, in itself, is not a relevant consideration for the purposes of the materiality threshold.

One possible consideration that the AER may have regard to is whether the variation proposal has or is likely to have a material impact on stakeholders, for example, the effect that the variation may have on a market participant's ability to access pipeline services.

The AER has had regard to the likely impacts on stakeholders arising from the variation proposal and has concluded that there are no material effects. The variation proposal does not affect the scope of services provided to shippers, the transmission tariffs or the method for varying the tariffs. It only affects the payment requirements for the provision of tariffed transmission services.

The scope of services provided to shippers by GasNet is outlined in GasNet's Access Arrangement and the SEA. The SEA includes provisions covering:

- Specification of the GasNet transmission network and service envelope capacity;
- Processes for reaching agreement on the effect of expansions and extensions;
- GasNet and VENCORP obligations in terms of making the service envelope capacity available, maintenance and operational practices, and provision of metering and other operational data;
- Authorised Maximum Demand Quantity and GasNet contributions to uplift payments under the Victorian gas market and system operation rules (MSO Rules);
- Obligations on VENCORP and GasNet in terms of insurances to be maintained; and
- VENCORP's obligation to direct market participants to make payment directly to GasNet in respect of the Tariffed Transmission Services.

The services provided to shippers, as users of GasNet's transmission network, do not change under GasNet's variation proposal. Further, GasNet's obligations to shippers are not changed.

GasNet's transmission reference tariffs and the method for varying the tariffs are provided for in the Access Arrangement. The Access Arrangement includes provisions for:

- The setting of the initial transmission tariffs;
- Alterations to the tariff path;

- New facilities investment;
- Capital redundancy;
- Incentive mechanisms;
- Pass through events;
- Tariff amendments; and
- Self-insurance.

Similar to the scope of services provided by GasNet, these elements of GasNet's tariff policy are not altered by GasNet's variation proposal.

The removal of the force majeure principles from the payment deed principles does not affect the obligation of market participants to make payment. The previous force majeure provisions under the current payment deed excused parties for non-performance rather than an obligation to make payment. The previous force majeure provisions did not apply to payment obligations.

Further, rules 42 and 43 of the NGR requires GasNet to provide Access Arrangement Information (AAI), when submitting a proposal to the AER, setting out information that is reasonably necessary for users and prospective users to understand the background, and the basis and derivation of the various elements of the Access Arrangement.

The AER does not propose to seek further amendments to GasNet's Access Arrangement Information (AAI). The AER accepts GasNet's submission that the information included in the variation proposal and Revised Access Arrangement is sufficient. GasNet's variation proposal and Revised Access Arrangement will be made public. Read in conjunction with GasNet's existing AAI, these should provide users and prospective users with sufficient information to understand the Access Arrangement in accordance with rules 42 and 43 of the NGR.

