Decision

Application for amendment

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

Date: 16 May 2001

Authorisation no:
A90646, A90647 and A90648

File no:
C2000/680-05

Commissioners:
Fels
Jones
Martin
Bhojani
Cousins

1. The application

On 30 March 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. In summary the proposed rule changes:

- clarify who must comply with the emergency procedures required under the MSOR;
- clarify when the dispute resolution procedures established under the MSOR and those established under the emergency procedures are to be applied in the context of emergency situations; and
- allow the transfer of authorised MDQ and AMDQ credit certificates between persons in time for the 2001 winter period;

VENCorp will develop and publish procedures for transfer of authorised MDQ and AMDQ credit certificates between parties in consultation with GMCC and other affected parties, in parallel with the Commission's authorisation process. This is to ensure that the procedures are in place for this winter.

An outline of the procedures for MDQ and AMDQ credit certificate transfer 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.

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

[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.

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).

One submission was received on this issue from AGL Energy Sales & Marketing Limited (AGL). AGL stated that they are satisfied that these proposed changes are minor in that they do not involve a material change in the effect of the authorisation previously granted to the MSOR. Further, AGL supported the substance of 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

5.3.2 Initial allocation of authorised MDQ

(g) Subject to clause 5.3.5 ~~If~~ if a *Customer* changes the *Retailer* from whom it purchases gas, the *Customer's authorised MDQ* allocated under clauses 5.3.2 or 5.3.4:

(1) remains assigned to that *Customer*; and

(2) is not varied,

as a result of the change of *Retailer*.

5.3.3 Allocations of authorised MDQ and *AMDQ credit certificates* for pipeline extensions or expansions

~~(e) If a *Market Participant* holds *authorised MDQ* originally allocated under this clause 5.3.3 and that *Market Participant* wishes to attribute that *authorised MDQ* to withdrawals of gas by any one or more persons, that *Market Participant* must give prior notice to *VENCorp* of the persons to whom that *authorised MDQ* is to be attributed and the location of the *delivery points* or *system withdrawal points* from which those persons will withdraw gas, and *VENCorp* will advise the *Market Participant* of the quantity of *authorised MDQ* that will be available at each *delivery point* or *system withdrawal point*.~~

~~(f) Subject to clause 5.3.3(g), if a *Market Participant* has notified *VENCorp* under clause 5.3.3(e) that it wishes to attribute *authorised MDQ* originally allocated under this clause 5.3.3, to any one or more persons, the *Market Participant*:~~

~~(1) will be liable for any *uplift payments* which are payable in respect of a *trading interval* as a result of any one or more of those persons withdrawing gas in that *trading interval* in excess of the *authorised MDQ* attributed to that person; or~~

~~(2) may agree with *VENCorp* that to the extent that any one or more of persons who withdraw gas using that *authorised MDQ* exceed the amount of *authorised MDQ* attributed to them in any *trading interval*, neither the *Market Participant* nor those persons will be liable for payment of *uplift payments* if those persons' aggregate withdrawals of gas are below the aggregate amount of *authorised MDQ* held by that *Market Participant* which was originally allocated under this clause 5.3.3.~~

~~(g) *VENCorp* may agree under clause 5.3.3(f)(2) to allow a *Market Participant* who attributes *authorised MDQ* originally allocated under clause 5.3.3 to withdrawals of gas made by any one or more persons, to aggregate withdrawals of gas made by those persons in respect of that attributed *authorised MDQ* if, in *VENCorp's* reasonable opinion, that alternative is more practicable, taking into consideration~~

~~the feasibility and complexity of determining the extent to which a person withdraws gas in excess of the *authorised MDQ* attributed to that person.~~

5.3.5 ~~Trading~~ Transfer of authorised MDQ or AMDQ credit certificates

~~(a) An allocation of *authorised MDQ* received under clause 5.3.2 or 5.3.4 is valid only for withdrawals of gas made at the *system withdrawal point* or *delivery point* (as the case may be) in respect of which it was first allocated.~~

~~(aa) A person which has received an allocation of *authorised MDQ* in respect of a *system withdrawal point* or a *delivery point* may upon notification to *VENCorp* transfer all or part of that *authorised MDQ* to a person or persons who withdraw gas from the same *system withdrawal point* or *delivery point* (as the case may be).~~

~~(b) If a person who has received *authorised MDQ* originally allocated under clause 5.3.3 wishes to transfer some or all of that *authorised MDQ* to another person who will withdraw certain quantities of gas at a different *system withdrawal point* or *delivery point*, *VENCorp* must upon request from the transferor advise each of those persons of the amount of *authorised MDQ* which will be transferred to the transferee for withdrawals of gas by that transferee at that different *system withdrawal point* or *delivery point*.~~

(a) A person that has acquired *authorised MDQ* or *AMDQ credit certificates* in accordance with this clause 5.3 may transfer the whole or a part of that *authorised MDQ* or *AMDQ credit certificates* to another person in accordance with this clause 5.3.5 and subject to transfer procedures developed in accordance with this clause 5.3.5.

(b) *VENCorp* must develop and publish procedures for the transfer of *authorised MDQ* or *AMDQ credit certificates* between parties in accordance with this clause 5.3.5 and must do so in consultation with *Participants* and other persons VENCorp reasonably considers may have an interest in the development of those procedures.

6.2.2 Emergency procedures

(a) ~~*Emergency procedures* are the procedures to be taken by or at the direction of *VENCorp* to:~~

Emergency procedures:

(1) are the procedures to be taken by *VENCorp*, *Transmission Pipeline Owners*, *Interconnected Pipeline Owners*, *Distributors*, *Retailers* and *Traders* to or at the direction of *VENCorp* to:

(~~1~~A) re-establish *system security*;

(~~2~~B) avert or reduce the scale of an *emergency*;

(~~3~~C) reduce the probability or probable scale of an *emergency*;

(~~4~~D) prepare for the occurrence of an *emergency*; and

(~~5~~E) restore gas supply and normal operation of the *transmission system* in the event of an *emergency*.

(2) regulate how disputes related to the implementation of the *emergency procedures* are to be resolved during a declared *emergency*.

(f) *VENCorp*, *Transmission Pipeline Owners*, *Interconnected Pipeline Owners*, *Distributors*, *Retailers* and *Traders* must comply with the *emergency procedures*.

7.2.1 Application and guiding principles

(a) Subject to clause 7.2.1(aa), ~~The~~the dispute resolution procedures set out in this clause 7.2 apply to all disputes which may arise between any of the following:

(1) *VENCorp*;

(2) *Participants*;

(3) *Connection Applicants*;

(4) *responsible persons* and persons who are able to satisfy *VENCorp* that they have a bona fide intention to become a *responsible person*; and

(5) persons who have been appointed by *VENCorp* under clause 4.4.20(b) as a *metering database* agent;

as to:

(6) the application or interpretation of these Rules; or

(7) a dispute under or in relation to a contract between two or more persons referred to in clauses 7.2.1(a)(1), (2), (3), (4) and (5) where that contract provides that the dispute resolution procedures under these Rules are to apply to any dispute under or in relation to that contract with respect to the application of these Rules; or

(8) the failure of a person referred to in clauses 7.2.1(a)(1), (2), (3), (4) or (5) to take action other than in accordance with these Rules; or

(9) a dispute concerning a proposed *connection agreement*; or

(10) the payment of moneys under or concerning any obligation under these Rules,

and for the avoidance of doubt, the dispute resolution procedures set out in this clause 7.2 apply to disputes between two or more persons from and within each of the categories set out in clauses 7.2.1(a)(1), (2), (3), (4) and (5).

(aa) In the case of a dispute:

(i) actually arising during any day of the period of an *emergency* declared by *VENCorp;* and

(ii) arising from the manner the *emergency procedures* are implemented during the period of that *emergency*.

that dispute shall be resolved through the dispute resolution provisions written into the *emergency procedures* and not the dispute resolution procedures established in this clause 7.2.

(ab) For the avoidance of doubt, the dispute resolution procedure written into the *emergency procedures* is intended to resolve only those disputes arising during the implementation of the *emergency procedures* and then only as they may be related to the manner of that implementation and are not intended to resolve disputes arising as a consequence of that implementation action.

11: Glossary

safety plan	A plan which must be developed by certain *Participants* in accordance with ~~section 138 of~~ the ~~Gas Indusrty Act~~ Gas Safety Act 1997 (Vic).

Annexure 2 OUTLINE OF PROCEDURES FOR AMDQ AND AMDQ CREDIT CERTIFICATE TRANSFER

The approach of placing the AMDQ transfer details in procedures rather than the MSO Rules themselves is seen as having the following important advantages:

- the process for regulatory approval of changes to the MSO Rules to allow transfers of AMDQ to take place is on the critical path for implementation of the proposal for this winter, the detailed procedures can be finalised in consultation with GMCC and other affected parties in parallel with the ACCC's authorisation process;

- changes to relatively minor procedures or systems can be made without the need for MSO Rules changes and re-authorisation;

- it is anticipated that AMDQ trading arrangements may become more sophisticated over time and this can be more efficiently achieved through industry consultation and agreement to changes to the procedures, rather than through MSO Rules changes and associated regulatory authorisation.

The procedures which are to be developed in consultation with participants and other interested persons, would include the following provisions:

- initially limiting transfers of Longford AMDQ to Tariff D withdrawal points (including storage facilities and interconnections with other transmission pipelines) until arrangements for wider trading are resolved by GMCC (e.g. tariff V AMDQ);

- authorisation required for the transfer to be enabled;

- notification and confirmation of registration of transfers to be provided by VENCorp to parties involved in registering the transfer;

- transfers able to be made between end-use customers and/or Market Participants (initially Retailer and Trader categories only);

- transfers able to be made between MIRNS and/or the reference hub;

- AMDQ can be held at a site (MIRN) or at the reference hub; the transfer process will need to specify how VENCorp should register the consequent AMDQ with the recipient holder.

- transfers are unconditional; a transfer of AMDQ will remain effective in VENCorp's metering register until otherwise advised by the recipient holder;

- VENCorp maintaining records that enables auditability of all transfers;

- VENCorp maintaining the metering register ie. updating AMDQ amounts;

and transfers being conditional on:

- the process of referencing AMDQ from the original site to a reference hub using locational and diversity scaling factors, and applying locational and diversity factors for referring it to a new site where the AMDQ transfer is to a new site;

- AMDQ limits (caps) being applied in some areas to reflect local physical capacity constraints, eg., with the Northern Zone;

- any Authorised MDQ held at the hub being only used as a financial hedge against congestion uplift similar to the manner of use of AMDQ Credits; and

- registration cut-off times for transfers.