

Western Australia

Gas Distribution Regulations 1996

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Gas Distribution Regulations 1996

CONTENTS

Part 1 — Preliminary

1.	Citation	2
2.	Commencement	2
3.	Application of these regulations	2
4.	Definitions	2
5.	Application of Interpretation Act to grants of access	11
6.	References to clauses in Schedule 1	11
7.	24 hour clock	12
8.	SI units	12
9.	References to duration of grant of access	12
10.	References to gas distribution capacity, point capacity or contracted peak rate	12
11.	References to delivery of gas to the trading business	13
12.	Commercial viability	13

Part 2 — Market sensitive information, non-discrimination and accountability

Division 2.1 — Prevention of communication or use of market sensitive information

13.	Market sensitive information	15
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Division 2.2 — Discrimination

14.	Minister to be notified of any finding of discrimination	16
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Division 2.3 — Miscellaneous accountability matters

15.	Description of the gas distribution system	17
16.	Corporation's response to enquiries	17
18.	No prohibition on bypass	17
19.	Financial records	17

Part 3 — Application for, and grant of, access

Division 3.1 — General

20.	Reasonable and prudent person	19
21.	Application process is at applicant's expense	19
22.	Corporation may establish administrative procedures	19

Division 3.2 — The application

23.	Lead times for applications	19
24.	User may increase duration or obtain additional contracted peak rate only by new application	20
25.	Contracted peak rate may vary over time	20
26.	Application for access	21
27.	Applicant to assist in any consequential environmental, safety and other matters	23

Division 3.3 — Processing the application

28.	Corporation must process application expeditiously	23
29.	First come first served	24
30.	Obligation to make grant of access	25
31.	Conditions precedent for grant of access	25
32.	Application may be linked to application for transmission capacity	26
33.	Assessment of compliance with conditions precedent	27

Division 3.4 — Non-compliance, amendment, withdrawal and rejection of application

34.	If application does not comply with a condition precedent	27
35.	Applicant may elect to negotiate amendment after notice of non-compliance	27
36.	Application deemed rejected after 30 days if no election to negotiate	28
37.	Linked application deemed rejected if transmission application is rejected	28
38.	Application deemed rejected after 120 days if grant of access not made	28

39.	Amendment of application	29
40.	Priority of amended applications	29
41.	Withdrawal of application	30

Division 3.5 — Making the grant of access

42.	The grant of access	30
43.	Conditional grant of access	31

Part 4 — The grant of access

Division 4.1 — General

44.	Access to gas distribution capacity must be under a grant of access	34
45.	Form of grant of access	34
46.	Contracting out of non- essential terms	34
47.	Essential terms	34
48.	Regulations to prevail	35
49.	Duration of grant of access	35
50.	Option to renew grant of access	35
51.	Amendment of grant of access	36

Division 4.2 — Title to gas

52.	Corporation has title to all gas in gas transmission system and gas distribution system	36
53.	No actions against corporation in respect of gas in gas distribution system	36
54.	Only user may take delivery, title and possession of gas from the corporation	37
55.	User's entitlement to receive gas is contractual	37

Division 4.3 — Designated shippers

56.	Designated shippers	37
-----	---------------------	----

Division 4.4 — Miscellaneous matters

57.	Grants of access to be publicly available	39
58.	Insurances	39
59.	The user is responsible for its and its contractors' personnel and property	40
60.	Corporation's liability to third persons	40
61.	No assignment except as provided for in these regulations	41
62.	Assignment by corporation	41

63.	Assignment by user and compulsory assignment at request of user's threshold gas customer	42
65.	Annual review of utilization	44
66.	Saving of corporation's powers	44
67.	Curtailments of gas deliveries to be allocated to defaulting users where practicable	44
68.	Advance information	45

Part 5 — Prices

69.	Corporation to determine prices	46
70.	Redetermined prices apply to existing users	46
71.	Network prices	46
72.	Service price	48
73.	Opportunity cost pricing	48
74.	Commercial viability arrangements	49
75.	Prices to be take-or-pay	50
76.	Redetermination of prices	50
77.	Investment in the high pressure system	51
78.	Costs of transmission information system recoverable	52
79.	Prices at multi-user outlet point	53

Part 6 — Technical and operational matters

Division 6.1 — Outlet meter sets and distribution metering equipment

80.	Installation, operation and maintenance of outlet meter sets	54
81.	Installation, operation and maintenance of distribution metering equipment	55
82.	Distribution metering equipment	55
83.	Use of gas quality data from other locations	56
84.	Metering uncertainty	56
85.	Provision of information to users	56
86.	Accuracy verification, correction of inaccurate measurements, etc.	57
87.	Determining trading business' hourly sub-network outlet quantity	57
88.	Identification of closest physical gate point	58
89.	Standards generally	58

Division 6.2 — Other technical and operational matters

90.	Corporation to operate and maintain system as reasonable and prudent person	58
91.	Multi-user allocation agreements	58
92.	Applicant must have multi-user allocation agreement or submit to the corporation's allocations	59
93.	Corporation's allocations may effect curtailment	59
94.	Gas losses and gas consumed by the corporation	60
95.	Emergencies	60

Part 7 — Other access

96.	Access from systems other than the gas transmission system and access to medium and low-pressure networks	62
-----	---	----

Part 8 — Miscellaneous

97.	Notices	64
98.	Receipt of notices	64
99.	No common carriage	65
100.	Corporation not a supplier of gas	65
101.	No disclosure of user information	65
102.	Prescribed fees	65

Part 9 — Transitional provisions to do with commencement of these regulations

103.	Pre-scheme distribution metering equipment deemed to comply	66
104.	Trading business' initial grant	66
105.	Trading business and new threshold gas customers	68

Part 10 — Transitional provisions to do with termination of these regulations

106.	This Part to prevail	69
107.	No further price redetermination required	69
108.	Duration of grants of access	69

109.	Time by which grants of access end	70
110.	Contracts already existing	71

Schedule 1 — The Grant of Access

Chapter 1 — Interpretation

Chapter 2 — The grant of access

Chapter 3 — Curtailment

Chapter 4 — Invoicing and payment

Chapter 5 — Default and termination

Chapter 6 — Liability of parties

Chapter 7 — Dispute resolution

Chapter 8 — Gas pressure

Chapter 9 — Balancing

Chapter 10 — Miscellaneous

Appendix 2 — Option[s] to extend grant of access

Appendix 3 — Contracted distribution outlet points and contracted peak rates

Appendix 4 — User specific facilities

Appendix 5 — Outlet pressures

Schedule 2 — Prescribed Fees

Notes

Western Australia

GAS CORPORATION ACT 1994

Gas Distribution Regulations 1996

Made by His Excellency the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations may be cited as the *Gas Distribution Regulations 1996*².

2. Commencement

These regulations come into operation on 1 January 1997.

3. Application of these regulations

Except to the extent otherwise provided in Part 7, these regulations apply only in respect of access to, and pricing for, gas distribution capacity for the purposes of transporting in the high pressure system gas which enters the gas distribution system from the gas transmission system.

4. Definitions

In these regulations, unless the contrary intention appears —

“**access contract**” means a contract between the DBNGP owner and a shipper for access to gas transmission capacity;

“**amend**” includes revoke or substitute;

“**amended application**” means an application amended under regulation 39, and if the application has been so amended on more than one occasion means the application in terms resulting from all such amendments cumulatively;

“**application**” means an application under Part 3 for access to gas distribution capacity;

“**commercial viability arrangement**” means an arrangement referred to in regulation 74 (2);

“**commercially viable**” means, in respect of any access, system reinforcement, user specific reinforcement, service or thing, that the tests set out in regulation 12 (1), and if applicable regulation 12 (2), are satisfied;

“conditional grant” means a grant of access subject to a condition precedent or conditions precedent, under regulation 43;

“contracted peak rate” in respect of a user entitled to take delivery of gas at a distribution outlet point means the rate specified in the user’s grant of access as the highest instantaneous flow rate through the distribution outlet point at which the corporation must be capable of delivering gas;

“Coordinator” means the Coordinator of Energy under the *Energy Coordination Act 1994*;

“corporate officer” means any director, the chief executive officer, and any other servant, consultant, contractor or agent of the corporation who by virtue of his or her position in, or relationship with, the corporation cannot properly discharge his or her duties without —

- (a) being partly engaged in both the distribution business and the trading business; and
- (b) receiving market sensitive information;

“DBNGP owner” has the same meaning as it has in the *Dampier to Bunbury Pipeline Act 1997*;

“demand price” means the price established under regulation 71 (2) (a);

“designated shipper” in relation to a user and a quantity of gas means the shipper who has been notified to the corporation under regulation 56 (1) (a) by the user for that quantity of gas, and (if applicable) who has given written notice to the corporation under regulation 56 (1) (b), if applicable;

“dispute” means any dispute or difference concerning —

- (a) the construction of;
- (b) anything contained in or arising out of; or
- (c) the rights, obligations, duties or liabilities of a party under,

the Act, these regulations or a grant of access;

“distribution business” means that part of the corporation (or any subsidiary) which carries on the business and operations involved in the granting of access to, and the maintenance and provision of, gas distribution capacity;

“distribution metering equipment” means all equipment used to measure the characteristics prescribed in, or agreed by the corporation and a user under, regulation 82 of gas taken from the gas distribution system at a distribution outlet point, and any ancillary equipment;

“distribution outlet point” means the flange, joint or other point specified in a grant of access as the point at which the user is entitled to take delivery of gas;

“emergency” means —

- (a) any extreme operational situation; or
- (b) any other situation (however caused) which, in the corporation’s opinion, poses an immediate or imminent danger to persons or property or otherwise constitutes an emergency or justifies or requires urgent or unilateral action;

“energy price” means the price established under regulation 71 (2) (b);

“engaged” means engaged, wholly or partly, as a servant, consultant, independent contractor or agent;

“essential term” means a clause in Schedule 1 that is an essential term under regulation 47;

“force majeure” means any event or circumstance not within a party’s control and which the party, by applying the standard of a reasonable and prudent person, is not able to prevent or overcome, including without limitation —

- (a) acts of God, epidemics, land slides, lightning, earthquakes, fires, storms, floods, wash outs and cyclones;
- (b) strikes, lock outs, stoppages, restraints of labour and other industrial disturbances;

- (c) acts of the enemy, wars, blockades or insurrection;
- (d) riots and civil disturbances;
- (e) valid laws (including, whether or not the party claiming the benefit of *force majeure* is the user, those made by the corporation);
- (f) shortage of necessary equipment, materials or labour;
- (g) refusal or delay in obtaining any necessary consent or approval from any Commonwealth or local government or any Commonwealth or State statutory authority (including, whether or not the party claiming the benefit of *force majeure* is the user, the corporation);
- (h) unavoidable accidents involving, or break down of or loss or damage to, any plant, equipment, materials or facilities necessary for the party's operations;
- (i) any pipeline shutdown, curtailment or interruption which is validly required or directed under any law (including, whether or not the party claiming the benefit of *force majeure* is the user, a law made by the corporation);
- (j) any pipeline shutdown, curtailment or interruption required to conform with design or regulatory limits on pipeline facilities, whether arising due to environmental conditions or circumstances or otherwise;
- (k) pipeline ruptures; and
- (l) collisions or accidents;

“gas day” means the 24 hour period starting at 08:00 hours on a day and ending at 08:00 hours on the following day;

“gas distribution capacity” means the capacity of the gas distribution system to transport gas from physical gate points to distribution outlet points;

“gas hour” means a period of 60 minutes, commencing and ending on the hour;

s. 4

“gas transmission capacity” has the same meaning as it has in the *Dampier to Bunbury Pipeline Act 1997*;

“gas transmission system” means the privatized DBNGP system as defined in the *Dampier to Bunbury Pipeline Act 1997*;

“gate station” means the metering equipment site associated with a physical gate point and includes all facilities installed at the site to perform over pressure protection, reverse flow protection, excessive flow protection, gas metering and measurement and telemetry and all standby, emergency and safety facilities and all ancillary equipment and services;

“grant of access” means a grant under Division 3.5 by the corporation to an applicant entitling it to take delivery of gas at a distribution outlet point, on the terms set out in the grant, and also means the entitlement of the trading business to take delivery of gas which arises under regulation 104, on the terms set out in the memorandum of understanding;

“high pressure system” means the gas distribution system excluding —

- (a) any part of the gas distribution system which operates at a nominal pressure of less than 300 Kpa; and
- (b) all high pressure regulators which reduce the pressure from those parts of the gas distribution system which operate at a nominal pressure of 300 Kpa or greater to those parts of the gas distribution system which operate at nominal pressure of less than 300 Kpa,

and including either the whole of, or otherwise the part or proportion of, all property, buildings and equipment which relate to or are used in connection with the maintenance and operation of the gas distribution system other than those parts described in paragraphs (a) and (b) of this definition;

“hourly sub-network outlet quantity” for a sub-network for a gas hour —

- (a) for a user other than the trading business, means the total energy quantity (across all distribution outlet points in the sub-network) of gas delivered to the user by the corporation under a grant of access in the gas hour in the sub-network; and
- (b) for the trading business, means the value calculated under regulation 87;

“instantaneous flow rate” at a distribution outlet point means a flow rate measured over the shortest period of time over which the distribution metering equipment is capable of measuring a flow rate;

“law” means a requirement of, or made under, a written law, Commonwealth Act (including any regulation, by-law or other instrument made under a Commonwealth Act) or applicable judicial or administrative decree, judgment or order, and includes the terms of any instrument issued under any of the above, and also includes all applicable standards and obligations under the common law;

“linked application” means an application in respect of which the applicant requests under regulation 32 that a grant of access be not made unless an access contract is entered into in response to a transmission application specified in the request;

“maintain” includes renew or replace, but nothing in this definition affects any allocation of investment or costs, for pricing, accounting or other purposes;

“memorandum of understanding” means the memorandum of understanding referred to in regulation 104 (1) between the distribution business and the trading business;

“multi-user allocation agreement” means an agreement under regulation 91 (1) between all users entitled to take delivery of gas at a multi-user outlet point and the gas customer of those users;

s. 4

“multi-user outlet point” means a distribution outlet point at which more than one user is entitled to take delivery of gas;

“network prices” means the demand price and the energy price;

“notice of noncompliance” means a notice under regulation 34 (1);

“notional gate point” for a sub-network means the point (which may be in the same physical location as a physical gate point) which is the notional gate point under the *Dampier to Bunbury Pipeline Regulations 1998* for that sub-network;

“opportunity cost price” means a price which the corporation may charge a user under regulation 73;

“original application” means an application as originally submitted to the corporation;

“outlet meter set” means all facilities (including without limitation the distribution metering equipment) installed at the distribution metering equipment site immediately upstream of a distribution outlet point and, where the context requires, includes that distribution metering equipment site;

“party” means the corporation as the grantor or the user as a grantee under a grant of access;

“physical gate point” means a flange, joint or other point, specified in the description of the gas distribution system published by the corporation under clause 3 (2) of Schedule 6 to the Act as a point which marks a boundary between the gas transmission system and the gas distribution system;

“point capacity” in relation to a distribution outlet point, or a proposed distribution outlet point, means the capability of the gas distribution system to transport gas to that point;

“possession” includes custody or control, and includes an immediate right to possession, custody or control;

“pricing methods” means the pricing methods adopted by the corporation under clause 5 (2) of Schedule 6 to the Act;

“priority” means an application’s ranking in the first come first served process under regulation 29;

“reasonable and prudent person” means a person who —

- (a) acts in good faith with the intention of performing his or her legal obligations; and
- (b) in the general conduct of his or her undertaking exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be exercised by a skilled and experienced person complying with recognized standards and applicable laws engaged in the same type of undertaking under the same or similar circumstances and conditions;

“referee” has the same meaning as it has in the *Gas Referee Regulations 1995*;

“requested grant of access” means the grant of access requested by an application;

“SECWA” means the State Energy Commission of Western Australia, a body corporate which was preserved and continued in existence under the *State Energy Commission Act 1979* until the coming into effect of Part 2 of the *Energy Corporations (Transitional and Consequential Provisions) Act 1994*;

“service price” means the price established under regulation 72;

“shipper” has the same meaning as it has in the *Dampier to Bunbury Pipeline Act 1997*;

“spare network capacity” in respect of a distribution outlet point or proposed distribution outlet point is to be quantified in terms of an instantaneous flow rate and means the remaining capability of gate stations to deliver gas into the sub-network in which that distribution outlet point is, or is to be, located, limited, where applicable, by the

s. 4

remaining point capacity of the gas distribution system to transport gas from a physical gate point to that distribution outlet point or proposed distribution outlet point, having regard to the individual and collective contracted peak rates and load profiles of all users at all distribution outlet points in that sub-network and to gas distribution capacity generally in that sub-network;

“sub-network” means a part of the high pressure system which for the purposes of gas flow is not directly connected with any other part of the high pressure system;

“system investment” means all capital investment, and commitments to invest, in or related to the high pressure system (excluding user specific facilities);

“system reinforcement” means any addition or enhancement to, or expansion or reinforcement of, all or any part of the high pressure system (excluding any user specific facility);

“term” includes term and condition;

“threshold gas customer” means a person who downstream of a distribution outlet point either directly or indirectly receives from a user such quantity of gas that the person (if the person were to make an application) would be entitled to a grant of access under the ministerial order for the time being in force from time to time made under section 93 (1) (b) of the Act;

“trading business” means that part of the corporation (or any subsidiary) which carries on the business and operations involved in marketing and selling gas;

“transmission application” means an application under regulation 45 of the *Dampier to Bunbury Pipeline Regulations 1998*;

“user specific facility” means any facility which is identified as such in a grant of access and (unless the contrary intention is expressed in that grant of access) —

- (a) includes the outlet meter set and all other facilities upstream of the distribution outlet point which are used to deliver gas to only that distribution outlet point; but
- (b) excludes any facility or facilities in respect of which there is a reasonable prospect in the corporation's opinion that the facility or facilities will in the future be used to deliver gas to more than one distribution outlet point;

“user specific investment” means all capital and other investment, and commitments to invest, in and related to user specific facilities;

“user specific reinforcement” means any addition or enhancement to, or the creation, expansion or reinforcement of, all or any part of a user specific facility;

“working day” means any Monday, Tuesday, Wednesday, Thursday or Friday which is not a public holiday or a bank holiday in the Perth metropolitan area.

[Regulation 4 amended in Gazette 10 March 1998 p.1358.]

5. Application of Interpretation Act to grants of access

The *Interpretation Act 1984* applies to the interpretation of, and the interpretation of references in or to, a grant of access, as though the grant of access were a written law.

6. References to clauses in Schedule 1

- (1) If a provision in a grant of access is the same as, or substantially similar to, a provision in Schedule 1, any reference in these regulations to the provision in Schedule 1 is, unless the contrary intention appears, to be taken for the purposes of that grant of access to be a reference to the provision in the grant of access, despite any variation in drafting or numbering between the 2 provisions.

s. 7

- (2) Nothing in subregulation (1) affects the operation of regulation 47.
- (3) A reference in these regulations or a grant of access to a provision in Schedule 1 is, unless the contrary intention appears, to be taken to include a reference to the corresponding provision in the memorandum of understanding.

7. 24 hour clock

In these regulations all time is, and in a grant of access time is to be, expressed in a 24-hour format, with each day commencing at 00:00 hours and ending 24 hours later.

8. SI units

Unless otherwise indicated, all units in these regulations and a grant of access are SI units in accordance with the International System of Units set out in Australian Standard 1000-1979.

9. References to duration of grant of access

- (1) Where the duration of a grant of access has been extended under regulations 49 (2) or 50, a reference in these regulations or the grant of access to the grant of access or its duration, includes a reference to the grant of access as extended and the extended duration, respectively.
- (2) If a grant of access is expressed to commence at a time subsequent to the date on which the grant of access is made, the duration of the grant of access commences on the date on which that grant of access is expressed to commence, and not the date on which the grant of access is made.

10. References to gas distribution capacity, point capacity or contracted peak rate

- (1) Unless the contrary intention appears and subject to subregulation (2), wherever gas distribution capacity, point capacity or contracted peak rate is required by these regulations

or a grant of access to be quantified, it is to be quantified as an instantaneous flow rate and expressed in gigajoules per hour.

- (2) In these regulations or a grant of access the calculation and invoicing of prices payable by users on an energy-delivered basis, is to be based on the energy value of gas delivered to the user during a gas hour.

11. References to delivery of gas to the trading business

For the purposes of the memorandum of understanding and these regulations, a reference to gas delivered to the trading business from a sub-network includes a reference to gas transported through the sub-network to enable its delivery at a distribution outlet point located in a part of the gas distribution system other than the high pressure system.

12. Commercial viability

- (1) Any access, system reinforcement, user specific reinforcement, service or thing is commercially viable if in all the circumstances —
- (a) there is a reasonable prospect that the corporation will recover within a reasonable time, from either users or prospective users or both, the capital investment required to provide, and the costs of maintaining and providing, that access, system reinforcement, user specific reinforcement, service or thing, and a reasonable rate of return on that capital investment;
 - (b) adequate funding to meet that capital investment and those costs is available to the corporation at commercially reasonable rates; and
 - (c) any anticipated increase to users' gas distribution prices resulting from the corporation making that capital investment or incurring those costs is considered by the corporation to be commercially reasonable.

s. 12

- (2) The corporation may in its discretion determine that a system reinforcement that consists of the creation of a new sub-network must be independently commercially viable in accordance with the tests set out in subregulation (1), having regard only to users or prospective users whose distribution outlet points are, or are to be, located in that sub-network.

**Part 2 — Market sensitive information,
non-discrimination and accountability**

**Division 2.1 — Prevention of communication or use of market
sensitive information**

13. Market sensitive information

- (1) If—
- (a) a person provides information to the distribution business;
 - (b) the information is market sensitive information; and
 - (c) before providing the information to the distribution business, the person gives written notice to the distribution business that the information is market sensitive information,

then (for so long as the information remains market sensitive information) the corporation must use reasonable endeavours to ensure that —

- (d) the market sensitive information is neither directly nor indirectly communicated by any person engaged in the distribution business (including a corporate officer) to any person (other than a corporate officer) engaged in the trading business; and
 - (e) a corporate officer who has received market sensitive information does not use that market sensitive information for or in relation to the trading business in any way which would or might have a material adverse effect on the interests of the person providing the information to the distribution business.
- (2) For the purposes of these regulations information is to be regarded as market sensitive information only if the disclosure of that information by the distribution business to the trading business would or might have a material adverse effect on the

interests of the person providing the information to the distribution business.

- (3) The corporation must, if it becomes aware of any contravention of subregulation (1) (d) or (e) as soon as practicable give written notice of the contravention and of all the surrounding circumstances to the Minister, the Coordinator and any person who was, or might reasonably be expected to have been, affected by the contravention.
- (4) If, in any proceedings, a referee, court, arbitrator or other tribunal finds that anything has been done that contravenes subregulation (1) (d) and (e) the referee, court, arbitrator or tribunal is as soon as practicable to notify the Minister, the Coordinator and the corporation of the contravention.

Division 2.2 — Discrimination

14. Minister to be notified of any finding of discrimination

If, in any proceedings before the referee, a court, an arbitrator, or other tribunal, the corporation is found to have discriminated in breach of clause 2 (1) of Schedule 6 to the Act then, without affecting any other remedies —

- (a) the referee, court, arbitrator or other tribunal making that finding is as soon as practicable to notify the Minister, the Coordinator and the corporation of the discrimination;
- (b) the corporation must in its next annual report give a summary of the notification; and
- (c) the corporation must in its next (and, if necessary, any subsequent) annual report give a summary of any action taken by the corporation and the Minister in response to the notification.

Division 2.3 — Miscellaneous accountability matters

15. Description of the gas distribution system

The schedule required by clause 3 (2) of Schedule 6 to the Act to be prepared by the corporation is to be prepared before 30 June each year and is to contain a detailed description of the gas distribution system, indicating at least all sub-networks and the notional gate point and the physical gate point or physical gate points for each sub-network, and all of its boundaries.

16. Corporation's response to enquiries

- (1) The corporation must respond as soon as reasonably practicable, but in any event within 8 weeks, after the corporation receives all information required by the corporation as a reasonable and prudent person to make the response, to any person's enquiry concerning the corporation's ability to meet that person's requirements for a new or additional contracted peak rate at a distribution outlet point specified in the enquiry.
- (2) The response must include reasonable details of any necessary system reinforcement or user specific reinforcement.

[17. Repealed in Gazette 2 May 2000 p.2111.]

18. No prohibition on bypass

Nothing in these regulations or any grant of access is to be taken to prohibit any person from installing or operating a pipeline or other facility to enable that person to interconnect with the gas transmission system or with any other gas source, rather than utilizing gas distribution capacity.

19. Financial records

- (1) The corporation must —
 - (a) maintain appropriate books and records concerning those aspects of the gas distribution system, and its

Gas Distribution Regulations 1996

Part 2 Market sensitive information, non-discrimination and accountability

Division 2.3 Miscellaneous accountability matters

s. 19

- maintenance and operation, which impact upon prices under these regulations; and
- (b) provide to any person at the person's request, and (except if the person is a user or prospective user) at the person's expense, a summary of such audited books and records which contains a level of detail as to the matters described in paragraph (a) which is generally included in the financial statements contained in the corporation's annual report required to be prepared under section 63 of the Act, but this does not require the summary to contain a balance sheet or a profit and loss statement.
- (2) The corporation must have audited by an independent auditor —
- (a) the books and records referred to in subregulation (1) (a); and
- (b) the information, assumptions, estimates and calculations made or used by the corporation in a redetermination of prices under regulation 76.
- (3) The audit under subregulation (2) must be conducted in a manner which enables the auditor to form an opinion concerning whether the corporation —
- (a) has or has not complied with the requirements of regulation 77; and
- (b) has or has not fairly allocated costs and expenditure to the maintenance and operation of the high pressure system.
- (4) The auditor referred to in subregulation (2) is to be appointed jointly by the corporation and the Coordinator, and is to report the results of his or her audit under subregulation (2) to the corporation and to the Coordinator.

Part 3 — Application for, and grant of, access

Division 3.1 — General

20. Reasonable and prudent person

The corporation is to act as a reasonable and prudent person in performing its functions under this Part.

21. Application process is at applicant's expense

- (1) An applicant must, when requested by the corporation, reimburse the corporation for all reasonable expenses which the corporation incurs by reason of the application.
- (2) The corporation must, when requested by a person proposing to make an application, provide to that person an estimate of all reasonable expenses which the corporation is likely to incur by reason of the application the person proposes to make, but the corporation is not liable for any error or inaccuracy in the estimation.

22. Corporation may establish administrative procedures

The corporation may from time to time establish administrative procedures which govern the submission and processing of applications, and must make available to any person, at the person's request and (except if the person is a user or prospective user) at the person's expense, a description of those procedures.

Division 3.2 — The application

23. Lead times for applications

- (1) An applicant must submit an application which does not have as a necessary consequence any system reinforcement or user specific reinforcement to the corporation at least 30 days before the requested start date.

- (2) An applicant must submit an application which has as a necessary consequence any system reinforcement or user specific reinforcement to the corporation a reasonable time before the requested start date, having regard to all the circumstances.
- (3) The corporation must, if requested by an applicant, provide to the applicant an estimate of the likely time required under subregulation (2), but the corporation is not liable for any error or inaccuracy in the estimation.

24. User may increase duration or obtain additional contracted peak rate only by new application

- (1) Subject to subregulation (2), the corporation cannot extend the duration of a user's grant of access or give a user additional contracted peak rate at any distribution outlet point other than in accordance with an application by the user for either or both of the extended duration or the additional contracted peak rate.
- (2) Subregulation (1) does not prevent —
 - (a) a user from exercising an option granted to it as part of the terms of a grant of access;
 - (b) the corporation and a user from agreeing under regulation 49 (2) to extend the duration of a grant of access; or
 - (c) a grant of access from giving a user a contracted peak rate which varies over time under regulation 25.

25. Contracted peak rate may vary over time

A grant of access may give the user a contracted peak rate at a distribution outlet point which increases or decreases at specified times during the duration of the grant.

26. Application for access

- (1) Subject to regulation 22 an application is made by giving it to the corporation, clearly marked “Application for Access to Gas Distribution Capacity”.
- (2) An application must be in writing and must contain or be accompanied by the following information —
 - (a) the full name, principal place of business, mailing address, facsimile number and telephone number of the applicant, and where the applicant comprises more than one person, of each of them;
 - (b) the name, title, facsimile number and telephone number of the person nominated by the applicant to liaise with the corporation in respect of the application;
 - (c) the requested start date and end date and whether the applicant requires any one or more options to extend the duration of the requested grant of access, and if so the duration or durations of those options;
 - (d) evidence that —
 - (i) the applicant is in a position to meet the requirements of the ministerial order in force under section 93 (1) (b) of the Act at the date of the application; and
 - (ii) the requirements of regulation 56 (1) (a) and, if applicable, 56 (1) (b) will be met before the commencement of the requested grant of access;
 - (e) details of each distribution outlet point at which the applicant requests a contracted peak rate, and for each such distribution outlet point —
 - (i) the requested contracted peak rate of (if the applicant wishes the contracted peak rate to vary during the duration of the requested grant of access) the requested contracted peak rates; and

- (ii) the applicant's forecast of the average energy quantity of gas required to be delivered at the distribution out let point, and estimates of periodic or other fluctuations in gas flows, for each month in the first year of the requested grant of access and for each year in the remaining duration of the requested grant of access;
- (f) such information as the corporation reasonably requires regarding the legal status and financial position of the applicant, and if the applicant comprises more than one person, of each of them together with such information as the corporation reasonably requires regarding the relationship between those persons;
- (g) whether the applicant —
 - (i) is to act as trustee in relation to the requested grant of access or any gas to be delivered under the requested grant of access; or
 - (ii) is acting as agent for any person,and if so such information concerning the trust or agency as the corporation reasonably requires;
- (h) details of any insurances the applicant proposes to have as required by regulation 58;
- (i) the proposed terms of the requested grant of access including without limitation —
 - (i) which (if any) of the clauses in Schedule 1 that are not essential terms are to be excluded from, or included in an amended form in, the terms of the requested grant of access; and
 - (ii) any terms of the requested grant of access proposed by the applicant which are in addition to the terms set out in Schedule 1;
- (j) if the applicant requests that the application be a linked application under regulation 32 or requests a conditional

grant under regulation 43, the information required under the relevant regulation; and

- (k) if the applicant is not to be the consumer of the gas, details of the applicant's gas customer.
- (3) An application must be signed by, or by a duly authorized agent of, each person constituting the applicant.
- (4) The corporation must assess whether an application complies with the requirements of subregulations (2) and (3) as soon as practicable.
- (5) The corporation must give written notice to the applicant —
 - (a) that its application satisfies in all material particulars the requirements of subregulations (2) and (3); or
 - (b) that its application is rejected because it fails to satisfy in a material particular a requirement of subregulation (2) or (3).
- (6) A written notice given under subregulation (5) (b) is to specify the requirement not complied with.

27. Applicant to assist in any consequential environmental, safety and other matters

If an application has as a necessary consequence any system reinforcement or user specific reinforcement, the applicant must provide to the corporation and to any other person reasonable assistance to allow the corporation to obtain under all laws, all approvals necessary to allow the corporation to undertake that system reinforcement or user specific reinforcement.

Division 3.3 — Processing the application

28. Corporation must process application expeditiously

- (1) The corporation must use reasonable endeavours to process an application which it has not rejected and make a grant of access

or issue a notice of non-compliance to the applicant as soon as practicable.

- (2) Without limiting the generality of subregulation (1) —
 - (a) for applications to which regulation 23 (1) applies, the corporation must use reasonable endeavours to make a grant of access or issue a notice of non-compliance to the applicant within 30 days of receipt of the application; and
 - (b) for applications to which regulation 23 (2) applies, the corporation must within 15 working days of receipt of the application notify the applicant of the date by which it is likely to make a grant of access or issue a notice of non-compliance.
- (3) The corporation and the applicant must conduct any negotiations in the course of processing an application in good faith.

29. First come first served

- (1) Subject to subregulation (4), the corporation must make any grants of access in respect of a sub-network so as to ensure that, as between applicants in respect of the subnetwork, the processing of applications and the making of grants of access takes place in an order which reflects the priority or deemed priority of the applications.
- (2) Subject to regulations 40 and 43 (10) applications are to have priority determined by the order in which the corporation receives them.
- (3) If an application is rejected, or is deemed by these regulations to have been rejected, that application loses its priority.
- (4) Subregulation (1) does not apply where making a grant of access to one applicant would not affect —
 - (a) the availability of spare network capacity; or

- (b) the need for, or the commercial viability of, any system reinforcement or user specific reinforcement,

for any other applicant.

30. Obligation to make grant of access

- (1) Subject to subregulation (2) and regulations 31 and 32, the corporation must make the requested grant of access to the applicant unless the application is withdrawn under regulation 41.
- (2) The corporation may, but is not obliged to, make a requested grant of access which involves a system reinforcement which materially extends the geographic area of the gas distribution system, including without limitation the creation of any new sub-network.

31. Conditions precedent for grant of access

It is a condition precedent to the corporation making a grant of access —

- (a) that —
 - (i) there is or will be sufficient spare network capacity to enable the requested grant of access to be made; or
 - (ii) either any necessary system reinforcement and any necessary user specific reinforcement is commercially viable, or, to the extent that this is not the case, the application contains a commercial viability arrangement acceptable to the corporation;
- (b) that each distribution outlet point is or will be of sufficient capability to accommodate the contracted peak rate requested at that distribution outlet point;
- (c) that the applicant provides evidence to the corporation's satisfaction that the requirements of regulation 56 (1) (a)

and, if applicable, 56 (1) (b) will be met before the commencement of the requested grant of access;

- (d) that the applicant complies with the corporation's requirements regarding the legal status of users;
- (e) that the corporation is satisfied that the applicant is and will remain able to meet its obligations under the requested grant of access, and that the applicant (if required by the corporation to do so) provides to the corporation's satisfaction security for those obligations;
- (f) that the applicant complies or agrees to comply with the requirements of regulation 58;
- (g) if the requested grant of access applies to a distribution outlet point which is (or would due to the requested grant of access become) a multi-user outlet point, that the applicant has entered into the agreement referred to in regulation 92(a) or gives the acknowledgment referred to in regulation 92(b); and
- (h) that the corporation and the applicant have reached agreement concerning any terms —

32. Application may be linked to application for transmission capacity

- (1) An applicant may request that its application be a linked application, in which case the applicant must provide such details as the corporation reasonably requires to enable the corporation to identify the transmission application to which the linked application is to be linked.
- (2) The corporation cannot make a grant of access in response to a linked application unless an access contract has been entered into in response to the transmission application specified in the request under subregulation (1).

[Regulation 32 amended in Gazette 10 March 1998 p.1358.]

33. Assessment of compliance with conditions precedent

The corporation must undertake an investigation concerning whether the applicant satisfies the conditions precedent for the making of a grant of access under regulation 31.

Division 3.4 — Non-compliance, amendment, withdrawal and rejection of application

34. If application does not comply with a condition precedent

- (1) If an application fails to comply with one or more of the conditions precedent for the making of a grant of access under regulation 31, the corporation must give the applicant a written notice detailing the nature of each non-compliance.
- (2) If a notice of non-compliance indicates that any necessary system reinforcement or user specific reinforcement is not commercially viable, then (subject to subregulations (3) and (4)) the corporation must if requested by the applicant provide to the applicant in reasonable detail information regarding the basis for that determination.
- (3) The corporation's reasonable expenses of provision of information under subregulation (2) are recoverable under regulation 21.
- (4) Before the corporation provides any information to the applicant under subregulation (2), the corporation may require the applicant to undertake to keep the information provided to it confidential, upon any conditions reasonably required by the corporation.

35. Applicant may elect to negotiate amendment after notice of non-compliance

If the corporation gives the applicant a notice of non-compliance, the applicant may within 30 days after the date of the notice of non-compliance elect, by giving written

Gas Distribution Regulations 1996

Part 3 Application for, and grant of, access

Division 3.4 Non-compliance, amendment, withdrawal and rejection of application

s. 36

notice to the corporation, to negotiate with the corporation to amend the application under regulation 39.

36. Application deemed rejected after 30 days if no election to negotiate

If within 30 days after the date of the notice of non-compliance —

- (a) the applicant has not given written notice under regulation 35; and
- (b) the corporation has not requested the applicant to amend the application under regulation 39 (2),

the application is by force of this regulation rejected.

37. Linked application deemed rejected if transmission application is rejected

- (1) If the transmission application to which a linked application is linked under regulation 32 is rejected, or is deemed to be rejected, under the *Dampier to Bunbury Pipeline Regulations 1998*, the linked application is by force of this regulation rejected.
- (2) A linked application is by force of this regulation (despite any other provision of this Part) rejected on the expiry of 150 days after the date the corporation gives written notice under regulation 26 (5) (a).

[Regulation 37 amended in Gazette 10 March 1998 p.1358.]

38. Application deemed rejected after 120 days if grant of access not made

An application is by force of this regulation (despite any other provision of this Part) rejected on the expiry of 120 days after the date of the notice of non-compliance, unless within that 120 days the corporation makes the grant of access.

39. Amendment of application

- (1) An applicant may at any time before the application is rejected or deemed rejected, or the corporation makes the grant of access, by written notice to the corporation, amend an application.
- (2) The corporation may at any time before it makes a grant of access request that the applicant amend the application, in which case the parties are to negotiate in good faith concerning the requested amendment.
- (3) Negotiations under this regulation do not affect an application's priority.
- (4) The corporation and an applicant may at any time agree in writing to amend the application, in which case the application is by force of this regulation amended in the terms agreed.
- (5) An application which has been withdrawn, rejected or deemed to be rejected cannot be amended, but the applicant can make a new application.

40. Priority of amended applications

- (1) Subject to subregulation (2), an application amended under regulation 39 has the same priority as it had immediately before the amendment.
- (2) If an amended application is materially different from the original application, and if that difference is such that an applicant whose application has priority subsequent to the original application is materially prejudiced (compared with that subsequent applicant's position with respect to the original application), then —
 - (a) if in the corporation's opinion, it is possible to construe the amended application as a combination of the original application and a notional supplementary application (whether for additional contracted peak rate or otherwise), the original application retains its priority

and the notional supplementary application has priority as though it was submitted at the time the amendment was made; but

- (b) otherwise, the original application is by force of this regulation rejected, and the applicant is by force of this regulation to be considered to have submitted an application in the amended terms at the time the amendment was made.

41. Withdrawal of application

- (1) At any time before the corporation makes a grant of access, the applicant may by written notice to the corporation withdraw its application.
- (2) Withdrawal of an application under subregulation (1) does not relieve an applicant of its liability under regulation 21 in respect of expenses incurred by the corporation before the corporation receives written notice of that withdrawal.

Division 3.5 — Making the grant of access

42. The grant of access

- (1) If the corporation decides to make a grant of access to an applicant, it must as soon as practicable, and in any event within 3 working days, after that decision, make a grant of access to the applicant in the form prescribed by regulation 45.
- (2) A grant of access may be made only on materially the same terms as the requested grant of access (as amended, if applicable, under regulation 39) except as to the start date, and any purported grant of access which is not on materially the same terms as the requested grant of access except as to the start date is by force of this regulation not a grant of access, and is to be treated as a request by the corporation to the applicant under regulation 39 to negotiate amendments to the application.

- (3) A grant of access may include the grant to a user of the option or options to extend the duration of the grant of access for the period or periods set out in the grant of access.
- (3a) A user cannot be given an option to extend the duration of a grant of access beyond the time described in regulation 109.
- (4) Subject to subregulation (5), the corporation must, if it decides to make a grant of access, use reasonable endeavours to make a grant of access which commences on the requested start date.
- (5) If an application has as a necessary consequence any system reinforcement or user specific reinforcement, then the grant of access may, instead of specifying a precise date on which it is to commence, specify an approximate or projected date on which it is to commence, but if it does so —
 - (a) the corporation must use reasonable endeavours to ensure that the grant of access commences on, or as soon as practicable after, the requested start date;
 - (b) the corporation must as soon as it is able advise the user of the precise date on which the grant of access is to commence; and
 - (c) the grant of access is not, unless the user agrees in writing to the contrary, to commence earlier than whichever is the later of the requested start date and the approximate or projected date specified in the grant of access.

[Regulation 42 amended in Gazette 2 May 2000 p.2111.]

43. Conditional grant of access

- (1) An applicant may request a conditional grant under this regulation.
- (2) A request for a conditional grant —
 - (a) must be accompanied by or contained in the application; and

Gas Distribution Regulations 1996

Part 3 Application for, and grant of, access

Division 3.5 Making the grant of access

s. 43

- (b) must provide or be accompanied by such information concerning any condition precedent as the corporation may reasonably require to assess the nature and effect of the condition precedent.
- (3) The corporation may, if it receives a request for a conditional grant, make a conditional grant to the applicant under this regulation, but the corporation is not to make the conditional grant if it would not under this Part have made an equivalent unconditional grant of access to the applicant in response to the application.
- (4) A conditional grant —
 - (a) must specify the condition precedent or conditions precedent applicable to the grant of access;
 - (b) is a grant of access under these regulations, subject only to the recipient of the conditional grant providing evidence to the corporation's satisfaction that the condition precedent or all conditions precedent have been met; and
 - (c) must specify a time before which the recipient of the conditional grant must satisfy the corporation under paragraph (b), which is not to be more than 4 months after the date of the conditional grant.
- (5) If, within the time limit specified under subregulation (4) (c), the corporation is satisfied that the condition precedent or conditions precedent have been met, it must give written notice to the recipient of the conditional grant that the grant of access is unconditional.
- (6) If the corporation gives written notice under subregulation (5) to the recipient of a conditional grant, the conditional grant is to be an unconditional grant of access from the time the written notice is given.
- (7) If the recipient of the conditional grant fails to satisfy the corporation under subregulation (4) within the time specified

under subregulation (4) (c), or gives written notice to the corporation that any condition precedent in subregulation (4) (a) will not be satisfied, then by force of this regulation the conditional grant is of no further effect.

- (8) Until a written notice under subregulation (5) is given in respect of a conditional grant —
- (a) the recipient of the conditional grant has no entitlement under the conditional grant to take delivery of gas; and
 - (b) the corporation is not obliged to undertake any system reinforcement or user specific reinforcement for the purposes of enabling the user to take delivery of gas under the conditional grant.
- (9) Subject to subregulation (10), a request for a conditional grant is to be assessed having regard to the priority of the application referred to in subregulation (2) (a).
- (10) If, in the corporation's opinion, more than one request for a conditional grant relates to a particular contract, project, development or works in respect of which an invitation to tender calls for persons to submit tenders, all such requests for a conditional grant are to be assessed as if they all had the same priority as whichever of the applications referred to in subregulation (2) (a) has the earliest priority.

Part 4 — The grant of access

Division 4.1 — General

44. Access to gas distribution capacity must be under a grant of access

A person (including the trading business) can only have access to gas distribution capacity under a grant of access.

45. Form of grant of access

Subject to regulations 46 and 104 a grant of access by the corporation to a user is to be by written grant in the form in Schedule 1, together with other terms agreed between the corporation and the user.

46. Contracting out of non- essential terms

- (1) To the extent that a provision of a grant of access is inconsistent with any provision of Schedule 1 which is not an essential term, the provision of the grant of access is by force of this regulation to prevail.
- (2) Clauses 3, 33(b), 34 and 48 of Schedule 1 are not essential terms.

47. Essential terms

- (1) Unless regulation 46 (2) states otherwise, each provision in Schedule 1 when a grant of access is made is an essential term of the grant of access.
- (2) Despite any subsequent amendment of any provision of these regulations (including Schedule 1), and unless the parties otherwise agree, the terms of a grant of access by force of this regulation are to be read and construed by reference to the regulations in force at the time of making of the grant of access.

48. Regulations to prevail

A term of a grant of access which is inconsistent with these regulations (other than Schedule 1) is of no effect.

49. Duration of grant of access

- (1) Subject to subregulation (2) and to regulations 31(a)(ii) and 42(3), unless the corporation and the user agree to a shorter duration, the duration of a grant of access is to be until the time described in regulation 109.
- (2) Subject to regulation 73 (3), if a user either —
 - (a) was not granted an option as part of the terms of its grant of access; or
 - (b) has exercised all options it was granted as part of the terms of its grant of access,

the corporation and the user may, at any time no later than 12 months before the end of the grant of access, agree in writing to extend the duration of the grant of access, and the corporation is not to unreasonably withhold its agreement to such an extension of the duration of the grant of access.

- (3) The duration of a grant of access is not to be extended beyond the time described in regulation 109.

[Regulation 49 amended in Gazette 2 May 2000 p.2111.]

50. Option to renew grant of access

- (1) Subject to subregulation (2) and to regulation 73 (3), if a user was granted (and has not yet exercised) an option as part of the terms of its grant of access, then the user may, by written notice to the corporation not later than 12 months before the end of the duration of the grant of access, exercise the option and extend the duration of the grant of access.
- (2) The corporation may refuse to extend the duration of a grant of access —

- (a) if the user would not, as an applicant for the contracted peak rate under Part 3, satisfy all the conditions precedent for the making of a grant of access on the terms of the grant of access for the period of the option (assuming for the purposes of regulation 31(a) that there was sufficient spare network capacity);
- (b) if the user has not made all payments duly and punctually during the duration of the grant of access;
- (c) if the user has seriously or persistently failed to perform any obligation under the regulations or the grant of access during the duration of the grant of access; or
- (d) if the user does not, between the time of written notice under subregulation (1) and the end of the duration of the grant of access, duly and punctually make all payments and observe and perform its obligations.

[Regulation 50 amended in Gazette 10 March 1998 p.1359.]

51. Amendment of grant of access

Subject to regulation 24 and to regulations 47 (1) and 48, the corporation and a user may at any time agree in writing to amend any provision of the user's grant of access.

Division 4.2 — Title to gas

52. Corporation has title to all gas in gas transmission system and gas distribution system

The corporation by force of this regulation has title to and possession of all gas in the gas distribution system.

[Regulation 52 amended in Gazette 10 March 1998 p.1359.]

53. No actions against corporation in respect of gas in gas distribution system

No person (including a user) has a claim against the corporation in respect of any gas in the gas distribution system —

- (a) claiming any interest in, or any claim of any nature over, the gas; or
- (b) in respect of any unpaid charges, royalties or taxes in respect of or in connection with the gas or the production of the gas incurred by any person (including the user) before or arising out of the delivery of the gas to the corporation.

54. Only user may take delivery, title and possession of gas from the corporation

- (1) All gas delivered under a grant of access by the corporation at a distribution outlet point is to be received by the user only.
- (2) The delivery by the corporation to a user of gas at a distribution outlet point is by force of this regulation a transfer of title to and possession of the gas from the corporation to the user, effective at the distribution outlet point and at the time of delivery, and free and clear of all claims of any nature.
- (3) Nothing in these regulations prevents a user from agreeing with any other person to transfer to the person title to and possession of gas delivered by the corporation to the user at a distribution outlet point at any time after the user receives title and possession from the corporation.

55. User's entitlement to receive gas is contractual

The user's entitlement to receive gas under clause 7 of Schedule 1 is a contractual entitlement and not a proprietary entitlement.

Division 4.3 — Designated shippers

56. Designated shippers

- (1) Before a user may take delivery of a quantity of gas at a distribution outlet point —

- (a) the user must give written notice to the corporation nominating (subject to subregulations (4) and (5)) a designated shipper in respect of the quantity of gas; and
 - (b) if the user is not the designated shipper, the designated shipper must give written notice to the corporation confirming that it is the designated shipper in respect of the quantity of gas.
- (2) A written notice under subregulation (1) (a) or (b) must contain such information as the corporation may as a reasonable and prudent person from time to time require.
- (3) The corporation may curtail delivery of a quantity of gas to a user if —
- (a) any requirement of subregulation (1) (a) or, if applicable, (b) has not been met in respect of that gas; or
 - (b) the DBNGP owner has under the *Dampier to Bunbury Pipeline Regulations 1998* or a contract —
- (4) There may be more than one designated shipper in respect of a grant of access from time to time, and (subject to the user and the corporation agreeing to the corporation's satisfaction regarding allocations of gas between designated shippers) in respect of a distribution outlet point at any one time.
- (5) A person cannot be nominated as a designated shipper in respect of more than one quantity of gas in a sub-network at the same time, unless the person has agreed with the corporation how any shortfall in the person's entitlements in respect of the notional gate point is to be apportioned between the quantities in the case of a curtailment under subregulation (3).

[Regulation 56 amended in Gazette 10 March 1998 p.1359.]

Division 4.4 — Miscellaneous matters

57. Grants of access to be publicly available

The corporation must, when requested in writing by any person, make available to that person —

- (a) a list of all grants of access made by the corporation; and
- (b) a copy of any grant of access (excluding Appendices 3, 4 and 5) identified in the request.

58. Insurances

- (1) Subject to subregulation (4), a user must procure and maintain at its own expense, throughout the duration of the user's grant of access, liability insurance with insurers having a reputation satisfactory to a reasonable and prudent person for such amount as the corporation may require against risk of injury, death, loss or damage to property or personnel (however caused) of the corporation, the user or any third party which arises out of or is in any way related to the grant of access or the gas distribution system.
- (2) A user must arrange for endorsement on the policy referred to in subregulation (1) of the interests of the corporation such that those interests are effectively insured under that policy, and for the insurer to waive rights of subrogation against the corporation.
- (3) A user must, upon request from time to time by the corporation, provide the corporation with copies of the insurance policy (including schedules) and endorsements required by this regulation and evidence that the policy is current.
- (4) The corporation may waive compliance with any or all of the requirements of subregulations (1), (2) and (3) if it as a reasonable and prudent person —
 - (a) is satisfied that a user has made adequate alternative arrangements; or

- (b) accepts a user as a self-insurer.

59. The user is responsible for its and its contractors' personnel and property

- (1) Subject to clause 26 of Schedule 1, a user alone is to be liable, whether under a law or in contract, tort or equity, for any —
 - (a) injury to or death of any person employed by the user or by any person (except the corporation) contracting with the user; and
 - (b) loss of or damage to any property of the user or of any person (except the corporation) contracting with the user or employed by the user or such contractor,

however caused, which occurs during the duration of a grant of access, in or about, or incidental to activities in or about, any gate station, any outlet meter set, the gas distribution system, or any other premises, facilities or places used for the storage, transportation or delivery of gas received from or delivered to the user or where the corporation's property or directors, servants, consultants, independent contractors or agents and the user's property or directors, servants, consultants, independent contractors or agents are in proximity.

- (2) A user indemnifies the corporation and any person (except the user) contracting with the corporation, and their respective directors, servants, consultants, independent contractors and agents against all liabilities and expenses caused by or arising out of any claim, demand, action or proceeding made or brought by any person in relation to any injury, death, loss or damage referred to in subregulation (1).

60. Corporation's liability to third persons

- (1) The corporation's liability to any third person for any injury, death, loss or damage suffered by that third person as a result of an act or omission of the corporation or the user which is in any way related to a grant of access or the gas distribution system is, as between the corporation and the user, limited to liability for

injury to or death of persons or loss of or damage to property arising directly or indirectly from the negligence or wilful default of the corporation or its servants and agents, and the user is to indemnify the corporation against all liability which it may incur to a third person beyond this limit.

- (2) The corporation is not liable to any user in respect of a claim made by a third person against the user —
- (a) by reason of any statutory or contractual relationship, or any relationship of special proximity, arising out of one or more of the Act, these regulations, a grant of access or any other agreement or relationship between the corporation and a user;
 - (b) for any indirect damage (as defined in Schedule 1); or
 - (c) for any injury, death, loss or damage which by force of regulation 59 is the sole responsibility of a user.
- (3) In this regulation —
- “third person”** means any person other than the corporation and a user, and includes any producer of gas and any customer of a user.

61. No assignment except as provided for in these regulations

No party may assign any right, interest or obligation under a grant of access except under regulation 62 or 63.

62. Assignment by corporation

The corporation may at any time without the consent of the user (but having first notified the user) assign all or part of its rights, interests or obligations under a grant of access to —

- (a) a related body corporate (as defined in the *Corporations Law*) of the corporation; or
- (b) any body corporate (of such financial standing and technical competence as will enable it to perform the corporation’s obligations under the grant of access),

whether statutory or otherwise, to which or to a related body corporate (as defined in the *Corporations Law*) of which the gas distribution system or a substantial part thereof or interest therein is sold, assigned, leased or hired out.

63. Assignment by user and compulsory assignment at request of user's threshold gas customer

- (1) Nothing in this regulation affects any contract (other than the grant of access or a multi-user allocation agreement) between the user and any person (including without limitation a contract by which the user must supply or deliver gas to the threshold gas customer).
- (2) A user may at any time by written notice to the corporation request an assignment of all or any part of the user's contracted peak rate at a distribution outlet point.
- (3) A user's threshold gas customer may at any time by written notice to the user and the corporation request an assignment to any person of all or any part of the user's contracted peak rate at a distribution outlet point at which the user supplies gas to the threshold gas customer, unless that contracted peak rate is essential to the user to enable the user to fulfil any contractual obligation to supply or deliver gas to the threshold gas customer.
- (4) A written notice under subregulation (2) or (3) must be accompanied by an application by the assignee in respect of the contracted peak rate to be assigned at the distribution outlet point.
- (5) An assignment can only be given effect to if —
 - (a) the corporation considers that all conditions precedent in regulation 31 for the making of a grant of access to the assignee in response to the application referred to in subregulation (4) have been satisfied (assuming for the

- purposes of regulation 31(a) that there is sufficient spare network capacity); and
- (b) without limiting the generality of paragraph (a), a new multi-user allocation agreement has been made or the assignee has given an acknowledgment under regulation 92(b), if applicable.
- (6) Subject to subregulation (5), the corporation must, within 30 days after receipt of a written notice under subregulation (2) or (3), give effect to a requested assignment by —
- (a) making a grant of access to the assignee in respect of the contracted peak rate to be assigned; and
- (b) giving the user a written notice of the assignment, which written notice by force of this regulation has effect as a proportional variation of all relevant terms of the user's grant of access.
- (7) The assignee's grant of access —
- (a) is to include the benefit and burden of the whole or the relevant proportion of any provisions of the user's grant of access relating to opportunity cost pricing, commercial viability arrangements or service prices; and
- (b) subject to subregulations (8) and (9) and regulation 104, is, so far as is practicable, to be on the same terms as the user's grant of access.
- (8) If the user is the trading business, the terms for the assignee's grant of access are to be those applicable to, or negotiated by, the assignee, and not the terms applicable to the trading business.
- (9) If the assignee is the trading business, the terms for the assignee's grant of access are to be the terms applicable to the trading business, and not those applicable to, or negotiated by, the user and contained in the user's grant of access.

[64. Repealed in Gazette 10 March 1998 p.1359.]

65. Annual review of utilization

- (1) A user is to be taken to have under-utilized its contracted peak rate at a distribution outlet point in a year, if the user's highest instantaneous flow rate at the distribution outlet point during the gas year is less than 90% of the user's contracted peak rate at the distribution outlet point.
- (2) If, in the corporation's opinion as a reasonable and prudent person after consultation with the user, the under-utilization of the user's contracted peak rate at a distribution outlet point is for any reason likely to continue in the future, the corporation may, by written notice to the user, reduce the user's contracted peak rate at the distribution outlet point to such contracted peak rate as the corporation reasonably estimates will accommodate the user's future requirements for the delivery of gas at the distribution outlet point.
- (3) A written notice under subregulation (2) has effect by force of this subregulation as a variation of the user's grant of access, reducing the user's contracted peak rate in the manner specified in the written notice.

66. Saving of corporation's powers

Nothing in Chapter 3 of Schedule 1 limits the corporation's powers under the Act, these regulations, any law or any grant of access, or generally as operator of the gas distribution system, to wholly or partially curtail gas deliveries to any user, or to wholly or partially not deliver any gas into the gas distribution system.

67. Curtailments of gas deliveries to be allocated to defaulting users where practicable

If, at a time when the corporation proposes to curtail gas deliveries to a user or users, any user is in default under these regulations or a grant of access, the corporation must where practicable endeavour as a reasonable and prudent person to

curtail gas deliveries to the defaulting user before curtailing gas deliveries to any other user who is not in default.

68. Advance information

- (1) The corporation may at any time and from time to time request a user to provide it with such information (or with the user's estimates or forecasts of that information) for such periods (to a maximum of 5 years), as the corporation reasonably specifies as being required by it to assist it in planning the operation or maintenance of the gas distribution system.
- (2) The corporation may for the purposes of subregulation (1) give the user reasonable undertakings as to confidentiality.
- (3) The user must endeavour as a reasonable and prudent person to comply with any request for information made by the corporation under subregulation (1), whether or not the information is requested in respect of a period which extends beyond the duration of the requested grant of access.
- (4) No damages are to lie against the user if any information, estimate or forecast provided by it under subregulation (1) subsequently proves to be or becomes materially inaccurate, except that nothing in this subregulation limits any action against the user if it fraudulently, recklessly, negligently or in bad faith provides to the corporation any materially false information, estimate or forecast in response to a request under subregulation (1).

[Regulation 68 amended in Gazette 2 May 2000 p.2111.]

Part 5 — Prices

69. Corporation to determine prices

- (1) Subject to subregulation (2), the corporation is from time to time to apply the pricing methods it adopts under clause 5 (2) of Schedule 6 to the Act, to determine and redetermine prices for access under a grant of access to gas distribution capacity.
- (2) Before the corporation adopts pricing methods under clause 5 (2) of Schedule 6 to the Act or determines or redetermines prices under subregulation (1) it is to —
 - (a) provide to the Coordinator (acting as the Minister's policy adviser under section 6 of the *Energy Coordination Act 1994*) such information as the Coordinator may reasonably require concerning the pricing methods or prices; and
 - (b) take into consideration any of the Coordinator's recommendations as to the pricing methods or prices.

70. Redetermined prices apply to existing users

A price redetermined under regulation 76 is to apply to all users, irrespective of whether the users' grants of access were made before or after the redetermination.

71. Network prices

- (1) The pricing methods are to provide for network prices, with the objective of recovering within a reasonable time from users the corporation's system investment, a reasonable rate of return on that system investment, and the corporation's costs of maintaining and providing that part of gas distribution capacity (excluding user specific facilities) which relates to the high pressure system.
- (2) The pricing methods are to establish network prices as follows —

- (a) a demand price based on the average of a user's 5 highest hourly sub-network outlet quantities occurring on separate gas days during the previous June, July, August and September for a sub-network;
 - (b) an energy price based on the energy value of gas delivered to the user at each distribution outlet point.
- (3) The pricing methods may provide for the demand price for a user in the first year of a grant of access to be based in whole or part upon an estimate of the user's average hourly sub-network outlet quantities, derived from the information provided by the user in the application under regulation 26 (2) (e) (ii).
- (4) The pricing methods are to provide for network prices to vary with —
 - (a) the sub-network in which a user's distribution outlet point is located; and
 - (b) the distance between a distribution outlet point or other point and the physical gate point in the sub-network in which that distribution outlet point or other point is located which is closest to that distribution outlet point or other point.
- (5) The pricing methods are to provide that, for the purposes of calculating the network prices, the costs of maintaining and providing that part of gas distribution capacity which relates to the high pressure system include, without limitation, the direct and indirect costs of —
 - (a) gas used by the corporation in its operation of the high pressure system;
 - (b) gas lost from the high pressure system and unaccounted-for gas; and
 - (c) transporting gas referred to in paragraph (a) or (b) in the gas transmission system.

s. 72

- (6) The pricing methods are to indicate how unaccounted-for gas is to be allocated and apportioned between the high pressure system and the other parts of the gas distribution system.

72. Service price

- (1) The pricing methods are to provide for service prices, with the objective of recovering within a reasonable time from users the corporation's user specific investment, a reasonable rate of return on that user specific investment, and the costs of maintaining and providing user specific facilities.
- (2) Without limiting the generality of subregulation (1), if the user specific facilities for a user are substantially similar to those provided to most users, the pricing methods are to provide for a standardized service price to be payable.

73. Opportunity cost pricing

- (1) Subject to this regulation, the corporation may charge a user opportunity cost prices, which are prices that are lower than the prices which would otherwise be payable by the user in accordance with the pricing methods established under this Part.
- (2) Opportunity cost prices can only be charged if, in the corporation's view as a reasonable and prudent person —
 - (a) the user or prospective user is otherwise likely to install and operate a pipeline or other facility to enable it to interconnect with the gas transmission system or with any other gas source, in preference to utilizing gas distribution capacity; and
 - (b) the prices payable by other users in accordance with the pricing methods established under this Part are no higher as a result of the charging of an opportunity cost price than those prices would have been if the user or prospective user had installed and operated the alternative pipeline or facility referred to in paragraph (a).

- (3) The corporation and a user who has been charged an opportunity cost price are to review that price prior to any extension of the duration of the grant of access under regulation 49 or 50, with a view to the opportunity cost price being phased out during the extended duration of the grant of access, and if the corporation and the user cannot agree the manner in which the opportunity cost price is to be phased out, the user is to pay the price which would otherwise be payable under the pricing methods established by the corporation under this Part during the extended duration of the grant of access.
- (4) Subject to subregulation (2), whether the corporation charges an opportunity cost price, and the amount of the difference between the opportunity cost price and the price which would otherwise be payable by the user in accordance with the pricing methods established under this Part, are to be determined in each case by the corporation in its absolute discretion.
- (5) The corporation is to have regard to opportunity cost prices it has charged, or may in the future charge, in setting prices generally under pricing methods established under this Part.

74. Commercial viability arrangements

- (1) Subject to this regulation, the corporation may require a user to be made subject to commercial viability arrangements.
- (2) If the corporation, after an assessment under regulation 33 of an application, determines that any necessary system reinforcement or user specific reinforcement is for any reason not commercially viable, the corporation may request the user to amend its application to include a commercial viability arrangement acceptable to the corporation which, without limitation, may require the user to do any or all of the following —
 - (a) to pay a surcharge;
 - (b) to make a minimum payment in respect of a period;
 - (c) to take a minimum quantity of gas in a period; or

s. 75

(d) to make a capital contribution.

- (3) A commercial viability arrangement cannot impose any requirement in excess of what is necessary to make the relevant system reinforcement or user specific reinforcement commercially viable.

75. Prices to be take-or-pay

The demand price and the service price are to be payable even if for any reason (including the operation of *force majeure* on the corporation or the user) the user wholly or partly does not utilize gas distribution capacity.

76. Redetermination of prices

- (1) Subject to this regulation, the pricing methods are to provide for the annual redetermination of prices.
- (2) The pricing methods may provide for the first redetermination of prices to be undertaken with effect from 08:00 hours on 1 July 1997.
- (3) A redetermination of prices is to take into account that part (if any) of any surplus or shortfall of actual recovery in the period since the previous redetermination, compared with the pricing methods' objectives, which is attributable to differences between forecast demand and actual demand for gas distribution capacity.
- (4) For the purposes of a redetermination of prices, the costs of maintaining and providing that part of gas distribution capacity which relates to the high pressure system are to be estimated having regard to the corporation's forecast annual budget.
- (5) For the purposes of a redetermination of prices, the corporation's investment in the high pressure system is to be determined under regulation 77.
- (6) The pricing methods are to encourage the corporation to operate and maintain the high pressure system in a financially efficient

manner, consistent with its duties and obligations under the Act, these regulations, any law and grants of access.

- (7) The pricing methods are to include as an objective of a redetermination of prices the sharing between the corporation and users of any financial benefits which result from an improvement in the financial efficiency of the operation and maintenance of the high pressure system since the last determination or redetermination of prices.

77. Investment in the high pressure system

- (1) As at 00:00 hours on 1 July 1996 —
- (a) the value of the corporation's system investment is by force of this regulation to be taken to have been \$47 290 000.00; and
 - (b) the value of the corporation's user specific investment is by force of this regulation to be taken to have been \$3 261 000.00.
- (2) For the purposes of any redetermination of prices under regulation 76, the value of the system investment is the amount determined by adding —
- (a) the most recently determined value of the system investment (which for the first redetermination of prices under regulation 76 is the amount specified in subregulation (1) (a), and for each subsequent redetermination is to be the amount determined as at the date of the last redetermination of prices by a previous application of this subregulation); and
 - (b) the actual capital investment made by the corporation in all system reinforcements (other than user specific reinforcements) that has become operational since the last redetermination of prices,

and adjusting the amount obtained to take account of depreciation for pricing purposes, then subtracting from the adjusted amount the initial value, adjusted to take account of

s. 78

depreciation for pricing purposes, of any asset that was part of, or any component of, the high pressure system (other than a user specific facility) before being retired from use as part of the high pressure system since the last redetermination of prices.

- (3) For the purposes of calculating a price under a redetermination of prices under regulation 76 (but not for determining the value of the system investment under subregulation (2)), the corporation may include in the value of the system investment, the value of capital expenditure which the corporation anticipates that it will make in all system reinforcements (other than user specific reinforcements) that will become operational in the period for which the prices to be redetermined will apply, making allowance for the proportions of that period in which the system reinforcements are not yet operational.
- (4) For the purposes of any redetermination of prices under regulation 76 —
 - (a) the value of the user specific investment is to be quantified by reference to the value attributed to it under subregulation (1) (b);
 - (b) the cost of any user specific reinforcement is to be added to the amount quantified under paragraph (a); and
 - (c) the initial value of any user specific facility which is no longer in use as part of the high pressure system is to be subtracted from the amount calculated under paragraphs (a) and (b).

78. Costs of transmission information system recoverable

- (1) Subject to subregulation (2), and without limiting the generality of regulation 71, 72 or 77, the corporation may recover from users in relation to whose distribution outlet point the transmission information system is connected all capital investment, a reasonable rate of return on that capital investment, and all other costs, of installing, maintaining and operating the facilities at, related to, or connected with,

distribution outlet points that are required to connect to the transmission information system.

- (2) The corporation cannot recover under subregulation (1) any capital investment, return on capital investment or other costs until at least one shipper is in a position to use information from the transmission information system during the same gas day as the information is, or would be, collected by the transmission information system.
- (3) In this regulation —
- “transmission information system”** means the electronic information system operated by the DBNGP owner that provides data electronically to the DBNGP owner and shippers, which may include, but is not limited to, the supervisory control and data acquisition system covering the gas transmission system for control, data collection and telemetry.

[Regulation 78 amended in Gazette 10 March 1998 p.1359.]

79. Prices at multi-user outlet point

The service price, obligations under commercial viability arrangements, and benefits of opportunity cost prices, of all users entitled to take delivery of gas at a multi-user outlet point are to be aggregated and allocated between those users in proportion to their respective contracted peak rates at that multi-user outlet point.

Part 6 — Technical and operational matters

Division 6.1 — Outlet meter sets and distribution metering equipment

80. Installation, operation and maintenance of outlet meter sets

- (1) Unless a user and the corporation agree in writing to the contrary, an outlet meter set is to be installed, operated and maintained by the corporation, immediately upstream of each distribution outlet point.
- (2) The corporation may from time to time modify any outlet meter set.
- (3) Any costs to the corporation of installing, operating, maintaining and modifying an outlet meter set are to be met by the user, and may be met through a service price.
- (4) The user must use its reasonable endeavours to cooperate with the corporation in installing, operating, maintaining, and modifying the outlet meter set including, without limitation, providing or procuring access to all land to which access is required for those purposes or any of them.
- (5) Unless the corporation and the user agree in writing to the contrary, the outlet meter set (but not including the site upon which the facilities are installed unless that land is already the property of the corporation), and any enclosure erected for the outlet meter set, is at all times to be and remain the corporation's property.
- (6) If the corporation and the user agree in writing that the user may install the outlet meter set, the outlet meter set must —
 - (a) be of a standard of manufacture acceptable to the corporation in its discretion as a reasonable and prudent person; and

- (b) comply with Australian Standard 2885 and any other Australian or international standard required from time to time by the corporation.

81. Installation, operation and maintenance of distribution metering equipment

- (1) Unless a user and the corporation agree in writing to the contrary, the corporation must —
 - (a) supply, install, operate and maintain distribution metering equipment at an outlet meter set in good working order and condition to the standard (subject to this Division) of a reasonable and prudent person; and
 - (b) calculate and record the quantity of gas delivered by the corporation to the user at a distribution outlet point.
- (2) If the corporation and the user agree in writing that the user is to undertake any one or more of the installation, operation or maintenance of the distribution metering equipment at an outlet meter set, the distribution metering equipment is to be installed, operated and maintained in such a manner that the corporation is able to fulfil its obligations under subregulation (1) (b) in respect of the distribution outlet point.

82. Distribution metering equipment

- (1) Unless the corporation and the user agree in writing to the contrary, the distribution metering equipment must —
 - (a) include components for signalling and recording metering pressure, metering temperature, inlet pressure and volumetric flow rate; and
 - (b) provide signals and include facilities to enable electronic data collection by the transmission information system and the system and equipment for collecting, receiving and transferring electronic signals and data from distribution metering equipment, for the measurement of gas delivered to the user and for billing.

(2) In subregulation (1) —

“transmission information system” has the same meaning as it has in regulation 78.

[Regulation 82 amended in Gazette 10 March 1998 p.1359.]

83. Use of gas quality data from other locations

The corporation may utilize gas quality data from equipment at another location (which may be anywhere in the gas transmission system or gas distribution system, upstream or downstream of a user’s distribution outlet point or sub-network) for the calculation of energy flow rates for a distribution outlet point, provided that the gas quality data from that equipment is representative of gas quality at the distribution outlet point.

84. Metering uncertainty

Distribution metering equipment must be designed, adjusted, operated and maintained so as to achieve the best accuracy of measurement which is, having regard to the nature and duration of the grant of access and the magnitude of the user’s contracted peak rate, technically and economically feasible consistent with the standard of a reasonable and prudent person.

85. Provision of information to users

Subject to the corporation and the user entering into an arrangement satisfactory to the corporation relating to the recovery of all costs incurred by the corporation as a reasonable and prudent person in relation to or connected with the provision of data signals or other signals, the user is entitled to direct or indirect access to data signals or other signals from the distribution metering equipment at each of the user’s distribution outlet points.

86. Accuracy verification, correction of inaccurate measurements, etc.

- (1) Subject to subregulations (2), (3) and (4), unless a user and the corporation agree in writing to the contrary, the corporation must, after consultation with the user, and having regard to —
- (a) what is technically and economically feasible consistent with relevant gas industry practices;
 - (b) the nature and duration of the user's grant of access; and
 - (c) the magnitude of the user's contracted peak rate,

from time to time specify as a reasonable and prudent person procedures and other matters for testing and establishing the calibration accuracy of distribution metering equipment at each of the user's distribution outlet points.

- (2) The corporation must on any occasion when requested by the user, verify the accuracy of the distribution metering equipment in accordance with a procedure to be agreed between the parties.
- (3) Each party may have representatives present at the time of any verification of the accuracy of distribution metering equipment and the corporation must give a user notice sufficiently in advance of an intended verification to enable the user's representative to be present.
- (4) If a verification requested by the user under subregulation (2) reveals that the accuracy of the distribution metering equipment is within the established calibration accuracy, the user is to meet both parties' expenses of the verification.

87. Determining trading business' hourly sub-network outlet quantity

The trading business' hourly sub-network outlet quantity for a sub-network for a gas hour is by force of this regulation to be taken to have a value equal to the total energy quantity of gas that is to be taken to be passing through the notional gate point for the sub-network in that gas hour minus the sum of all users'

(other than the trading business') hourly sub-network outlet quantities for the sub-network for that gas hour.

[Regulation 87 amended in Gazette 10 March 1998 p.1359.]

88. Identification of closest physical gate point

A user's grant of access is, for each distribution outlet point at which the user is entitled to take delivery of gas, to identify the physical gate point in the sub-network in which that distribution outlet point is located which is closest to that distribution outlet point.

89. Standards generally

The design, layout, installation, location, operation and maintenance of, any site for and any work on or connected with, an outlet meter set or any other facility connected to or associated with, the gas distribution system must conform to good engineering practice and the standard of a reasonable and prudent person.

Division 6.2 — Other technical and operational matters

90. Corporation to operate and maintain system as reasonable and prudent person

The corporation must operate and maintain the gas distribution system to the standard of a reasonable and prudent person.

91. Multi-user allocation agreements

- (1) Users at a multi-user outlet point, and the gas customer of those users, may enter into a written multi-user allocation agreement dealing with —
 - (a) the allocation of gas deliveries among the users; and
 - (b) the communication to the corporation of the allocations in paragraph (a).

- (2) For each gas hour in respect of which there is no multi-user allocation agreement or an allocation is not communicated to the corporation for all gas delivered in the gas hour, the corporation may after consultation with the gas customer, allocate gas deliveries between some or all of the users as it sees fit.
- (3) Subject to regulation 79, allocations of gas deliveries under subregulation (1) or (2) are to be binding on the users to whom the allocations are made for all purposes under these regulations and a grant of access.

92. Applicant must have multi-user allocation agreement or submit to the corporation's allocations

Before an applicant may receive a grant of access entitling it to take delivery of gas at a multi-user outlet point, the applicant must either —

- (a) enter into an agreement with all users entitled to take delivery of gas at the multi-user outlet point for the time being, and their gas customer, which is to take effect as a multi-user allocation agreement, if the applicant receives the grant of access; or
- (b) acknowledge that, if it receives the grant of access, it will be bound by the corporation's allocations under regulation 91 (2) until it enters into a multi-user allocation agreement.

93. Corporation's allocations may effect curtailment

Whenever the corporation is empowered under the regulations or a grant of access to curtail gas deliveries to any user at a multi-user outlet point it may in its discretion give effect to that curtailment by making appropriate allocations of gas deliveries under regulation 91 (2), despite any multi-user allocation agreement, and it may do so without consulting with the gas customer under regulation 91 (2).

94. Gas losses and gas consumed by the corporation

The corporation may commingle with other gas in the gas distribution system any gas purchased by the corporation to replace —

- (a) gas used by the corporation in its operation of the gas distribution system; or
- (b) gas lost from the gas distribution system or otherwise unaccounted for.

95. Emergencies

- (1) Without limiting any other power under the Act, these regulations, any other law or a grant of access, and despite any other provision of these regulations or a grant of access, the corporation may in an emergency without notice to any other person do all things which it considers necessary to prevent injury, death, loss or damage to persons or property and to render the situation safe, including without limitation entering onto any land or premises, stopping, disconnecting or reducing any gas flow, curtailing any delivery of gas, not delivering any gas into the gas distribution system and giving any reasonable instructions to users.
- (2) The corporation must as soon as practicable after determining that an emergency exists give written notice of the emergency to all users affected either by the emergency or by the corporation's actions in dealing with the emergency, but a failure to give such written notice does not limit the corporation's powers under subregulation (1).
- (3) The corporation must, as soon as practicable after the emergency has been dealt with, remove itself and any person, machinery, equipment or thing under its control, from any land or premises into which it entered under subregulation (1), except to the extent that the person, machinery, equipment or thing is required to continue dealing with the emergency or to prevent its recurrence.

- (4) A user must comply with any reasonable instruction (including without limitation any instruction concerning the management of the user's or its gas customers' gas demand and any instruction directed to preservation or restoration of gas distribution capacity) given to it by the corporation during, and related to, an emergency, and a user is to be liable to the corporation for any injury, death, loss or damage suffered by the corporation by reason of the user's failure to comply with such an instruction.

Part 7 — Other access

96. Access from systems other than the gas transmission system and access to medium and low-pressure networks

- (1) A person seeking a grant of access to gas distribution capacity for the purposes of —
- (a) transporting gas which enters the gas distribution system from a source other than the gas transmission system; or
 - (b) transporting gas in a part of the gas distribution system which is not the high pressure system,

is to apply under these regulations, and the provisions of Parts 1, 2, 3 and 8 apply (with appropriate modifications) to the processing of that application and the making of any grant of access.

- (2) Subject to this regulation, the provisions of these regulations do not form part of, or apply in respect of, the terms of a grant of access referred to in subregulation (1).
- (3) Before the corporation makes a grant of access referred to in subregulation (1) the corporation and the applicant are to agree the terms for the grant of access.
- (4) Terms agreed under subregulation (3) —
- (a) are to deal with all matters required by the corporation in its discretion as a reasonable and prudent person in that user's circumstances;
 - (b) subject to paragraph (c), are as far as is technically and commercially feasible to follow the terms under these regulations for access to gas distribution capacity for the purposes of transporting in the high pressure system gas which enters the gas distribution system from the gas transmission system; and
 - (c) are to preserve the corporation's ability to correctly meter gas deliveries and determine prices for all users, are to be consistent with the safe, reliable and economic

operation of the gas distribution system, and are to avoid injury, death, loss or damage to the property or person of the corporation or any user, and unreasonable inconvenience to the corporation or any user.

- (5) Part 10 also applies (with appropriate modifications) to a grant of access referred to in subregulation (1).

[Regulation 96 amended in Gazette 2 May 2000 p.2111.]

Part 8 — Miscellaneous

97. Notices

- (1) For the purposes of these regulations and a grant of access, except where a contrary intention is expressed, a written notice may be communicated to a person by personal delivery, certified mail or facsimile transmission.
- (2) A user must from time to time advise the corporation in writing of an address located within the State and a facsimile number, and the corporation must advise the user in writing of its address and facsimile number.

98. Receipt of notices

- (1) A reference in these regulations or a grant of access to written notice before a certain time means that the written notice must be received at the intended address or facsimile machine by no later than that time.
- (2) For the purposes of these regulations or a grant of access, any written notice sent by facsimile machine is by force of this regulation to be taken to have been sent and received on the date and at the time printed on a transmission report produced by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the appropriate facsimile number, unless the recipient notifies the sender within one working day of the facsimile being sent that the facsimile was not received in its entirety in legible form.
- (3) For the purposes of these regulations or a grant of access, a written notice sent by certified mail is by force of this regulation to be taken to be received on the earlier of the date of receipt or on the second working day after the written notice was committed to post.

99. No common carriage

Neither the corporation nor any user is a common carrier of gas transported through the gas distribution system.

100. Corporation not a supplier of gas

Nothing in the Act, these regulations or any grant of access requires the corporation to supply gas to a user.

101. No disclosure of user information

Nothing in these regulations is to be taken to require the corporation to disclose to any person (including the trading business) information identifying the distribution outlet point at which a user is entitled to take delivery of gas, the flow rate of gas delivered to a user at any distribution outlet point (either expressed as an average or as a peak) or the energy value of gas delivered to a user at any distribution outlet point during any period.

102. Prescribed fees

- (1) Subject to subregulation (2), Schedule 2 sets out the prescribed fee for the purposes of each of the provisions of Schedule 6 to the Act referred to in Schedule 2.
- (2) The prescribed fee for the purposes of clause 3 (1) of Schedule 6 to the Act is to be calculated by applying the hourly rate set out in Schedule 2 to the number of hours (which may include a part of an hour) of work which the distribution business' personnel or sub-contractors take to prepare the report and forecast.

Part 9 — Transitional provisions to do with commencement of these regulations

[Heading inserted in Gazette 2 May 2000 p. 2112.]

103. Pre-scheme distribution metering equipment deemed to comply

- (1) Any outlet meter set installed and commissioned by or with the approval of SECWA or the corporation, and any metering arrangement (including without limitation an internal arrangement) implemented or followed by, or entered into with, SECWA or the corporation, before 1 January 1997 is by force of this regulation to be taken to comply with the requirements of Part 6.
- (2) The corporation and a user are in respect of any outlet meter set or metering arrangement to which subregulation (1) applies, by force of this regulation to be taken to have complied with the requirements of Part 6.

104. Trading business' initial grant

- (1) The trading business is entitled to take delivery of gas at distribution outlet points in accordance with the terms of a memorandum of understanding clearly marked "Memorandum of Understanding for the Trading Business' Entitlement to Take Delivery of Gas from the Gas Distribution System" and signed by the general manager of the distribution business and the general manager of the trading business before 00:00 hours on 1 January 1997, which, subject to regulation 105, may be amended from time to time thereafter.
- (2) For the purposes of the Act, these regulations or any third person, the memorandum of understanding is to be taken to have the same effect as if the trading business were a separate legal entity and a grant of access had been made to the trading business immediately after the commencement of these regulations on the terms of the memorandum of understanding.

- (3) The memorandum of understanding is to be taken to comply in all respects with the requirements of these regulations, even though the operational and technical circumstances which apply to the trading business' entitlement to take delivery of gas require the terms of the memorandum of understanding to contain provisions which are inconsistent with these regulations or which would not be contained in a grant of access to a user other than the trading business, and without limitation, nothing in these regulations prevents the memorandum of understanding from —
- (a) providing, and being amended from time to time to continue to provide, that the trading business is to have the contracted peak rate set out in the memorandum of understanding for each distribution outlet point at which the trading business takes delivery of gas to deliver to a gas customer at or downstream of the distribution outlet point, which gas customer is, or is to become within the following 12 months, a threshold gas customer;
 - (b) providing that the trading business at each distribution outlet point which does not require to have a contracted peak rate set out in the memorandum of understanding under paragraph (a) above is entitled to take delivery of gas at a rate that will enable the trading business to meet its gas customers' gas demands at or downstream of that distribution outlet point;
 - (c) identifying the distribution outlet points which do not require to have a peak contracted rate set out in the memorandum of understanding under paragraph (a) above, by a generic description and not a precise description of each distribution outlet point;
 - (d) providing that the energy price to be paid by the trading business is to be based upon the energy value of gas delivered to the trading business from each sub-network rather than at each distribution outlet point; and
 - (e) providing that for the trading business the quantity of gas referred to in regulation 56 is to be a quantity of gas

s. 105

accumulated across a sub-network, and not a quantity of gas at a distribution outlet point.

- (4) The distribution business is to make available a copy of the memorandum of understanding (excluding the Appendices which set out the threshold distribution outlet points, the contracted peak rates, the user specific facilities and the outlet gas pressures) to any person when requested in writing by that person under regulation 57(b).

105. Trading business and new threshold gas customers

The trading business can only become entitled to take delivery of gas at a distribution outlet point at which the trading business was not previously entitled to take delivery of gas where the gas customer to whom the trading business is to deliver gas downstream of the distribution outlet point is a threshold gas customer, under a grant of access obtained as if the trading business were a new user.

Part 10 — Transitional provisions to do with termination of these regulations

[Heading inserted in Gazette 2 May 2000 p.2112.]

106. This Part to prevail

To the extent that there is any inconsistency between this Part and anything else in these regulations, this Part prevails.

[Regulation 106 inserted in Gazette 2 May 2000 p. 2112.]

107. No further price redetermination required

Despite anything in the pricing methods or these regulations about the annual redetermination of prices —

- (a) a redetermination of prices is not required for 1999 or at any time after 1999 while these regulations continue to apply; and
- (b) the most recent redetermination of prices is to continue in effect.

[Regulation 107 inserted in Gazette 2 May 2000 p. 2112.]

108. Duration of grants of access

- (1) A grant of access made before the commencement of the *Gas Pipelines Access (Repealed Access Scheme Modification) Regulations 2000* is amended by including in it a term that, if it does not end sooner, the grant ends at the time described in regulation 109 and cannot be extended beyond that time.
- (2) A term included by subregulation (1) prevails over anything in the grant that may be inconsistent with the term, and has effect despite any option to extend the duration of the grant.
- (3) To the extent that a provision of these regulations would be inconsistent with a term included by subregulation (1) in a grant of access —

s. 109

- (a) the provision does not, despite regulation 48, apply to that grant of access; and
- (b) if the provision is in Schedule 1, the provision is not, despite regulation 47(1), an essential term for that grant of access.

[Regulation 108 inserted in Gazette 2 May 2000 p. 2112-3.]

109. Time by which grants of access end

- (1) The time by which a grant of access is to end is the end of the first gas day to end after a period of 3 months from the approval day has elapsed, unless a later time is approved under subregulation (2) by the Coordinator.
- (2) If the Coordinator is satisfied that the parties to a grant of access are genuinely attempting to enter into a Code access agreement, the Coordinator may, at the request of the parties and after consulting the Regulator, approve a later time, not more than 6 months after the time described in subregulation (1), as the time by which the grant of access is to end.

- (3) In this regulation —

“approval day” means the day on which an Access Arrangement is approved under the Gas Pipelines Access (Western Australia) Law for the pipeline concerned;

“Code access agreement” means an agreement in accordance with the Gas Pipelines Access (Western Australia) Law for access to a service provided by means of the pipeline concerned;

“Gas Pipelines Access (Western Australia) Law” has the same meaning as it has in the *Gas Pipelines Access (Western Australia) Act 1998*;

“Regulator” means the person holding or acting in the office of the Western Australian Independent Gas Pipelines Access Regulator established by section 27 of the *Gas Pipelines Access (Western Australia) Act 1998*.

[Regulation 109 inserted in Gazette 2 May 2000 p. 2113.]

110. Contracts already existing

Regulation 47(2) does not prevent the application of anything in this Part to a grant of access made before the commencement of the *Gas Pipelines Access (Repealed Access Scheme Modification) Regulations 2000*.

[Regulation 110 inserted in Gazette 2 May 2000 p. 2113.]

Schedule 1 — The Grant of Access

[r. 45]

GAS CORPORATION ACT 1994
GAS DISTRIBUTION REGULATIONS 1996
GRANT OF ACCESS

This is a grant of access to gas distribution capacity

by

the **GAS CORPORATION** trading as **ALINTAGAS**, a body corporate
constituted by the *Gas Corporation Act 1994*, of The Quadrant,
1 William Street, Perth, Western Australia

(“the corporation”)

to

[Insert the name and address of each person who comprises the user].

(“the user”)

This grant of access is dated.....

Recitals

- A. The corporation is the operator of the gas distribution system.
- B. The user has submitted an application under Part 3 of the regulations for a grant of access entitling the user to take delivery of gas at the distribution outlet points set out in Appendix 3.
- C. The corporation has accepted the user’s application and by this document makes a grant of access entitling the user to take delivery of gas at the distribution outlet points.
- D. Under subsection (2) of section 94 of the Act, this grant of access is to be taken to constitute a contract between the corporation and the user.

Chapter 1 — Interpretation

1. Interpretation

(1) In this grant of access, unless the contrary intention appears —

“**Act**” means the Gas Corporation Act 1994;

“**direct damage**”—

- (a) in relation to any person, means loss or damage which is not indirect damage; and

- (b) in relation to the corporation only, means in addition any liability of the corporation to any user, and any claim, demand, action and proceeding brought against the corporation by any user, and any of the corporation's costs or expenses in connection with the claim, demand, action or proceeding;

“distribution outlet point” means a distribution outlet point specified in Appendix 3;

“guest party” means the party to whom entry is given or for whom entry is procured under clause 47;

“host party” means the party granting or procuring entry under clause 47;

“indirect damage” suffered by a person, means —

- (a) any consequential loss or damage however caused, including without limitation any —
- (i) loss of (or loss of anticipated) use, production, revenue, income, profits, business and savings; or
- (ii) business interruption,

whether or not the consequential loss or damage was foreseeable; and

- (b) any liability of the person to any other person, or any claim, demand, action or proceeding brought against the person by any other person, and any costs or expenses in connection with the claim, demand, action or proceeding,

but in relation to the corporation does not mean loss or damage referred to in paragraph (b) of the definition of “direct damage” in this clause;

“outlet meter set” means each outlet meter set specified in Appendix 4;

“prescribed dispute” means a dispute prescribed by the *Gas Referee Regulations 1995* as a dispute over which the referee has exclusive jurisdiction;

“prescribed interest rate”, in respect of a day from which interest is to be payable, means an annual interest rate which is 3 percentage points higher than the bank bill rate, where the bank bill rate is —

Sch. 1

- (a) the quoted rate for Bank Bill Reference Rate (Mid-Rate) on Telerate page 39373 at or about 10:00 hours (Sydney time) on that day as being the rate for a one month bill; or
- (b) if the bank bill rate cannot be determined by the procedure in paragraph (a) of this definition, a rate determined by the corporation as a reasonable and prudent person having regard to comparable indices then available;

“regulations” means the *Gas Distribution Regulations 1996* as in force at the date of this grant of access, and excludes (unless the parties agree in writing to the contrary) any subsequent amendments to those regulations.

- (2) Unless the contrary intention appears, any expression defined in the Act or the regulations has the same meaning when used in this grant of access, whether that expression is defined in respect of all or part of the regulations.
- (3) Unless the contrary intention appears, a reference in this grant of access to —
 - (a) a Division, Part or regulation is a reference to a Division, Part or regulation in the regulations; and
 - (b) an Appendix or clause is to an Appendix or clause of this grant of access.
- (4) A reference in this grant of access to a regulation or provision forming part of this grant of access means that the regulation or provision has effect as if set out in full in this grant of access.
- (5) A reference in this grant of access to a particular point on the gas distribution system is to the point identified as such in this grant of access, or (if the point is not identified in this grant of access) is a reference to the point identified as such in the description of the gas distribution system published by the corporation under clause 3 (2) of Schedule 6 to the Act.

Chapter 2 — The grant of access

2. The grant of access

The corporation by this instrument agrees that the user is entitled to take delivery of gas at the distribution outlet points on the terms set out in this grant of access.

3. Parties

[If necessary, this clause is to set out any terms agreed between the corporation and the user under regulation 31(h) (v).]

4. Duration of grant

- (1) This grant of access has effect on and from 08.00 hours on and ends at 08.00 hours on
- (2) The user has the option to extend this grant of access for the duration or durations (if any) set out in Appendix 2.

5. Contracted peak rates

The contracted peak rate for each distribution outlet point is set out in Appendix 3.

6. Prices

- (1) The user is to pay the prices set out in Appendix 1.
- (2) The closest physical gate point for each distribution outlet point is identified in Appendix 1.
- (3) The prices set out in Appendix 1 may be varied from time to time under Part 5.

7. User's right to receive gas at distribution outlet points

Subject to regulation 56 and to any provision of the regulations or of this grant of access entitling the corporation to wholly or partly curtail gas deliveries to the user, the user may at any time at each distribution outlet point take delivery from the corporation of gas at a rate less than or equal to the user's contracted peak rate at the distribution outlet point.

Sch. 1

8. User specific facilities

The user specific facilities (including the outlet meter sets) are described in Appendix 4.

Chapter 3 — Curtailment

9. Corporation to minimize curtailment

The corporation must in its operation and maintenance of the gas distribution system use reasonable endeavours to minimize the magnitude and duration of any curtailment of gas deliveries to the user, except where the curtailment is attributable to the default of a user.

10. Curtailment

The corporation may at any time and from time to time, and (subject to clause 9) to such an extent and for such duration as it considers appropriate in its discretion as a reasonable and prudent person, wholly or partly curtail gas deliveries to the user at a distribution outlet point —

- (a) if the level of gas distribution capacity falls or remains below that necessary to meet all users' requirements;
- (b) during any emergency or any event of *force majeure*;
- (c) if the user exceeds its contracted peak rate at the distribution outlet point;
- (d) if any requirement of regulation 56 (1) (a) and, if applicable, 56 (1) (b) is not met in respect of the gas;
- (e) if the designated shipper in respect of the gas is not entitled to have delivered, or fails to have delivered, an equivalent quantity of gas at a gate point;
- (f) under regulation 67 if applicable;
- (g) under regulation 93 if applicable;
- (h) under clause 13;
- (i) under clause 21, if the user is in default under this grant of access;
- (j) if the corporation considers as a reasonable and prudent person that it would be unsafe or may give rise to an unsafe

situation for the operation of the gas distribution system to deliver gas to the user at the distribution outlet point; and

- (k) if the corporation becomes aware of any non-compliance with the *Gas Standards Regulations 1983* downstream of the distribution outlet point by the user, the gas customer or any other person which may give rise to an unsafe situation.

11. Advance notice of curtailment

- (1) The corporation must where practicable use reasonable endeavours to provide the user with reasonable advance written notice of the magnitude, starting time and the expected duration of an impending curtailment of gas deliveries to the user.
- (2) Any written notice under subclause (1) must give the reasons for the curtailment.

12. Mechanism for curtailment

- (1) The corporation may effect a curtailment of gas deliveries to the user either physically or by written notice to the user.
- (2) A written notice under subclause (1) is to stipulate the duration of the curtailment, whether the user is entitled to take delivery of gas at the distribution outlet points specified in the written notice, and, if so, at what rate or rates.
- (3) The user must not take delivery of gas at distribution outlet points specified in the written notice under subclause (1) at a rate or rates greater than the rate or rates specified in the written notice.

13. Curtailment for system reinforcement

The corporation may —

- (a) at any time by arrangement with the user; or
- (b) at any time at least 90 days after giving the user written notice under this paragraph,

and subject always to clause 9, wholly or partially curtail gas deliveries to the user to the extent reasonably necessary to permit the corporation to undertake any system reinforcement or user specific reinforcement.

Chapter 4 — Invoicing and payment

14. Monthly invoicing for charges payable in arrears

The corporation must, within 10 working days after the end of a month, provide to the user an invoice or invoices for the month just ended showing —

- (a) the gas distribution prices payable under this grant of access for the month;
- (b) a summary of any metering information used to calculate the charges in paragraph (a);
- (c) all other amounts which under this grant of access are payable in arrears or refundable for the month;
- (d) any outstanding amounts from previous months and the interest payable on those amounts; and
- (e) such other information as the parties may agree.

15. Payment within 15 working days

- (1) The user must, within 15 working days after the end of a month, pay to the corporation in the manner shown on the invoice provided to the user under clause 14 for that month all amounts shown on the invoice as payable under this grant of access.
- (2) If the user fails to comply with subclause (1) then, without prejudice to the corporation's other rights, the user must pay interest on any unpaid amount calculated daily at the prescribed interest rate from 15 working days after the end of the month in respect of which the invoice has been provided, until payment.

16. Disputed invoices

- (1) If the user disputes any amount set out in an invoice to be payable, then the user must under clause 15 pay the undisputed portion (if any) and one half of the disputed portion of the amount shown on the invoice, and must, within 15 working days of the end of the month in respect of which the invoice has been provided, give written notice to the corporation that it disputes the amount and provide in that written notice full details of the dispute.

- (2) Any amount withheld by the user under this clause but subsequently found to have been payable is, without prejudice to the corporation's other rights, to attract interest calculated daily at the prescribed interest rate from 15 working days after the end of the month in respect of which the invoice has been provided, until payment.
- (3) 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 the corporation repays the amount to the user.

17. Correction of payment errors

If a party detects any underpayment or overpayment by a party of any amount, the detecting party must give written notice to the other party of the underpayment or overpayment, and an adjusting payment is to be made by the appropriate party within 10 working days of that written notice, which adjusting payment is, without prejudice to the parties' other rights, in the case of an underpayment to the corporation to attract interest calculated daily at the prescribed interest rate from the date of underpayment until payment.

Chapter 5 — Default and termination

18. Default by a party

A party is in default under this grant of access in any one or more of the following circumstances —

- (a) if a party makes default in the due and punctual payment, at the time and in the manner prescribed for payment by this grant of access, of any amount payable under this grant of access;
- (b) if a party makes default in the due and punctual performance or observance of any of the other covenants, agreements, conditions or other obligations contained, or implied by the operation of law, in this grant of access;
- (c) if —

Sch. 1

- (i) any execution or other process of any court or authority is issued against or levied upon any material part of the party's property or assets;
 - (ii) a petition or application is presented (and not withdrawn within 10 working days) or an order is made or a resolution is passed for the winding up or dissolution without winding up of the party otherwise than for the purpose of reconstruction or amalgamation under a scheme to which the other party has given consent;
 - (iii) a receiver or receiver and manager of the undertaking or any material part thereof of the party is appointed;
 - (iv) the party proposes to enter or enters into any arrangement, reconstruction or composition with or for the benefit of its creditors to which the other party has not given its consent;
 - (v) an administrator of the user is appointed or the board of directors of the party passes a resolution to the effect of that specified in section 436A(1) of the *Corporations Law*;
 - (vi) the party fails (as defined by section 459F of the *Corporations Law*) to comply with a statutory demand;
 - (vii) a controller (as defined in the *Corporations Law*) is appointed in respect of the party or the whole or a material part of the party's undertaking, property or assets;
 - (viii) application is made to a Court for an order in respect of the party under section 260 of the *Corporations Law*; or
 - (ix) any event referred to in section 459C(2) of the *Corporations Law* occurs in respect of the party;
- (d) if—
- (i) there is any adverse change in the business or financial condition of the party; or
 - (ii) any event occurs,

which could, in the reasonable opinion of the other party, in any way jeopardize the ability of the party to meet its obligations to the other party under this grant of access;

- (e) if the party is found to be materially in breach of any warranty given to the other party, whether in this grant of access, the application which gave rise to this grant of access, or any instrument relating to this grant or that application, or if any statement or representation made by the party in any instrument described above, is found to be false or misleading in any material particular;
- (f) if the party is in default under any other grant of access between the parties; or
- (g) if the party is the user and is in default under an access contract for the transport of gas to the notional gate point associated with the sub-network in which a distribution outlet point specified in Appendix 3 is located.

19. Notice of default

If a party is in default under this grant of access, then the other party may give written notice by certified mail to the defaulting party specifying the default.

20. When a party may exercise remedy

A party cannot terminate this grant of access under clause 22 —

- (a) for a default under clause 18(a), unless it has given a written notice under clause 19 of that default, and the default has not been remedied within 3 working days after the other party receives that written notice; and
- (b) for any other default under clause 18, unless it has given a written notice under clause 19 of that default, and the default has not been remedied within 7 working days after the other party receives that written notice.

21. Curtailment for the user's default

Subject to any terms agreed under regulation 31(h) (v), if the user is in default under this grant of access, then the corporation may in its sole discretion wholly or partly curtail gas deliveries to the user at a

Sch. 1

distribution outlet point, or reduce or suspend any other service to the user, until such time as all defaults under clause 18 have been remedied, whether or not those defaults were the subject of a written notice under clause 19.

22. Termination

Subject to clause 20, if a party is in default under this grant of access then the other party may in its sole discretion by written notice to the defaulting party terminate this grant of access.

23. Saving of the corporation's other remedies

A party's rights under clause 22 and the corporation's rights under clause 21 are in addition to any other rights and remedies available to the party, whether under the regulations or any law, or this grant of access, or in contract, tort, equity or otherwise.

24. Effect of termination

- (1) Termination of this grant of access by a party under clause 22 or 25 (6) —
 - (a) does not prejudice the rights or remedies accrued to either party at the date of termination; and
 - (b) subject to subclause (2), relieves each party of all further obligations under this grant of access to the other party.
- (2) Termination of this grant of access by a party under clause 22 or 25 (6) does not relieve the other party of its obligations —
 - (a) to pay all amounts outstanding at the time of termination; and
 - (b) to pay all amounts which would have become payable under this grant of access but for its termination.

Chapter 6 — Liability of parties

25. Force majeure

- (1) Subject to subclause (2) a party is excused from performance of, and is not liable for any failure in carrying out, any of its obligations under this grant of access if it is prevented from doing so by *force majeure*.

-
- (2) The occurrence of *force majeure* does not relieve the user of the obligation to pay any charge or charges which is specified by the regulations or this grant of access to be payable despite the operation on the user of *force majeure*.
 - (3) The inability to pay money, however caused, does not constitute *force majeure*.
 - (4) If a party claims the benefit of *force majeure*, it must —
 - (a) promptly give written notice to the other party of the occurrence and circumstances in which the claim arises;
 - (b) use its best endeavours to remedy the consequences without delay; and
 - (c) resume full performance of its obligations under this grant of access as soon as reasonably practicable.
 - (5) Settlement of strikes, lock outs, stoppages and restraints of labour or other industrial disturbances are entirely within the discretion of the party claiming the benefit of this clause and the party may refrain from settling industrial disturbances or may settle them on any terms it considers to be in its best interests.
 - (6) If at any time during the duration of this grant of access a party is validly claiming, and has for a consecutive period of at least one year validly claimed, the benefit under this clause of *force majeure* in respect of a failure by the party to substantially comply with its obligations under this grant of access, then either party may in its sole discretion by written notice to the other party terminate this grant of access.

26. Liability for negligence and default limited to direct damage

- (1) If a party —
 - (a) is negligent in any matter relating to or arising out of this grant of access, then the party; or
 - (b) defaults in respect of its obligations to the other party under this grant of access, then (subject to subclause (2)) the party,is liable to the other party (including its directors, servants, consultants, independent contractors and agents) for, and indemnifies the other party (including its directors, servants, consultants,

Sch. 1

independent contractors and agents) against, any direct damage to the other party caused by or arising out of the negligence or default.

- (2) The corporation is not liable to the user for direct damage or indirect damage caused by or arising out of any curtailment of gas deliveries to the user, or any non-delivery of gas into the gas distribution system, where that curtailment or non-delivery is undertaken under the regulations or this grant of access.

27. Liability for fraud

A party who is fraudulent in respect of its obligations to the other party under this grant of access is liable to the other party for, and indemnifies the other party against, any direct damage or indirect damage caused by or arising out of the fraud.

28. No liability for indirect damage

Except as provided in clause 27, neither party is in any circumstances to be liable to the other party for any indirect damage, whether arising under a law, or in contract, tort or equity, or otherwise.

29. No liability arising out of any approval by the corporation

Without limiting the generality of clause 28, the corporation is not, except as provided in clauses 26 and 27, in any circumstances liable to the user for any injury, death, loss or damage (including indirect damage), caused by or arising out of any approval by the corporation of any design, location or construction of, or proposed operating or maintenance procedures in relation to, any equipment, apparatus, machine, component, installation, cable, pipe or facility connected to, or adjacent to and associated with, the gas distribution system.

30. Saving of contractual payments

Nothing in this Chapter limits the liability of either party to make all payments due under this grant of access.

31. Each limitation separate

Each limitation or exclusion created by this Chapter and each protection given to the corporation or the user or to their respective directors, servants, consultants, independent contractors and agents by

this Chapter is a separate limitation, exclusion or protection applying and surviving even if for any reason any provision of this Chapter is held inapplicable in any circumstances.

Chapter 7 — Dispute resolution

32. Parties to attempt to resolve

- (1) If any dispute arises between the parties, either party may give written notice to the other party specifying the details of the dispute.
- (2) If the dispute remains unresolved for a period of 30 days after the date on which the written notice was given under subclause (1), authorized officers of the parties are to meet within 5 working days after the end of that 30 day period and use their best endeavours to resolve the dispute.

33. Disposition of unresolved disputes

If the dispute remains unresolved for a further 10 working days after the last date by which the authorized officers must meet under clause 32, then —

- (a) if the dispute is a prescribed dispute, it is to be dealt with under the Gas Referee Regulations 1995; and
- (b) if the dispute is not a prescribed dispute, then unless the parties agree to refer the dispute to the referee under the Gas Referee Regulations 1995, it must be referred to arbitration under clause 34.

34. Arbitration

- (1) Where under clause 33(b) the parties must refer a dispute to arbitration, either party may give written notice to the other party specifying with reasonable particularity the matter in dispute, and the dispute is by that written notice by force of this clause referred to arbitration of a single arbitrator under this clause.
- (2) If the parties cannot agree on a person to be arbitrator, either party may request the President for the time being of the Law Society of Western Australia to nominate a person to be arbitrator.
- (3) In any arbitration —

Sch. 1

- (a) the proceedings are to be conducted generally under the *Commercial Arbitration Act 1985* as modified by this grant of access;
 - (b) a party may be represented by a legal practitioner; and
 - (c) the proceedings are to be conducted in Perth.
- (4) In conducting proceedings the arbitrator is not to be bound by the rules of evidence.
- (5) The arbitrator must not order any of the parties to take any steps to achieve a settlement of the dispute being arbitrated.
- (6) A party to the arbitration proceedings may —
 - (a) apply to a Judge for the determination of any question of law that may arise in the course of the arbitration; or
 - (b) appeal to a Judge on any question of law arising out of an award by an arbitrator.
- (7) The arbitrator may —
 - (a) of his or her own motion, but only to the extent reasonably necessary to facilitate the determination of a dispute presently before him or her, retain the services of any person suitably qualified in any field of expertise to advise the arbitrator in relation to matters within that field of expertise;
 - (b) award such interest as he or she considers appropriate;
 - (c) if a party has overpaid another, whether under a mistake of law or fact, order repayment of the sum overpaid together with interest; and
 - (d) rectify any term of this grant of access which is not an essential term, so as to conform to the true intention of the parties, but any rectification must comply with the Act, the regulations and the principles of the general law applicable to the rectification of contracts.
- (8) If the arbitrator retains a person under subclause (7) (a) —
 - (a) that person may sit with the arbitrator during the hearing of all evidence relating to the person's field of expertise and may take part in the proceedings;

- (b) the arbitrator, in making an award, may adopt the opinion of that person, after first disclosing the opinion to the parties and receiving the parties' submissions thereon;
- (c) the costs and expenses of that person must be reasonable and are to be in the arbitrator's discretion and, without limiting that discretion, may be dealt with as part of the costs of the proceedings; and
- (d) the duration of retainer of that person must end no later than the day on which the arbitrator publishes his or her final award in the proceedings in question.

35. Dispute not a default

Any dispute in good faith being dealt with under this Chapter or under the *Gas Referee Regulations 1995* does not constitute a default for the purposes of clause 18.

Chapter 8 — Gas pressure

36. Gas pressure

The maximum and minimum pressures between which the corporation is to deliver gas to the user at the distribution outlet points are set out in Appendix 5.

Chapter 9 — Balancing

37. Corporation to maintain balance

The corporation may do all things expected of a reasonable and prudent person to maintain a balance between total gas inputs to, and total gas outputs from, the gas distribution system.

Chapter 10 — Miscellaneous

38. The user's representations and warranties

- (1) The user, by making the application which gave rise to this grant of access and by exercising its rights under this grant of access, represents and warrants to the corporation that —

Sch. 1

- (a) it has duly complied, and will up to the termination of this grant of access continuously comply, with all laws relating to environmental, building, construction, engineering, planning, health, safety or occupational health and safety matters, with respect to any of its obligations connected with, arising out of or in relation to the Act, the regulations or this grant of access;
- (b) it has in full force and effect all authorizations, licences, permits, consents, certificates, authorities and approvals necessary under all laws to enter into this grant of access, to observe its obligations under the Act, the regulations and this grant of access, and to allow those obligations to be enforced;
- (c) its obligations under this grant of access are valid, binding and enforceable against it;
- (d) this grant of access and any transaction under it does not contravene the user's constituent documents or any law or any of its obligations or undertakings by which it or any of its assets are bound or cause to be exceeded any limitation on its or its directors' powers;
- (e) its obligations to make payments under this grant of access rank at least equally with all unsecured and unsubordinated indebtedness of the user except debts mandatorily preferred by law;
- (f) neither the user nor any of its related bodies corporate (as defined in the *Corporations Law*) is in default under a law affecting any of them or their respective assets, or any obligation or undertaking by which it or any of its assets are bound, which default will, or might reasonably be expected to, materially affect its ability to perform its obligations under this grant of access;
- (g) there is no pending or threatened action or proceeding affecting the user or any of its related bodies corporate (as defined in the *Corporations Law*) or any of their respective assets before a court, referee, arbitrator or other tribunal which will, or might reasonably be expected to, materially affect its ability to perform its obligations under this grant of access;

- (h) neither the user nor any of its related bodies corporate (as defined in the *Corporations Law*) has immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment before judgment, attachment in aid of execution, execution or otherwise); and
 - (i) the user is not an agent or trustee (except if and to the extent that it is disclosed as such in this grant of access) in relation to this grant of access or the gas to be delivered or received under this grant of access.
- (2) These representations and warranties are by force of this clause to be taken to be made on each day on which —
- (a) the corporation delivers gas to the user at a distribution outlet point; or
 - (b) any amount payable by the user to the corporation under this grant of access is or may be outstanding.

39. Corporation's representations and warranties

- (1) The corporation represents and warrants to the user that —
- (a) it has duly complied, and will up to the termination of this grant of access continuously comply, with all laws relating to environmental, building, construction, engineering, planning, health, safety or occupational health and safety matters with respect to any of its obligations connected with, arising out of or in relation to this grant of access;
 - (b) it has in full force and effect all authorizations, licences, permits, consents, certificates, authorities and approvals necessary under all laws to enter into this grant of access, to observe its obligations under the Act, the regulations and this grant of access, and to allow those obligations to be enforced;
 - (c) it has in full force and effect all materially necessary leases, licences or easements to construct, operate and maintain the outlet meter set or stations and all metering and other facilities for which it is responsible under the regulations and this grant of access;
 - (d) its obligations under this grant of access are valid, binding and enforceable against it;

Sch. 1

- (e) neither the corporation nor any of its subsidiaries is in default under any law affecting any of them or their respective assets, or any obligation or undertaking by which they or any of their respective assets are bound, which default will or might reasonably be expected to materially affect the corporation's ability to perform its obligations under this grant of access;
 - (f) there is no pending or threatened action or proceeding affecting the corporation or any of its subsidiaries or any of their respective assets before a court, referee, arbitrator or other tribunal which will, or might reasonably be expected to, materially affect the corporation's ability to perform its obligations under this grant of access;
 - (g) subject to the provisions of the Act, the corporation does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment before judgment, attachment in aid of execution, execution or otherwise); and
 - (h) it controls the gas distribution system.
- (2) The representations and warranties in this clause are to be taken to be made on each day on which —
- (a) the corporation delivers gas to the user at a distribution outlet point; or
 - (b) any moneys payable by the corporation to the user under this grant of access is or may be outstanding.

40. Corporation may deal with gas

The corporation may deal with any gas in the gas distribution system in any way consistent with its sole title to and possession of the gas, and may without limitation consume (for any operational or other purpose and before meeting any obligation to deliver gas to a user under clause 7), compress, clean, process, odourise and store the gas and commingle the gas with any other gas in the gas distribution system.

41. Exclusion of right to use and property rights

Nothing in, and nothing done under, this grant of access or the regulations gives the user any right to use all or any part of, or any legal or equitable right to or interest in —

- (a) any gas in the gas distribution system; or
- (b) all or any part of the gas distribution system.

42. Records and information

Each party must prepare and maintain proper books, accounts, records and inventories of all matters connected with or relating to this grant of access, and must retain those books, accounts, records and inventories for at least 2 years.

43. No waiver

No failure or delay by a party in exercising any of its rights under this grant of access operates as a waiver of the party's rights or prevents the party from subsequently enforcing any right or treating any breach by the other party as a repudiation of this grant of access.

44. Entire agreement

Subject to any provisions of the regulations or this grant of access to the contrary, this grant of access constitutes the entire agreement between the parties on the subject matter of this grant of access and supersedes all prior negotiations, representations and agreements between the parties.

45. Severability

If any provision of this grant of access is held illegal or unenforceable by any judgment of a referee, court, arbitrator or tribunal having competent jurisdiction, the judgment does not affect the remaining provisions of this grant of access unless the remaining provisions of this grant of access would have a significantly different meaning or effect to their meaning or effect prior to the provision being held illegal or unenforceable, in which case this grant of access is to be at an end and neither party is to have any further claim against the other of them except for obligations already accrued due for performance.

Sch. 1

46. Governing law

This grant of access is to be construed and interpreted under the law of the State and the user by making the application which gave rise to this grant of access and by exercising its rights under this grant of access, and the corporation by making this grant of access, submit to the exclusive jurisdiction of the courts of the State and the referee.

47. Entry and inspection

- (1) Each party must give to, or use its reasonable endeavours to procure for the other party all reasonable rights of entry —
 - (a) for the purposes of constructing, installing, operating, maintaining and verifying the accuracy of any outlet meter set, other equipment or thing (and if the guest party is the corporation, the gas distribution system);
 - (b) to inspect for safety or other reasons the construction, installation, operation, maintenance and repair of any outlet meter set, or other equipment or thing (and if the guest party is the corporation, the gas distribution system); and
 - (c) for any other purpose connected with or related to the grant of access.
- (2) Any entry under subclause (1) is made in all respects at the expense and risk of the guest party, who must make good any damage occasioned by or resulting from the entry.
- (3) The guest party must —
 - (a) when it seeks to exercise a right of entry under this clause, give reasonable advance notice to the host party specifying the proposed time and duration of entry; and
 - (b) take all reasonable steps to ensure that during the entry its servants, consultants, independent contractors and agents cause as little inconvenience to the host party as possible and at all times comply with all reasonable safety standards and other requirements of the host party.
- (4) To the extent that any equipment or thing is located on the premises of a third person, the parties must use their reasonable endeavours to secure for either or both of the parties a right of entry to that third person's premises.

- (5) The rights of entry under this clause are in addition to, and do not derogate from, the corporation's rights of entry for emergency reasons under regulation 95.

48. Ownership, control, maintenance and risk

- (1) In the absence of any agreement between the parties to the contrary, the corporation is at all times before, during the currency of, and after the expiry of, any grant of access to be taken to own all user specific facilities, including all distribution metering equipment and all other plant, equipment, pipelines and facilities at each outlet meter set.
- (2) In the absence of any agreement between the parties to the contrary, the distribution outlet points mark the boundaries of ownership of all plant, equipment, pipelines and facilities, and, as between the parties and in the absence of evidence to the contrary, the user is to be presumed to own any relevant thing downstream of the distribution outlet points, and the corporation is to be presumed to own any relevant thing upstream of the distribution outlet points.
- (3) In the absence of any agreement between the parties to the contrary, the responsibility to install, commission, operate and maintain, and the risk in relation to, all plant, equipment, pipelines and facilities follows ownership.
- (4) In this clause, the expressions “**upstream**” and “**downstream**” refer to the flow of gas through the distribution outlet point in question, and not to the flow of gas through the gas distribution system as a whole.

49. Addresses for notices

- (1) Until further notice, the corporation's address for written notices is [*set out details of the corporation's address and facsimile number*].
- (2) Until further notice, the user's address for written notices is [*set out details of the user's address and facsimile number*].

50. Corporation may require security from user

- (1) The user must immediately provide to the corporation details of any change in its legal status or of any material adverse change in its financial position.

Sch. 1

- (2) If at any time the corporation is not satisfied that the user is and will remain able to meet its obligations under this grant of access the corporation may as a reasonable and prudent person require the user to provide to the corporation's satisfaction security for those obligations.
- (3) Subclause (2) applies separately to and in respect of each person who constitutes a user, regardless of whether that person's liability under this grant of access is joint, several or joint and several.

THE COMMON SEAL of)
the **GAS CORPORATION**)
was affixed in the presence of:)

.....
DIRECTOR

.....
DIRECTOR/EXECUTIVE OFFICER

Appendix 1 — Pricing

1 USER'S NETWORK PRICES

- User's sub-network:
- Sub-network factor:
- Closest physical gate point:
- Distance between physical gate point and distribution outlet point:
- User's demand price:
- User's energy price:

2 USER'S SERVICE PRICE:

3 OPPORTUNITY COST PRICE (IF APPLICABLE):

4 COMMERCIAL VIABILITY ARRANGEMENTS (IF APPLICABLE):

5 REDETERMINATION OF PRICES

All the prices set out in paragraphs 1 and 2 are subject to change according to any redetermination of prices undertaken by the corporation.

Appendix 2 — Option[s] to extend grant of access

[Set out each option period (if any).]

Appendix 3 — Contracted distribution outlet points and contracted peak rates

[The following table is to be expanded as necessary, and repeated for each contracted distribution outlet point to which this grant of access relates.]

Distribution outlet point number..... (Location:.....)	
Period	Contracted peak rate (GJ/h)
<i>[Set out each period to which a particular contracted peak rate relates, which will be the duration of the grant of access if there are to be no variations.]</i>

Appendix 4 — User specific facilities

[Describe all user specific facilities, including the outlet meter sets.]

Appendix 5 — Outlet pressures

[To be agreed between the corporation and the user.]

[Schedule 1 amended in Gazette 10 March 1998 p.1359.]

Sch. 2

Schedule 2 — Prescribed Fees

Provision of Schedule 6 to the Act	Prescribed fee
Clause 3 (1)	\$60.00 per hour
Clause 3 (2)	\$50.00 per copy
Clause 5 (1) (d)	\$50.00 per copy
Clause 5 (3) (a)	\$50.00 per copy
Clause 5 (3) (b)	\$50.00 per copy
Clause 5 (3) (c)	\$50.00 per copy

[r. 102]

Notes

¹ This is a compilation of the *Gas Distribution Regulations 1996*² and includes the amendments referred to in the following Table.

Compilation table

Citation	Gazettal	Commencement
<i>Gas Distribution Regulations 1996</i>	31 Dec 1996 pp.7349-426	1 Jan 1997 (see r. 2)
<i>Gas Distribution Amendment Regulations 1998</i>	10 Mar 1998 pp.1358-9	11 a.m. on 25 Mar 1998 (see r. 2 and <i>Gazette</i> 10 Mar 1998 p.1317)
<i>Gas Pipelines Access (Repealed Access Scheme Modification) Regulations 2000</i> ²	2 May 2000 pp.2110-3	2 May 2000

² The provisions under which these regulations were made were repealed by the *Gas Pipelines Access (Western Australia) Act 1998* Schedule 3 clauses 29 & 30 but the regulations continue under Schedule 3 clause 31 until an Access Arrangement is approved.