

Our Ref: RCM/0028

Dr Ken Michael
Gas Pipelines Access Regulator
Office of Gas Access Regulation
Level 6, 197 St Georges Terrace
PERTH WA 6000

Dear Dr Michael

PROPOSED HAULAGE CONTRACT BETWEEN ALINTAGAS NETWORKS PTY LTD AND ALINTAGAS SALES PTY LTD

Thank you for inviting submissions from interested parties in regard to the proposed Associate Contract (“Contract”) between AlintaGas Networks Pty Ltd (“AlintaGas Networks”) and AlintaGas Sales Pty Ltd (“AlintaGas Sales”) for access to haulage services provided by means of the Mid-West and South-West gas distribution systems.

I note, from your Issues Paper, that you have decided to release the Contract but not the schedules to the Contract, which set out discounted tariffs, based on AlintaGas’ claims that those schedules contain information of a confidential and commercially sensitive nature. I further note that you have not yet reached a conclusion in respect of whether disclosure of the information the subject of the claim would unduly harm AlintaGas Networks’ or AlintaGas Sales’ legitimate business interests.

From your Issues Paper, I understand that AlintaGas Ltd has confirmed, in separate correspondence to you, that for a number of delivery points AlintaGas Sales would pay a tariff less than the relevant Reference Tariff and that the differences are in some cases substantial. I also understand that AlintaGas Ltd has advised that the discounted haulage tariffs will only apply to the delivery points where the contracted price of gas sold by AlintaGas Sales to consumers supplied through those delivery points is too low to accommodate the relevant Reference Tariff and that the gas sales contracts at issue were purportedly entered into prior to your approval of AlintaGas Networks’ Access Arrangement.

I expect that you will now take the necessary steps to obtain from AlintaGas Ltd information related to these gas sales contracts that would enable you to confirm the Company’s claims particularly in relation to the level of the contracted price of gas and the date of entry into the contracts.

In the absence of the schedules to the Contract it is difficult to make any fully informed comments on the Contract. It appears, however, that AlintaGas Sales may have a competitive advantage in the retail of gas, through its ability to pay tariffs less than the Reference Tariffs for certain distribution services. It further appears that the potential advantage to AlintaGas Sales of discounted tariffs arises as a result of an increase in AlintaGas Sales' ability to reduce its retail prices to a level below the costs faced by competitors, which may enable undercutting of the prices of other gas retailers in order to defend its market share.

This outcome would seem on face value to be of advantage to customers having current contracts. However, this advantage may not necessarily flow on to new customers should the practice of discounted tariff arrangements be continued or extended. Theoretically, AlintaGas Sales could price up to the level of competitors facing Reference Tariffs while it takes an improved margin derived from discounted tariff arrangements. Another important aspect of this issue emerges in the case of customers who are not yet contestable. Up to 1 July 2002, AlintaGas Sales, in addition to its potential advantage of discounted tariffs, has the advantage of being the only eligible retailer and it can seek to maximise delivered prices under the regulated price cap.

It appears to this Office that it will be essential for the Regulator to have access to detailed information, both in relation to the Contract and the gas sales contracts at issue, for the Regulator to consider whether the advantage of discounted tariffs has the effect of substantially lessening, preventing or hindering competition in the gas retail market.

From the information provided in your Issues Paper, discounts may apply only in relation to existing gas sales contracts of AlintaGas Sales for certain delivery points. You should consider whether or not these discounts should or should not apply to any new contracts (or extensions of existing contracts, not already provided for) for those delivery points.

It is understood, from your Issues Paper, that the gas sales contracts to which discounts apply have expiry dates that range from March 2001 to June 2005 and that AlintaGas Ltd wishes to maintain its discretion to either discontinue the tariff discount at the end of the term of the current contracts or to continue to offer the discount. Should AlintaGas Ltd commit to discontinue discounts on the retail price of gas, a Contract condition to require this would be sufficient.

Should AlintaGas Ltd not be prepared to commit to discontinue discounts at the end of current contracts it could be asked to commit that to the extent that future tariff discounts are offered by AlintaGas Networks to AlintaGas Sales (that is, after expiry of the existing contracts) these would also be offered to other Users of the AlintaGas gas distribution systems. If this representation is binding upon AlintaGas Networks, this may alleviate concerns regarding any increased ability of AlintaGas Sales to offer discounts on the retail price of gas. It does not appear, however, that a condition in the Contract would be sufficient to place an obligation on AlintaGas Networks to this effect.

In any event a condition in the Contract that enables AlintaGas Networks either to discontinue the tariff discounts or to offer those to other Users of the AlintaGas gas distribution systems as well as to AlintaGas Sales, at expiry of the existing contracts, appears to be necessary.

Given that it may not be practicable to bind AlintaGas Networks to make discounted distribution tariffs available to Users other than AlintaGas Sales, the Regulator should consider making discounted distribution tariffs, and indication of the delivery points to which

these apply, available to the public. It would be reasonable for AlintaGas Networks to notify the Regulator, and the Regulator to publish this information, at least 49 days before the discounted tariffs are to be offered (i.e. at least 49 days before expiry of the existing contracts). This would be consistent with the situation which would apply to new contracts between AlintaGas Networks and AlintaGas Sales involving discounted tariffs. In the latter circumstances the Regulator would be able to publish a proposed contract at least 49 days before such a contract might be entered into.

Finally, your Issues Paper identifies a number of differences between the Access Arrangement and the proposed Contract. In some cases the justification for those differences is not apparent from your Issues Paper. It is thus difficult for interested parties to make comments on the reasonableness of those differences. However, one clear difference relates to the duration of the Contract. It is considered that in the context of the full deregulation of the gas retail market on 1 July 2002, and the expected ensuing increase in competition, the inherent flexibility to reduce the number of gas customers being served under the arrangements in the Contract appears to be warranted.

This submission may be made public by the Regulator as required.

Yours sincerely

LES FARRANT
COORDINATOR OF ENERGY

3 April 2001

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