

10 October 2003

Mr Tony Hinton
Presiding Commissioner
Gas Access Regime Inquiry
Productivity Commission
LB2 Collins Street East
MELBOURNE VIC 8003

Dear Mr Hinton

PRODUCTIVITY COMMISSION REVIEW OF THE GAS ACCESS REGIME:
SUBMISSION BY NT GAS PTY LIMITED

NT Gas is the Trustee for the Amadeus Gas Trust which is the operator of the Amadeus Basin to Darwin Pipeline (ABDP) and owner and operator of the City Gate to Berrimah Pipeline (CGBP), a small lateral pipeline that links the ABDP to an industrial area on the outskirts of Darwin. In addition, NT Gas operates a number of small lateral pipelines for the Australian Pipeline Trust and owners of other laterals from the ABDP.

NT Gas supports the pipeline industry's position put to the Commission as set out in the APIA and APT submissions. This submission seeks to give a brief account of NT Gas' experience of the operation of the Gas Access Regime on its pipelines and to broadly suggest how the Regime needs to be reviewed to promote the development of future pipelines especially those in the NT.

NT Gas' Experience of the Operation of the Code

Both the Amadeus Basin to Darwin Pipeline (ABDP) and the City Gate to Berrimah Pipeline (CGBP) were covered by Schedule A of the Gas Code upon the NT Government's enactment of agreed national gas legislation. These pipelines are managed through NT Gas Pty Limited (which in turn is 96% owned by APT).

There has been a number of perverse outcomes associated with these pipelines in the Northern Territory, which was caused by the blanket coverage approach to pipelines under the Code; and the perverse outcomes have been compounded by the cost and complexity of the regulatory process and the tendency of regulators to apply the Code without consideration of the commercial contexts under which the pipelines were developed. Each pipeline is discussed below.

- *Amadeus Basin to Darwin Pipeline*

The ABDP was built in 1986 to supply gas to power stations owned by the Power and Water Corporation (PWC) and provided open access for other users prior to the introduction of the Gas Code in 1998. The foundation contract with PWC specified the charges that would be paid by PWC until 2006 to underwrite the ABDP development.

At the time of submitting a proposed Access Arrangement to the ACCC, the ABDP was (and remains) fully contracted and the gas fields supplying the ABDP were understood to have no reserves to contract. Despite having access to ABDP's contracts, the ACCC's Draft Decision proposed a tariff that was significantly below the price paid by PWC for access to the ABDP. The Draft Decision arrived at this result because of a perceived need by the ACCC to establish an initial capital base equal to DORC and not take into account the contractual arrangements necessary to establish the pipeline. It was only because of strenuous submissions made to the ACCC by NT Gas following the Draft Decision – and possibly the interpretation of the Code brought about by the Epic Decision on the DBNGP - that the ACCC arrived at tariffs for third parties which were at an appropriate level.

However, the Access Arrangement process cost in the order of half a million dollars, despite the fact that no capacity was available nor was it likely to be sought in the foreseeable future. It is arguable that the ABDP should not be covered as it is unlikely to meet the Code coverage criteria. However, NT Gas formed the view, once well into the Access Arrangement process, that compliance with the Code from that point was likely to be less expensive than embarking on the revocation process.

This case study highlights the fact that every pipeline is different and cannot be adequately dealt with by application of a one size fits all framework.

- *City Gate to Berrimah Pipeline*

The CGBP was built in 1996 to extend gas supply to the small industrial zone in the Berrimah area on the outskirts of Darwin. It was a risky venture, as Darwin's industrial sector has always been small, and attempts to develop industry in this "frontier" environment with its remoteness and small scale have generally not met with significant success. The riskiness of the venture is demonstrated by the fact that the CGBP has realised less than 10% of the projected load used to justify its construction and its continued operation is only barely justified.

Following the introduction of the Gas Code in 1998, the ACCC accepted that it was appropriate to grant a number of extensions for submitting an Access Arrangement on the grounds that no access had been sought and that the cost of an Access Arrangement outweighed its benefits. In 2003 the ACCC decided that continued use of its extensions power was not consistent with intent of the Code and required NT Gas to either submit an Access Arrangement or seek revocation. Consequently, NT Gas submitted an application for revocation (which was successful). However, the cost of the relatively simple application has still had a very significant impact on the financial operation of the CGBP. Thus, the Code has imposed a series of unnecessary costs on the CGBP (amounting to 23% of its annual revenue in the year revocation was sought) arising out of the original policy decision to deem it covered from the commencement of the Code.

Future Pipelines in the NT and the Impact of the Gas Access Regime

There are a number of potential new gas pipelines that may be built in the NT over the next 10 to 15 years. The main pipeline prospects are a new pipeline linking the Blacktip gas field in the Bonaparte Gulf with Gove; a new pipeline system conveying gas from Papua New Guinea to major users in the NT and potentially northern Queensland and beyond; and/or a pipeline extending from the region of Darwin to the southern States supplying gas into the markets of SE Australia. Appropriate investment in these pipelines is important for the development of the NT and is likely to have broader implications for long term security of supply outside the NT generally.

The willingness to invest in these pipelines and the timing and quantity of that investment will be affected by the content of and direction given by the Gas Access Regime following this review and how pipeline investors perceive the Regime will operate in practice.

NT Gas' experience gives a clear indication that coverage by the Code as it is, is likely to be a deterrent to investment. NT Gas' experience is that regulation under the Gas Code does not inspire confidence that returns will be permitted which are commensurate with the risks faced by pipelines. The Code provides for a broad exercise of regulatory discretion that is too uncertain and levels of return that are unlikely to be sufficiently attractive to encourage investors to take risks in the face of uncertain markets.

It is our perception that the sorts of decisions made under the Code are going to increasingly leave pipeline investors unexcited about the prospect of risking large amounts of capital. The downside risk involved in investment will never be balanced by the potential to earn any upside return. Moreover, as investors observe the results of further regulatory decisions applied to existing pipelines under the Code, there will be increasing concern about the adverse impact of future regulatory decisions on new pipelines.

NT Gas welcomes the review of the Gas Access Regime and believes changes to the Regime that provide confidence for pipeline investors in the regulatory treatment of their investment will be key to ensuring developments that deliver the maximum benefit for the Australian community.

Yours faithfully

WENDY OLDHAM
General Manager