A.C.N. 009 302 809

COMBUSTION AIR PTY. LTD.

Our Ref : Alinta AA
Your Ref : Gas Safety
May 5, 2000

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

Subject : Public Submission - Draft Decision - AlintaGas' Access Arrangement Mid-West and South-West Gas Distribution Systems - March 14, 2000

Dear Mr Pullella,

We make this submission in response to the Office of Gas Access Regulation (OffGAR) invitation for public comment on the Draft Decision made by the Independent Gas Pipelines Access Regulator on March 14, 2000 in relation to the AlintaGas Access Arrangements ("Draft Decision") with regard to the Mid-West and South-West Gas Distribution Systems. We note that AlintaGas remains a publicly owned corporation.

The Draft Decision Amendment 1, which requires reference to the standards and codes that will apply to the services specified in the Services Policy proffered by AlintaGas, is welcomed.

The requirement that the Access Arrangements (AA) should reference the appropriate standards and codes to be utilised by AlintaGas for the design, construction, operation and maintenance of their installations recognises AlintaGas's obligation to ensure the safety of workers, the public and gas consumers. Many such standards and codes allow for exemptions, derogation or opting-out. For example a prime code for AlintaGas's gas distribution operations, the Australian Gas Association (AGA) document AG603 "Gas Distribution Code" may be replaced by a safety case, an individual set of regulations or plans unique to a particular gas distribution network. One such set of plans and policies is outlined in AG606 "Code of Practice for the Preparation of a Safety and Operating Plan for Gas Networks". Were the AGA AG606 code referenced in the AA, Users and Prospective Users would be no further informed as to the applicable regulatory bench mark. An example appears at section 2.4 of AG606 which is headed "Operating Parameters" and states:

> *The operating parameters (of the gas distribution network) are to be sufficiently detailed to allow assessment of the risks from loss of supply and overpressure of supply. The details of the relevant operating parameters may be embodied in the description of the management systems.*

Use of a specific safety case, inspection plan and policy by a gas supplier, such as AlintaGas, will not satisfy Section 3.2 of the National Third Party Access Code (the Code) in respect to Services Policy, as Users and Prospective Users require specific information in order to fully understand the technical and service specifications offered by AlintaGas (Draft Decision p B-29). Unless the specific safety case, inspection plan or policy is specified in the AA, it cannot reference the applicable safety requirements. If the technical and service specifications of the AA are based on risk management, users and prospective users must be able to understand the risk. Criteria such as area risk and occupational risk coupled with AlintaGas' nominated value of statistical life (VOSL) would assist Users in their cost benefit analysis.

We argue that a change to **Amendment 1** would give proper effect to the reasons published for the draft decision, by including the words "regulations, safety case, inspection plans and policy". Amendment 1 could then read:

> ***The Access Arrangement should be amended to reference and identify (for information purposes only) the regulations, standards, codes, safety case, inspection plan and policy that will apply to the services specified in the Services Policy offered by AlintaGas. Derogations from standards and codes should be detailed.***

We note that advice was sought from the Office of Energy, an agency of the Minister for Energy, in regard to technical safety issues related to the AA. The independence of the Office of the Gas Access Regulator is a vital parameter in the process of evaluating access arrangements to ensure commercial neutrality and compliance with the Code.

In the draft decision the Regulator has recognised that Section 3.2 of the Code would be satisfied by amending the AA to reference standards and codes relating to technical and service specifications. The Regulator may not appreciate that commercial advantage has already been conferred by the Minister for Energy and the Office of Energy, in granting exemptions with varying conditions to different gas suppliers, e.g. exemptions granted by the Minister under sub-s. 1392) of the Gas Standards Act 1972 (WA).

At page B - 126 of the draft decision the Office of Energy advises the Regulator as follows:

> *AlintaGas has been issued with an exemption under the provision of section 13(2) of the Act [Gas Standards Act 1972 (WA)]. The terms and conditions of this exemption require AlintaGas to have an "Inspection Plan and Policy Statement" that is approved by the Director of Energy Safety of the Office of Energy, and to work to that plan at all times. Failure to do so is an offence under the Gas Standards Act 1972. The Office of Energy audits AlintaGas's inspection practices on a regular basis.*

The difficulty with such Ministerial exemption being granted to various gas suppliers on different terms can be seen by the Ministers response to question 1625, reported in Hansard at page 9773 for Wednesday June 30, 1999.

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Page 9773 Hansard, June 30, 1999

Q. *Is the "Inspection Plan and Policy" document available to the public and where can copies be obtained? If not, why not?*

A. *The gas suppliers are required to achieve the necessary outcomes consistent with their particular system of operation and therefore are unique to each gas supplier. There may be a* ***competitive advantage*** *in the methods chosen by a gas supplier to achieve the safety outcomes and* ***the plan is therefore confidential.***

The "competitive advantage" conferred by such **secret** safety and technical requirements described by the Minister is apparent in the marketplace. Further, AlintaGas' General Manager, Distribution Division raises these difficulties in his letter to Combustion Air dated April 4, 2000:

> *However, AlintaGas is concerned that consistency is maintained across industry, to ensure uniformity where possible between operators. It should not be possible for a competitor to gain an advantage through the application of an Inspection Plan. AlintaGas will be pursuing this issue with the Office of Energy.*

Such "inspection plans and policy statements" do not equate to the existing statutory duty imposed by sub-section 13(1) of the Gas Standards Act 1972 (WA) (the Act). Exemptions granted by Ministerial fiat are not subject to public or Parliamentary scrutiny. Inspection plans and policy statements against which discretionary Ministerial instruments are granted remain secret. Regulation to which gas users, the public and industry are not privy is undemocratic and must on any analysis, threaten gas safety and gas access integrity. Recent recommendations by the Joint Standing Committee on Delegated Legislation have targeted this process and urged the Government to alter the practice, see **Report No. 45** para 7.3(e) at p 35.

This company argues that it is technically and commercially unsafe for the Minister and/or his agency to grant secret competitive advantage to chosen gas suppliers via the use of Ministerial exemptions based on confidential conditions concerning the application, or non-application of regulations, standards and codes, especially when concerned with gas safety. Where exemptions to the Act have been made, they should be detailed in the Services' section of the AA. Where derogations or variations to regulations, standards or codes have been negotiated by gas suppliers with the technical regulator, the details should be specified in the Service. Where standards or codes have been replaced or supplemented by safety cases, inspection plans and/or policies; the details should be specified in the AA. Users and Potential Users require this information to adequately assess the Services offered. Any competitive advantage conferred by Ministerial exemption of a gas supplier by the approval of individual safety inspection plans and policies should be capable of assessment by a User to assess the risk and cost the benefit.

Advice provided by the Office of Energy, and relied upon by the Gas Access Regulator in making the draft decision includes ambiguous material, ie page B - 216:

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AlintaGas has been issued with an exemption under the provision of section 13(2) of the Act]. The terms and conditions of this exemption require AlintaGas to have an "Inspection Plan and Policy Statement" that is approved by the Director of Energy Safety of the Office of Energy, and to work to that plan at all times. Failure to do so is an offence under the Gas Standards Act 1972. The Office of Energy audits AlintaGas's inspection practices on a regular basis.

The provision for exemptions to undertakers and pipeline operators was introduced in recognition that the prime responsibility for ensuring that a consumer's gas installation is safe rests with the licensed gas fitter performing the work.

This advice appears to be erroneous in that compliance with the "Inspection Plans and Policy Statement", against which AlintaGas has been granted Ministerial exemption under sub-section 13(2), does not, prima facie, invoke section 14 (offences) of the Act. The OOE should be required to establish how compliance with such an "Inspection, Plan or Policy Statement" can be enforced under the Act.

The advice also appears to be factually incorrect. The provision for Ministerial exemptions to gas suppliers was introduced by section 89 of the Energy Corporations (Transitional and Consequential Provisions) Act **1994** (WA). Attempts to change the prime responsibility for ensuring that a consumers' gas installation is safe were made in the Gas Standards (Gasfitting and Consumers' Gas Installations) **1999**, these regulations were disallowed by Parliament and repealed. A synopsis of the difficulties Parliament continues to have with these regulations can be seen from pages 6109 onward of Hansard on April 6, **2000**. The Chair of the Joint Standing Committee on Delegated Legislation, in commending **Report No. 49** to the House, the second report in relation to the Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999, noted that the apparent shift of liability from gas suppliers and inspectors to gas fitters was bought about by these **1999** regulations.

Technical regulatory oversight by Government should enforce mandatory safety obligations stipulated by legislation. Such obligations are relied upon by gas users, the public and other government agencies and independent officers so that it is vital they be clear, certain and a matter of public record. Where mandatory obligations have been ameliorated by Ministerial exemption, or prescribed standards substituted for risk based inspections and policies, the de facto arrangements of calculated risk rates and specified VOSL's should be specified in the "Service" and funded via the "Tariff" in any access arrangement. Prudence and legislative compliance cannot be replaced by de facto risk management, secret competitive advantage entrenched via Ministerial exemption or a "lighthanded approach" to gas safety.

The opportunity to comment on the Access Arrangement Decision and the relationship of gas access to negotiated competitive advantage via variable gas safety arrangements is appreciated.

Yours faithfully,

PETER J. STEWART
Director
COMBUSTION AIR PTY LTD
Att.
Hansard page 9773, June 30, 1999
AlintaGas letter, April 4, 2000
Hansard page 6109, April 6, 2000
Hansard page 6118, April 6, 2000

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House: **LEGISLATIVE COUNCIL-** QUESTIONS ON NOTICE

Date: WEDNESDAY, 30 June 1999 javascript:_doClick('8e5862120d5f5424482566830036cef1/$Body/0.270c') javascript:_doClick('8e5862120d5f5424482566830036cef1/$Body/0.27ac')

Member: **NEVILL; MOORE**

Subject: **GAS SUPPLIERS SUBSECTION 13(2) EXEMPTIONS**

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GAS SUPPLIERS, SUBSECTION 13(2) EXEMPTIONS

1625. Hon MARK NEVILL to the Leader of the House representing the Minister for Energy:

In respect of the *Gas Standards Act 1972* (WA) -

(1) Which gas suppliers are exempted under sub-section 13(2)?

(2) What are the details of gazetted entries for these exemptions?

(3) What are the Ministerial requirements for exemption under sub-section 13(2)?

(4) Is an "Inspection Plan or Policy" required in order to gain an exemption under sub-section 13(2)?

(5) Which gas suppliers have produced an "Inspection Plan and Policy"?

(6) Which of those in (5) rely on forms designed and issued by the gas supplier?

(7) Is the "Inspection Plan and Policy" document available to the public and where can copies be obtained?

(8) If not, why not?

(9) Has the Director of Energy Safety approved any gas supplier as a competent authority for the design and issuing of forms under the *Gas Standards Regulations 1995* or other regulations?

(10) Where a sub-section 13(2) exemption exists, who would bear the economic burden if there was a major explosion?

(11) How can the proliferation of different forms, procedures and requirements be consistent with regulatory certainty of gas safety?

Hon N.F. MOORE replied:

(1) AlintaGas, Kleenheat Gas, Boral Energy and BOC Gases Pty Ltd.

(2) Not applicable - gazettal is not required.

(3) That the gas supplier has in place an approved inspection plan and policy statement.

(4) Yes.

(5) Those exempted in (1) above

(6) None. Forms are covered by regulations.

(7) No.

(8) The gas suppliers are required to achieve the necessary outcomes consistent with their particular system of operation and therefore are unique to each gas supplier. There may be a competitive advantage in the methods chosen by a gas supplier to achieve the safety outcomes and the plan is therefore confidential.

(9) No.

(10) Not applicable.

(11) There are no different forms as they are called up in the regulations. The requirements on gas fitting are uniform but the inspection system can be tailored to suit a gas supplier's procedures providing it achieves the same outcome of gas safety.

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Reports

MR WIESE (Wagin) [10.01 am]: I present for tabling the forty-eighth report of the "Meeting of the Working Group of Chairs and Deputy Chairs of the Australian Scrutiny of Primary and Delegated Legislation Committees", which was held in Darwin on 14 and 15 February. This meeting of working groups from all States and Territories was called to discuss a proposal to form a national committee comprising representatives from all Australian jurisdictions for the purposes of scrutinising national schemes of legislation. Participants were unable to agree on the proposal put before the conference but remain committed to the concept. Future meetings will take place over the next 12 or 18 months to try to achieve that target. I commend the report to the House.

I also present for tabling "Report No 2 In Relation To Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999". This is supplementary to the forty-fifth report, which the committee tabled earlier this year. That report dealt with the complicated issue of gas standards regulations, and the committee raised five areas of concern. I quote from the report -

(a) the ambiguity arising from the definitions of "appliance" . . .

(b) the potential for Section 13D of the Act to cause hardship to manufacturers of Type B appliances . . .

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House: LEGISLATIVE ASSEMBLY
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Member: WIESE
Subject: JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION - REPORTS

(c) the apparent conflict between the procedure for supplying "commissioning" gas for inspection and testing under Regulation 22 and the prohibition on the supply of gas to a consumer's gas installation other than with the exemption of the Director . . .

(d) the apparent shift of liability from gas suppliers and inspectors to gasfitters;

That shift in liability was brought about by the regulations -

(e) the failure to publish inspection plans and policies of gas suppliers granted exemptions under section 13(2) of the Act.

The supplementary report deals with the Minister for Energy's response to the issues raised. The committee is pleased that the minister welcomed amendments and proposed to implement the main recommendations of the committee; we commend him for that. However, the minister was not prepared to introduce amendments to deal with the problem the committee had highlighted about regulation 28(4), which requires -

gasfitters to certify that " . . . every part of the gas installation on which the gasfitting work was done *or that is affected by the work* complies with the requirements referred to regulation 32, is safe to use and is completed to trade finish."

The regulation puts a greater burden on the gasfitter, whose role might be only to connect the gas pipe to the appliance, than on the inspector, whose role is to inspect the type B appliance and certify that it meets the requirements of the legislation. The gasfitter must certify that all the work he does meets the standards and anything that might be affected by his work also complies. The reality is that to do that, the gasfitter virtually has to pull the appliance apart to certify that everything in it is safe. The committee believes that is a ridiculous requirement. The contrast between the gasfitter, who comes along at the end of the process of manufacture to carry out the installation and hook up the gas to the appliance, and the inspector, whose role is in the early stages, is that the inspector is required only to ensure that he -

" . . . inspected the appliance and ascertained, *so far as is practicable*, that it complies with the requirements referred to in regulation 32."

The gasfitter is required to certify the appliance in total whereas the gas inspector, whose role must surely be far more important and who must be involved throughout the whole process, is required only to certify that the appliance meets the requirements so far as is practicable. The committee believes that is unfair. I am sorry to say the issue still remains because the minister does not agree with the committee's recommendations.

The minister agreed to all the other committee recommendations. The committee wrote to the minister seeking his concurrence with the recommended changes. He replied on 30 December, accepting four of the five changes to the regulations and the Act. He advised the committee that amendments to the Act and the regulations would be introduced this year. I commend the minister for that. However, the minister stated that -

"I acknowledge that in the particular case of a person who merely connects pipework to a Type B appliance this could be justified. However, simply changing Regulation 28(4) in the way indicated is likely to have repercussions in relating to other areas of gasfitting and I could therefore not agree to that specific change. I can, however, commit to any changes necessary to achieve the desired outcome, taking advice of Parliamentary Counsel as to the most appropriate means of achieving it."

While the minister has not agreed to the change that the committee recommended, he does appear to have accepted that, at least in some circumstances, the amendment proposed by the committee could be justified. His letter indicates that he will look at this issue with a view to addressing the committee's concerns if that is possible. I thank the minister on behalf of the committee. I commend him for the way in which he has worked with the committee on this difficult issue and look forward to the changes proposed and acknowledged being put in place in the near future. I commend the report to the House.

[See papers Nos 819 and 820.]

is the reason that the notices of motion to disallow moved in this Parliament are handled by the upper House. We have effectively handed across to the upper House the role of scrutinising delegated legislation as our standing orders are totally ineffective and do not allow us to deal with them.

I have dealt with the question of workload, but I need to talk more about it to give members a better understanding of what is involved in the role of the Joint Standing Committee on Delegated Legislation. The workload is enormous. The committee has scrutiny of all the regulations, rules and local government local laws brought into being in this State. In my experience that is normally between 400 and 500 a year. I do not think it has ever been fewer than 400. In some cases it is a very simple matter: The committee looks at the regulation, notes that it is fine and does not offend the requirements the committee must consider, and it goes through automatically. However, some are extremely substantial and can comprise between 40 and 50 pages of detailed regulation. That is not an exaggeration; it is fact. Some are extremely complicated, and the Leader of the House will be very well aware of one with which the committee has dealt.

The committee today tabled a second report in relation to the gas regulations, and they are a classic example of a very complicated set of regulations which required very detailed consultation. The regulations dealt with issues which are highly technical, but which were of enormous potential importance to Western Australia, especially industry. They dealt with the safety of all gas appliances put in place in Western Australia, especially the larger type B installations. If anyone wants an indication of the sorts of problems that could arise if those matters were not properly dealt with, they need look only at Longford and what happened when Victoria was without power for 10 days to a fortnight as a result of an accident which occurred in a refinery. That is the sort of issue and level of safety dealt with in the gas regulations. They were highly complex and required the committee to hold many hearings with specialist witnesses. It took an enormous amount of time. That happens in some cases.

Another example of complicated issues are those relating to local government laws on signs. Local governments across the State are slowly adopting local law legislation to deal with signs. Again, they are highly complex issues crossing several different boundaries; some are dealt with under town planning legislation, as well as the local laws on signs, and some come under the jurisdiction of Main Roads. These are complicated issues with which the committee had to deal and which took an inordinate amount of time, and they still are taking an inordinate amount of time because local laws on signs are still being brought to the committee. They are inevitably long, perhaps 15 to 20 pages of complex, subsidiary legislation, and they have small changes in each of them which means they must be scrutinised individually and in great detail. Local laws introduced by local government cover an enormous range of issues. At present the committee is considering local laws on cats and if anyone thinks that legislating for the control of cats is a simple issue, I can tell them otherwise. I see the Minister for Local Government nodding his head; he may be saved the responsibility because the committee may do the job for him.

Mr Omodei: I am not silly.

Mr WIESE: No, the minister is not silly; the committee is! Again, these are very complex and highly emotive issues, and they have a substantial impact upon members of the community. This committee must go through the subsidiary legislation, and in many cases it must exercise the wisdom of Solomon when making judgments on what is right, what is wrong and whether the laws infringe people's rights. That is one of the key areas the committee considers. The committee must balance those issues against my very strong belief, on the basis of 19 years in local government, in the importance of local government as the third arm of government in this State. It has a right and a role to pass legislation. This committee deals with the legislation passed by local government, and it must be very careful not to infringe upon the rights of local government and its role and responsibility. The work performed by the committee is complicated, time consuming and requires delicate judgments. This proposal before the Parliament would not only

lumber the committee with additional work, but also make it responsible for the scrutiny of uniform legislation. I reiterate that it is not possible for one committee to handle that role.

I now deal with one more issue - some members will breathe a sigh of relief - that is, the question of primary legislation, the scrutiny of that legislation and who performs that role. This motion deals with uniform primary legislation generally, but it also has a role in uniform secondary legislation. It raises the whole question of scrutiny of primary legislation. My personal belief is that rather than combine a committee that considers uniform legislation with a committee that considers delegated legislation - totally different responsibilities and roles - this Parliament should put in place a committee to consider primary legislation and all the uniform legislation that comes before this Parliament. That should be done not on the basis of all the politics which may surround primary legislation, but to ensure that the primary legislation does not have time bombs embedded in it. It should not include features which should not be dealt with in primary legislation.

My first example of this relates to the gas legislation, where issues dealt with by the Joint Standing Committee on Delegated Legislation, in my opinion and in the opinion of the committee, should have been dealt with by primary legislation. The primary legislation should have had a mechanism to ensure that some of those issues were in primary legislation rather than their being dealt with by the mechanism which is very simple for the bureaucracy; that is, regulations. It sometimes seems that the attitude of the bureaucracy is that if is too difficult to deal with a matter in the primary legislation, it should be put in the regulations. I do not believe that sort of issue should be dealt with in regulations.

In its scrutiny of delegated legislation, the committee has reported five or six times at least, probably more, that issues dealt with in the regulations should have been dealt with in primary legislation. The committee has brought that to the attention of the Parliament because it is one of the matters it must consider. Recently the committee tabled reports in relation to the Western Australian Trotting Association rules and regulations. In the committee's scrutiny of the delegated legislation it also had to look at the Act itself. Some of the provisions in the Act were absolutely appalling. The Act was unbelievable, and it is totally and utterly beyond me how that legislation ever got through this Parliament.