Decision

Application for amendment

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

Date: 31 July 2002

Authorisation no:
A90646, A90647 and A90648

File no:
C2000/680-10

Commissioners:
Fels
Bhojani
Cassidy
Jones
Martin
McNeill

1. The application

On 20 June 2002 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 minor variation relates to proposed amendments to the MSOR (proposed rule changes). The proposed rule changes are designed to establish a clear mechanism and process under which VENCorp may recover its costs incurred in the implementation and operation of full retail contestability (FRC)[2] in the Victorian gas market, as provided for under section 69 of the Victorian Gas Industry Act 2001 (the GIA). These proposed rule changes appear in Annexure 1 to this determination and are outlined below.

- Clause 3.6.5 of the MSOR is amended to include sub-clause (b)(10), to provide authority for VENCorp to collect payments in accordance with the Retail Gas Market Rules.
- Clause 3.6.18 of the MSOR is amended to include sub-clause (d), which provides that any disputes arising in relation to payments determined under the Retail Gas Market Rules shall be determined under the dispute provisions of the Retail Gas Market Rules. Sub-clauses (a) and (b) have been amended to reflect clause 3.6.18 (d).
- Clause 3.6.21 of the MSOR is amended to include the Retail Gas Market Rules in sub-clause (b)(3), so that where a default event has occurred in relation to a Market Participant, VENCorp may make a claim upon any credit support held in respect of a Market Participant for any amount of money owed by that Market Participant to VENCorp pursuant to the Retail Gas Market Rules.
- Clause 3.7.1 of the MSOR is amended to extend the purpose of the prudential requirements to ensuring that Market Participants meet their obligations to make payments under the Retail Gas Market Rules.
- Clause 3.7.9 (c) of the MSOR is amended to include sub-clause (3), so that in calculating VENCorp's estimated exposure to a Market Participant under clause 3.7.9 (a), VENCorp must now also take into account amounts that VENCorp is entitled to recover from that Market Participant under the Retail Gas Market Rules.

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.

2 Full retail contestability will commence on the 1 October 2002 in Victoria.

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.[3] 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 the proposed rule changes, from Energex. Energex states that the changes sought by VENCorp are appropriate and that Energex supports VENCorp's position in this matter.

The proposed rule changes were unanimously endorsed by the Gas Market Consultative Committee (GMCC) and were approved by the VENCorp Board at its meetings on 17 June 2002.

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.[4]

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 as revised would

[3] 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.

[4] 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.

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

3.6.5 Settlement amounts for billing periods

(a) *VENCorp* must determine the *settlement amount* for each *Market Participant* for each *billing period* in accordance. with clause 3.6.5(b).

(b) The *settlement amount* for a *Market Participant* for a *billing period* equals the sum of:

(1) the sum of that *Market Participant's trading amounts* for each *trading interval* in that *billing period*; plus

(2) that *Market Participant's positive reconciliation amount* (if any) in respect of any prior *billing period* determined in accordance with clause 3.5; less

(3) that *Market Participant's negative reconciliation amount* (if any) in respect of any prior *billing period* determined in accordance with clause 3.5; less

(4) the aggregate of:

(A) any *market fees* which that *Market Participant* is required to pay in respect of that *billing period* calculated in accordance with clause 2.6; and

(B) any *participant compensation fund* contribution which that *Market Participant* is required to make in accordance with clause 3.3; and

(C) any amount which that *Market Participant* is required to pay to *VENCorp* in respect of compensation payments in accordance with clause 3.6.6; plus

(5) if *VENCorp* has completed its determination of *ancillary payments* and consequential associated *uplift payments* arising from a *trading interval*:

(A) the amount of any *ancillary payments* determined to be payable to that *Market Participant* in accordance with clause 3.6.7 in respect of that *trading interval* and not previously taken into account in determining the *settlement amount* for a *billing period* in respect of that *Market Participant*, minus

(B) the amount of any *uplift payments* determined to be payable by that *Market Participant* in accordance with clause 3.6.8 in respect of that *trading interval* and not previously taken into account in determining the *settlement amount* for a *billing period* in respect of that *Market Participant*; minus

(6) any other amounts payable by that *Market Participant* to *VENCorp* in respect of that *billing period*; plus

(7) any amount payable by *VENCorp* to that *Market Participant* in respect of any *linepack account* surplus in accordance with clause 3.6.12(c); minus

(8) any amount payable by that *Market Participant* to *VENCorp* in respect of any *linepack account* deficit in accordance with clause 3.6.12(b); plus

(9) (9) any other amount payable by *VENCorp* to that *Market Participant* in respect of that *billing period*; plus

(10) any amount payable by that *Market Participant* to *VENCorp* in accordance with the provisions of the *Retail Gas Market Rules*

(c) The *settlement amount* determined by *VENCorp* pursuant to clause 3.6.5(b) for each *Market Participant* will be a positive or negative dollar amount.

(d) Each component of the *settlement amount* determined by *VENCorp* pursuant to clause 3.6.5(b) for each *Market Participant* is subject to the application of *GST*, where applicable, under clause 3.8.

3.6.18 Disputes

(a) Subject to clause 3.6.18(d), if a dispute arises between a *Market Participant* and *VENCorp* concerning either:

(1) the *settlement amount* stated in a preliminary statement provided under clause 3.6.14 to be payable by or to it; or

(2) the supporting data,

they must each use reasonable endeavours to resolve the dispute within fifteen *business days* after the end of the relevant *billing period.*

(b) Subject to clause 3.6.18(d), disputes in respect of *final statements* or the supporting data provided with them in accordance with clause 3.6.15 must be raised within twelve months of the relevant *billing period.*

(c) Disputes raised under this clause 3.6.18 must be resolved by agreement or pursuant to the dispute resolution procedures set out in clause 7.2.

(d) Disputes arising in relation to payments determined under the *Retail Gas Market Rules* shall not be determined under these Rules and must be determined under the dispute provisions of the *Retail Gas Market Rules.*

3.6.21 Payment default procedure

(b) Where a *default event* has occurred in relation to a *Market Participant, VENCorp* may:

(1) issue a *default notice* which specifies:

(A) the nature of the alleged default; and

(B) if *VENCorp* considers that the default is capable of remedy, that the *Market Participant* must remedy the default within 24 hours of the issue of the *default notice*; and/or

(2) immediately issue a *suspension notice* in accordance with clause 3.7.7 if *VENCorp* considers that the default is not capable of remedy and that failure to issue a *suspension notice* would be likely to expose other *Market Participants* to greater risk; and/or

(3) if it has not already done so, make a claim upon any *credit support* held in respect of the *Market Participant* for such amount as *VENCorp* determines represents the amount of any money actually or contingently owing by the *Market Participant* to *VENCorp* pursuant to these Rules and the *Retail Gas Market Rules*.

3.7 PRUDENTIAL REQUIREMENTS

3.7.1 Purpose

The purpose of the *prudential requirements* is to ensure the effective operation of the *market* by providing a level of comfort that *Market Participants* will meet their obligations to make payments as required under these Rules and the *Retail Gas Market Rules*.

3.7.9 Monitoring

(a) Each day, *VENCorp* must review its estimated exposure to each *Market Participant* in respect of previous *billing periods* under these Rules and the *Retail Gas Market Rules*.

(b) In calculating *VENCorp's* estimated exposure to a *Market Participant* under clause 3.7.9(a), the period between the start of the *billing period* in which the review occurs and the start of the *gas day* immediately following the day on which the review occurs is to be treated as a previous *billing period*.

(c) In calculating *VENCorp's* estimated exposure to a *Market Participant* under clause 3.7.9(a), *VENCorp* must take into account:

(1) outstanding *settlement amounts* for the *Market Participant* in respect of previous *billing periods*; and

(2) *settlement amounts* for the *Market Participant* for *trading intervals* from the start of the *billing period* in which the review occurs to the end of the *gas day* on which the review occurs based on:

(A) actual *market prices* or, if actual *market prices* are not available for all or part of a *gas day*, the *market prices* forecast for the relevant *gas day* as *published* in the relevant *final operating schedule* determined by *VENCorp* in accordance with clause 3.1.12; and

(B) actual *metered* quantities for the *Market Participant* or, if actual *metered* quantities are not available for a *trading interval*, then a *trading imbalance* for that *trading interval* determined by *VENCorp* based on substituted or available profiled *metering data* in accordance with procedures developed and *published* from time to time by *VENCorp* in consultation with *Market Participants*, and

(3) Amounts that *VENCorp* is entitled to recover from that *Market Participant* under the *Retail Gas Market Rules*.

end.