

25th January 2001

Ms Kanwaljit Kaur
Acting General Manager
Regulatory Affairs - Gas
Australian Competition and Consumer Commission
PO Box 1199
Dickson ACT 2062

By Email: david.hatfield@accc.gov.au

Dear Ms Kaur,

Re: Ballera To Mount Isa Pipeline - ACCC Issues Paper Submission

1. Introduction

The submission is made on behalf of BHP Minerals Pty Ltd (ACN 008 694 782) (**BHP**) in response to an ACCC Issues Paper, dated November 2000, which invited interested parties to make submissions to the Commission on any issues relevant to the Access Arrangements for the Wallumbilla to Brisbane and the Ballera to Mount Isa pipelines which was submitted on 15 September 2000.

The submission is limited to the Access Arrangement proposed for the Ballera to Mount Isa pipeline (the ***Carpentaria Gas Pipeline - CGP***).

BHP owns and operates a silver-lead-zinc mine at Cannington in North-West Queensland and contracts with the Carpentaria Pipeline Joint Venture (***CGPJV***) for the transportation of gas from Ballera to a Delivery Point at the Corrie Downs off-take tee on the CGP.

2. Compliance with the National Gas Code

Under section 2.7 of the Code, the categories of information described in Attachment A to the Code must be made available but Attachment A does not limit what is to be made available.

We cannot see the legal basis for a claim that the CGPJV is exempted from the requirements of the Code in this regard.

Having regard to:

- the nominated Revisions Commencement Date of 1 May 2023
- the fact that only one Reference Service is identified, and
- the fact that it applies only for postage stamp tariff for forward haulage through the pipeline to a capacity of 175 TJ per day,

we see no reason why the information required by the Code should not be imposed as a minimum.

Furthermore, the length of time before the Revisions Commencement Date makes it impossible to be confident that the categories of information described in Attachment A to the Code will remain sufficient. Because of the length of this period, we believe that the CGPJV should also be obliged to make available in the future further information which is determined as appropriate by the ACCC having regard to the circumstances prevailing at that time.

Furthermore, the length of time before the Revisions Commencement Date makes it impossible to be confident that the categories of information described in Attachment A to the Code will remain sufficient. Because of the length of this period, we believe that the CGPJV should also be obliged to make available in the future further information which is determined as appropriate by the ACCC having regard to the circumstances prevailing at that time.

3. Services Policy

It is noted that the proposed Access Arrangement will result in there being no ability to require another Reference Service or Reference Tariff until the year 2023.

We believe that the ACCC should require the CGPJV to include the following additional Reference Services, viz:

- backhaul;
- a per kilometre service;
- an interruptible service;
- a pressure service;

for such a major trunkline with the potential to form an important link in the near future to a national network. Reference Tariffs would have to be provided for each of these services.

4. Terms and Conditions of Service

The CGP is already experiencing difficulties in servicing its customers, apparently because contracted capacity is right up against pipeline capacity without the addition of compression. We believe the unsatisfactory operating impact of allowing contracted capacity to be stretched to the limit should be avoided by adding to the terms and conditions of service a requirement for the transporter to install additional compression (at its own expense, but only up to a maximum capacity limit of 175TJ per day), if during 4 days in any month, the transporter has been required to deliver in excess of 95% of the installed capacity of the CGP.

It is implicit in Schedule C that users are to provide linepack and that the transporter's obligation to deliver is not of the user's share of user's linepack. The means by which the provisions are to be implemented should be clarified, in particular to the effect that:-

- a) differences between nominations, scheduled deliveries and receipt point allocations do not affect the transporter's firm obligation to transport gas up to the MDQ;
- b) differences between nominations and deliveries are managed by the shipper to ensure that linepack is maintained against the target linepack.

Under clause 15 of Schedule C, there is a lack of symmetry in that there is no limitation upon consequential loss in the case of delivery of non-Specification gas to a Receipt Point, whereas liability for consequential loss in respect of delivery of non-Specification gas at the Delivery Point by the CGPJV only applies where there has been negligence or wilful default of the CGPJV. It would be unusual for a shipper to accept liability for consequential loss.

The rights to interrupt and curtail are expressed to be absolute. They should be expressed so as not to be construed as relieving the transporter from liability where the interruption or curtailment constitutes a breach of the transporter's obligation to transport.

5. Trading Policy

Under the Code, there is scope for the ACCC to require limitations upon what is meant by reasonable commercial grounds, applicable to consents required for both assignments and changes in delivery or receipt points, because the Code contemplates that trading policies may specify conditions under which consent will or will not be given.

There is concern that an unqualified reference to "reasonable commercial grounds" could include commercial advantages to the transporter which are not legitimate grounds to prevent assignments. The service provider should not be able to refuse consent simply because it is to its commercial advantage to do so (and, for example, thereby oversell capacity). The commercial grounds should relate only to the prospects for satisfactory

financial and other performance of contractual obligations by a Prospective User to whom an assignment is sought. The same considerations apply to consent for changes to Receipt Points or Delivery Points.

Furthermore, additional receipt or delivery points should be required to be provided without consent so long as the shipper satisfies the following conditions:

- the aggregate of the varied receipt or delivery point MDQs does not exceed the aggregate of the shipper's receipt or delivery point MDQs prior to the inclusion of the additional receipt or delivery point;
- it is technically feasible and within the constraints of the Service Provider's contractual obligations to receive or deliver the varied MDQs at the specified receipt or delivery point;
- the shipper makes all appropriate arrangements with its customers as a result of the variation nominated;
- the Service Provider will not, as a result of such a variation, incur any additional capital cost (other than a cost which the requesting party agrees to meet or to indemnify the Service Provider against) which it would not otherwise have incurred, or will be required to advance the time at which capital costs would otherwise have been required;
- as a result of the variations, and where the transportation distance is equal to that previously provided, the shipper will pay the same amount of revenue to the Service Provider, where the transportation distance is less than the previously provided, the Service Provider will rebate to the shipper the net gain (if any) which accrues to it as a result of the change but where the transportation distance is increased, the shipper will provide additional revenue to satisfy the incremental transportation distance.

6. Queuing Policy

Prospective Users should not be required to demonstrate access to a particular source of gas.

There should be a provision stating explicitly that the progressing offering of capacity to successive persons on the queue be on the same terms and conditions. In addition, especially if there is only the Reference Service, and given the long-term nature of these arrangements, we see no justification for according any priority to a request for a Reference Service over any other request. Indeed this could lead to serious distortions in future utilisation of the CGP.

7. Extensions/Expansions Policy

The proposed access arrangements give the CGPJV the right to determine whether an extension forms part of the pipeline, requiring only prior

consultation with the Regulator. Consistent with section 3.16 of the Code, this decision should require the consent of the Regulator.

The same proposition applies to the expansion of capacity beyond 175TJs per day.

Further, it is inappropriate that an obligation to undertake an expansion shall be dependent upon any demonstration of proven preserves.

8. Term and Review

While we note that the ACCC is not empowered to review the proposed Revisions Commencement Date or the Revisions Submission date, the Regulator has, in addition to the right to vary the Revisions for Submission Date (which is foreclosed to it in this case), a separate right to require that specific major events be defined that trigger an obligation of the Service Provider to submit Revisions prior to the Revisions Submission Date. This separate right still applies to the CGP. To the extent that appropriate Reference Services are not now included in the access arrangements, it is suggested that the following events qualify as specific major events that ought to trigger a requirement to submit Revisions, namely:

- a) gas becoming available on the CGP at receipt points (including Mount Isa) other than Ballera;
- b) demand exceeding 175TJ per day;
- c) oscillation between the physical flow direction along the CGP, leading to the need to stabilise tariffs between forward-haul and back-haul tariffs;
- d) any substantial demand for a service other than a Reference Service.

So long as the Reference Tariff is fixed by the Access Arrangement, there seems no point in seeking to include any mechanism to address the risk of forecasts being incorrect as the Reference Tariff has already been fixed. If additional Reference Services are added and Reference Tariffs are determined for them, either now or upon a Revision, it would be appropriate for them to be reviewed at least every 5 years to address the risks of the forecasts on which they were based proving incorrect. The existing derogation would not inhibit any such provision, so long as the provision is inapplicable to the existing Reference Service to which the derogation relates.

9. Conclusion

BHP is happy to supplement any of the above submissions if required. For this purpose or to discuss any of the matters raised above, you should contact John Rich in Brisbane or (07) 3226-0714 or E-mail rich.john.ja@bhp.com.

Yours faithfully

TONY LENNOX
President