Decision

Application for amendment

Access Arrangement by Victorian Energy Networks Corporation for the Principal Transmission System

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1. The application

On 25 May 2001 the Australian Competition and Consumer Commission (the Commission) received an application from the Victorian Energy Networks Corporation (VENCorp) for amendment of its Access Arrangement for the Principal Transmission System (PTS). The application was submitted under the National Third Party Access Code for Natural Gas Pipeline Systems as it applies in Victoria (National Access Code).[1]

The application for amendment relates to proposed changes to the Market and System Operations Rules (proposed rule changes). These proposed rule changes appear in Annexure 1 to this decision, and are outlined below.

- Clause 5.3.6 is to be extended to cover both authorised MDQ and AMDQ certificates, and to cover transferred authorised MDQ and AMDQ Credit Certificates. In addition, clause 5.3.6 will be amended to stipulate that the relinquished authorised MDQ or AMDQ credit certificates which have been originally allocated under clause 5.3.3 at the direction of a Transmission Pipeline Owner will revert to that Transmission Pipeline Owner rather than to VENCorp;

- Clause 1.2.1(f) is to be amended to extend the time period within which VENCorp must publish a report following a significant market event from within ten business days of the event to within ten business days following the issue of the final statement for that trading interval;

- Clause 7.1.5 is to be amended to increase the reporting period for VENCorp's report of all decisions in relation to the enforcement of MSOR from six months to twelve months; and

- Clause 8.1 is to be amended to increase the reporting period for VENCorp's report of its rule change proposals from six months to twelve months.

2. Background

The Access Arrangement for the PTS by VENCorp was approved by the Commission under section 2.19 of the Victorian Third Party Access Code for Natural Gas Pipeline Systems (the Victorian Access Code) on 16 December 1998.

Clause 5.1.2 of the Access Arrangement provides that:

> 'in the event that the MSOR becomes subject to an exemption under section 51(1) of the Trade Practices Act, any amendment to, or supplementation or replacement of, the MSOR will, to the extent to which the MSOR are part of this Access Arrangement, constitute a change for the purposes of the Code and will not be effective to change this Access Arrangement unless and until the procedure in section 2 of the Code.

[1] The National Access Code came into force in Victoria on 1 July 1999 with the coming into force of the *Gas Pipelines Access (Victoria) Act* 1998. Section 25 of that Act repeals Part 4B of the *Gas Industry Act* 1994 pursuant to which the Victorian Third Party Access Code for Natural Gas Pipeline Systems (Victorian Access Code) was established. However, certain provisions of the Victorian Access Code continue to apply, such as section 2.33, which is discussed below.

On 21 November 1998, the *Gas Industry Act* 1994 (Vic) was amended by the insertion of section 62PA which authorises the making of the MSOR (including any amendment to the MSOR) and things done or conduct engaged in by VENCorp, participants or market participants pursuant thereto. Section 62PA was re-enacted as section 53 of the *Gas Industry Act (Vic) 2001*. The MSOR are subject to an exemption under section 51(1) of the *Trade Practices Act* 1974 (Cth). The proposed changes to the MSOR concern rules that are part of the Access Arrangement. For these reasons, the proposed rule changes constitute proposed revisions to the Access Arrangement.

3. Procedure for assessing proposed revisions

VENCorp lodged its application for amendment pursuant to section 2.33 of the Victorian Access Code.[2] Section 2.33 of the Victorian Access Code allows the Commission to approve proposed revisions to the Access Arrangement without requiring production of Access Arrangement information or public consultation if:

(a) the revisions have been proposed by the Service Provider other than as required by the Access Arrangement; and
(b) the Relevant Regulator considers that the revisions proposed are not material.

VENCorp argued that these proposed revisions (as constituted by the proposed rule changes) do not impact on the Access Arrangement in any material respect.

In the course of its public consultation relating to an application by VENCorp for minor variation of the authorisation of the MSOR, the Commission sought the views of interested parties on whether the proposed rule changes are material to the Access Arrangement (insofar as they constitute proposed revisions).

No submissions were received on the proposed rule changes.

The Commission accepted the view that the proposed revisions are not material to the VENCorp Access Arrangement and decided to dispense with the requirement to produce Access Arrangement Information and the consultation process outlined in section 2 of the National Access Code.[3]

4. Criteria for assessing proposed revisions

Section 2.46 of the National Access Code provides that the Commission may approve proposed revisions to an Access Arrangement only if it is satisfied the Access Arrangement

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[2] Section 24A(3) of the *Gas Pipelines Access (Victoria) Act 1998* provides that section 2.33 of the Victorian Access Code continues to apply in respect of an access arrangement in force before the repeal of Part 4B of the *Gas Industry Act 1994* until the first review of the access arrangement under section 2 of the National Access Code (31 March 2002, clause 5.8.1 of the Access Arrangement). The VENCorp Access Arrangement was in force prior to the repeal of Part 4B of the *Gas Industry Act 1994* and hence VENCorp requested the Commission consider this application under section 2.33 of the Victorian Access Code.

[3] Section 2 of the National Access Code prescribes a more comprehensive public consultation process than that undertaken by the Commission in the course of its assessment of the application by VENCorp for minor variation of the authorisation of the MSOR.

as revised would contain the elements and satisfy the principles in sections 3.1 to 3.20 of the Code. In assessing proposed revisions, the Commission must take into account:

- the factors described in section 2.24 of the Code; and
- the provisions of the Access Arrangement.

4.1 Requirements of section 2.24

Section 2.24 requires that the Access Arrangement contains the elements and satisfies the principles set out in sections 3.1 to 3.22. These sections set out the elements that an Access Arrangement must include as a minimum – namely a services policy, Reference Tariffs, terms and conditions, a capacity management policy, a trading policy, a queuing policy, an extensions/expansions policy and a review date.

Section 2.24 also requires that the Commission take into account:

(a) the legitimate business interests of the Service Provider;

(b) firm and binding contractual obligations of the Service Provider or other persons (or both) already using the Covered Pipeline;

(c) the operational and technical requirements necessary for the safe and reliable operation of the Covered Pipeline;

(d) the economically efficient operation of the Covered Pipeline;

(e) the public interest, including the public interest in having competition in markets (whether or not in Australia);

(f) the interests of Users and Prospective Users; and

(g) any other matters that the Relevant Regulator thinks are relevant.

The Commission considers that these proposed revisions in question do not remove any of the elements of the VENCorp Access Arrangement that was approved under section 2.19 of the Code on 16 December 1998. Moreover, the Commission considers that the proposed revisions do not affect the substance of the Access Arrangement in such a way that takes it outside the principles set out in sections 3.1 to 3.22.

The Commission has taken the matters set out in section 2.24 into account and considers that the proposed revisions do not impact on the Access Arrangement in such a way that the Commission should no longer consider that the Access Arrangement contains the elements and satisfies the principles set out in sections 3.1 to 3.20 of the National Access Code.

4.2 The provisions of the Access Arrangement

The minimal effect of the proposed revisions on the substance of the Access Arrangement means that the provisions of the Access Arrangement do not require any redrafting.

5. Decision

The Commission has taken into account the factors described in section 2.24 of the National Access Code and the provisions of the Access Arrangement, and is satisfied that the revised

Access Arrangement contains the elements and satisfies the principles set out in sections 3.1 to 3.20 of the National Access Code.

Pursuant to section 2.46 of the National Access Code, the Commission approves the proposed revisions which are the subject of this application.

Annexure 1 - Proposed MSO Rule Changes

1.2.1 Obligations of VENCorp

(f) If *VENCorp* identifies any *significant price variations* in and between *trading intervals*, *VENCorp* must:

(1) within ten *business days* notify *Participants* of this event; and

(2) within ten *business days* following the issue of the *final statement* for that *trading interval,* prepare a report setting out the identified *significant price variations*

5.3.6 Relinquishment of authorised MDQ or AMDQ credit certificate

(a) Subject to clause 5.3.6(b), if a person holds *authorised MDQ* or *AMDQ credit certificates* in accordance with these rules and ceases to be a *Participant* or *Market Participant* in accordance with these rules, or in the case of a *Customer*, is disconnected from the *transmission system* or a *distribution pipeline,* that person's entitlement to the *authorised MDQ* or *AMDQ credit certificates* will revert to *VENCorp* for reallocation to other persons in accordance with clause 5.3.4 unless that person transfers that *authorised MDQ* in accordance with clause 5.3.5.

(b) If a person:

(1) to whom *authorised MDQ* or *AMDQ credit certificates* has been allocated under clause 5.3.3, or

(2) to whom *authorised MDQ* or *AMDQ credit certificates* originally allocated under clause 5.3.3 has been transferred in accordance with clause 5.3.5,

ceases to be a *Participant* or *Market Participant* in accordance with these rules, or in the case of a *Customer*, is disconnected from the *transmission system* or a *distribution pipeline,* that person's entitlement to the *authorised MDQ* or *AMDQ credit certificates* will revert to the relevant issuing *Transmission Pipeline Owner* unless that person transfers that *authorised MDQ* or *AMDQ credit certificates* in accordance with clause 5.3.5.

Publication

Subject to clause 5.4, *VENCorp* must *publish* a report at least once each year setting out a summary for the period covered by the report of all decisions made by *VENCorp* during that period in relation to enforcement of these Rules.

8.1 Changing the Rules

(c) *VENCorp* must develop and, during March each year, make available to *Participants* a report which sets out:

(1) all Rule change proposals which have been made in the previous twelve month period and any decisions (but not the reasons for those decisions) and any requests for further information made by *VENCorp* under clause 8.4 in relation to those Rule change proposals;

(2) the progress of those Rule change proposals in accordance with the procedures prescribed in this chapter 8;

(3) the reason for any delays in relation to the progress of those Rule change proposals and any action *VENCorp* has taken to overcome those delays; and

(4) any other matter which *VENCorp* reasonably considers to be relevant to the progress of Rule change proposals, including but not limited to any policies developed by *VENCorp* in relation to:

(A) the way in which it intends to deal with any procedure specified in this chapter 8; and

(B) the facts, matters or circumstances which *VENCorp* may take into account in making a decision and otherwise discharging its functions and obligations under this chapter 8,

providing that nothing in this clause 8.1(c)(4) is to be taken to limit the exercise by *VENCorp* of its discretion under this chapter 8.