AUSTRALIAN COMPETITION TRIBUNAL

Alinta Sales Pty Ltd [2011] ACompT 16

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| Citation: | Alinta Sales Pty Ltd [2011] ACompT 16 |
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| Parties: | Alinta Sales Pty Ltd (ABN 92 089 531 984) |
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| File number: |  |
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| Tribunal: | **JUSTICE MANSFIELD (President)**  **PROFESSOR D ROUND**  **MR R DAVEY** |
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| Date of decision: | 28 October 2011 |
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| Date of hearing: | Heard on the papers |
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| Date of last submissions: | 7 September 2011 |
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| Place: | Adelaide |
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| Solicitor for Alinta Sales Pty Ltd: | Clifford Chance |
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| Solicitor for Economic Regulation Authority: | Talbot Olivier |

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| IN THE AUSTRALIAN COMPETITION TRIBUNAL |  |
|  | ACT 2 of 2011 |

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| RE: | APPLICATION UNDER S 245 OF THE NATIONAL GAS LAW FOR A REVIEW OF A REVIEWABLE REGULATORY DECISION MADE BY THE ECONOMIC REGULATION AUTHORITY IN RELATION TO WA GAS NETWORKS GAS DISTRIBUTION SYSTEM PURSUANT TO RULE 64 OF THE NATIONAL GAS RULES  ALINTA SALES PTY LTD (ABN 92 089 531 984)  Applicant |

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| TRIBUNAL: | JUSTICE MANSFIELD (PRESIDENT)  PROFESSOR D ROUND  MR R DAVEY |
| DATE OF ORDER: | 28 OCTOBER 2011 |
| WHERE MADE: | ADELAIDE |

THE TRIBUNAL ORDERS THAT:

1. The applicant is given leave to apply for review of the decision of the Economic Regulation Authority published on 28 April 2011 in relation to the WA Gas Networks Pty Ltd Gas Distribution System, made pursuant to Rule 64 of the National Gas Rules.

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| tribunal: | justice MANSFIELD (president)  PROFESSOR D ROUND  MR R DAVEY |
| DATE: | 28 OCTOBER 2011 |
| PLACE: |  |

**REASONS FOR DECISION**

# BACKGROUND

1. WA Gas Networks Pty Ltd (WAGN) owns and operates a gas distribution system (GDS) in Western Australia. It comprises various connected and non-interconnected sub-networks covering the Perth metropolitan area and country centres from Geraldton in the north to Busselton in the south. It excludes the Kalgoorlie and Albany networks.
2. Alinta Sales Pty Ltd (Alinta Sales) has applied for leave pursuant to s 245(1) of the National Gas Access (Western Australia) Gas Law (NGL) to apply to the Tribunal for a review of the decision of the Economic Regulation Authority of Western Australia (ERA) published on 28 April 2011. That decision was made pursuant to Rule 64 of the National Gas Rules (NGR) in respect of the access arrangement for the Mid-West and South-West GDS.
3. The decision is a “reviewable regulatory decision” as defined in s 244 because it is an “applicable access arrangement decision” and a “full access arrangement decision” as defined in s 2. The Reviewable Decision, by an earlier decision of the ERA published on 28 February 2011 (the Final Decision) made revisions to an access arrangement in place of revisions to an access arrangement submitted to the ERA under s 132 of the NGL by WAGN which the ERA did not approve.
4. WAGN has itself applied under s 245 of the NGL for leave for review of the Reviewable Decision. That leave has been given in a separate decision of the Tribunal given at the same time as this decision: *WA Gas Networks Pty Ltd (No 1)* [2011] ACompT 14. The background to the Reviewable Decision, and the grounds of review to be raised by WAGN are set out in that decision.
5. The Tribunal in that decision indicated why it considered that the Reviewable Decision was a reviewable regulatory decision under s 245 of the NGL, and why it granted leave for review to WAGN as:

(1) the grounds it raised fell within s 246;

(2) its application was within time under s 247;

(3) the particular matters to be argued by WAGN were each matters which gave rise to a serious issue to be heard and determined in accordance with s 248;

(4) the statutory threshold prescribed by s 249 was met; and

(5) there was no other reason under ss 250 and 251 why leave to review should not be granted.

# THE APPLICANT

1. Alinta Sales is a wholly owned subsidiary of Alinta Pty Ltd (Alinta). Alinta Sales says that Alinta made submissions on behalf of itself and Alinta Sales as its subsidiary in relation to the Reviewable Decision and to the processes leading up to it.
2. Alinta Sales’ interest is confined to one of the five Reference Gas Haulage Services of WAGN which is designated B3. The effect of the Reviewable Decision is that, from the commencement date of 1 July 2011, there will be a higher reference tariff for the B3 reference service for 2011-2012, while the increases thereafter during the operating term of the Reviewable Decision would be limited by the annual CPI movements.
3. Alinta Sales claims the standing to apply under s 245 of the NGL as an effected or interested entity because, under s 244(b) it is a user and end user whose commercial interests are materially affected by the Reviewable Decision. It is a party to contracts with WAGN for the transportation of natural gas through the GDS, and it then on sells that gas primarily to domestic consumers of that gas.
4. The ERA has raised the question whether Alinta Sales should be permitted to make the application having regard to s 250 of the NGL. That matter is addressed below.
5. Alinta Sales wishes to have the Reviewable Decision varied to allow for a more gradual implementation of the higher reference tariff for the B3 Reference Service, or to have the matter remitted to the ERA for further consideration.
6. Its grounds for review, in terms, fall within s 246, but it is necessary to separately consider whether those matters give rise to serious issues to be heard and determined: s 248.
7. It is also necessary to consider whether the threshold specified in s 249 applies. Alinta Sales accepts that, in its terms, the threshold is not met because its concern relates to the way that revenue may be recovered over time by different prices, rather than the actual amount of revenue to be recovered. It argues that, in the circumstances, s 249 is not directly an impediment to its leave application.

# THE STANDING OF ALINTA SALES

1. The material satisfies the Tribunal that Alinta Sales is an affected or interested party whose commercial interests are materially affected by the Reviewable Decision. Its application has been made within the time specified by s 247.
2. Section 250 of the NGL provides that the Tribunal must not grant leave under s 245(1) if Alinta Sales:
3. did not make a submission or comment in relation to the making of the reviewable regulatory decision under review following an invitation to do so; or
4. made such a submission or comment that was late and was not taken into account in the making of the decision.
5. The material before the Tribunal shows that the ERA on 12 February 2010 invited public submissions on the WAGN proposed revision to the access arrangement of 12 April 2010, and that Alinta made a responsive submission on 19 April 2010. That submission was duly considered. Following its draft decision of 17 August 2010, the ERA again invited public submissions by 5 November 2010. Alinta made a further submission on that date. Then on 1 December 2010 the ERA published a draft discussion paper on the general issue of debt risk premium (including a proposed method for calculating debt risk premium) and invited public responses. Alinta Sales responded on 7 January 2011, and its submission was duly considered. That was the first submission specifically in the name of Alinta Sales.
6. The formal written submissions under the stylised “Alinta” carried the name Alinta Pty Ltd and expressly say the submissions (other than the final one) were each made by Alinta Pty Ltd. The final one of 7 January 2011 says it is made by Alinta Sales Pty Ltd.
7. As noted, Alinta Sales asserts that the submissions of Alinta were made on its behalf. That was not express. It is a submission based upon the circumstances including the fact that Alinta Sales is a subsidiary of Alinta.
8. The Manager Regulatory Affairs of Alinta, by affidavit, has confirmed that fact. There is good reason to accept that was his intention. He was directly responsible for regulatory matters relating to Alinta Sales. Alinta Sales was the entity which was potentially affected by any revised access arrangement. It was a retailer of gas to residential, commercial and industrial customers using the WAGN GDS. It had haulage contracts with WAGN. It was the relevant licensed holder of the gas trading licence under the *Energy Coordination Act 1994* (WA). The detailed submissions to the ERA made by Alinta variously refer to matters which necessarily relate to Alinta Sales, rather than to Alinta. They are referred to in the reply submissions of Alinta Sales. Email communications with the ERA used the term general “Alinta” (not Alinta Pty Ltd) in relation to the WAGN proposals.
9. This is not a situation where an applicant is seeking to derivatively benefit from the submissions of an unrelated or independent body for its status under s 245. The Manager Regulatory Affairs was directly responsible for regulatory matters relating to Alinta Sales, and email communications with the ERA used the term “Alinta” (not Alinta Pty Ltd) in relation to the WAGN proposals. The written submissions, however, under the stylised “Alinta” carried the name Alinta Pty Ltd and expressly say the submissions (other than the final one) were each made by Alinta Pty Ltd. The final one of 7 January 2011 says it is made by Alinta Sales Pty Ltd.
10. That finding of fact means that s 250 does not require separate attention. It may be remarked, however, that the purpose of s 250 is clear enough. It would be unfair to ERA and to the entity seeking revision of an access arrangement, on a review application, to be confronted with material or contentions touching upon a reviewable regulatory decision, which were not given or made to the ERA either at all or in a proper time for the ERA to consider them. It might also be unfair to an entity seeking the making or revision of an access arrangement and to the ERA to be confronted with an entity which had not taken up the opportunity participate in the decision-making process of the ERA to come along belatedly to challenge its outcome. The finding of fact made by the Tribunal as to the status of Alinta Sales does not give rise to any such concerns.

# CONSIDERATION OF THE APPLICATION

1. The particular matters sought to be raised by Alinta Sales emerge more clearly from its submissions than from its application. They concern the National Gas Access (WA) Regulations (WA) (the Local Provisions Regulations) and the NGR in setting the tariff path for the implementation of the new and higher B3 Reference Service tariff.
2. Rule 7 of the Local Provisions Regulations requires the ERA to take into account the possible impact of any proposed reference tariffs and their implementation on small use customers and retailers. That description applies to the persons and entities supplied by Alinta Sales.
3. In its draft decision of 17 August 2010, the ERA set out proposed B3 Reference Service tariffs, and discussed the impact of the then proposed increase in reference tariffs on small use customers and retailers, including by reference to the Local Provisions Regulations. In that context, it referred to some modelling of retail tariffs. Alinta Sales, in its submission, assumes the modelling was based on the retail tariffs regulated (and capped) under the *Energy Coordination (Gas Tariffs) Regulations 2000* (WA) (the Gas Tariffs Regulations) applying to the retail tariffs Alinta Sales is obliged to offer customers using less than 1 terajoule of gas each year.
4. Alinta Sales refers to [1145] of the draft decision and says it disagrees with the ERA’s assumption of a “full pass through” of the changes in distribution tariffs to retail tariffs as being either correct or reasonable. Its own modelling of the impact of distribution costs for supplying gas to small use consumers using the B3 Reference Service shows that the impact was “relatively small”.
5. The ERA Final Decision published on 28 February 2011 proposed higher tariffs for the B3 Reference Service than in its draft decision, in particular as it proposed higher tariffs by way of a one-off increase on 1 July 2011. It had again modelled the impact, assuming a “full pass through” of the changes in distribution tariffs to retail tariffs, upon small use consumers. The impact shows a significant increase to small use consumers on varying levels of consumption, if Alinta Sales did fully pass through the proposed distribution tariffs, at various levels of consumption. At the median gas consumption level by a residential consumer, the increase would be some 26.6% as a one-off increase from 1 July 2011 and then only CPI increases.
6. Alinta Sales conveyed its concerns to the ERA by letter of 22 March 2011. No specific consultation thereafter occurred.
7. The Reviewable Decision adhered to the proposal in the Final Decision.
8. It is not suggested that the ERA failed to consider the Local Provisions Regulations. Its reasons in its Final Decision indicate that it did so. Its assumption of a “full pass through” to small use gas consumers was consistent with the relevant part of the Western Australian Office of Energy Draft Recommendation Report on its Gas Tariffs Review of December 2010 (as part of that Office’s review of retail gas tariff arrangements in Western Australia, conducted from 2008). The recommendations in that report have not yet been adopted by the Western Australian Government, and it is unclear whether they will be adopted. The Premier was reported in the Western Australia newspaper as saying that the Government would not adopt the recommendations concerning gas tariffs.
9. The Gas Tariffs Regulations capped the tariffs Alinta Sales could charge small use consumers. The capped tariffs were adjusted only for CPI changes between 2000 and 2008, and in each of 2008-2010 they were adjusted somewhat higher as there were, apparently, increased costs to Alinta Sales in servicing the small use consumers. Under the Gas Tariff Regulations, as they are presently expressed, Alinta Sales cannot routinely pass through the increased distribution tariffs.
10. In those circumstances, Alinta Sales contends that the assumption by the ERA that increased distribution tariffs would be passed through to consumers was unreasonable and incorrect, having regard to the Local Provisions Regulations. The other side of the coin is its contention that the ERA, by assuming the “full pass through” of increased distribution tariffs, failed to consider the impact of higher tariffs on users of the GDS who supply smaller consumers with gas, and who must bear the increased cost so long as the Gas Tariffs Regulations remain unchanged. That consequence, according to Alinta Sales, is very significant and would exceed the threshold prescribed in s 249. Even if the Gas Tariffs Regulations are changed to allow Alinta Sales to effect the “full pass through”, that will be over a period that will result in a mismatch in its costs and revenue profiles for a considerable period.
11. Alinta Sales alternatively contends that the modelling by ERA did not correctly assess the possible impact of the proposed Reference tariffs on small use customers. That is because the ERA modelling did not take into account, in addition to the impact of the proposed increase in distribution charges, the impact of a further proposed increase in the retail tariff in the Draft Recommendations Report.
12. If either contention is made out, it argues, ERA would have implemented the proposed higher distribution tariff by a “more gradual, smooth tariff path”.
13. ERA considered the option of a more gradual implementation of higher reference tariffs: see [892] of the Final Decision. It said:

The Authority considered the option of a more gradual implementation of higher reference tariffs. The Authority considers the disadvantages to be too great to implement a more gradual change:

* It would delay recovery of revenue which must be achieved in PV terms (rule 92). This would mean users in total would pay more as cost recovery delayed is effectively inflated by the cost of capital (WACC) over the period of the delay. For example a two year delay would equate to a cost increase of approximately 15 per cent.
* The lasts [sic] years’ reference tariff revenue would be significantly higher than the corresponding total revenue (cost of service) for that year. Thus if costs and volume assumptions for this year are accurate, the delayed recovery of costs could lead to a significant stepped change in tariffs in the subsequent (2014-2019) access arrangement period.
* The impact on retail tariffs is affected by the Government’s policy in setting retail tariff caps. Any government policy requirements regarding smoothing of changes may be achieved by this mechanism.

1. As to those matters, Alinta Sales says there is a serious question to be heard and determined because, addressing the three reasons in sequence:
2. the ERA did not adequately consider why the perceived disadvantage would be greater than paying lower tariffs initially by any actual comparative analysis, and did not (as required by reg 7(2) of the Local Provisions Regulations) consider the social impact of the proposed increase;
3. the ERA’s concern about the imbalance of tariff revenue and cost in the last years of the access arrangement does not support its conclusion that the delayed recovery of costs may lead to a significant stepped change in tariffs in the succeeding access years’, because by the end of the proposed access arrangement period there will have been recovery of costs by the smoother introduction of tariffs so the next access period would be “softer” if tariffs again increase; and at the least the concern does not justify not implementing a gradual tariff change; and
4. the ERA, by effectively leaving any “smoothing” of the increased distribution tariffs in the retail tariff cap under the Gas Tariffs Regulations, failed to have regard to the social impact of the proposed increased distribution tariffs for Reference Services, and in addition that there was no clear Western Australian policy which would have led to such an outcome as the Gas Tariffs Regulations as in force at the time did not provide for that.

Hence, Alinta Sales says that the reasons of the ERA are “not compelling”, and do not evidence due and proper consideration of the impact of the proposed higher tariffs, as required under Rule 7 of the Local Provisions Regulations.

1. The ERA, earlier in its reasons for the Final Decision at [759], had expressed a preference, wherever practicable, to determine reference tariffs with a smooth tariff path rather than one which involved a sudden and significant tariff change during or at the end of an access arrangement period. That general approach has been adopted by the ERA in other decisions. Rule 97(3)(d) of the NGR requires the ERA to have regard to the desirability of consistency between regulatory arrangements for similar services, both within a jurisdiction or beyond that particular jurisdiction. Reference is made to other decisions of the ERA, both before and after the Reviewable Decision.
2. The various matters raised by Alinta Sales are expressed as grounds of review in terms of s 246. There is no contrivance in doing so. It remains to determine whether, in respect of those grounds, a serious issue to be heard and determined has been shown.
3. The three categories of grounds of review in terms of s 246 are that those matters involve an incorrect exercise of discretion, or are unreasonable, or involve an error of fact.
4. The Tribunal does not consider that the ERA assumed the “full pass through” of distribution tariffs for Reference Services to retail tariffs by reason of the Draft Recommendations Report being adopted to lead to a change in the Gas Tariffs Regulations. The ERA, as shown by its third observation in [892] quoted above, was aware of the Gas Tariffs Regulations and how they operated. It is not apparent that it assumed they would be changed. It referred to the retail tariff caps then in force, and to the tariff caps being altered in accordance with government policy. Its first observation in [892] quoted above has as its focus the revenue to which it had determined that WAGN was entitled by higher reference tariffs, and to the significant extra costs which would be incurred by WAGN if its receipt of that entitlement were deferred and which would ultimately be borne by WAGN (and, subject to government policy) passed on to small gas users.
5. The ERA thus recognised that, ultimately, the retail gas tariffs were fixed under the Gas Tariffs Regulations, and so in effect by the Western Australian government. It also recognised that, through the Draft Recommendations Report, there was some basis for the prospect that the increased distribution tariffs would be passed onto small gas users in the retail tariffs. In the Tribunal’s view, Alinta Sales has not shown how the ERA overlooked the social impact of its distribution tariff for Reference Services. It was not in a position to determine the way in which its decision on the proper distribution tariff would be passed on to small gas users, because that role was taken by the Western Australian government. Alinta Sales has not explained how, by a “smoother” introduction of the distribution tariff increase to WAGN, the ERA could have better addressed its social impact. The smoother or averaged increases contended for by Alinta clearly had the detriment to WAGN to which the ERA referred, and the significant increased costs to WAGN so as to lead overall to a significantly higher overall increase. On the other hand, the control of the tariffs under the Gas Tariffs Regulations rested with the Western Australian government and not with the ERA.
6. The contention by Alinta Sales is not that the Local Provisions Regulations should have led to an overall lesser distribution tariff increase, but that its introduction should have been smoothed or averaged. The ERA considered that option and rejected it. The Tribunal is not satisfied that the ERA ignored or overlooked the need to consider the social impact of its decision. It recognised the potential social impact, but could not take that matter further because the social impact was within the control of the Western Australian government.
7. However, it is not quite so clear that the ERA considered the impact of its distribution tariff decision for Reference Services on Alinta Sales (and other suppliers of gas to small gas users) by the substantial front-end one-off increase. That impact was potentially significant if the Gas Tariff Regulations did not permit Alinta Sales to pass through the increase promptly, or indeed at all, for obvious reasons. It was, however, significant to Alinta Sales whether there was a significant one off increase and then CPI increments thereafter, or whether the increase was “smoothed” by a less significant one-off increase and then increments greater than CPI over the balance of the access arrangement period. That would be accompanied by the overall greater cost to Alinta Sales because the “smoothed” approach would add significantly to the costs of WAGN and so to the overall allowance for increased distribution tariffs over that period. The impact on Alinta Sales was therefore significant on either event, but dependent on how, if at all, the Western Australian government amended the Gas Tariffs Regulations. The ERA recognised those alternatives. The case argued was not that, because there may be no or limited change to retail tariffs, the ERA should not in some form give effect to the increased distribution tariff which it had decided upon. The argument was, in essence, posited upon Alinta Sales having to bear the burden up front of the one-off significant increase in distribution tariffs, and then the CPI indexed tariffs, without any change other than CPI indexing under the Gas Tariffs Regulations, or in any event having to absorb the significant up front tariff increase, whilst the small gas users tariff was adjusted under the Gas Tariffs Regulations with some significant time delay. It is the latter scenario which the Tribunal understands the ERA was referring to in the second point in [892] of the ERA reasons in the Final Decision. In any event, in addition its reasons at [892] show a consideration of the impact upon consumers and an appreciation of the risk that the Gas Tariffs Regulations may not reflect the increased distribution tariffs for Reference Services, or may only do so after some delay. The ERA thus appears to have balanced the respective factors raised by Alinta Sales, including their social impact if passed on to small gas users, and their impact upon Alinta Sales and other retail gas suppliers, in reaching its decision.
8. Underlying the Alinta Sales submissions is the issue as to whether, and how, the ERA should perform its functions in the particular circumstances where there are rules such as the Local Provisions Rules and where the retail tariffs of a supplier to small gas users such as Alinta Sales are controlled by regulation such as the Gas Tariffs Regulations. That is not a matter on which there is a clear legislative answer, nor one where there is a clear decision of the Tribunal. It is an issue which, in the view of the Tribunal, is a serious issue to be heard and determined.
9. That leaves the contentions, under the head of “incorrect exercise of discretion”, that the ERA failed to consider the “R” component of the retail gas tariff and so underestimated the impact of the higher distribution tariff one-off increase, and that the ERA’s decision to grant a one-off significant increase was not consistent with other regulatory arrangements.
10. As to the former, it is not clear what the ERA was supposed to do beyond considering the options of a one-off significant increase or a “smoothed” increase at an overall significantly greater expense to WAGN to be passed on to Alinta Sales and others over the term of the access arrangement. It did that. However, for the reason given, it is unclear whether or how, given the retail tariff fixing regime under the Gas Tariffs Regulations, the ERA should have taken into account whether Alinta Sales might or might not be permitted to recover further costs beyond routine incremental costs in the fixed retail tariffs including the increased costs following from the increased distribution tariffs for Reference Services. As the Alinta Sales submission shows, the adjustment to retail tariffs under the Gas Tariffs Regulations other than CPI adjustment has not been routinely accommodated.
11. As to Rule 97(3)(d) of the NGR, the Tribunal does not consider that the ERA approach in this matter gives rise to a serious issue to be tried that the ERA failed to have regard to the objective of consistency. More recently, as Alinta Sales has pointed out, it has set “average” tariff paths (albeit with an initial significant increase) rather than a significant one-off tariff increase, as it had also done in one earlier decision. Those matters do not routinely demonstrate that the ERA failed to have regard to Rule 97(3)(d). It is but one matter that the ERA was required to consider.
12. The “unreasonableness” contentions involve the considerations discussed in *Australian Competition and Consumer Commission v Australian Competition Tribunal* (2006) 152 FCR 33 at [117]. The matters raised under this heading are the same as those raised when attacking the exercise of the ERA’s discretion. For the reasons given, the Tribunal is satisfied that those matters give rise to a serious issue to be heard that the ERA decision was unreasonable in respect of the timing or phasing in of the increased distribution tariffs.
13. Finally, Alinta Sales contends that the ERA decision about the timing of the imposition of the increased distribution tariffs for Reference Services involved an error or errors of fact. The two asserted errors of fact are that the ERA assumed the “pass through” of distribution tariffs to small use customers under the Gas Tariffs Regulations, on the basis of a mechanism anticipated in the Draft Recommendations Report, when there was no real foundation for anticipating that the Gas Tariffs Regulations would be amended to give effect to that recommendation, and secondly that more generally the ERA considered that retail tariffs could be adjusted under the Gas Tariffs Regulations to smooth the way of an increase in distribution tariffs, when that is not the case. Those questions are also bound up in the general issue referred to above. The ERA recognised that, ultimately, the decision as to the extent to which increased distribution tariffs were passed on to small gas users, and the decision as to how those increased distribution tariffs would be passed on (if at all) was for the Western Australian government in either of those two respects. Rhetorically, one may ask whether it would not have been appropriate for the ERA to assume that the Western Australian government may have been prepared to pass on the increased distribution tariff if the initial “one-off” increase was less but still significant, and the subsequent increases were smoothed at figures greater than the CPI (and with a significantly increased overall distribution tariff increment to allow to WAGN by reason of the delayed receipt of appropriate distribution tariffs) but would not have been prepared to do so having regard to its present decision.
14. As to s 249, the Tribunal considers that the issue raised by Alinta Sales does not relate to the amount of revenue that may be earned by WAGN that is specified in or derived from the Reviewable Decision. It is the phasing in of the increased distribution tariffs which is the issue, but Alinta Sales appears to accept that the “price” of a phasing-in of those tariffs for WAGN Reference Services would lead to an increment to the tariffs to accommodate the extra costs incurred by WAGN by that process. The overall net outcome to WAGN would be, in effect, unchanged and the additional costs caused by the delayed tariff revenue would be borne by Alinta Sales and potentially ultimately by small gas users. Accordingly, s 249(1)(b) of the NGL is not satisfied and s 249 does not apply. The Tribunal notes that, if the Reviewable Decision stands and the Gas Tariffs Regulations are not responsibly changed to increase retail tariffs, the detriment to Alinta Sales on the material before the Tribunal would well exceed $5,000,000. That is not however the question which s 249 requires to be answered.
15. For those reasons, the Tribunal proposes to grant leave to Alinta Sales to apply for review of the Reviewable Decision.

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| I certify that the preceding forty-nine (49) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Mansfield (President); Professor D Round and Mr R Davey. |

Associate:

Dated: 28 October 2011