FEDERAL COURT OF AUSTRALIA

Application by DBNGP (WA) Transmission Pty Ltd (No 2) [2012] ACompT 10

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| Citation: | | Application by DBNGP (WA) Transmission Pty Ltd [2012] ACompT 10 |
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| Parties: | | **DBNGP (WA) TRANSMISSION PTY LIMITED ON ITS OWN BEHALF AND ON BEHALF OF DBNGP (WA) NOMINEES PTY LIMITED AS TRUSTEE FOR THE DBNGP WA PIPELINE TRUST** |
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| File number: | |  |
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| Judge: | | **JUSTICE** |
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| Date of ruling: | | 5 April 2012 |
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| Date of hearing: | | 5 April 2012 |
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| Place: | | (via video link with Perth) |
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| Category: | | No catchwords |
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| Number of paragraphs: | | 13 |
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| Counsel for APT Parmelia Pty Ltd: | Mr O’Leary | |
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| Solicitor for APT Parmelia Pty Ltd: | Gilbert + Tobin | |

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| IN THE AUSTRALIAN COMPETITION TRIBUNAL |  |
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| re: | APPLICATION UNDER SECTION 245 OF THE NATIONAL GAS ACCESS (WESTERN AUSTRALIA) LAW FOR A REVIEW OF THE DECISION MADE BY THE ECONOMIC REGULATION AUTHORITY OF WESTERN AUSTRALIA TO GIVE EFFECT TO ITS PROPOSED REVISIONS TO AN ACCESS ARRANGEMENT FOR THE DAMPIER TO BUNBURY NATURAL GAS PIPELINE, PURSUANT TO RULE 64 OF THE NATIONAL GAS RULES |
| BY: | DBNGP (WA) TRANSMISSION PTY LIMITED (ACN 081 609 190) ON ITS OWN BEHALF AND ON BEHALF OF DBNGP (WA) NOMINEES PTY LIMITED (ACN 081 609 289) AS TRUSTEE OF THE DBNGP WA PIPELINE TRUST  First Applicant  DBNGP (WA) NOMINEES PTY LTD (ACN 081 609 289) AS TRUSTEE OF THE DBNGP WA PIPELINE TRUST  Second Applicant |

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| : | JUSTICE |
| DATE: |  |
| PLACE: | (VIA VIDEO LINK WITH PERTH) |

**REASONS FOR RULING**

1. This matter was first listed for hearing (in anticipation of leave to apply for review being given) on 16 April and 23 to 25 May 2012, there being at that stage 10 grounds of review. The hearing was given in an anticipatory way because on 17 to 20 April 2012 the Tribunal had separately listed a similar application by WA Gas Networks Pty Ltd (WAGN/ATCO) in which issues 1 and 2 of this application, or grounds 1 and 2 of this application, were the same as the grounds of the WAGN ATCO application. It was perceived that there was some efficiency in having the matters heard conjunctively or at least sequentially, but with the material on issues 1 and 2 being fresh in the minds of the Tribunal, which is constituted in the same way for both matters.
2. It transpired that, for reasons that I do not need to go into, the WAGN/ATCO application will take the four full days of 17 to 20 April 2012 and will not be interrupted or heard together with this application. Nevertheless, the applicant in this matter DBNGP (WA) Transmission Pty Ltd (DBNGP), wished to preserve the date 16 April 2012 for reasons which senior counsel has expressed today. Subsequently, on 15 March 2012, the leave to apply was formally given, as had been foreshadowed, and several applications to intervene have been made. They are not opposed.
3. The Tribunal is in the position where it is having to reconsider the dates which have been allocated. The first stepping point is to determine whether to keep the date 16 April. DBNGP wishes to keep that for two reasons: firstly, because it is keen for the matter to proceed to completion and it is possible that the six full days set aside, including now 21 and 22 as well as 23-25 May, will be needed to do so; secondly, because it considers that its position would be potentially better preserved by having the opportunity for it to make submissions on issues 1 and 2 on 16 April 2012, even without written submissions in reply from any of the regulator or the proposed intervenors.
4. The regulator accepts that there is no prejudice to it in proceeding in that way, although it contends that it is in the Tribunal’s and the parties’ interests that the hearing should commence and be resolved all at the one time. It also contemplates that the week of 21 to 25 May alone may not be sufficient to deal with all issues. Previously the three days, 23 to 25 May, were set aside to deal with issues 3 to 10.
5. Two of the potential interveners, Electricity Generation Corporation trading as Verve Energy (Verge) and Alinta Sales Pty Ltd (Alinta), contend that their positions may be prejudiced by hearing DBNGP on 16 April on issues 1 and 2, having regard to the extent of work involved in preparation for the matter. They also contend that it is desirable not to hear all issues in the week of 21 May, whether or not the date 16 April is preserved.
6. The Tribunal has certain time strictures with which it must comply. There is the opportunity for an extension of time if the circumstances warrant it. Without an extension of time the decision in this matter must be given by 14 June 2012. It is not possible to know whether an extension of time should be ordered at this point.
7. On the material before me I think there is a significant risk that to hear all issues will require more than the three or four days presently set aside. Indeed, I think it is wise to set aside the six days which are available, that is, 16 April and the full week of 21 May, to hear all issues. Having regard to the submissions of senior counsel for DBNGP and the prejudice which the potential intervenors Verve and Alinta have put forward by their counsel, in my view the balance in terms of fairness to the parties and in terms of achieving as prompt a result as the legislation contemplates, is better served by preserving the date 16 April 2012.
8. I appreciate that that will require some significant preparation on the part of the potential intervenors, Verve and Alinta, (the other potential intervenors have made no complaint about that) prior to 16 April but I bear in mind that those parties made submissions to the regulator in relation to the issues generally which the regulator addressed and have the benefit of the regulator’s reasons. I also bear in mind that they will not be called upon to provide written submissions on any issues prior to 16 April, so that the brief of their counsel at that time will, in essence, be to listen and comprehend the submissions put on behalf of DBNGP on 16 April 2012.
9. The next step then is to determine the timetable for submissions on all issues. I will hear the parties about that. I understand that the regulator routinely makes submissions on these matters to justify or to support its original decision, and where there is no intervener it properly considers it should to give that assistance to the Tribunal, which the Tribunal accepts, including sometimes expressing the reasons for its decision and its reasons for maintaining its decision in quite firm terms. Where there is an intervener which wishes to adopt a position consistent with the views of the regulator, that intervener in effect provides the role of contradictor and the regulator’s position and role is commonly expressed a little more neutrally than would otherwise have been the case.
10. I will now turn to address the balance of the proposed minutes, bearing in mind that in the week of 21 May 2012 it is the Tribunal’s wish and expectation that all issues will be heard and determined following the first day of hearing on 16 April when DBNGP will open its case and make its submissions on issues 1 and 2.
11. It is probably convenient to address the proposed orders in sequence. I take up the regulator’s proposed orders simply because they have a few refinements on those proposed by DBNGP. I will make Orders 1, 2, 3 and 4.
12. I will vary the directions given in Orders 5 to 10 on 8 March 2012 by providing for the hearing to be listed on 16 April and 21 to 25 May. I will provide for the exchange of submissions on the issues which are identified as issues 1 to 10 on page 13 of the application as follows:
13. Upon the basis that the regulator has provided to DBNGP its views as to the proper construction of the provisions in issue on matters 1 and 2 prior to 16 April 2012:

* Issue 1: the intervenors by 2 May 2012, the regulator by 9 May 2012, and the applicant in reply by 15 May 2012.
* Issues 2, 3, 4, 5 and 10: as to issue 2 the applicant has filed its submission, and on the other issues must do so by 24 April, and in each of those instances the regulator by 8 May and the applicant in reply by 11 May (the interveners play no role on those issues).
* Issues 6, 7, 8 and 9: the applicant by 24 April, the intervenors by 8 May, the regulator by 14 May, and the applicant in reply by 18 May.

To revert to the proposed orders provided by the regulator, the subsequent orders are not contentious. I request the regulator to provide a final proposed order which gives effect to those directions.

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| I certify that the preceding thirteen (13) numbered paragraphs are a true copy of the Reasons for Ruling herein of the Honourable Justice Mansfield (President). |

Associate:

Dated: 16 April 2012