

TXU's submission to GasNet response to submissions 14 October 2004

1. Introduction

1.1 TXU welcomes the opportunity to respond to GasNet's submission (dated 14 Oct. 2004) regarding its request to vary its access arrangements and believes the following comments will be helpful.

1.2 TXU makes two key points in this submission. They include

- TXU believe that the ACCC already had concerns about implementing rate of return regulation when it made its Final decision.
- TXU has provided documentary evidence to the ACCC that a change to the refill tariff will impact TXU's ability to compete in the South Australian retail market.

2. Issues

Rate of return regulation

2.1 The ACCC already had considered whether GasNet had applied CPI-X regulation and not rate of return regulation in Gas-Net's Access Arrangement- Final Decision 2002. As part of its Final Decision,

- (i) GasNet modified its price path, which the ACCC thought of as a CPI-X mechanism, to accommodate some actual events within the access arrangement.
- (ii) It proposed a pass through mechanism that extends to a number of costs that may alter within the period.

2.2 At the time, the ACCC decided it was incorrect to suggest that Gas Net had established a true price path. In fact, even at that stage, before the present proposed revisions, the ACCC suggested that GasNet was applying a combination of a price path and cost of service approach.¹ However, after considering the issues, it decided that it was satisfied that the price path was not altered to the extent that it could be described as rate of return regulation.²

2.3 Clearly, in 2002 the ACCC was concerned as to whether these elements form rate of return regulation.

2.4 TXU believes that if the ACCC grants GasNet's application to revise its access arrangement 24 August 2004 that would allow it to alter the "K" factor, the refill tariff and the demand forecasts mid review, it risks implementing rate of return regulation as feared in 2002. TXU suggests the ACCC consider carefully these general implications.

¹ Final Decision: Gas-Net access arrangement 2002 p239 " It would be correct to describe GasNet's approach as complying with sect 8.3 (C) of the Code, that is, a combination of a price path and cost of service approach."

² Final Decision: GasNet access arrangement 2002 p.239

" As noted above the Tariff Order established a number of fixed principles for this next access arrangement period. Fixed principles can only be changed with the agreement of the service provider. However, as Gas-Net has not proposed to alter any of the fixed principles, the proposed revised access arrangement must also comply with these principles.

The first principle of relevance noted above is the requirement to use a CPI-X approach and not a rate of return approach. While GasNet has proposed to modify its price path mechanism further with the introduction of an expanded pass through mechanism, the basis of regulation for GasNet remains CPI-X. The approach has not been altered to the extent that it can be accurately described as rate of return."

Re-fill Tariff revision

2.5 GasNet argues it does not have sufficient evidence to ascertain whether TXU would be disadvantaged by the revision as part of its existing contractual commitments.³ TXU submits that it has given evidence to the ACCC in the form of “confidential information” that provides evidence on the extent to which a variation to the refill tariff mid review would impact TXU retail’s competitive position in the South Australian market.

Regards

Con Noutso
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³ GasNet response to submissions 14 October 2004 “ Second, while TXU has raised some concerns about the effect on its contractual position, GasNet does not have sufficient evidence to ascertain whether TXU would be disadvantaged by the Revision.”