



8/12/2011

Mr Warwick Anderson
General Manager
Network Regulation Branch
Australian Energy Regulator
GPO Box
Canberra ACT 2601

Dear Warwick,

A: Introduction

TRUenergy welcomes the opportunity to comment on the APT Petroleum Pipelines Pty Limited (APA Group) Roma Brisbane Pipeline (RBP) Access Arrangement Revisions 2012-17.

The Access Arrangement (AA) is a key element to the Third Party Access Framework. It governs the terms and conditions under which a shipper of gas is able to transport gas to its end users. In addition, it operates in parallel with existing bilateral contracts on the pipeline.

The APA Group will issue an AA for the RBP. It will be governed by the National Gas Law (NGL) and the National Gas Rules (NGR).

The current AA applies from 12 April 2007 and expires on 11 April 2012. The revised terms and conditions of access that have been submitted by the APA Group for this pipeline will apply from 12 April 2012-30 June 2017.

TRUenergy will submit some comments in response to the proposed AA lodged for the RBP. We will limit our comments to the key parts of the revised terms and conditions of the AA that will apply for the 2012-2017 AA period.

Given the constrained nature of the RBP pipeline and the fact that we are contemplating counteracting for capacity on the RBP for our announced Blackstone Power Generation project at Ipswich, the key focus of our submission will be on issues related to access.

B: Key recommendations

TRUenergy has reviewed the revised terms and conditions of access to apply on the RBP for the 2012-2017 AA period. In response to the revisions proposed to the AA to the RBP, we submit the following comments.

Overall, we consider that:

- the NGL provides parties with a remedy where a dispute arises in a commercial negotiation regarding a tariff on an expansion. Under the NGL in section 6, a dispute resolution body has the power to order a service provider to offer a pipeline service at a specified tariff or charge for that expansion.
- an NPV prioritised auction under the expansions policy should optimise the size of any expansion. However, if APA cannot locate other parties to underwrite a larger or smaller expansion – depending on the outcome of the NPV auction process - then this policy should not deter or delay an expansion that arises from a bilateral negotiation.
- there is sufficient competitive tension in the provision of extensions to the RBP as long as there are no artificial impediments to the connection of extensions not built by APA. We suggest that the AER, along with the APA Group, should determine reasonable technical and operating standards that would apply to the construction of an extension, and a process by which such extensions could be connected.
- the capacity trading policy that has been submitted under the AA for the RBP is appropriate. In short, it allows users to trade any capacity that they do not require in the market.
- the imbalance charge proposed by APA under section 4.3.2 of its AA which is proposed to be recovered daily may not be consistent with the NGR, and may be excessive

C: Key Issues

1. Expansions

Negotiated Service

TRUenergy understands that the default position under the AA is for incremental services provided through an expansion to be supplied under the terms and conditions of the revised AA. However, if the service provider proposes and the AER agrees that the incremental services will not be provided under the terms of the AA, then it will not apply. We understand that the APA Group intend to treat expansions outside the AA.

We intend to negotiate an expansion of capacity on the RBP for our proposed Blackstone generator during the next AA. To get this additional capacity, we will need to negotiate in good faith with the APA Group to determine a fair and reasonable tariff on that expansion. Our intention is to negotiate a commercial deal to secure that tariff on an expansion of the RBP. In this regard, we aim to secure firm forward haul at a reasonable tariff for the expansion over a long term period.

We are clearly aware that we will be negotiating an expansion of the RBP with a regulated monopoly. So, we have a clear disadvantage. In addition, we do not have the benefit of getting access at the reference tariff. Therefore, in the event of a dispute in relation to price on the expansion of the on the RBP, we understand that Chapter 6 of the NGL provides remedies for any potential access disputes.

We consider that chapter 6 of the NGL provides a clear pathway for both the APA Group and any shipper to resolve an access dispute. Specifically, the NGL under section 193 states that an access determination may deal with any matter relating to the provision of a pipeline service.¹ We can see no alternative than to rely on these provisions to provide some competitive tension and ultimately provide some protection for us in negotiating an expansion. Whilst we do not expect that our commercial negotiations to secure the expansion of the RBP will lead to an access dispute, we are comforted by the fact that this remedy is available to us.

NPV prioritised auction

The APA Group intends to apply an NPV prioritised auction methodology to determine the amount of capacity developed on the RBP.

The APA Group intends to maximise the capacity development coordination through its NPV prioritised auction methodology for developable capacity. Under this policy, it could be that in some circumstances that the size of an expansion is scaled up to create capacity for third parties on the RBP. In other circumstances, it could mean that an expansion is scaled back. Overall, the outcomes of this process will vary depending on the nature of requirements of the parties seeking the expansion of the pipeline.

We accept that the NPV prioritised auction process will help the APA Group optimise the size of an expansion of the RBP in the future. However, because we do not have enough information about this process, we cannot say for sure whether it will benefit all the parties that seek access to the pipeline.

Nevertheless - where a single party needs the RBP expanded - then this policy should not prevent an extension being developed that was based on the outcome of a bilateral negotiation. In other words, a bilateral negotiation should not be excluded on the basis it does not maximise the NPV prioritised capacity.

2 Extensions policy

TRUenergy understands that extensions to the RBP will in effect be negotiated outside the terms and conditions of the AA.

The APA Group submitted its proposal to the AER by the APA Group on the RBP. It is required to apply to the AER for an extension to form part of the covered pipeline - if it considers it appropriate. We understand that the APA Group have decided that it will not to do this in the next AA. Instead, they will conduct bilateral negotiations with a user to determine the terms and conditions at which an extension will be undertaken. Thus, the delivery of an extension will be the subject of a commercially negotiated outcome between TRUenergy and the APA Group.

TRUenergy is happy with this outcome with the significant proviso that we are able to build our own extension to the RBP and connect it. This outcome would be entirely consistent with the extension policy proposed for the RBP. We could build and own these assets themselves and choose our own contractors to

¹ Section 193 of the NGL – Content of an access determination

“Subject to this chapter, an access determination may deal with any matter relating to the provision of a pipeline service to a prospective user or user.

Example-

An access determination may require the service provider to provide a pipeline service to a prospective user or user at_

- (a) a specified tariff, rate or charge; and
- (b) on specified terms and conditions

build the extension. APA could bid competitively to build the extension, and even to subsequently own it. This would give us more control over the time it took to construct these assets and the amount they cost. It also provides the competitive tension required to make the investment efficient. There is nothing in the extensions policy being proposed by the APA Group on the RBP that would prevent this.

The key to this extension proposal is that APA may not prevent connection of extensions that are build to an acceptable standard, and may not prevent gas supply to extension that are operated in a prudent manner.

We suggest that in order for this proposal to proceed under the extensions policy, we would agree based on the following key matter:

- The AER, along with APA Group, should determine reasonable technical and operating standards that would apply to the construction of an extension. And, that if in the reasonable view of the AER, a proponent meets these standards, then APA must facilitate connection and gas supply to the extension.

3 Capacity trading policy

TRUenergy believes a capacity trading policy for the RBP is essential.

We prefer that the AA include a capacity trading policy which clearly allows that shippers can trade capacity on the RBP. Given the relatively constrained nature of the pipeline, we suggest that the need for a fully functional capacity trading policy is crucial. It will just give those parties that require additional capacity to the pipeline to gain access.

Section 5.2 of the AA appears to allow capacity to be traded without the service providers consent.² We consider that the requirements of the user to notify the service provider of the assignment of capacity are reasonable. In this regard, we consider the requirement of a user to provide information about the assigned value of capacity, the contract, the identity of the third party are all reasonable.

4 Imbalance charge

TRUenergy notes that APA intends to apply an imbalance charge that would be applied daily.

The imbalance charge that was applied in the current RBP access arrangement was applied on monthly basis.

We suggest that the inevitable result of the change to the imbalance charge is that it will allow APA to recover more revenue from imbalance charges. We are not clear whether this proposal is consistent with section 95 (tariffs – transmission pipelines of the NGR). However, we would welcome the AER's further investigation of the issue. Our view is that imbalance charges should reflect the consequent cost to APA of a shipper's imbalance, and not be a significant source of earnings.

² Section 5.2 Access Arrangement for the RBP

" The user may, without the Service provider's consent, assign, by way of subcontract, all or any of the User's Contacted capacity to another person (the third party) with the following consequences:

- (a) the User's rights against, and obligations to, Service Provider are (subject to paragraph (b)) unaffected by the assignment; and
- (b) the User must immediately give notice to Service Provider of :
 - (i) the sub contract and its duration
 - (ii) the identity of the third party
 - (iii) the amount of contracted capacity assigned and any other reasonable details requested by the Service Provider

D: Other

There are a number of other questions we have about the proposed AA:

- Why have the APA Group proposed only one reference tariff? Likely developments in the Brisbane market, including implementation of the Short Term Trading Market, may well make “As Available” and “Backhaul” services attractive.
- Why is there is no forecast of capital expenditure for augmentation? It seems unlikely that APA Group do not plan to augment the RBP given that it has very limited capacity available, and also unlikely that APA Group is not aware of planned extra loads (our proposed Blackstone generator is an example).

E: Conclusion

TRUenergy looks forward to working with the AER on the RBP AA proposal.

We consider that our submission has raised a number of issues for the AER to consider in assessing the AA proposal lodged by the APA Group for the RBP. We think that our suggestions in this paper will be consistent with the National Gas Objective (NGO).

In order to deal with the issues that we have raised in a rigorous and transparent manner, we expect that there will be an opportunity to consult further with the AER on the range of issues that we have raised in this submission.

We look forward to engaging with AER in further consultations as the consultation process unfolds.

We thank AEMO for the opportunity to comment on this proposal.

If you have any enquiries regarding this submission, please feel free to contact Mr. Con Noutso - Regulatory Manager at TRUenergy on Tel: 03 8628 1240.

Regards



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