

Access Arrangement Variation Proposal to the APA Access Arrangement of 1 January 2008

A. Introduction

TRUenergy welcomes the opportunity to comment on APA's current access arrangement (AA) which commenced on 1 January 2008 and is due to be revised on 31 December 2012. APA requests a variation to its access arrangement pursuant to Rule 65 of the National Gas Rules (NGR) which provides that a "service provider may submit for the Australian Energy Regulator's (AER's) approval a proposal for variation of the applicable access arrangement." The AER has already indicated that the revision to the AA is a material revision to be considered under Division 8 of the NGR.

APA argues the proposed variation is required in order to change the Transmission Refill Tariff approved by the AER under the current AA because it results in a tariff anomaly. The anomaly occurs because the Transmission Refill Tariff is designed to recover the incremental cost of providing the Transmission Refill Tariff. Specifically, the price differential between the transmission refill tariff for withdrawals at WUGS and the general withdrawal tariff applicable in the South West Zone creates an anomaly in the tariff structure that allows some shippers to withdraw gas from the PTS in the Port Campbell Injection Zone for export to South Australia more cheaply than others.

Since the Access Arrangement was approved by the ACCC on 25 June 2008, APA has learned that there will be a material change in the way in which compressor fuel gas is treated under the MSOR which will impact the level of costs required to be recovered by the Transmission Refill Tariff. This will result in a significant reduction to the APA charges for the Transmission Refill tariff for withdrawals into a gas storage facility (WUGS).

APA remains concerned that the changes to the 2009 tariffs which flow from the compressor fuel gas changes will exacerbate the negative effects of this tariff anomaly. Accordingly, APA is proposing to remove the Cross System Withdrawal Tariff for withdrawals at the Port Campbell Injection Zone and to replace the WUGS Transmission Refill Tariff with the standard withdrawal tariff which applies to the South West Zone. APA claims that these changes will create a more efficient tariff structure combining with more cost reflective tariffs.

TRUenergy has considered the variation to the AA requested by APA which the AER has progressed as a material variation under Rule 65 of the NGR. We have some very serious concerns regarding the proposed variation that include:

1. The proposed variation creates tariff uncertainty for all major gas shippers. A more stable tariff regime (without major tariff variations) during a five year access arrangement period would be more consistent with best practice regulation;
2. APA's proposed Access Arrangement variation does not comply the tariff pricing principles in Section 8 of the Gas Code;

B. Key issues

i. APA initiated Access Arrangement creates tariff uncertainty for all market participants

A variation to an AA made during a regulatory term which alters major tariffs is not supported. Significant changes to major tariffs made during an access period can create problems for gas shippers who use the Principal Transmission System (PTS). In 2004, when GasNet proposed a variation to its AA to approximately double the Transmission Refill Tariff, TRUenergy raised some serious concerns regarding its ability to pass on these additional costs to customers in the South Australian (SA) gas retail market. Our principle concern was our inability to pass these costs through given any pass through would impact on our ability to compete in the SA retail gas market. Whilst the changes proposed to the Transmission Refill Tariff and the other withdrawals tariffs will lead to reduced charges for gas shippers using the WUGS & SEAGas connection point, we still oppose any significant alteration to major tariffs that lead to greater uncertainty and unpredictability in tariffs during an AA period. The practice can lead to significant uncertainty in the cost structure of gas shippers and it is therefore opposed. Finally, we caution the AER against approving this variation, because the approval will set a precedent that allows other significant variations to tariffs during an access arrangement period, which will lead to greater tariff uncertainty for users of the PTS in the future.

ii. The AER requirement to assess the proposed variation to ensure it is consistent the tariff pricing principles in section 8 of the Gas Code

The National Gas Code has been repealed and APA has lodged this application pursuant to Rule 65 of the NGR, which provides that "a service provider may submit for the AER's approval a proposal for a variation of the applicable access arrangement." As the NGR do not include any specific criteria which the AER must apply when deciding on whether to approve an AA variation proposal, we agree with APA's proposal to assess the variation under:

- (a) the national gas objective set out in section 23 of the NGL; and
- (b) the tariff pricing principles set out in section 8 of the Gas Code

An application to vary an AA was previously lodged under Section 2.24 of the Gas Code prior to the introduction of the National Gas Law (NGL) & the NGR which took effect on 1 July 2008. In order for the ACCC to approve an AA variation under section 2.24 of the Gas Code, the variation was required to comply with Section 3.1 to section 3.20 of the Gas Code. Importantly, in undertaking this assessment, the ACCC concluded that that there was no need to conduct a full review of an access arrangement to determine whether the terms and conditions of the AA comply with the Gas Code. Rather, it determined that it was important to factor in the impact of the proposed revisions and on whether circumstances had changed substantially such that the access arrangement would no longer contain the elements and satisfy the principles set out in section 3.1 to 3.20 of the Gas Code.¹

¹ ACCC: Final Decision: Access Arrangement for the Principal Transmission System, Application for Revision by GPU GasNet Pty. Ltd, 28 April 2009 p.56

"The Commission does not consider it appropriate for the current assessment to extend to extending the full review of the access arrangement it conducted between November 1997 and December 1998, or to anticipate the review to be conducted during 2002. This review therefore focuses on the impact of the proposed revisions and on whether the circumstances have changed since 1998 such that the access arrangement would no longer contain the elements that satisfy the principles set out in sections 3.1 to 3.20 of the Code."

TRUenergy concedes that this application to vary APA's AA does not amount to an assessment under section 2.24 of the Gas Code to determine if the proposed revisions and current circumstances have changed such that revised AA no longer satisfies the principles in section 3.1 to 3.20. However, given rule 65 of the NGR does not provide the AER with any clear direction on how to determine if the proposed revision satisfies the criteria under which APA submit the revision should be assessed (i.e. the tariff principles in section 8 of the Gas Code) we believe that the methodology applied in previous cases should also be applied here. Therefore, in accordance with previous GasNet AA revision determinations, an important principle for the AER to apply in determining whether this AA variation complies with the tariff pricing principles in Section 8 of the Gas Code is to decide whether the environment in which an AA operates has changed so substantially that the AA no longer complies with section 8 of the Gas Code. Both the ACCC and GasNet make it clear from previous statements in past determinations relating to AA variations that when **substantial** changes to the environment in which the AA operates occurs, that this would justify an early review of the AA. ²

ACCC: Final Decision: Access Arrangement for the Principal Transmission System, Application for Revision by GPU GasNet Pty. Ltd, South west Pipeline, 29 June 2001. p66

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² ACCC: Final Decision: Access Arrangement for the Principal Transmission System, Application for Revision by GPU GasNet Pty. Ltd, 28 April 2000 p.55- 56

"The Commission has considered the costs and uncertainties likely to be associated with frequent reassessment of the regulated rate of return. It is of the view that any early review would only be justified if there were strong grounds to believe that changes in the prevailing conditions in the market for funds since the rate of return was set have been so **substantial** that the reference tariff principles established by section 8 of the Code would no longer apply."

ACCC: Final Decision: Access Arrangement for the Principal Transmission System, Application for Revision by GPU GasNet Pty. Ltd, South west Pipeline, 29 June 2001. p66

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GasNet Australia access arrangement revisions for the GasNet System - 10 November 2004 p. 6

"GasNet submits that the Access Arrangement as revised with these Access Arrangements Revisions is not taken outside the principles of section 3.1 to 3.20. Nor has the environment in which the Access Arrangement operates changed so substantially that the Access Arrangement no longer complies with the Code.

However, if the ACCC considers that the environment has changed such that the reference tariff principles change are affected, it is GasNet's view that this change is not so significant that the costs and uncertainties associated with this review are outweighed by the need to amend the Access Arrangement. GasNet notes particularly that the ACCC should not conduct a review at this point as this may amount to repeating the full review undertaken in 2002 or anticipating the review in 2007."

TRUenergy submits there has been a "substantial" change in the prevailing conditions in the market for funds since the rate of return (WACC) was set for APA if the AER compares the current APA rate of return (WACC) with the most recent AER electricity transmission determination on the WACC. APA's current Nominal Vanilla WACC is 10.55%³ compared with the AER nominal vanilla WACC of 8.6% proposed to apply to electricity transmission businesses in December 2009.⁴ Whilst the non diversifiable risk of both these energy assets maybe different, it is reasonable for the AER to compare this determination with APA's current WACC to determine whether the prevailing conditions in the market have changed since APA's rate of return was set. In fact, the AER argued it would use the outcome of its recent WACC review (that applies to electricity transmission businesses) for consideration of WACC issues in future gas AA reviews.⁵ Accordingly, our view is this comparison provides evidence to conclude that there has been a substantial change in the prevailing conditions in the market for funds since the rate of return was set for APA.

C. Conclusion

TRUenergy's position on the proposed variation to the APA AA is:

1. The proposed variation creates tariff uncertainty for all major gas shippers. A more stable tariff regime (without major tariff variations) during a five year access arrangement period would be more consistent with best practice regulation;
2. The changes in the prevailing conditions in the market for funds since the rate of return was set have been so substantial that that the reference tariff principles in section 8 no longer apply.
3. The proposed variation in its current form should not be approved under Rule 65 of the NGR. In order to approve this AA variation and ensure compliance with Section 8 reference tariff principles the AER will need to requests amendments that :
 - Re-adjust the WACC and make the necessary changes to the building block revenues;
 - Following this, re-allocate the costs to the relevant connection points (including the SEAGas & WUGS Connection point) to ensure more efficient tariffs to the users shipping gas through these connection points.

³ AER Final Decision "Revised access arrangement by GasNet Australia (Operations) Pty. Ltd. for the Principal Transmission System" p.17 " Real Vanilla WACC of 7.67%. This is equal to a Nominal Vanilla WACC of 10.55%.

⁴ AER Explanatory Statement - Electricity Network and distribution network service providers - Review of the weighted average Cost of capital (WACC) parameters - December 2008 p. 21

"The outcome of the AER's WACC review applies only to electricity determinations and has no direct formal applicability to gas access arrangements. The determination of the WACC for access arrangements is subject to the requirements under the National Gas Law (NGL) and the National Gas Rules (NGR.), which are not being considered in this review. Nonetheless, given the similarity of the issues, the AER may use the outcome of this review for the consideration of WACC issues in future gas access arrangement reviews."

⁵ AER Explanatory Statement - Electricity Network and distribution network service providers - Review of the weighted average Cost of capital (WACC) parameters - December 2008

Regards

A handwritten signature in black ink, appearing to read 'Con Noutso', written in a cursive style.

Con Noutso
Regulatory Manager (Access)