



COMBUSTION AIR PTY. LTD.

Our Ref : Alinta AA
Your Ref : Gas Safety

July 23, 1999

Mr Robert Pullella
Office of Gas Access Regulation
Level 6 Governor Stirling Tower
197 St Georges Tce
PERTH WA 6000

**Subject : Public Submission - AlintaGas' Access Arrangement
Mid-West and South-West Gas Distribution Systems**

Dear Mr Pullella,

In response to the Office of Gas Access Regulation (OffGAR) invitation for public comment on Access Arrangements (AA), please find below our submission on the Access Arrangement Information (AAI) provided by AlintaGas in respect of the Mid-West and South-West Gas Distribution Systems. We note that AlintaGas remains a publicly owned corporation.

The Australian Competition and Consumer Commission (ACCC) recognised the primacy of gas safety in it's submission to the Gas Reform Implementation Group (GRIG) dated August 27, 1998 titled "Issues Affecting Competition Between Retailers". Under the heading "3.3 Legislation" the ACCC submits :

It may be more appropriate for standards to be set out in legislation where certainty is more important than flexibility, where the matter is of enough importance to require imposing minimum or set standards, and where the availability of enforcement for breaches of the standards is important. In many jurisdictions, for example, legislative standards are set for safety matters, as safety represents a basic consumer right, with very high costs to the community for non-compliance.

It should be noted that the ACCC submission to GRIG was provided in the month prior to the Esso Longford Gas Plant Explosion and Fire of September 25, 1998. In his Report of June 1999, Sir Daryl Dawson makes reference to legislation and the regulatory environment at Longford, up stream (off shore) and down stream (gas supply and utilisation). The Royal Commission Report at Chapter 14 "The Regulatory Environment" and Chapter 15 "Conclusions and Recommendations" are relevant to gas safety legislation, certainty in regulation and gas access arrangements.

Whilst the ACCC submission to GRIG of August 1998 suggested that it (the ACCC) did not recommend the legislative approach over the general obligations of a consumer charter, with the gas supplier having a general duty of care; the Dawson Report is most specific in regard to the importance of external, mandatory obligations in regard to safety and gas supply.

The GRIG information paper "Retail Competition in the Natural Gas Industry: Issues and Approaches" of February 1999 recognised that :

Gas retail competition issues cannot be examined in isolation as competition issues often also have consumer protection and technical/safety dimensions relating to the implications for the safe physical transportation, delivery or use of natural gas sold through retail markets, eg standards for the installation of appliances.

Appendix D of the GRIG information paper is titled, "Jurisdictional Approaches to Addressing Issues Affecting the Development of Retailer Competition" and lists Technical/Safety as an issue, second only to Access to Competitively Priced Gas in the ranking of some 16 issues concerning retail competition. At page 15 of this appendix the primacy of the Western Australian *Gas Standards Act 1972* (the Act) is acknowledged in matters concerning safety standards and to ensure the safety of consumer installations and the standard of gasfitting. The Gas Standards Regulations (WA) 1983 (the regulations) and the Gas Distribution Regulations 1996 were also referenced.

The National Competition Council (NCC) produced an issues paper in March 1999 titled "WA Access Regime for Gas Pipeline Services". Under issues arising from the Competition Principles Agreement [Clause 6 (3)] the NCC reinforced the need for a State access regime to conform to the principle of safe use of the facility, by the person seeking access, be assured at an economically feasible cost and, if there is a safety requirement, appropriate regulatory arrangements exist.

GRIG issued a consultation paper in April 1999 titled "Licensing Arrangements for Natural Gas Retailers". At Appendix 1, page 48, it notes under the head "Safety", the purpose of the Gas Standards Act (WA) 1972, Section 13, is to place an obligation on the gas supplier to satisfy themselves that consumers' installations meet minimum standards before commencing gas supply. We also note that the paper referred to several jurisdictions requiring gas suppliers or pipeline licensees to develop, and implement, safety operating plans that focus on maintaining technical standards for supplying consumers.

In this context we ask that your Office consider and respond in regard to the primacy of the Gas Standards Act (WA) 1972 in matters concerning safety; gas suppliers obligations and Ministerial exemptions of gas suppliers and pipeline licensees under Section 13, "Consumers' installations". Such a response should comment on the relationship between the provisions of the Act and Access Arrangements for gas suppliers generally; and in the case of AlintaGas, the Act and Access Arrangements, given the particular provisions of the Gas Corporation Act (WA) 1994 "Gas Distribution Regulations 1996"; Schedule 1 "Grant of Access", Chapter 3 Curtailment, clause 10 sub c. (j) and (k).

The Minister for Energy, the Hon Colin J Barnett recognised the significance of the Victorian Gas Access Arrangements in the Western Australian government's submission to the Victorian Office of the Regulator General (ORG) in 1998; hence reference is also made to ORG reports and decisions.

Section 3 of the National Third Party Access Code for Natural Gas Pipeline Systems (the Code) establishes requirements for "service". It is particularly difficult to assess the definition of service from OffGAR's introduction, overview and tariff principles comments on the Code. This lack of precision suggests that specific information reflecting the intent of the Code should be found in the AlintaGas AA and AAI. Although the base elements of service and technical requirements are scattered throughout the documents, a consolidated definitive set of requirements are not. Interested parties are, therefore, unable to understand the services offered under the AA.

ORG engaged a Perth based engineering firm, Ewbank Preece to review the Victorian AA and AAI documents against the Code. Their report, dated June 1998 advised ORG that the technical standards of these documents was unsatisfactory. The AlintaGas AA and AAI appear similarly flawed in regard to technical standards and supporting documents.

One is left to infer from the AAI that AlintaGas' record as a gas supplier has been safe, reliable and compliant with legislation for gas safety. This inference should be tested. In the absence of a set of complete and definitive "service and technical requirements" documented in the AA or AAI: the practical application of safety requirements and the mutual obligations of a gas supplier to its customers must be gauged by the stewardship offered by the applicant to industry. Examples of safety concerns include:

- The lack of available documentation from the applicant such as "Approval Requirements for Type B Appliances" which assist industry to comply with a gas suppliers safety obligations under subsection 13 (1) of the Gas Standards Act (WA), 1972 as amended, or details of any Ministerial exemption granted under subsection 13 (2);
- A failure to acknowledge the changes effected by new regulations being introduced under the Gas Standards Act 1972 (WA) in the documentation;
- A general lack of knowledge amongst AlintaGas' industrial gas users of the requirements of a consumers gas installation and the role played by the gas supplier in Western Australia, and;
- A concern from AlintaGas industrial consumers expressed to their industry body, the Chamber of Commerce and Industry WA, as to risks associated with gas supply and the safe installation, certification, approval and operation of industrial appliances.

Industrial gas consumers rely heavily upon gas suppliers to ensure compliance with applicable gas safety regulation and such a core obligation must be acknowledged in any AA or AAI in Western Australia.

We do note that AlintaGas' AA makes reference to the Gas Standards (Gas Fitting and Consumers' Gas Installations) Regulations 1999; which we understand are before the Parliamentary Joint Standing Committee on Delegated Legislation on a motion for disallowance.

Clause 134 (i) and 134 (j) of the AlintaGas AA, in regard to Curtailment, state:

134 (i) if AlintaGas considers as a reasonable person that it would be unsafe or may give rise to an unsafe situation for the operation of the AlintaGas Network to deliver gas to the user at the delivery point;

134 (j) if AlintaGas becomes aware of any non-compliance with the Gas Standards (Gas Fitting and Consumers' Gas Installations) Regulations 1999 downstream of the delivery point by the user, a gas customer or any other person which may give rise to an unsafe situation:

It is disingenuous for AlintaGas to suggest that Curtailment is optional in an unsafe situation. The primacy of the Act in matters of gas safety cannot be ignored. The Gas Standards Act, at sub. s 13 (1) states:

13. (1) An undertaker or pipeline licensee shall not commence to supply gas to a consumer's gas installation unless that installation meets the requirements, if any prescribed in respect of that installation.

If AlintaGas have obtained Ministerial exemptions from this prime statutory obligation: the details should be set out in the AA. The obligations of a gas supplier to withhold permanent gas supply, until a consumer's gas installation meets legislative requirements are prime; and cannot be ignored in the AA. Any subsection 13 (2) exemption should not allow a gas supplier to use it's market position to negotiate "approval requirements" which force gas fitters, appliance manufacturers and consumers to act at the behest of such suppliers.

Having established that the safety criteria have been met, prior to initial supply of gas, a gas supplier then has an ongoing obligation to ensure that continuing gas supply is provided only whilst an installation remains compliant. This requires all gas suppliers to make sufficient ongoing enquiry to establish compliance, downstream of the delivery point.

Section 8 of the National Third Party Access Code for Natural Gas Pipeline Systems (Code) establishes principles for design of "Tariffs". It is particularly difficult to assess the Code principle expressed at sub section 8.1 (c), "*ensuring the safe and reliable operation of the pipeline*" from OffGAR's tariff comments on the Code. The lack of reference suggests that specific information reflecting the intent of the Code would be found in the AlintaGas AA and the AAI. Again a lack of reference to safety in these documents leaves interested parties unable to understand or calculate the risk associated with unresourced safety obligations.

The Victorian Office of the Regulator General, via a press release dated October 6, 1998, commented on the rate of return of capital under the Code. The media release highlights, at p. 2., the cost of "new and untested regulatory regimes",

"... The increase in the rate of return results mainly from the increased risk premium adopted ... to reflect the Office's reassessment of a number of potential risk factors identified in submissions and the conferences, These include ... risks associated with the immaturity of the

gas market reforms and the gas industry structural arrangements, a new and untested regulatory regime and the presence of a range of potentially diversifiable or insurable risks which cannot be readily included in cash flows. Examples of such insurable risks include natural disasters that may cause major infrastructure dislocations. The recent explosion at Esso/BHP's Longford plant indicates the impact that such events can have on gas flows and thus cash flows ...".

ORG made these comments when increasing the asset beta from the draft decision value of 0.4 by some 40% to 0.55 in the final decision for the Victorian AA. There is some concern that ORG has misunderstood gas safety as being a diversifiable risk. Insurance cannot, and should not, be relied upon to replace mandatory inspection, approval and certification.

The cost of maintaining gas safety is of interest and concern to industry and Government. Our company as a significant manufacturer of industrial gas appliances supports the existing system of mandatory inspections and in situ certification and approvals sponsored by gas supplier obligations under the Act. Gas safety and the cost of gas to market entrants, consumers and operators is threatened by any ambiguity as to the regulatory obligations of gas suppliers.

Regulatory oversight by Government must enforce the mandatory safety obligations of gas suppliers stipulated in legislation, such obligations must also be detailed in the "Service" and funded by the "Tariff" in any access arrangement. Prudence and legislative compliance cannot be replaced by de facto risk management or a "lighthanded approach" to gas safety.

The opportunity to comment on the Access Arrangements and gas safety is appreciated.

Yours faithfully,

PETER J. STEWART

Director

COMBUSTION AIR PTY LTD

cc Phil Harvey AlintaGas

cc Lyndon Rowe CCI WA