GasNet response to ACCC Draft Decision

19 November 2004

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1 Introduction

1.1 Background

On 24 August 2004, GasNet lodged with the Commission an application to revise the Access Arrangement under 2.28 of the Code (**Revisions Application**). The revisions contained in the Revisions Application are voluntary and separate from:

(a) the scheduled review of the Access Arrangement, due in 2007; and

(b) the annual tariff adjustment, which for 2005 which commenced on 16 November 2004.

A number of interested parties provided submissions on the Revisions Application. On 14 October 2004 GasNet provided the Commission with a response to these submissions.

The Commission issued a draft decision on 10 November 2004 (**Draft Decision**), which proposed to approve three of the four revisions.

1.2 This Response

One of GasNet's revisions proposed removing the current lower tariff for withdrawals into storage facilities to prevent export leakage to the SEA Gas Pipeline. The lower tariff would be replaced with a rebate system.

This aspect of the Revisions Application attracted comment from all submissions received by the Commission.

In the Draft Decision, the Commission proposed not to approve this revision, for three reasons:

(a) the Commission was concerned there may be potential for financial loss for some users, who claimed to have entered into fixed price contracts based on GasNet's present withdrawal tariff;

(b) the Commission was concerned GasNet could receive a windfall gain; and

(c) in the Commission's view, the revision was not necessary to maintain forecast revenue.

This Response deals only with the first of those reasons, which was specifically raised by TXU in its submission of 30 September 2004 (**TXU Submission**).

GasNet reserves the right to make further submissions on this, or any other, aspect of the Draft Decision.

1.3 Terminology

For convenience, this Response adopts the terminology used in the Revisions Application.

2 Refill Tariff Revision

2.1 Summary of GasNet's proposal

GasNet currently applies a lower tariff to withdrawals into storage facilities. This tariff is deliberately lower than other tariffs on the GNS to encourage storage.

GasNet has become aware that it is now possible for Users who have access to the WUGS storage facility at Iona to export gas from the GNS to the SEA Gas Pipeline, via the WUGS facility, and receive the benefit of the cheaper withdrawal tariff. This opportunity is not available to Users who export through the nearby SEA Gas delivery point.

This use of the cheaper withdrawal tariff for exports was never intended. Under the Refill Tariff Revision, GasNet proposes to retain the storage incentives while preventing export "leakage" by:

(a) removing the cheaper withdrawal tariff; and

(b) instead operating a rebate system so that stored gas attracts the lower tariff when it is re-injected into the GNS.

2.2 TXU's Submission

As GasNet understands it, TXU contends that:

(a) TXU has entered into "downstream supply contracts" on the basis of the existing tariffs; and

(b) any increase in costs could not be passed through in a "competitively neutral way",

and therefore TXU would be adversely affected by the rebate proposal for the refill tariff.

The TXU Submission does not elaborate on or substantiate this contention. In particular, two key issues are not addressed.

First, TXU referred to "downstream supply contracts, especially in SA". For the purposes of this Response, and based on TXU's other comments, GasNet has assumed that the contracts to which TXU refers are contracts for the sale of gas, where the gas is sourced in Victoria, transported through WUGS and SEA Gas and sold in South Australia to gas retailers or directly to major users. However, this is not clear.

Second, TXU does not explain how it would be financially disadvantaged under supply contracts in South Australia.

In its submission, TXU states that its ability to provide this material is hampered by its customers' "concerns about the confidentiality of the terms of their contracts".

2.3 The Draft Decision

In the Draft Decision, the Commission placed considerable weight on TXU's contentions regarding the potential for financial loss..

In GasNet's view, the Commission should be cautious about making a decision that affects a service provider's legitimate business interests where:

(a) there is insufficient evidence to substantiate a claim, although that evidence could be readily provided in a confidential form; and

(b) an analysis of the usual arrangements for supply of gas in South Australia suggests that the claimant is unlikely to be financially disadvantaged by the service provider's proposal.

3 Insufficient evidence

Outline

The fact that a mid-term change in an access arrangement could have a significant negative financial effect on Users is not, of itself, a basis to reject a revision. Any impact on Users must be carefully weighed against the other Code criteria.

That said, GasNet understands the reluctance of the Commission to approve a change in an access arrangement that could have a significant negative financial effect on users.

However, the corollary is that, where a revision sought by a service provider is resisted on the basis of perceived financial harm to Users, the Commission must have access to reasonable evidence of the harm.

This is particularly so where (as in this case):

(a) it is simple for the User to establish the alleged financial harm (for example, by providing a copy of relevant contracts); but

(b) it is extremely difficult for the Service Provider to contradict the alleged financial harm (ie because it does not have access to any of the relevant material).

TXU Submission

As TXU relies on particular contracts to demonstrate the potential for financial loss, it is important that the Commission examine these contracts to determine if those contracts are likely to lead to the type of harm claimed by TXU. In particular, the Commission should consider whether TXU is able to pass through any cost increases.

TXU has not substantiated its potential loss as it is hampered by its "customers' concerns about the confidentiality of the terms of their contracts".

While TXU is understandably concerned to preserve confidentiality in sensitive commercial agreements, the Commission's routine confidentiality mechanisms would enable TXU to put forward, in confidential submissions to the Commission, its concerns regarding its potential loss. But it is very difficult for GasNet to disprove.

In the absence of such evidence, it is difficult to assess accurately the effect of the refill tariff revision.

4 Fixed contracts

Despite these difficulties, a number of general observations can be made about the TXU assertions.

As GasNet understands it, TXU is concerned that it may suffer financial loss due to the terms of downstream supply contracts. In GasNet's experience, these contracts could be unregulated or regulated supply contracts.

4.1 Unregulated supply contracts

Passthrough mechanism

Typically, unregulated gas supply contracts allow suppliers to pass through the costs of increased gas charges due to change in regulatory charges, including transmission tariffs. In these situations, a supplier (such as TXU) would not suffer any loss if transmission charges were increased after the supply contract was signed.

Moreover, given that GasNet's tariffs fluctuate year to year due to the operation of the K-Factor, it would be curious if TXU's supply contracts did not contain some ability to pass through a change in tariffs.

Accordingly, GasNet would expect that TXU's downstream supply contracts would be likely to contain a clause allowing increases in regulatory costs to be passed through.

Effects of pass-through mechanism

Also, GasNet notes that where TXU is able to pass through such costs, GasNet estimates the extra amount paid by customers would be immaterial (around 2% of the delivered gas price).

4.2 Regulated retail contracts

TXU Submission

To the extent the TXU downstream sales comprise (directly or indirectly) regulated retail sales, the TXU Submission suggests that:

(a) regulated retail tariffs do not include a component to recover changes in transmission charges; and

(b) TXU would be disadvantaged by an increase in transmission tariffs.

Transmission component of retail tariffs

On the basis of GasNet's assumption that the TXU Submission related only to gas sales in South Australia (see above), the Victorian retail tariff structure is not relevant.

Where TXU sells gas to regulated South Australian retailers for on-sale to retail customers, the South Australian regime may be relevant. GasNet understands that, in South Australia, the Energy Minister determines (and has recently determined) maximum retail tariffs. When setting these tariffs, the Minister includes an allowance for transmission costs and the Minister's department recognises that these costs are likely to fluctuate within periods.

Accordingly, as regulated retail tariffs in South Australia include a component for transmission costs, it is unlikely a retailer that purchased gas from TXU would be detrimentally affected if TXU passed through an increase in GasNet's transmission tariff.

Therefore, in relation to any losses for a regulated South Australian retailer, to which TXU sells gas sourced in Victoria:

(a) the risk of intra-period fluctuations appears to be contemplated in the determinations; and

(b) in any event, any exposure would only be borne by the regulated retailer until the next retail tariff review.

However, it is not clear whether TXU sells any gas to regulated South Australian retailers for on-sale to retail customers.

Minimum increase to retail tariff

Finally, under the operation of the bundled tariff for small retail customers in South Australia, the effect of GasNet's Refill Tariff Revision would be an increase on an average gas bill of less than 1%.