

DAMPIER TO BUNBURY PIPELINE ACT 1997
GAS CORPORATION ACT 1994
GAS REFEREE AMENDMENT REGULATIONS 1998

Made by the Governor in Executive Council.

Citation

1. These regulations may be cited as the *Gas Referee Amendment Regulations 1998*.

Commencement

2. These regulations come into operation on the commencement of the *Dampier to Bunbury Pipeline Regulations 1998*.

Principal regulations

3. In these regulations the *Gas Referee Regulations 1995** are referred to as the principal regulations.

[* *Published in Gazette 30 May 1995, pp. 2155-72.*

For amendments to 6 March 1998 see 1996 Index to Legislation of Western Australia, Table 4, p. 109.]

Regulation 3 repealed and regulations substituted

4. Regulation 3 of the principal regulations is repealed and the following regulations are substituted —

“

Definitions

3. (1) In these regulations, unless the contrary intention appears —

“**Act**” means the *Gas Corporation Act 1994* or the *Dampier to Bunbury Pipeline Act 1997*, according to which of them is the Act under which the dispute concerned arises;

“**acting referee**” means a person appointed under regulation 10 to act in the office of gas referee;

“**AlintaGas transmission contract**” means a contract for access to gas transmission capacity under the *Gas Corporation Act 1994*;

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

“**corporation**” means the Gas Corporation established under the *Gas Corporation Act 1994*;

“**Court**” means the Supreme Court of Western Australia;

“**DBNGP access contract**” means an access contract as defined in the *Dampier to Bunbury Pipeline Regulations 1998*;

“**determination**” means a determination of the referee, whether interim or final, and includes award, order and direction;

“**dispute**” means any dispute or difference and includes any prescribed dispute;

“**dispute notice**” means any notice given by one party to a dispute to the other party or parties which describes the nature of the dispute between them and is stated to be a dispute notice for the purposes of regulation 30 or 31, as the case may be;

“**exclusive jurisdiction**” means the jurisdiction granted to the referee by regulation 16;

“**grant of access**” means a grant of access under the *Gas Distribution Regulations 1996*;

“**Judge**” means a single judge of the Court;

“**misconduct**” includes corruption, fraud, partiality, bias or lack of independence from a party to a dispute;

“**party**” means a party to any dispute or proceedings, and includes any person claiming through or under a party, and also includes any permitted representative of that party;

“**prescribed AlintaGas transmission dispute**” means any dispute between the corporation and any shipper or prospective shipper dealing with —

- (a) whether or not the corporation —

(i) has complied with the obligations imposed on it; and

(ii) has properly exercised any power granted to it,

by Schedule 5 to the *Gas Corporation Act 1994*, regulations made under that Schedule (but not any term of an AlintaGas transmission contract, including regulations to the extent that they have effect as a term of such a contract), or any other written law which relates to access to or the granting of capacity in the gas transmission system or the prices payable for such access or grant; or

- (b) whether the price to be paid by any shipper or prospective shipper has been determined or redetermined in accordance with regulations and in accordance with any pricing methods adopted by the corporation;

“prescribed DBNGP transmission dispute” means a dispute between the DBNGP owner and the Coordinator or the corporation in its capacity as the operator of the gas distribution system, or between the DBNGP owner and any shipper or prospective shipper, dealing with —

- (a) whether the DBNGP owner has complied with the *Dampier to Bunbury Pipeline Act 1997*;
- (b) whether or not, for the purposes of clause 5 (1) of Schedule 1 to the *Dampier to Bunbury Pipeline Act 1997*, it would be technically and economically feasible to do something;
- (c) whether anything in a DBNGP access contract is inconsistent with the *Dampier to Bunbury Pipeline Act 1997* or these regulations;
- (d) whether anything in a DBNGP access contract that the DBNGP owner or the shipper or prospective shipper is seeking to negotiate would be inconsistent with the *Dampier to Bunbury Pipeline Act 1997* or these regulations; or
- (e) the meaning and effect of the *Dampier to Bunbury Pipeline Act 1997* and these regulations,

except that it does not include a dispute about the performance of any of the Coordinator’s functions or about a decision not to act in the performance of any of those functions;

“prescribed dispute” means a prescribed AlintaGas transmission dispute, a prescribed DBNGP transmission dispute, or a prescribed distribution dispute;

“prescribed distribution dispute” means a dispute between the corporation in its capacity as the operator of the gas distribution system and the DBNGP owner, or between the corporation and any user or prospective user dealing with —

- (a) whether or not the corporation —
- (i) has complied with the obligations imposed on it; and
- (ii) has properly exercised any power granted to it, by Schedule 6 of the *Gas Corporation Act 1994*, the *Gas Distribution Regulations 1996* (but not any clause of Schedule 1 to the *Gas Distribution Regulations 1996* or any other term of a grant of access) or any other written law which relates to access to, or the granting of access to, capacity in the gas distribution system or the prices payable for such access or grant; or
- (b) subject to regulation 16 (2), whether the price to be paid by any user or prospective user has been determined or redetermined in accordance with the provisions of Part 5 of the *Gas Distribution Regulations 1996* and in accordance with any pricing methods adopted by the corporation;

“proceedings” means any proceedings before the referee whether final or interlocutory, and includes any application to the referee in connection with or at any stage of proceedings, and also includes the making of a determination;

“reasonable and prudent person” means a person acting in good faith with the intention of performing his or her legal obligations, and who in so doing and 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 law engaged in the same type of undertaking under the same or similar circumstances and conditions;

“referee” means the person appointed by the Minister under regulation 5 (1) to the office of gas referee, and includes an acting referee;

“summons” means a summons issued under regulation 34.

(2) Terms used in these regulations have, in relation to a dispute, meanings that are consistent with the meanings those terms would have if they were used in the Act under which the dispute arises.

Application

3A. These regulations apply in relation to disputes that arise under the *Gas Corporation Act 1994* or the *Dampier to Bunbury Pipeline Act 1997*.

Regulation 13 repealed and a regulation substituted

5. Regulation 13 of the principal regulations is repealed and the following regulation is substituted —

“

Referee bound by the Act and the regulations

13. The referee may not make a determination which is inconsistent with the Act or regulations made under it.

”.

Regulation 15 repealed and a regulation substituted

6. Regulation 15 of the principal regulations is repealed and the following regulation is substituted —

“

General jurisdiction

15. (1) The referee may hear and determine any dispute between the corporation and any shipper, prospective shipper, user, or prospective user, between the DBNGP owner and the Coordinator or the corporation in its capacity as the operator of the gas distribution system, or between the DBNGP owner and any shipper or prospective shipper, with respect to or arising out of any relevant legislation, one or more AlintaGas transmission contracts, one or more grants of access, one or more DBNGP access contracts, or the operating agreement referred to in regulation 23 (1) of the *Dampier to Bunbury Pipeline Regulations 1998*, including any dispute about —

- (a) the meaning, effect or operation of; or
- (b) the rights or duties of any person in connection with,

any relevant legislation or any of the other instruments referred to in this subregulation, but not including a dispute about the performance of any of the Coordinator's functions or about a decision not to act in the performance of any of those functions.

(2) In subregulation (1) —

“**relevant legislation**” means the *Gas Corporation Act 1994* or regulations made under it, the *Dampier to Bunbury Pipeline Act 1997*, or the *Dampier to Bunbury Pipeline Regulations 1998*, and includes any provision of the DBNGP access manual referred to in the *Dampier to Bunbury Pipeline Regulations 1998*.

”.

Regulation 23 amended

7. Regulation 23 (1) of the principal regulations is amended by deleting “Subject to the Act and these regulations and to subregulation (2),” and substituting the following —

“

Subject to the Act, subregulation (2), and the other provisions of these regulations,

”.

Regulation 25 amended

8. After regulation 25 (1) of the principal regulations the following subregulation is inserted —

“

(1a) A practice direction under subregulation (1) may authorize or require the referee not to disclose information identified as confidential in accordance with regulation 40 (2) to a person, whether or not a party to the proceedings, either absolutely or for a limited time.

”.

Regulation 27 amended

9. Regulation 27 of the principal regulations is amended by deleting “these regulations, the *Gas Transmission Regulations 1994*, the *Gas Distribution Regulations 1996*, a transmission contract or a grant of access.” and substituting the following —

“

regulations made under it, an AlintaGas transmission contract, a DBNGP access contract, or a grant of access.

”.

Regulation 29 amended

10. Regulation 29 of the principal regulations is amended —

- (a) by repealing subregulation (1) and substituting the following subregulation —

“

(1) Subject to subregulation (3), proceedings in respect of any prescribed dispute may only be commenced within 2 years after the occurrence of the act or decision which is the subject of the dispute.

”;

and

- (b) by repealing subregulation (3) and substituting the following subregulation —

“

(3) If at the time that a prescribed dispute arises the Minister has not appointed a referee under regulation 5 (1), proceedings may commence outside the time limit in subregulation (1), provided that a party to the prescribed dispute has notified the Minister under regulation 31 within 2 years after the occurrence of the act or decision which is the subject of the dispute.

”.

Regulation 33 amended

- 11.** Regulation 33 (3) of the principal regulations is repealed and the following subregulation is substituted —

“

(3) An order under subregulation (2) is not a determination, and must be consistent with these regulations, the *Gas Distribution Regulations 1996*, and the *Dampier to Bunbury Pipeline Regulations 1998*, and any practice directions given by the referee under regulation 25.

”.

Regulation 37 amended

- 12.** Regulation 37 (3) of the principal regulations is repealed and the following subregulation is substituted —

“

(3) To the extent that a provision of an AlintaGas transmission contract, a DBNGP access contract, a grant of access or other agreement purports to limit or exclude any party's right to legal representation in any proceedings, that provision is of no effect.

”.

Regulation 39 amended

- 13.** Regulation 39 (2) of the principal regulations is amended by deleting “in making a determination which involves ascertaining the meaning of any provision of the Act, these regulations, the *Gas Transmission Regulations 1994* or the *Gas Distribution Regulations 1996* — ” and substituting the following —

“

in making a determination which involves ascertaining the meaning of any provision of the Act or regulations made under it —

”.

Regulation 40 amended

- 14.** (1) Regulation 40 (2) and (3) of the principal regulations are repealed and the following subregulations are substituted —

“

(2) If a person, whether or not a party, who produces or discloses information in the course of any proceedings relating to a dispute, identifies the information as confidential before producing or disclosing it, the information is to be kept confidential by any other person who is a party and any person advising that other person, and by the referee and any person retained or consulted by the referee, for such period as may be reasonably required by the person producing or disclosing the confidential information.

(3) If the dispute is a prescribed dispute, the application of subregulation (2) is subject to subregulation (4), any agreement with the person who identified the information as confidential, and any direction by the referee.

”.

- (2) Regulation 40 (4) of the principal regulations is amended —

- (a) by inserting after “45” the following —

“ (4) ”; and

- (b) in paragraph (a), by deleting “subregulation (3)” and substituting the following —

“ subregulation (2) ”.

- (3) Regulation 40 (5) of the principal regulations is amended by deleting “or (3)”.

Regulation 43 amended

- 15.** (1) Regulation 43 (2) of the principal regulations is amended —

- (a) by inserting after paragraph (b) the following paragraph —

“

(ba) order the DBNGP owner and a prospective shipper, if they are parties to the dispute, to enter into an access contract —

- (i) for capacity in Tranche 1; or

(ii) if there is no spare capacity in Tranche 1, for spare capacity in Tranche 2,
on terms and conditions set out in the DBNGP access manual in accordance with clause 3 (3) of Schedule 1 to the *Dampier to Bunbury Pipeline Act 1997*;

and

(b) by deleting paragraphs (e) and (f) and substituting the following paragraphs —

“ (e) determine whether an AlintaGas transmission contract, a DBNGP access contract, a grant of access or any other agreement has been frustrated and the consequences of that frustration;

(f) order rectification of an AlintaGas transmission contract, a DBNGP access contract, a grant of access or any other agreement;

(2) After regulation 43 (2) of the principal regulations, the following subregulations are inserted —

(3) In subregulation (2) (ba) —

“**Tranche 1**” and “**Tranche 2**” have the same meanings as they have in the *Dampier to Bunbury Pipeline Regulations 1998*.

(4) Subregulation (2) (ba) limits subregulation (2) (b) and subregulation (1) to the extent only that an order that a DBNGP access contract be entered into can only be made under subregulation (2) (ba).

Regulation 45 amended

16. Regulation 45 (3) of the principal regulations is repealed.

Regulation 48 amended

17. Regulation 48 (7) of the principal regulations is repealed and the following subregulation is substituted —

(7) If the consent determination is in respect of a prescribed dispute, the referee must cause the terms of the consent determination to be given to the Coordinator and the terms of the consent determination may be made public.

Regulation 51 amended

18. Regulation 51 of the principal regulations is amended —

(a) by deleting “If a determination requires the corporation to do or refrain from doing any thing which the corporation,” and substituting the following —

“ If a determination requires the corporation or the DBNGP owner to do or refrain from doing any thing which the corporation or the DBNGP owner,

and

(b) in paragraph (a), by inserting after subparagraph (i) the following subparagraph —

“ (ia) the privatized DBNGP system; ”.

Regulation 52 repealed and a regulation substituted

19. Regulation 52 of the principal regulations is repealed and the following regulation is substituted —

Determinations are subject to the Act

52. If a determination requires the corporation or the DBNGP owner to do —

(a) any thing that is subject to approval under a written law, and in respect of which approval is not given; or

(b) any thing that, under a written law, the corporation or the DBNGP owner has been or is directed not to do,

and the corporation or the DBNGP owner, as the case requires, certifies in writing to the referee and all other parties to the dispute that the approval is not given or that the direction was given, then the whole of the determination is of no effect.

Regulation 54 amended

20. Regulation 54 of the principal regulations is amended —

- (a) by repealing subregulations (1) and (2) and substituting the following subregulations —

“

(1) Subject to subregulation (4), in proceedings relating to a dispute which is not a prescribed dispute, where the referee makes a determination for the payment of money (whether on a claim for a liquidated or an unliquidated amount), the referee may include in the sum for which the determination is made interest at such rate as the referee may direct (being a rate not exceeding the rate at which interest is payable on a judgment debt of the Court) on the whole or any part of the money for the whole or any part of the period between the date of the occurrence of the act or decision which is the subject of the dispute and the date on which the determination is made.

(2) Subject to subregulation (4), where —

- (a) proceedings before the referee have been commenced for the recovery of a debt or liquidated damages; and
 (b) payment of the whole or a part of the debt or damages is made during the currency of the proceedings and prior to or without a determination being made in respect of the debt or damages,

the referee may order that interest be paid at such rate as the referee may direct (being a rate not exceeding the rate at which interest is prescribed for the purposes of section 142 of the *Supreme Court Act 1935*) on the whole or any part of the money paid for the whole or any part of the period between the date of the occurrence of the act or decision which is the subject of the dispute and the date of the payment.

”;

and

- (b) in subregulation (4), by deleting paragraph (b) and substituting the following paragraph—

“

(b) apply in relation to any amount upon which interest is payable as of right whether by virtue of an AlintaGas transmission contract, a DBNGP access contract, a grant of access or any other agreement or otherwise.

”.

Regulation 58 repealed and a regulation substituted

21. Regulation 58 of the principal regulations is repealed and the following regulation is substituted —

“

No prospective agreement that parties bear their own costs

58. A provision in an AlintaGas transmission contract, a DBNGP access contract, a grant of access or any other agreement to the effect that the parties or a particular party to future proceedings before the referee are in any event to pay their own or any party's costs of any future proceedings, or any part of those costs, is of no effect.

”.

Regulation 66 amended

22. Regulation 66 of the principal regulations is amended by deleting “and to the extent that a provision of a transmission contract, grant of access or other agreement purports to limit or exclude any or all of those rights,” and substituting the following —

“

and to the extent that a provision of an AlintaGas transmission contract, a DBNGP access contract, a grant of access or any other agreement purports to limit or exclude any or all of those rights,

”.

Transitional provisions

23. The referee may deal with a dispute arising before the commencement of these regulations that could have been dealt with if these regulations had not commenced, and may substitute the DBNGP owner for the corporation as a party to the dispute.

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.