

CMS GAS TRANSMISSION of AUSTRALIA

PUBLIC SUBMISSION

**ALINTAGAS NETWORKS PTY LTD
REVISED ACCESS ARRANGEMENT**

**Submitted to Economic Regulatory Authority
on 14 May 2004**

INTRODUCTION

CMS Gas Transmission of Australia (CMS) makes this public submission in response to the notice of 7 April 2004 published by the Economic Regulatory Authority (ERA) which invited submissions on the proposed revised Access Arrangement submitted by AlintaGas Networks Pty Ltd (AGN) for its Mid-West and South-West Gas Distribution Systems (GDS).

The intended purpose of this brief submission is to identify fundamental issues arising from the proposed AGN revised Access Arrangement, which if not addressed will lead to long term adverse ramifications in the natural gas transmission and distribution markets and to request the ERA to direct AGN to make amendments which will address these matters.

INTERCONNECTION WITH OTHER PIPELINES

AGN offers an Interconnection Service in its proposed revised Access Arrangement. This service addresses the interconnection of the AGN GDS with pipeline operators other than the Dampier to Bunbury Natural Gas Pipeline (DBNGP).

The proposed revised Access Arrangement states (Part A, Clause 21(2)):

The Interconnection Service provides a right to interconnect with the AGN GDS. Subject to Part A, clause 22, the terms and conditions and prices upon which an Interconnection Service will be made available are to be negotiated by AGN and the person to whom that Service is provided.

This means that there are no benchmark terms and conditions, which are open to public scrutiny and that clarify the structure concerning the proposed Interconnection Service.

One of the stated objectives of the National Third Party Access Code For Natural Gas Pipeline Systems (the Code) is to:

"establish a framework for third party access to gas pipelines that:

...

provides rights of access to natural gas pipelines on conditions that are fair and reasonable for both Service Providers and Users;"

As AGN is not involved in gas transmission services outside of distribution, interconnection to the AGN GDS constitutes third party access to a gas pipeline system as intended to be the subject of the Code.

Another objective of the Code is to:

"establish a framework for third party access to gas pipelines that:

...

promotes a competitive market for natural gas in which customers may choose suppliers, including producers, retailers and traders;"

The Minister for Energy outlined the State Government's position on gas market reform in his comments below.

"The establishment of a competitive gas market in Western Australia remains a high priority for the State Government. Allowing consumers to choose their preferred natural gas retailer is an outcome of the Government's energy industry reform initiatives, and is in line with the National Competition Principles agreement by which all States, Territories and the Federal Government are bound." (Energy Western Australia, Office of Energy, February 2003, page 4)

The State Government has undertaken significant levels of funding since July 2001 in its endeavours of achieving its goal of "Full Retail Contestability" (FRC) in the gas market. The State Government has quite properly recognised that FRC costs are incurred in the interests of the wider social economy of Western Australia, as the public receives the benefits of competition which would otherwise not occur due to the presence of bottleneck infrastructure (i.e. the gas distribution network and its associated retail enterprise). Accordingly, FRC costs necessarily incurred to enable competition and to provide the benefits competition brings, are intended to be borne by the wider community, either through contributions from the Government or via inclusion in the cost base for determining the broad based delivered cost of gas.

The establishment of a competitive gas market in the areas serviced by the AGN GDS involves more than simply facilitating access for retailers competing in the market "downstream" of the GDS, although the both the FRC process and the current regulatory consideration of the AGN proposed revised Access Arrangement must also deal with this.

However the real and significant benefits of competition will only be realisable when consumers are able to viably choose between suppliers, who in turn are able to bring to bear their relative production and delivery efficiencies. In the absence of interconnection access upon a publicly acceptable industry standard agreement forming part of the proposed revised Access Arrangement, then the FRC process will be hampered.

Consequently, "upstream" access to the AGN GDS should also be given important consideration and be adequately addressed within the proposed AGN revised Access Arrangement.

CMS owns and operates the Parmelia Pipeline, which brings natural gas to Perth from the region of Dongara (Perth Basin), from where the metropolitan area obtained its natural gas supply prior to the construction of the DBNGP. The Parmelia Pipeline now provides a means by which gas producers in the northern Perth Basin can efficiently deliver competitive sources of natural gas supplies to the Perth Metropolitan Area. Additionally, the Parmelia Pipeline interconnects with the DBGNP at Mondarra to provide additional DBGNP capacity to Perth and is connected to the Mondarra gas storage facility which, amongst other things, is used for load management services.

For example, the Mondarra gas storage facility, which is connected to the Parmelia Pipeline, could supply the gas requirements of all residential, small business and commercial gas users in the Perth gas distribution for months, but not if it is not connected or artificially constrained by a lack of interconnection access.

For its part, CMS has been negotiating with AGN for over 5 years to obtain access on fair and reasonable terms and conditions to sub-networks within the South-West Distribution System through interconnection with the Parmelia Pipeline.

CMS currently has restrictive interim interconnection contracts with AGN for its North and South Metropolitan Sub-Networks. However, only constrained physical interconnection has occurred at one northern location, due to a lack of interconnection certainty. The commercial problem arising from these interim and restrictive arrangements is that they restrict CMS' ability to meet New Gas Retailer demand and therefore restricts CMS' ability to grow its business. Furthermore, any gains made to date may be lost, when the interim term ends. These contracts were entered into by CMS, as a precursor to negotiating a full Interconnection Agreement and therefore are for a limited term and contain provisions that CMS would not normally accept. Until CMS is able to negotiate an Interconnection Agreement containing fair and reasonable terms and conditions then real commercial concerns exist in relation to certainty.

Interconnection to the AGN GDS on fair and reasonable terms and conditions for CMS and the New Gas Retailers will significantly contribute to the establishment of a competitive natural gas market in Western Australia.

It is therefore imperative that the Interconnection Service proposed by AGN should be treated as, or at very minimum viewed in the context of, a Reference Service. A Reference Service is required to include a set of terms and conditions (Code section 3.6).

The absence of benchmark terms and conditions for an Interconnection Service is, in CMS' opinion, a significant omission in AGN' proposed revised Access Arrangement. To not provide a benchmark for a fundamental objective of open access is, in CMS' opinion, contrary to the outcomes sought to be achieved under the Code.

CMS therefore requests that AGN be required to revise its proposed Access Arrangement to include a complete set of benchmark reference terms and conditions for its Interconnection Service as soon as reasonably practical. The inclusion of a set of complete reference terms and conditions should be a fundamental part of the public consultation process, which is intended to arrive at an outcome where natural justice has been afforded and certainty that the access provided to all parties will be made available on a fair and reasonable basis.

COST RECOVERY FOR INTERCONNECTION

In regard to the payment of costs associated specifically with interconnection of different sources of supply to the distribution network (section 3.6 of its proposed AGN GDS Access Arrangement Information (AAI)), AGN states:

"As the benefits are not available to all Users and all Sub-networks, it is not equitable for the costs to be allocated across the whole AGN GDS. Therefore these costs could not be recovered via the Reference Tariffs." (AAI, page 25)

On the same page of the AAI, AGN goes on to justify an ability to charge the interconnecting pipeline operator for the costs associated with facilitating access to the network by new suppliers on the basis that;

- (a) users may swap between suppliers and hence swap between pipelines, making it problematic to directly allocate supply connection costs, and
- (b) AGN doesn't have a direct contractual arrangement with shippers, whereas the interconnecting pipeline service provider does and hence a cost recovery path exists to users via shippers, who can be on-charged by the pipeline operator.

An estimate of the capital and ongoing non-capital costs of facilitating upstream interconnection access to the GDS is also provided by AGN (AAI, page 25), however the basis upon which charges may be allocated to the provision of an interconnection service is not specified.

Other than a brief reference (on page 25) to the need to deal with *"the design, construction, commissioning, ownership and funding of Physical Gate Points and associated facilities"* (presumed to include metering facilities), the AAI does not discuss the nature or extent of costs that the service provider would directly incur for its part in facilitating interconnection to the GDS. However there appears to be implicit acceptance that these costs are separate to and not included in the interconnection cost recovery provisions outlined by AGN.

Premised on the preceding grounds, AGN has included new provisions on cost recovery of interconnection costs, as stated in its proposed revised Access Arrangement, Part A, Clause 62:

- (1) *AGN may recover the reasonable capital and Non-Capital Costs it incurs as a result of a Pipeline being interconnected with the AGN GDS from the owner or operator of the Interconnected Pipeline.*
- (2) *Without limiting Part A, clause 62(1), if AGN is required or agrees to implement, or is required or agrees to assist in the implementation of, a heating value blending management plan under the Gas Standards Regulations in respect of an Interconnected Pipeline, the owner or Pipeline Operator of the Interconnected Pipeline will be required to reimburse AGN's reasonable capital costs and Non-Capital Costs associated with the measurement, recording, auditing, facilitation or otherwise related to the development, implementation and administration of the heating value blending management plan.*
- (3) *If the costs referred to in Part A, clause 62 (2) cannot be recovered from the owner or Pipeline Operator of the Interconnected Pipeline, then AGN may suspend the provision of the Interconnection Service to the owner or Pipeline Operator of the Interconnected Pipeline.*

CMS rejects these provisions and is of the opinion that, if permitted to remain, the proposed provisions will maintain the current barriers to entry of gas supply which have held back competition for at least the five years that CMS has been seeking entry into the market, and will continue to block the FRC process and the realisation of the Government's objectives in that regard.

In contrast, if competitive supply is facilitated through equitable and fair and reasonable terms of upstream interconnection to the GDS, CMS believes that AGN will derive additional system wide benefits such as additional market growth and security of supply. Consequently, CMS contends that the nature of the capital and non-capital costs that AGN refers in its AAI as incurring due to the interconnection of the GDS by another pipeline operator, should properly be considered part of the system wide cost of pursuing the system wide benefits of FRC, which AGN proposes to pass onto all customers.

Therefore CMS requests that the cost recovery provisions for the AGN' proposed revised Access Arrangement should be developed having regard to the following matters:

- (1) The interconnection to the GDS of new competitive sources of gas supply will bring the benefits of competition to consumers well beyond just those users who change from their current supplier/retailer due to competitive responses (as already demonstrated in those limited areas already within reach of the Parmelia Pipeline). This could conceivably extend to benefits being directly available "*to all Users and Sub-networks*" and hence the costs of AGN facilitating interconnection can and should be equitably recovered via Reference Tariffs in a similar manner to other FRC costs.
- (2) The estimated costs of facilitating interconnection as defined by AGN (AAI, page 25) in relation to "*operating, monitoring and otherwise*

managing heating value management plans to comply with Declared Heating Value Regulations" should be considered in the context of relative cost impacts. The relevant capital and ongoing non-capital costs cited by AGN represent insignificant increments to the ongoing expansion and maintenance of the GDS, and AGN has to do some of this work anyway. The resulting impact on Reference Tariffs would be inconsequential. In contrast however, for new entrants to have to solely bear the costs of system modifications required in order to facilitate competition, the burden is likely to be onerous and discriminatory. At the least, the cost apportionment proposed represents a further barrier to competitive new entrance into the current monopoly market.

- (3) The proposition that the direct allocation of costs to those users who directly benefit from contracts entered into for new competitive gas supplies simply evaporates if the more equitable approach of including the cost of facilitating such arrangements in the reference tariff is adopted.
- (4) The assertion by AGN that "*it is impractical to have a standard tariff for the Interconnection Service*" because of the need to address "*specific issues*" in "*each case*" (AAI, page 25) arises as a result of confusing the costs of facilitating a specific interconnection by a pipeline competing with the DBNGP at a specific gate point into the GDS, with the necessity for AGN to incur relatively minor system costs to modify the way in which the GDS is monitored and operated in order for it to accommodate gas having slightly different gas quality specifications from that supplied solely from the DBNGP. Proper consideration of the nature of these costs and the quite different cost bases from which they arise, means that it is practical to standardise their treatment and to equitably apportion them.
- (5) The issues raised by AGN in regard to the treatment of interconnection costs arise out of the need for the GDS to accommodate the distribution and equitable charging for delivery of gas which seeks to compete with gas delivered by the DBNGP but which has a somewhat different gas quality specification. (This difference largely derives from a contractual arrangement whereby a certain level of LPG's are required to be maintained in the gas stream in order that they may be profitably extracted just south of the city of Perth for the commercial benefit of Wesfarmers and Alinta.)

INTERCONNECTION REFERENCE SERVICE PROVISIONS

CMS considers that at the very least AGN' proposed revised Access Arrangement should contain a complete set of reference terms and conditions on the Interconnection Contract. Specification as to the treatment of costs should include recognition that facilitating upstream access has a system wide benefit intrinsically bound to the wider social benefits of FRC and hence the relatively small costs of provision should be included in the capital base for establishing network tariffs.

Given that AGN' proposed revised Access Arrangement does not contain benchmark terms and conditions on the Interconnection Contract, CMS considers it necessary to provide an outline on its commercial position on what it considers to be generic Interconnection Contract provisions.

CMS has structured these provisions into the form of a term sheet. It should be noted that the following term sheet does not contain any provisions on matters that are covered by the Retail Market Rules.

TERMS SHEET FOR PROPOSED INTERCONNECTION

The terms and conditions that are detailed below represent an expression of the subject matter and commercial issues that CMS believes should form part of a standard set of fair and reasonable conditions for interconnection access. Although CMS is in the process of attempting to negotiate with AGN to arrive at an acceptable interconnection agreement, the following summary of provisions only represents the preferred position of CMS.

The overarching consideration is that the complete set of standard terms and conditions, once resolved with the necessary level of particularity, should form part of the proposed revised access arrangement and be offered in that form to access seekers regarding interconnection.

Note, given the existence of; the Shipper agreements for transmission on a pipeline, haulage contracts for distribution on the distribution system and the Retail Market Rules, the interconnection agreement should only deal with the issues that arise at the interconnection interface not covered by the other arrangements. Such a limitation means that the arrangements regarding interconnection should be fairly simple in their terms.

Intended Parties	AlintaGas Networks Pty Ltd (ABN 90 089 531 975) of Level 7, The Quadrant, 1 William Street, Perth, Western Australia ('AGN') and [] ('Pipeline Operator'), individually "Party" or collectively "Parties" to this Deed.
Term	An Interconnection Contract (Contract) should be for such term as a valid pipeline licence operates in relation to the Pipeline,
Curtailement	Arrangements should be provided for which cater for permissible curtailement in the event of Force Majeure.
Title to and transfer of Gas	<p>The Parties accept that title to gas passes at the Gate Station Delivery Point from the Pipeline Operator to the Shipper on the upstream side of the Delivery Point to the downstream side to the User and then to the GDS Operator.</p> <p>The Parties accept that the transfer of gas from the Shipper to the User is governed by the Retail Market Rules.</p>
Gas delivery and receipt	The Parties acknowledge that the delivery of gas at the Delivery Point is governed by shipping arrangements between the Shippers and the Pipeline Operator. The Parties acknowledge that the receipt of gas at the Delivery Point is governed by haulage arrangements between the Users and the GDS Operator.
Costs	<p>The Parties agree that the Pipeline Operator bears all costs associated with any costs arising upstream of the Delivery Point and the GDS Operator bears any costs associated with any matter downstream of the Delivery Point.</p> <p>The Parties acknowledge that the costs related to the transfer of gas from the Shipper to the User is governed by the Retail Market Rules.</p>
Gas conditions	<p>The Pipeline Operator shall use reasonable endeavours to maintain the gas delivery pressure below the MAOP of the High Pressure System supplying the GDS.</p> <p>The Pipeline Operator shall use reasonable endeavours to maintain the gas delivery temperature between 0°C and 50°C.</p>

Odourisation	The Pipeline Operator must use reasonable endeavours to ensure that gas delivered by it to the interconnection point is odourised to comply with the Australian Gas Standards.
Gas Quality Specifications	The Pipeline Operator must use reasonable endeavours to ensure that gas delivered by it to the interconnection point complies with the Australian Gas Standards.
Notices	All notices, under the Contract shall be in writing and delivered in accordance with normal commercial practice.
System Descriptions	The Parties, where necessary, shall use reasonable endeavours to consult and assist each other's formulation of each party's system descriptions.
Disputes	<p>In the event of a dispute one Party must give to the other Party written notice and an opportunity for the other Party to resolve the matter in dispute.</p> <p>Without limiting the Parties right to litigate, and depending upon the size of the dispute, the Parties may refer the dispute to an Expert or an Arbitrator.</p>
Insolvency	In the event of a Party becoming insolvent, the other Party by written notice may terminate the interconnection agreement.
Termination	<p>If a Party is in default, and notwithstanding being given notice fails to remedy the default, then the other Party may terminate this Contract.</p> <p>The termination rights and remedies shall be in addition to and not in substitution for any other rights and remedies.</p>
Indemnity	The Parties agree to mutually indemnify each other in relation to direct losses caused by or contributed to by a negligent act of that Party. (maximum liability A\$5,000,000).
Right to Appoint Manager	A Party may elect to appoint a company that is a related body corporate, or authorised agent, to administer all its obligations under this Contract.
Assignment	The Parties shall be entitled to assign the Contract, subject to obtaining written consent, which will not be unreasonably withheld.

Waiver	Any failure or delay in exercising any right under the Contract shall not operate as a waiver.
Entire Agreement	The Contract constitutes the entire agreement.
Governing Law	The Contract shall be governed by the laws of the State of Western Australia.

As previously indicated, the absence of benchmark terms and conditions for an Interconnection Service is, in CMS' opinion, a significant omission in AGN' proposed Access Arrangement. CMS therefore requests that AGN be required to revise its proposed Access Arrangement to include a set of benchmark terms and conditions for its Interconnection Service as soon as reasonably practical, so that it may be considered as part of the public consultation process to determine whether it is fair and reasonable for all parties.

CMS is currently working on a draft interconnection agreement based on the term sheet above, which it intends to submit by the end of May 2004 to the Economic Regulatory Authority for public comment.

OTHER PROVISIONS IN AGN PROPOSED REVISED ACCESS ARRANGEMENT

CMS provides the following additional brief comments on other provisions within AGN proposed revised Access Arrangement.

Part C, Clause 4: AGN seeking bank guarantees and a requirement that a User demonstrates its ability to meet all financial obligations under a Haulage Contract. CMS considers that these provisions are unreasonable and commercially unacceptable.

Part C, Clause 23: AGN have reduced the period between giving a User notice and curtailing them to undertake extension or expansion or any maintenance of the AGN GDS from "90 days" to "30 days". CMS considers that this revision is unreasonable and commercially unacceptable. CMS requests that previous period, i.e., 90 days be re-instated into this provision.

Part C, Clause 31: AGN have reduced the period of payment from 15 days to 10 days. CMS considers that this revision is unreasonable and commercially unacceptable. CMS requests that previous period of payment, i.e., 15 days be re-instated into this provision.

Part C, Clause 32: AGN have deleted the previous Access Arrangement Clause 17(3), which stated:

"Any amount paid by the user under this clause but subsequently found not to have been payable is, without prejudice to the user's other rights, to attract interest calculated daily at the prescribed interest rate from the date the user paid the amount until the date AlintaGas repays the amount to the user."

This provision was a benefit to the User and CMS contends that this deletion is unacceptable. CMS request that this provision be re-inserted into the AGN proposed revised Access Arrangement.

Part C, Clause 33: AGN have amended clause 33(2) to remove AGN from provision, i.e., AGN removed word "party" and replaced it with word "User". This results in provision being one sided. The original provision was a benefit to the User and CMS contends that this change is unacceptable. CMS requests that original provisions wording be re-inserted into AGN proposed revised Access Arrangement.

Part C, Clause 35: In clause 35(2) there is no objective measure in provision. Clause must include delay of 2 days to be reasonable.

Part C, Clause 46: Clause 46(1) is unreasonable. CMS requests that the following words be inserted "such consent should not be unreasonably withheld" to make provision acceptable to all parties.

CMS requests that Clause 46(3) be deleted, as it is an unreasonable provision. CMS contends that AGN should pay its own costs as part of its own due diligence.

OTHER MORE GENERAL COMMENTS

The AGN proposed revised Access Arrangement should contain a set of reference terms, which are not reworked in a Haulage Contract (HC). The HC should only contain the parties and sites. It's not fair that each User then has to try and negotiate a HC, it should be able to just rely on the provisions within the AGN proposed revised Access Arrangement.

Retailers should not be locked into End User Site related matters, such as access to AGN GDS facilities.

Retailer's should not be locked to an End User Site cost recovery risk and AGN should not be allowed to charge reservation when a Retailer no longer supplies a site, e.g., goes into liquidation and someone else takes over the site.

A Retailer should not be responsible to pay for or organise removal of AGN facilities at a disused site.

ERA should engage an independent commercial legal review, or allow the Retailers to undertake a joint legal review of the proposed new reference terms and conditions once these are close to being finalised.