



29 January 2001

Ms Kanwaljit Kaur
Acting General Manager
Regulatory Affairs – Gas
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Ref: R-01-006 and R-01-007

Dear Ms Kaur

**WALLUMBILLA TO BRISBANE AND BALLERA TO MOUNT ISA GAS PIPELINE ACCESS
ARRANGEMENTS**

We refer to the request for submissions on the Wallumbilla to Brisbane and Ballera to Mount Isa gas pipeline access arrangements and associated issues paper, released by the Australian Competition and Consumer Commission ("ACCC") in November 2000.

We thank you for the opportunity to comment and ask that you accept the attached submission as Ergon Energy Gas Pty Ltd's views on both Access Arrangements.

Ergon Energy Gas Pty Ltd recognises the need to establish Access Arrangements in the lead up to the introduction of competition in the gas retail market and the importance of ensuring that access to gas transmission pipelines is provided to all parties on fair and reasonable terms.

If you wish to discuss any of the issues raised within our submission, please do not hesitate to contact Ms Rebecca Myers on (07) 3228 8134 or myself on (07) 3228 8116.

Yours sincerely

Darren Barlow
Manager Regulation
Strategic Business Development Group

ERGON ENERGY GAS PTY LTD



**SUBMISSION TO AUSTRALIAN COMPETITION AND
CONSUMER COMMISSION ON THE ACCESS
ARRANGEMENTS FOR THE 'WALLUMBILLA TO BRISBANE'
AND 'BALLERA TO MOUNT ISA' GAS TRANSMISSION
PIPELINES**

1.0 INTRODUCTION

The Carpentaria Gas Pipeline Joint Venture ("CGPJV") has submitted Access Arrangements to the Australian Competition and Consumer Commission ("ACCC") for the Ballera to Mount Isa gas transmission pipeline ("BMIP"). Similarly, APT Petroleum Ltd/Interstate Pipelines Pty Ltd ("APT") has submitted Access Arrangements for the Wallumbilla to Brisbane pipeline ("WBP"). Following the release of the Access Arrangement documents (including an information document relating to each Access Arrangement) the ACCC released an issues paper in November 2000.

Ergon Energy Gas Pty Ltd ("Ergon Energy") has reviewed both the Access Arrangement documents in conjunction with the ACCC issues paper in order to develop this submission.

It is understood that following analysis of the Access Arrangements and review of the submissions received from this initial public consultation process, the ACCC will release a draft determination, following which there will be further opportunity for consultation and comment by interested parties.

This submission represents Ergon Energy's views on the Access Arrangements and provides comments in relation to some of the questions posed by the ACCC in the issues paper. We are happy to discuss any aspect of this submission with the ACCC if requested.

2.0 GENERAL COMMENT

One of the key objectives of deregulating the gas industry is to create an environment where gas retailers can compete with one another to serve customers. It is important when creating this environment that a level playing field is established such that no single retailer has advantage over other retailers operating in the same market. Areas where we rely on regulators to ensure no competitive advantage is gained by any party is in the monopoly parts of the gas industry - transmission and distribution networks. In the absence of being able to seek an alternate service, it is critical for Regulators to ensure that all parties gain access to network capacity on fair and reasonable terms and that no party is favoured in the allocation of available capacity. In other words, it is our view that the objectives of deregulation are not met if new retailers cannot compete in gas retail markets because existing retailers (whether incumbents or early movers) receive access to capacity on more favourable terms.

3.0 DISCUSSION

3.1 Service Policy

We believe the Reference Service (a firm forward non-interruptible transportation service) being offered by APT for the WBP is sufficient to meet a significant part of the market's demand. However, offering this service to users who contract the first 101TJ/day (in a pipeline that is forecast to exceed this volume threshold on an average daily basis by 2002), discriminates against those who contract beyond this amount. There is no reason given by APT why the full capacity of the pipeline (ie up to 118.5 TJ/day) cannot be contracted under its Reference Service. Given that the capacity of the WBP is almost fully utilised on a daily basis, we consider that access to the full pipeline capacity should be available at a regulated tariff rate. Allowing access to the full pipeline

capacity as a Reference Service would not prevent any User or Prospective User from seeking access to a Negotiated Service if they wished.

We have no comment to make in relation to CGPJV's proposed service policy for the BMIP.

3.2 Access Arrangement Information Disclosure

The minimum disclosure requirements for Access Arrangement Information are specified in Attachment A of the Code. There are six categories of information, of which the Service Providers (APT and CGPJV) have only supplied Category 5 information which is not related to Reference Tariffs.

With regards to the both the WBP and BMIP, it is our view that Access Arrangement Information should be supplied by the Service Providers in order that Users and Prospective Users can be informed of how the Reference Tariffs were initially derived and how Negotiated Services will be priced in the future.

As discussed in the ACCC's issues paper, the Gas Pipelines Access (Queensland) Act 1998 contains a derogation which exempts APT from the requirement to submit Access Arrangement Information in connection with an Access Arrangement for capacity up to 101TJ/day. However, with respect to the WBP, the Access Arrangement submitted by APT to the ACCC also covers the expanded capacity from 101 to 118.5 TJ/day.

Further to our comments in Section 3.1, regarding the need for access to the 101-118.5 TJ/day portion to be offered as part of APT's Reference Service, the full Access Arrangement Information requirements under the Code should be met by APT. Without this information, pipeline users are unable to understand how requests to contract capacity beyond 101TJ/day will be treated.

3.3 Reference Tariffs and Reference Tariff Policy

APT's proposed Negotiated Service arrangement for the WBP capacity between 101 TJ/day and 118.5 TJ/day does not provide any certainty for users because of the lack of regulated tariffs and could potentially impact upon the development of a competitive market. Given that the pipeline capacity above 101 TJ/Day will be utilised immediately, it is our view (as discussed in Section 3.1 and 3.2) that a regulated tariff should apply to the entire capacity to prevent monopoly power from being exercised. Therefore as discussed above, we believe that APT should be required to submit a Reference Tariff for capacity above 101TJ/Day, for approval by the ACCC.

3.4 Terms and Conditions

Negotiating with a monopoly business in relation to the terms and conditions upon which access to infrastructure is granted is a difficult task. Commercial outcomes and appropriate apportionment of risk between the Service Provider and User are seldom achieved under agreements due to the relative (ie inequitable) bargaining positions of the parties. The terms and conditions are therefore a critical part of the Access Arrangement from the point of view of the User, in particular 2nd tier retailers who see excessive network relationship risk as a barrier to entry. This is an issue where we believe the ACCC should seek to ensure all parties can gain access on reasonable terms.

Ergon Energy's expectation was for the Terms and Conditions for access to Reference Services to be captured in a single schedule to the Access Arrangement. The format submitted by both APT and CGPJV, whereby terms and conditions are dispersed throughout the numerous schedules, means it is difficult to fully assess the requirements/obligations. Further, it leads us to query which specific clauses would be brought into a contractual document when a User is seeking to enter an access agreement.

In our view, the ACCC should include in its draft determination a requirement for both Service Providers to develop a comprehensive 'Terms and Conditions' schedule, which incorporates all necessary aspects of a default access agreement within the one document.

3.5 Trading Policy

It is not clear why a transferee must reveal to the Service Provider the portion and nature of contracted capacity which is the subject of a bare transfer. This information is commercially sensitive and we cannot see why it is required by the Service Provider.

An appropriate definition should be provided for the term "reasonable commercial grounds or technical conditions" under which the Service Provider will consent to a transfer of capacity (other than by bare transfer) or a change to the Receipt/Delivery Point. The definition should encompass the conditions under which the consent will be granted. Alternately, the Access Arrangement should allow for any dispute to be referred to through a recognised dispute resolution procedure.

3.6 Queuing Policy

Clause 7.5 requires a Prospective User to demonstrate, upon request, that it has agreements in place which will provide it with access to gas supplies at the time when access is likely to be offered. This information is commercially sensitive. We are unable to see any public benefit in a requirement to reveal this information to the Service Provider.

Ergon Energy believes that competition can be stifled if a pipeline's capacity is fully contracted, yet not fully utilised. To ensure that available capacity can be accessed, it is our view that the Queuing Policy should include a mechanism whereby Users who do not fully utilise their contracted capacity sufficiently should be required to surrender that capacity if there are Prospective Users queuing to obtain access.

3.7 Extensions/Expansions Policy

Under the proposed policies, both Service Providers give themselves the option (after consultation with the ACCC) to elect not to treat any geographic extension as part of the covered pipeline. This is clearly a favourable outcome for the Service Providers as it potentially allows them to set unregulated tariffs on these extensions. The Access Arrangement also states that the Service Provider can 'elect' whether an extension/expansion will be treated as a covered pipeline. Whilst this potential policy position is flagged under the Code, we consider that it could prevent access to some key infrastructure from being subject to Code requirements. It is our view that the Access Arrangement should require coverage of each pipeline extension/expansion to be considered on a case-by-case basis and that the methodology by which coverage is determined be clearly specified and subject to a public consultation.

Further, there should be greater detail provided about how the Service Providers would determine the impact that an extension/expansion would have on the Reference Tariffs. For example, there could be an “economic feasibility test” to determine if the prevailing tariff structure will apply to an extension or whether a surcharge will be levied on incremental users.

3.8 Term and Review

Ergon Energy supports the ACCC applying conditions/mechanisms, based on clauses 3.17 and 3.18 of the Code, to both Access Arrangements and in particular to the BMIP where the Revisions Submission Date is 1 November 2022. Specifically we would support a mechanism whereby a review/revision of the Access Arrangements would be triggered (prior to the Revisions Submission Date) if a specified major event occurred.

Examples of specified major events are:

- Development of a new pipeline as an alternative or compliment to the existing pipeline
- Variation (from forecast) in revenue from the pipeline of more than 10%
- Variation (from forecast) in total gas demand of more than 10%

Further, the conditions should specify (in accordance with clause 3.18 of the Code) that any excess revenue or profit would be returned to Users.

Looking forward towards the end of the specified terms for both pipelines, and the reviews which will occur prior to the subsequent Access Arrangement periods, we query whether the Initial Capital Bases that have been set by the Minister will continue to be applied once the ACCC takes responsibility for approving the access tariffs.

Under Chapter 8 of the Code, the Initial Capital Base approved by the Regulator can only be revised in subsequent Access Arrangement periods in accordance with section 8.9 (ie to reflect new facilities and redundancies etc). Essentially once approved, the Initial Capital Base for the prevailing assets is locked in and cannot be subsequently revisited by the Regulator. It is unclear from the Code or Gas Pipeline Access (Qld) Act 1998, whether the ACCC will be able to redetermine the Initial Capital Base for either pipeline once it assumes responsibility for the tariff arrangements. Given that the Minister took responsibility in this initial Access Arrangement period, we question whether there is scope for the ACCC to make a re-determination, or whether it is required to regard the Ministerially approved ICB as permanent.

4.0 CONCLUSIONS

There are a number of sections within both Access Arrangements where there is, in our view, a clear need for greater detail to be provided by the Service Providers, in order to clarify their policy intentions and to prevent excessive risk being passed to Users.

In our view, the ACCC’s draft determination should include requirements to ensure the Access Arrangements reflect the Chapter 3 provisions of the Code.