

Decision

Application for amendment

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

Date: 18 April 2001

Authorisation no:
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C2000/680-05

Commissioners:
Alan Fels
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1. The application

On 16 November 2000 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.

- Clauses 6.6.5 and 6.7.6 of the MSOR are to be amended to provide greater clarity in the criteria to be used by the Compensation Panel in its determination of compensation payments to be paid by VENCorp to Market Participants who claim to have been financially disadvantaged as a result of a direction by VENCorp to inject gas to ensure maintenance of system security or by VENCorp's application of an administered price cap.
- Clause 3.6.6 of the MSOR is to be amended where compensation payments paid by VENCorp results in allocating costs to those who have contributed to the circumstances for which compensation is payable.

Given the amendments of clauses 6.6.5 and 6.7.6, the current criteria for the determination of compensation payments which is embedded in the MSOR, will be replaced with an MSOR requirement for the determination of compensation to be in accordance with a set of guidelines.

The guidelines appear in Annexure 2 to this determination.

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 statutorily 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 came into force on 2 December 1998. 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

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

6.6.5 Compensation of Market Participants in respect of intervention

- (f) The *compensation panel* must:
- (1) conduct itself on the same basis and in accordance with the same timeframes as a *dispute resolution panel* under clause 7.2.4;
 - (2) determine whether any compensation should be paid to the *Market Participant* to put the *Market Participant* in the position in which the *Market Participant* would have been, in respect of the gas injection it made under clause 6.6.5(a), had the direction not been issued by *VENCorp*; and
 - (3) base its determination on ~~its assessment of a fair and reasonable amount of compensation taking into account guidelines developed by *VENCorp* in consultation with *Participants*.~~
 - (A) ~~all the relevant surrounding circumstances;~~
 - (B) ~~the actions of any relevant *Participants*;~~
 - (C) ~~the market price (if any) applicable in the trading interval in which the injection of gas was made;~~
 - (D) ~~the compensation panel's reasonable estimate of the market price if the circumstances causing a threat to system security had not existed, taking into account all other factors relevant to an assessment of the expected market price;~~
 - (E) ~~other costs incurred by the *Market Participant*, where such costs were directly incurred to enable the gas injection to be made; and~~
 - (F) ~~any difference between the amount of gas injected by the *Market Participant* under clause 6.6.5(a) determined from metering data and the amount of gas which would have been injected by the *Market Participant* if *VENCorp* had not issued the direction.~~

6.7.6 Compensation due to the application of an administered price cap

- (f) The *compensation panel* must:
- (1) conduct itself on the same basis and in accordance with the same timeframes as a *dispute resolution panel* under clause 7.2.4;
 - (2) determine whether any compensation should be paid to the *Market Participant* to put the *Market Participant* in the position that the *Market Participant* would have been in, in respect of the gas injection referred to in clause 6.7.6(a), had the *administered price cap* not applied; and
 - (3) base its recommendations on ~~its assessment of a fair and reasonable amount of compensation taking into account guidelines developed by *VENCorp* in consultation with *Participants*.~~
 - (A) ~~all the relevant surrounding circumstances;~~
 - (B) ~~the actions of any relevant *Participants*; and~~
 - (C) ~~the difference between the market price applicable due to the application of the administered price cap and the price specified by the *Participant* in its injection inc/dec offer.~~

3.6.6 Funding Compensation payments and payments for gas supplied to VENCORP under contract

- (a) ~~If the compensation panel determines that compensation should be paid to a Market Participant in accordance with clauses 6.6.5 or 6.7.6, each Market Participant who purchased gas from the market in the trading interval or trading intervals in respect of which the market price was affected by the imposition of an administered price cap or in respect of which such compensation has been determined must pay to VENCORP an amount determined in accordance with clause 3.6.6(b).~~
- (b) ~~VENCORP must determine, in respect of each trading interval referred to in clause 3.6.6(a), the amount payable by each Market Participant who has a negative trading imbalance in such trading interval as follows:~~

$$\frac{APC \times G_i}{\sum G_j}$$

where

~~APC is the amount of the compensation payment payable to a Market Participant in respect of that trading interval under clauses 6.6.5 or 6.7.6;~~

~~G_i is the negative trading imbalance of that Market Participant in that trading interval; and~~

~~∑G_j is the sum of all negative trading imbalances of all Market Participants in that trading interval.~~

- (a) If compensation is to be paid to a Market Participant in accordance with clause 6.6.5 or 6.7.6, or amounts are payable to VENCORP in accordance with clause 6.5.2(e) or 6.5.3(e) then VENCORP is entitled to recover those payments from Participants in accordance with this clause 3.6.6 and each Market Participant and Transmission Pipeline Owner must pay to VENCORP an amount determined in accordance with this clause 3.6.6.

(b) If:

(1) VENCORP has instructed a Market Participant to inject gas in accordance with clause 6.6.4, or

(2) VENCORP has entered into a contract with a person and instructed that person to inject gas in an emergency in accordance with clause 6.5.2(c)

and

(3) that Market Participant or person is entitled to be paid compensation in accordance with clause 6.6.5 or 6.7.6, or amounts are payable to VENCORP in accordance with clause 6.5.2(e), and

(4) as a result of that injection or withdrawal, as the case may be, there is a net increase in the quantity of system linepack over a trading interval greater than that scheduled by VENCORP for that trading interval

then VENC Corp shall be entitled to be paid from the linepack account an amount calculated as:

if $Q_{LA} - Q_{LS} > 0$ and $Q_{LA} - Q_{LS} \leq Q_{AG}$

then $R_{LA} = \frac{CP_T \times [Q_{LA} - Q_{LS}]}{Q_{AG}}$; or

if $Q_{LA} - Q_{LS} > 0$ and $Q_{LA} - Q_{LS} > Q_{AG}$

then $R_{LA} = CP_T$; or

if $Q_{LA} - Q_{LS} \leq 0$

then $R_{LA} = 0$

Where:

R_{LA} is the amount in \$ of the payment to be paid to VENC Corp from the linepack account;

CP_T is the sum of the amounts in \$ of compensation payable by VENC Corp to all Market Participants for that trading interval determined in accordance with clauses 6.6.5 or 6.7.6, or amounts payable to VENC Corp in accordance with clause 6.5.2(e);

Q_{LA} is the actual total amount in GJ of system linepack increase for that trading interval;

Q_{LS} is the total amount in GJ of system linepack increase last scheduled by VENC Corp for that trading interval; and

Q_{AG} is the sum of the amounts in GJ of actual additional gas injected by all Market Participants during that trading interval as a consequence of VENC Corp's instructions made in accordance with clauses 6.5.2 or 6.6.4.

(ba) If the amount calculated in accordance with clause 3.6.6(b) is insufficient to satisfy the total amount:

(1) of compensation payable by VENC Corp to a Market Participant entitled to be paid under clause 6.6.5, or

(2) payable to VENC Corp as a result of a contract entered into by VENC Corp in accordance with clauses 6.5.2 or 6.5.3,

then VENC Corp shall be entitled to recover the outstanding balance of that payment from Participants in accordance with clauses 3.6.6(bb) and 3.6.6(bc).

(bb) Where a Participant must pay to VENC Corp an uplift payment amount determined under clause 3.6.8 for the trading interval for which there is a payment amount recoverable by VENC Corp under 3.6.6(ba) then that Participant must pay an amount to VENC Corp calculated as:

$$\underline{R_{CP}} \equiv \underline{R_{UL}} \times \underline{U}$$

Where

ΣU

R_{CP} is the amount payable in \$ by a *Market Participant* to *VENCorp* in respect of that *trading interval*;

R_{UL} is the total amount in \$ to be recovered by *VENCorp* under clause 3.6.6(ba) for that *trading interval*

U is the total amount in \$ of *uplift payment* to be paid to *VENCorp* by that *Participant* for that *trading interval*

ΣU is the aggregate amount of *uplift payment* in \$ to be paid to *VENCorp* by all *Participants* for that *trading interval*

(bc) If compensation payments are to be paid by *VENCorp* under clause 6.7.6 or if there is a payment amount outstanding after the application of clause 3.6.6(bb) then each *Market Participant* who purchased gas from the *market* in the *trading interval* in respect of which compensation is to be paid must pay an amount to *VENCorp* calculated as:

$$R_{AP} = \frac{CP_A \times N}{\Sigma N}$$

where

R_{AP} is the amount payable in \$ by a *Market Participant* to *VENCorp* in respect of that *trading interval*;

CP_A is the total amount in \$ to be recovered by *VENCorp* from all *Market Participants* under clause 6.7.6 or after the application of 3.3.6(bb), as the case may be, in that *trading interval*;

N is the *negative trading imbalance* in GJ of that *Market Participant* in that *trading interval*; and

ΣN is the sum of *negative trading imbalances* in GJ of all *Market Participants* in that *trading interval*.

3.6.12 Linepack payments

- (a) *VENCorp* must clear the balance on the *linepack account* each month by charging or making payments to *Market Participants* in accordance with this clause 3.6.12.
- (b) If the sum of daily *linepack debits* for the relevant month plus the sum of payments made to *VENCorp* in accordance with clause 3.3.6(b) for the relevant month less the absolute sum of daily *linepack credits* for the relevant month (as determined under clause 3.6.10(c)) is a positive amount, each *Market Participant* who withdrew gas from the *transmission system* in that month must pay *VENCorp* an amount calculated as follows:

$$PM = \frac{DB \times QW_i}{\Sigma QW_i}$$

Where

PM is the amount which the *Market Participant* must pay;

DB is the sum of daily *linepack debits* for the relevant month plus the sum of payments made to VENCORP in accordance with clause 3.3.6(b) for the relevant month less the absolute sum of daily *linepack credits* for the relevant month (as determined under clause 3.6.10(c));

QW_i is the quantity of gas withdrawn from the *transmission system* by that *Market Participant* in that month; and

ΣQW_i is the total quantity of gas withdrawn from the *transmission system* by all *Market Participants* in that month.

- (c) If the sum of daily *linepack debits* for the relevant month plus the sum of payments made to VENCORP in accordance with clause 3.3.6(b) for the relevant month less the absolute sum of daily *linepack credits* for the relevant month (as determined under clause 3.6.10(c)) is a negative amount, *VENCORP* must pay each *Market Participant* who withdrew gas from the *transmission system* in that month an amount calculated as follows:

$$PV = CB \times \frac{QW_i}{\Sigma QW_i}$$

Where:

PV is the amount which *VENCORP* is required to pay to the *Market Participant*;

CB is the sum of daily *linepack debits* for the relevant month plus the sum of payments made to VENCORP in accordance with clause 3.3.6(b) for the relevant month less the absolute sum of daily *linepack credits* for the relevant month (as determined under clause 3.6.10(c));

QW_i is as defined in clause 3.6.12(b); and

ΣQW_i is as defined in clause 3.6.12(b).

6.5.2 Injection controls

- (e) Subject to clause 6.5.2(c), to the extent that the *market price* applicable during any *trading interval* in which the non-*Participant* injected gas is lower than the amount payable by *VENCORP* to the non-*Participant* under the contract, the shortfall is to be paid to *VENCORP* by *Market Participants* who withdrew gas in those *trading intervals* as though the *compensation panel* has determined that compensation is payable to that non-*Participant* and the compensation payable is to be calculated in accordance with clause 3.6.6(b).

Annexure 2 - Proposed Compensation determination guidelines

COMPENSATION DETERMINATION GUIDELINES

MSO RULES 6.6.5 AND 6.7.6

These Guidelines have been developed by VENCORP in consultation with Participants as is required by MSO Rules 6.6.5(f) and 6.7.6(f). The Guidelines were endorsed by the Gas Market Consultative Committee at its meeting number 67, held 17 January 2001.

Background

In late 1998 Trowbridge Consulting were engaged by VENCORP to make recommendations to the GMCC on issues related to the MSO Rule provisions for force majeure and the administered price cap. Trowbridge's recommendations are contained in their report - "VENCORP: Review of the Force Majeure (FM) and Administered Price Cap (APC) Provisions for the Victorian Gas Market" - Trowbridge Consulting; November 1998".

MSO Rules 6.6.5 and 6.7.6 allow participants to claim compensation if they consider they have been financially disadvantaged as a result of a direction by VENCORP to inject gas or by VENCORP's application of an administered price cap. The MSO Rules also provide for the "Compensation Panel" established under the MSO Rules to determine the amount of compensation to be paid.

Trowbridge considered that the MSO Rule provisions in relation to the determination of compensation appeared to be based on:

"The concept of indemnification.....well established in insurance - in brief, it means that compensation should place the participant on the same financial footing as it was before the injection, no better or no worse off than if the injection had not occurred."

Trowbridge recommended that the MSO Rules be amended to more clearly and explicitly reflect this concept.

Compensation Determination Principles

The following general principles for determination of compensation payment amounts are intended to provide the basis of compensation determination by the Compensation Panel.

It is recognised that each compensation claim will have its own unique set of background circumstances that may require divergence from these general principles in the interest of fair and equitable outcomes in any given situation. Hence it is accepted that divergence from these principles may be necessary, however, any such divergence must be clearly justified and that justification recorded and made transparent.

It should be noted that "compensation payments" are payments made in addition to those payments made at the market price for the gas injected.

The general principles are:

- A. Where, in respect of a particular trading interval, a Participant has injected gas in accordance with a VENCORP schedule instruction or direction, and either
 - (i) no inc/dec offer has been made by that Participant for that source of gas; or
 - (ii) VENCORP has notified Participants of the existence of a force majeure event in accordance with the MSO Rules clause 6.7.2;

then compensation is to be based only on proven direct costs incurred by that Participant in injecting gas to comply with VENCORP's schedule instruction or direction.

- B. Where, in respect of a particular trading interval, a Participant has injected gas in accordance with a VENCORP schedule instruction or direction, and
- (i) an inc/dec offer has been made by that Participant for that source of gas, and
 - (ii) VENCORP has not notified Participants of the existence of a force majeure event in accordance with the MSO Rules clause 6.7.2;
- then compensation is to be based on that Participant's inc/dec offer.

Guidelines for determining compensation payments.

The following are the guidelines referenced in the MSO Rules, clauses 6.6.5(f) and 6.7.6(f), and are to be applied by the Compensation Panel in accordance with those clauses.

- (1) Subject to (3), where a claim for compensation had been made under clause 6.6.5 or 6.7.6 and that claim:
- (A) is not related to an *inc/dec offer* for the *trading interval* for which the claim is made, or
 - (B) is related to a *trading interval* for which VENCORP has issued a notification of a force majeure event under clause 6.7.2,
- the amount of compensation to be paid to the *Participant* should be calculated as:
- (C) the sum of direct costs of injecting the gas in compliance with VENCORP's schedule instruction or direction (as the case may be) in the relevant *trading interval*, as considered reasonable by the *compensation panel*, less
 - (D) the product of the quantity of gas injected in the relevant *trading interval* and the *market price* for that gas for that *trading interval*,
- unless the amount determined is less than zero, in which case no compensation is to be paid.

When determining direct costs the *compensation panel* must only take into consideration those direct costs provided in writing by the *Participant* to the *compensation panel* and supported by evidence of their authenticity.

- (2) Subject to (3), where a claim for compensation has been made under clause 6.6.5 or 6.7.6 and that claim:
- (A) is related to an *inc/dec offer* for the *trading interval* for which the claim is made, and
 - (B) is related to a *trading interval* for which VENCORP has not issued a force majeure event notification under clause 6.7.2,
- the amount of compensation to be paid to the *Participant* must be calculated as:
- (C) the product of the quantity of gas injected in compliance with VENCORP's schedule instruction or direction (as the case may be) for the relevant *trading interval* and the value of the *inc/dec offer* for the relevant *trading interval*, less
 - (D) the product of the quantity of gas injected in the relevant *trading interval* and the *market price* for that gas for that *trading interval*.
- unless the amount determined is less than zero, in which case no compensation is to be paid.
- (3) Guidelines (1) and (2) may be modified as is considered fair and reasonable by the *compensation panel* to take account of:
- (A) all the relevant surrounding circumstances;
 - (B) the actions of any relevant *Participants*;
 - (C) the *market price* applicable in the *trading interval* in which the injection of gas was made;

- (D) the difference between the *market price* applicable due to the application of the *administered price cap* and the price specified by the *Participant* in its *injection inc/dec offer*.
 - (E) where *VENCorp* has issued a direction to the *Market Participant*, the *compensation panel's* reasonable estimate of the *market price* if the circumstances causing a threat to *system security* had not existed, taking into account all other factors relevant to an assessment of the expected *market price*;
 - (F) other costs incurred by the *Market Participant*, where such costs were directly incurred to enable the gas injection to be made; and
 - (G) where *VENCorp* has issued a direction to the *Market Participant*, any difference between the amount of gas injected by the *Market Participant* under clause 6.6.5(a) determined from *metering data* and the amount of gas which would have been injected by the *Market Participant* if *VENCorp* had not issued the direction.
- (4) Where the *compensation panel* takes into consideration any circumstance listed in (3) and as a consequence modifies the amount of compensation determined under (1) or (2) then the *compensation panel* must provide a written explanation in support of that variation.

Note: Words shown in italics have the meanings ascribed to them in the Glossary to the MSO Rules.