



17 November 2006

Your ref: S2005/76

Mike Buckley
General Manager
Network Regulation North
PO Box 1199
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Dear Mr Buckley

Access Arrangement for Roma to Brisbane Pipeline– user contributions

I refer to your letter dated 8 November 2006 requesting the views of Sun Retail Pty Ltd (Sun Retail) regarding the draft decision of the ACCC on the Roma to Brisbane Pipeline (RBP).

You specifically asked whether, in our view, the ACCC should remove past capital contributions made by users from the initial capital base (ICB) as done in the draft decision. APTPPL in its response to the ACCC's draft decision has argued against this approach citing that the benefits of contribution should accrue to single users rather than to all current and future users.

Sun Retail is firmly of the opinion that past contributions must be recognised in this regulatory decision and agrees that the methodology used by the ACCC in the draft decision is the best approach in this situation, that is, capital contributions are removed from the ICB.

Such an approach is used by State regulators to take account of capital contributions including IPART¹, ICRC² and more recently by the QCA³ in its decisions on Revised Access Arrangements for the Queensland gas distribution networks.

¹ Revised Access Arrangements for AGL Gas Networks – Final Decision, April 2005.

² Revised Access Arrangements for ActewAGL gas distribution system in ACT – Final Approval, Nov 2004.

³ Revised Access Arrangements for Allgas Network – Final Decision, Dec 2005; and Revised Access Arrangements for Envestra Network – Final Decision, Dec 2005.

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In these decisions, regulators considered it appropriate to take account of capital contributions by either removing the amounts from the regulated capital base or by subtracting the contribution from regulated revenue. In the RBP case, any reduction through revenue is not applicable as limited capacity is available on the pipeline at the regulated reference tariff for the next regulatory period and hence, no users can benefit.

Sun Retail would highlight the IPART decision describes capital contributions as “generally made as an upfront payment and/or as a charge that exceeds the reference tariff for the relevant reference service.” Sun Retail therefore takes a contrary view to APTPPL and is certain that the contributions in question were in addition to the reference tariff for the service and therefore constitute capital contributions within the meaning of the National Third Party Access Code for Natural Gas Pipeline Systems (Gas Code).

With regard to the APTPPL proposal that contributions are an issue for arbitration, Sun Retail does not consider this as a viable alternative for two reasons. First, with APTPPL excluding any expanded pipeline capacity from the Access Arrangement, any charges for new capacity will be set through negotiation. Without a benchmark reference tariff, the bargaining position of users (including Sun Retail) is limited and to expect recognition of previous capital contributions is unrealistic. Secondly, if an arbitration process actually required APTPPL to offer a discount rate, there is no benchmark tariff to reduce and it is again unrealistic to assume the resultant tariff would represent an efficient cost for providing the service less past contributions.

On the matter of capital contributions, Sun Retail would also encourage the ACCC to establish a precedent for dealing with future capital contributions, whether they are up-front or excess charges over time. It is vital that all participants including APTPPL have an understanding of how similar payments will be incorporated into the next regulatory period.

The IPART decision stated “A user might agree to make a capital contribution where a service provider is otherwise reluctant to undertake the investment at the prevailing reference tariffs.”

It was made clear from this regulatory process that APTPPL was reluctant to make a reference tariff available for expanded capacity as it wanted firm commitment from users to take up new capacity prior to the investment. This is accepted as a valid argument by the ACCC as the expanded capacity was excluded from the draft decision. Given APTPPL is now able to negotiate tariffs for any expanded capacity and such negotiated tariff may include an element of capital contribution, Sun Retail is concerned these contributions will be denied recognition in the next revision.

It is Sun Retail’s view that the ACCC will face a similar issue in the next revision with regard to capital contributions, in particular, where it is a charge that exceeds the efficient cost for the relevant reference service made towards “new capacity” on the RBP. Sun Retail considers it essential the ACCC provides clear direction to APTPPL with regard to future application of payments of a capital nature to ensure appropriate records are maintained and to provide APTPPL with proper incentives to manage its business in a manner consistent with the regulatory principles within the Gas Code.

In summary, Sun Retail supports the draft decision of the ACCC to reduce the ICB of the RBP by the value which represents the capital contributions made by users during previous periods. Sun Retail considers it is more appropriate to recognise the capital contributions in this regulatory period to benefit all users in the future rather than rely

upon an arbitration process to provide the possibility for some benefits to accrue to specific users.

In addition, Sun Retail believes that if the ACCC presents a clear methodology for treatment of capital contributions in its final decision then it will provide more certainty for users and the service provider regarding the nature and relevance of similar future payments.

If you have any further questions please don't hesitate to contact Patrick Whish-Wilson, A/ Regulatory Manager, on (07) 3405 9424.

Yours sincerely

Sandra McCullagh
Group Manager Natural Gas