AUSTRALIAN COMPETITION TRIBUNAL

Application by APA GasNet Australia (Operations) Pty Limited

[2013] ACompT 4

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| Citation: | Application by APA GasNet Australia (Operations) Pty Limited [2013] ACompT 4 |
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| Parties: | **APA GASNET AUSTRALIA (OPERATIONS) PTY LIMITED** |
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| File number: |  |
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| Tribunal: | **MANSFIELD J, PRESIDENT**  **PROFESSOR D ROUND, MEMBER**  **MR R STEINWALL, MEMBER** |
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| Date of decision: | 5 July 2013 |
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| Date of hearing: | Heard on the papers |
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| Solicitor for the Applicant: | Gilbert + Tobin Lawyers |
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| Solicitor for the Australian Energy Regulator: | Australian Government Solicitor |
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| IN THE AUSTRALIAN COMPETITION TRIBUNAL |  |
|  | ACT 2 of 2013 |

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| Re:: | APPLICATION UNDER SECTION 245 OF THE NATIONAL GAS LAW FOR A REVIEW OF A FULL ACCESS ARRANGEMENT DECISION MADE BY THE AUSTRALIAN ENERGY REGULATOR IN RELATION TO APA GASNET AUSTRALIA (OPERATIONS) PTY LIMITED PURSUANT TO RULE 64 OF THE NATIONAL GAS RULES |
| BY: | APA GASNET AUSTRALIA (OPERATIONS) PTY LIMITED (ABN 65 083 009 278)  Applicant |

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| TRIBUNAL: | MANSFIELD J, PRESIDENT  PROFESSOR D ROUND, MEMBER  MR R STEINWALL, MEMBER |
| DATE OF ORDER: | 5 JULY 2013 |
| WHERE MADE: | ADELAIDE |

THE TRIBUNAL ORDERS THAT:

1. Leave is granted to the Applicant to apply to the Tribunal for review of the full access arrangement decision made by the Australian Energy Regulator in relation to the Applicant published on 29 April 2013 in terms of its Application made on 20 May 2013.

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| IN THE AUSTRALIAN COMPETITION TRIBUNAL |  |
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| TRIBUNAL: | MANSFIELD J, PRESIDENT  PROFESSOR D ROUND, MEMBER  MR R STEINWALL, MEMBER |
| DATE: |  |
| PLACE: |  |

**REASONS FOR DECISION**

1. APA GasNet Australia (Operations) Pty Limited (APA GasNet) applies to the Tribunal for leave to apply for review of a reviewable regulatory decision of the Australian Energy Regulator (AER) under s 245(1) of the National Gas Law.
2. APA GasNet is the owner of the Victorian Transmission System (VTS). It is wholly owned by APT Pipelines Limited, part of the publicly listed APA Group. The APA Group owns and operates a number of gas transmission pipelines in Australia.
3. Section 7 of the *National Gas (Victoria) Act 2008* (Vic) provides that the National Gas Law, as set out in the Schedule to the National Gas (South Australia) Act 2008 (SA), applies as a law of Victoria (National Gas Law). *The National Gas (Victoria) Act 2008* (Vic) commenced operation on 1 July 2008.
4. Section 26 of the National Gas Law gives the National Gas Rules the force of law in Victoria.
5. The VTS consists of 45 licensed pipelines and associated facilities supplying to the Melbourne metropolitan area, country Victoria and supply to New South Wales and South Australia. The VTS also transports gas across the system and into New South Wales (NSW) at Culcairn.
6. The VTS is a covered pipeline pursuant to item 6 of Schedule 3 of the National Gas Law.
7. Under rule 52 of the National Gas Rules, APA GasNet was required to submit, and on 2 April 2012 did submit, an access arrangement revision proposal to the AER (APA GasNet Access Arrangement Proposal).
8. Pursuant to rule 59 of the National Gas Rules, the AER was required to make, and did make, an access arrangement draft decision in relation to the APA GasNet Access Arrangement Proposal entitled Access Arrangement Draft Decision: APA GasNet Australia (Operations) Pty Ltd 2013-17 dated September 2012 and published on 11 September 2012 (Draft Decision).
9. On 9 November 2012, APA GasNet submitted amendments to the AER (APA GasNet Access Arrangement Proposal Revisions).
10. On 15 March 2013, the AER published its access arrangement final decision entitled Access Arrangement Final Decision: APA GasNet Australia (Operations) Pty Ltd 2013-17 (Final Decision). The AER’s Final Decision was to refuse to approve the APA GasNet Access Arrangement Proposal Revisions.
11. On 29 April 2013, the AER published its decision to give effect to the AER Proposed Revisions, entitled Access Arrangement Decision: APA GasNet Australia (Operations) Pty Ltd 2013-17 (Reviewable Decision). The revisions made by the AER were incorporated into the access arrangement (including the terms and conditions and the access arrangement information) and were published by the AER with the Reviewable Decision.
12. Leave to apply for review of a regulatory decision may only be granted by the Tribunal if the threshold requirements identified in ss 248 and 249 of the National Gas Law are met.
13. Section 248 of the National Gas Law provides that the Tribunal must not grant leave to apply for review of a reviewable regulatory decision under s 245(1) unless there is a serious issue to be heard and determined as to whether a ground for review set out in subs 246(1) exists.
14. Subsection 249(1) of the National Gas Law applies where the application for leave to apply for merits review relates to a reviewable regulatory decision that is a full access arrangement decision and the grounds for review relied on by the applicant relate to the amount of revenue that may be earned by a covered pipeline service provider that is specified in or derived from that decision.
15. Subsection 249(2) of the National Gas Law provides that, in such cases, the Tribunal must not grant leave to apply for merits review unless the amount specified in or derived from the decision exceeds the lesser of $5,000,000 or two per cent of the average annual regulated revenue of the covered pipeline service provider that is specified in or derived from that decision (financial threshold).

# Grounds for review

1. APA GasNet seeks leave to apply for review of the matters set out in its Application for Leave and proposed Application for Review dated 20 May 2013 on the grounds stated in that Application. Its Application is supported by the affirmation of Catherine Dermody of 20 May 2013.
2. The Tribunal is satisfied that the Application is confined to grounds of review specified in s 246 of the National Gas Law, that the Application has been made within the time prescribed by s 247, and that there is no reason to refuse to grant leave by reason of ss 250 or 251.
3. Consequently, the matters remaining for the Tribunal’s consideration relate to the financial threshold, and to whether it is satisfied that there are serious issues to be heard and determined. The Tribunal, by directions given on 24 May 2013, gave the opportunity to the AER to indicate whether it opposed the grant of leave, and if so for the exchange of further submissions. The AER has not indicated that it opposes the grant of leave, so it is appropriate to address the leave question on the material presently relied upon by APA GasNet.
4. There are four general issues, each attracting several grounds of review, about which APA GasNet seeks leave to apply to review.

# FINANCIAL THRESHOLD

## Interval of delay

1. The issue as to the financial threshold is enlivened by the ground of review relating to the interval of delay as it relates to the amount of revenue that may be earned by APA GasNet (a covered pipeline service provider) that is specified in or derived from the Reviewable Decision.
2. In the Reviewable Decision, the AER did not accept APA GasNet’s proposal and purported to include in the tariff variation mechanism a mechanism that will operate to adjust the reference tariffs APA GasNet is permitted to charge in the 1 July 2013 to 31 December 2017 access arrangement period (2013-17 access arrangement period) to take into account the fact that the revisions to the 2013-17 access arrangement did not commence on 1 January 2013, but will commence on 1 July 2013.
3. On the basis of Ms Dermody’s affirmation and the material she refers to, the Tribunal is satisfied that the amount of revenue derived from the Reviewable Decision in respect of the adjustment to the reference tariffs to take into account the fact that revisions to the 2013-17 access arrangement did not commence on 1 January 2013 is approximately $6.5 million ($2013) over the period 1 July 2013 to 31 December 2017, being the difference between the revenue that would be derived from reference tariffs without any adjustment to take into account the fact that revisions to the 2013-17 access arrangement did not commence on 1 January 2013 but on 1 July 2013, and the revenue that would be derived from reference tariffs with such an adjustment.

## Opening capital base as at 1 January 2013

1. In the Reviewable Decision, the AER did not accept APA GasNet’s proposal and purported to adjust the opening capital base as at 1 January 2013 by removing the return on the difference between estimated and actual expenditure in 2007.
2. This ground also relates to the amount of revenue that may be earned by APA GasNet that is specified in or derived from the Reviewable Decision.
3. On the same material, the Tribunal is satisfied that the amount of revenue derived from the full access arrangement decision in respect of the value of the opening capital base as at 1 January 2013 is approximately $6.54 million (nominal) over the period 1 July 2013 to 31 December 2017, being the difference between the amount of revenue that would be derived from reference tariffs based on the value of the opening capital base as at 1 January 2013 proposed by APA GasNet in the APA GasNet Access Arrangement Proposal Revisions and the amount of revenue that would be derived from reference tariffs based on the value of the opening capital base as at 1 January 2013 applied in the Reviewable Decision.

## Depreciation

1. In the Reviewable Decision, the AER did not accept APA GasNet’s proposal and purported to apply its own allowance for depreciation that was predicated on an approach which involved indexation of the capital base.
2. The AER’s decision in relation to depreciation also relates to the amount of revenue that may be earned by APA GasNet that is specified in or derived from the Reviewable Decision.
3. Again, on the basis of Ms Dermody’s affirmation and the material she refers to, the Tribunal is satisfied that the amount of revenue derived from the Reviewable Decision in respect of the allowance for depreciation is approximately $76.38 million (nominal) over the period 1 July 2013 to 31 December 2017, being the difference between the amount of revenue that would be derived from reference tariffs based on the allowance for depreciation proposed by APA GasNet in the APA GasNet Access Arrangement Proposal Revisions and the amount of revenue that would be derived from reference tariffs based on the allowance for depreciation set out in the Reviewable Decision.

## Rate of return – Cost of equity

1. In the Reviewable Decision, the AER did not accept APA GasNet’s proposal and purported to apply its own methodology for measuring the cost of equity which involved seeking to estimate the market risk premium and ascribing a value for that parameter of six per cent.
2. The AER’s decision in relation to the measurement of the cost of equity relates to the amount of revenue that may be earned by APA GasNet that is specified in or derived from the Reviewable Decision.
3. This is the fourth of four general issues to which the proposed grounds of review relate. On the same material, that is Ms Dermody’s affirmation and the material she refers to, the Tribunal is satisfied that the amount of revenue derived from the full access arrangement decision in respect of the cost of equity is approximately $36.42 million (nominal) over the period 1 July 2013 to 31 December 2017, being the difference between the amount of revenue that would be derived from reference tariffs based on the value for the cost of equity proposed by APA GasNet in the APA GasNet Access Arrangement Proposal Revisions (10.20 per cent nominal, post tax), and the value for the cost of equity applied in the Reviewable Decision (8.02 per cent nominal, post tax).

# CONCLUSION

1. Consequently, the Tribunal is satisfied that the financial threshold prescribed in s 249 of the National Gas Law is met in respect of each of the grounds of review.

# SERIOUS QUESTION TO BE TRIED

1. It remains to consider whether it appears to the Tribunal that there is a serious question to be heard and determined as to whether each of the grounds of review exists.

## Interval of Delay

1. The relevant Rules are particularly Rules 72(1)(j) and (k) and 92(1)(2) and (3) of the National Gas Rules.
2. The 2008-2013 Access Arrangement is taken by the AER to have ended on 1 January 2013, and the Reviewable Decision operates from 1 July 2013. The AER explained that the “target revenue” and “total volume withdrawn” (integers in the calculation of tariffs) have been adjusted “to account for the late commencement date of 1 July 2013 instead of 1 January 2013”. The adjustments then specified are downwards adjustments in the tariffs after 1 July 2013 to account for the difference between the existing reference tariffs over the period 1 January 2013 to 1 July 2013 and the reference tariffs that would have been applicable in that period had the 2013-2017 Access Arrangement commenced on 1 January 2013.
3. APA GasNet’s contention is that the 2008-2013 Access Arrangement continued to 1 July 2013 in the circumstances, and the AER’s approach was incorrect, and that the AER could not “rewrite” its terms. Hence, it said, the AER erred in fact by proceeding on the basis that there was an interval of delay to be addressed, and additionally that the AER wrongly exercised its discretion, or made an unreasonable decision, by adjusting the tariffs under the Reviewable Decision for the interval of delay in the manner it did on the basis of a perceived over-recovery, as Rule 92(3) did not in the circumstances enable it to do so.
4. The point is a short one, and on the basis of the material referred to the Tribunal is satisfied that it gives rise to serious issues to be determined by raising the grounds in relation to it in the application.

## Opening Capital Base at 1 January 2013

1. The relevant Rules are Rules 69, 76 and 77 of the National Gas Rules.
2. This issue arises because APA GasNet noted that its estimated capital expenditure for 2007 was $101.5 million ($2012) and that this amount had been rolled into the 2008 opening capital base, so those expenditures were not reflected in the 2008-12 capital expenditure forecast. However, in 2007 APA GasNet’s actual capital expenditure was $82.2 million ($2012), because of slower than expected progress on certain works. The projects which accounted for the difference between estimated and actual expenditure in 2007 in essence were completed or substantially completed between 2008 and 2012.
3. There is no dispute that the opening capital base for the 2013-2017 Access Arrangement should be reduced by the difference between the estimated and actual capital expenditure in 2007. The dispute concerns a further reduction of $13.2m by the AER to the opening capital base for the 2013-2017 Access Arrangement reflecting the return on capital over the last access arrangement period on the difference between the 2007 estimated and actual capital expenditure amounts.
4. The AER’s Final Decision was not to approve APA GasNet’s proposed opening capital base as at 1 January 2013 because it had not been adjusted to remove the return on the difference between estimated and actual capital expenditure in 2007. This decision was given effect in the Reviewable Decision by removing $13.2 million ($nominal) from the opening capital base for the 2013-2017 Access Arrangement.
5. APA GasNet argues that the AER erred in making a further adjustment of $13.2 million to the opening capital base, in circumstances where rule 77(2) makes express and exhaustive provision for the matters to be included in the opening capital base, and does not provide for the further adjustment made by the AER. It also says the AER erred in proceeding to make the adjustment without any regard to the fact that the relevant capital expenditure was (except for a minor amount) actually incurred between 2008 and 2012. Consequently, it argues it will have received no allowance for a return on capital for the expended amounts over the entire period 2008-2012, as the return which was in fact received is now being reversed. Further, it says that if the AER was (contrary to the terms of rule 77(2)) entitled to remove any benefit received by APA GasNet from the difference between forecast and actual expenditure in 2007, then the $13.2 million adjustment is excessive and not a proper assessment of that benefit.
6. In the view of the Tribunal, those matters do expose serious issues to be heard and determined about whether the AER correctly proceeded on the footing that APA GasNet received “additional revenue” which it “will keep” unless the adjustment is made, and that APA GasNet’s approach would create incentives to defer efficient expenditure, without having regard to the circumstance that the majority of this expenditure was in fact incurred in the 2008 – 2012 period. The AER’s approach would create incentives to spend the amount of capital expenditure that has been estimated for the last year of an access arrangement period, whether or not it is efficient to spend it all in that year. Hence, as expressed in the application, the contentions constitute issues about whether the AER made an error or errors of fact in its findings of fact which were material to the making of the decision; or whether the exercise of the AER’s discretion was incorrect, having regard to all the circumstances; or whether the AER’s decision was unreasonable, having regard to all the circumstances, and the Tribunal is persuaded that those grounds satisfy the test prescribed by s 248.

## Depreciation and Indexation of the Capital Base

1. The relevant Rules are Rules 72, 88 and 89 of the National Gas Rules.
2. In the APA GasNet Access Arrangement Proposal and the APA GasNet Access Arrangement Proposal Revisions, APA GasNet proposed to use a straight-line depreciation profile and proposed a set of asset lives for the purposes of calculating depreciation. The Final Decision accepted APA GasNet’s proposal to use a straight-line depreciation profile and also accepted the proposed asset lives, with one exception which is not relevant here.
3. For the purposes of calculating amounts of depreciation, APA GasNet proposed use of nominal values for the asset base. In line with its proposal to use nominal values for the asset base (and also a nominal rate of return), APA GasNet proposed no adjustment for inflation in the calculation of depreciation amounts in the calculation of total revenue.
4. In the Final Decision, the AER did not accept the depreciation schedule proposed by APA GasNet. Instead, the AER required a depreciation schedule based on indexed values for the asset base.
5. The AER’s conclusion that APA GasNet’s proposed depreciation schedule did not satisfy the applicable criteria was based on a comparison of projected paths for reference tariffs over future access arrangement periods. The main difference between the two approaches lay in the timing and magnitude of projected tariff reductions.
6. On this aspect, APA GasNet argues that the AER erred including in the following respects:
7. the AER misconstrued its task in reviewing the proposed depreciation schedule, which was limited to assessing the proposed profile of depreciation and the proposed asset lives;
8. the AER failed to apply the limited discretion approach in rule 89(3) and erroneously engaged in an assessment of which approach better satisfied the relevant criteria;
9. the AER had insufficient evidence to support its conclusion that the proposed depreciation schedule was not designed so that reference tariffs will vary, over time, in a way that promotes efficient growth in the market for reference services;
10. the AER failed to have regard to, or failed to adequately take into account, the expert evidence and other factual evidence which indicated that the proposed depreciation schedule was designed so that reference tariffs will vary, over time, in a way that promotes efficient growth in the market for reference services;
11. the AER’s conclusion that the proposed depreciation schedule was not designed so that reference tariffs will vary, over time, in a way that promotes efficient growth in the market for reference services was based on errors of fact, including in relation to the level of spare capacity in the VTS;
12. the AER ignored the fact that under its approach there would be significant price falls followed by later price rises, thus creating price shocks and likely inefficient investment, or, alternatively, the AER made a factual error or errors in failing to conclude that this would be the case notwithstanding the evidence to that effect;
13. the AER made factual errors in concluding that any capacity constraints on the VTS were insignificant and could be managed in various ways, including because the AER misunderstood the measurement of capacity constraint used by APA GasNet and the significance of that measurement;
14. the AER erred in failing to take into account that the greatest capacity constraints on the VTS were in the very area (the Northern Zone) where demand was most likely to be responsive to changes in tariffs, such that the impact of the AER’s approach would be more concentrated in a particular zone than the AER recognised in the Final Decision;
15. the AER failed to have regard to, or failed to adequately take into account, the evidence submitted by APA GasNet which demonstrated that the AER’s alternative depreciation schedule was not designed so as to allow for the APA GasNet’s reasonable needs for cash flow to meet financing, non-capital and other costs.
16. Further, or alternatively, APA GasNet contends that the AER’s decision was unreasonable, having regard to all the circumstances.
17. The Tribunal, obviously reaches no present final conclusion about any of those matters, or indeed about any of the grounds of review in the application. It has not had the benefit of the AER’s views (beyond those expressed in its Decisions) but it will no doubt have that assistance at the hearing. In the present circumstances, it has considered the contentions as expressed and the material to which it has been referred. It is required to be satisfied that each of the specified grounds of review on this general topic give rise to serious issues to be heard and determined. It has reached that degree of satisfaction.

## Rate of Return – Cost of Equity

1. The relevant Rules are Rules 72, 74, 76 and 87 of the National Gas Law.
2. In the APA GasNet Access Arrangement Proposal and the APA GasNet Access Arrangement Proposal Revisions, APA GasNet proposed to use a nominal vanilla weighted average cost of capital (WACC) to estimate the return on capital. The Final Decision accepted APA GasNet’s proposal to use a nominal post-tax WACC to estimate the return on capital.
3. A nominal vanilla WACC is a weighted average of the pre-tax cost of debt and the post-tax cost of equity, and is calculated on a well-known formula. One input is the post-tax cost of equity. In the APA GasNet Access Arrangement Proposal and the APA GasNet Access Arrangement Proposal Revisions, APA GasNet proposed to use the capital asset pricing model (CAPM) to estimate the post-tax cost of equity. The Final Decision accepted APA GasNet’s proposal to use the CAPM to estimate the post-tax cost of equity.
4. The CAPM provides for the cost of equity to be calculated also on a well-known formula. The inputs include the nominal risk-free rate, the equity beta and the expected return on the market portfolio of equities. The difference between the expected return on the market portfolio and the nominal risk-free rate is sometimes abbreviated and referred to as the market risk premium (MRP).
5. It is common ground between the AER and APA GasNet that:
6. in accordance with the requirement for the rate of return to be commensurate with prevailing conditions in the market for funds, all elements of the CAPM formula that are time-variant should ideally reflect current (or prevailing) market conditions;
7. in order to derive a nominal risk-free rate that reflects prevailing market conditions, the prevailing yield on 10-year Commonwealth Government Securities (averaged over an agreed 20-day period) should be used. Applying this approach resulted in a nominal risk-free rate of 3.22% for APA GasNet’s agreed averaging period; and
8. an appropriate value for the equity beta is 0.8.
9. What is not common ground is the appropriate value for the final element of the CAPM formula – the return on the market portfolio. Hence, the area of dispute is quite narrow.
10. APA GasNet proposed to use the dividend growth model (DGM) to measure the expected return on the market portfolio. That is a model which can be used to estimate the current market return on equities by reference to current prices for those equities, and estimated future growth in dividend yields. Based on DGM modelling undertaken by expert economists, APA GasNet proposed to apply a market return of 11.94% in the CAPM formula.
11. In the Final Decision, the AER did not attempt an estimate of the market return. Instead, the AER chose to adopt a value for the MRP of 6%, which implies a return on the market portfolio of 9.22%. The AER considered that the prevailing MRP is not directly observable (unlike other parameters in the CAPM formula) and therefore various sources of information ought to be taken into account, including data on historical excess returns, survey based estimates of the MRP, DGM estimates and recent practice among Australian regulators. It concluded on balance that the relevant information supports a value for the MRP of 6%. It noted that although current DGM estimates are significantly higher than 6%, those estimates are to be interpreted with caution, including because they are highly sensitive to input assumptions.
12. The AER gave effect to its final decision in the Reviewable Decision.
13. This topic has been addressed in other recent decisions of the Tribunal. It is clearly an important one, about which different apparently reasonable views are held. The contentions of APA GasNet largely reflect that ongoing difference of views. It argues that the AER erred including in the following respects:
14. the AER erred in not attempting to estimate the return on the market portfolio of equities, as required under the CAPM formula – instead, the AER set out to estimate the “MRP” and thus misconstrued its task;
15. the AER failed to have regard to evidence that the prevailing yield on 10-year Commonwealth Government Securities was anomalously low, including for reasons that were unrelated to the rate of inflation, and erred in concluding that the prevailing yield was not anomalously low;
16. the AER failed to have regard to evidence that the required return on equity was significantly higher than the amount suggested by the AER’s approach, and erred in concluding that the AER’s approach correctly estimated the required return on equity;
17. the AER failed to have regard to evidence (including from its own expert) that the MRP was likely to be larger than normal in the market conditions prevailing at the relevant time;
18. the AER had insufficient evidence to support its conclusion that the return on the market portfolio was falling in lock step with the risk-free rate, as implied by the AER’s conclusion that the MRP is stable over time and that it was appropriate to use a historical measure of MRP;
19. the AER failed to have regard to, or failed to adequately take into account, the expert evidence which indicated that the return on the market portfolio was in fact relatively stable over time, and that the MRP was less stable and tended to vary inversely to the risk-free rate;
20. the AER made errors of fact in its interpretation of empirical evidence in relation to the relative stability of market returns and the MRP over time;
21. the AER failed properly to recognise that the use of a historical average for the MRP involved the use of two inconsistent risk free rates in the one equation;
22. the AER failed properly to consider whether, if there was insufficient evidence as to the prevailing market return or the prevailing MRP at the relevant time, a long term average market return or a long term average MRP should be matched with a long term average risk free rate;
23. the AER erred in placing insufficient, or indeed any, weight on the results of DGM analysis, which provided the only truly forward-looking or current estimate of the prevailing return on the market portfolio (as opposed to other methods which measure historic returns);
24. the AER erred in concluding that DGM estimates were unreliable or to be given limited weight;
25. the AER failed to have regard to, or failed to adequately take into account expert advice (including advice from its own experts) that greater consideration should be given to DGM estimates;
26. the AER erred in concluding that evidence of historic excess returns provided a reasonable proxy for estimation of the difference between the prevailing market return and the prevailing risk-free rate; and
27. the AER erred in failing to conclude that, in light of evidence of volatility in the MRP, the use of a historical MRP was no proper substitute for estimating the expected return on the market portfolio of equities.
28. It also contends that the AER’s decision on this aspect was unreasonable, having regard to all the circumstances.
29. The Tribunal has noted the ongoing debate on this topic. In that light, it is sufficient to say that it is satisfied that the grounds of review of APA GasNet on this topic are ones which give rise to serious issues to be heard and determined. It is possible that the time may be reached when that is no longer the case, although on such an issue – which involves a complex factual question where market conditions are almost always in a state of change, and sometimes rapid change – it would not be appropriate to predict when and if such a time may be reached.

# ORDERS

1. It follows that the Tribunal gives leave to APA GasNet to apply to review the Reviewable Decision, on the four issues referred to and on the grounds contained in its Application.
2. The Tribunal, to ensure the appropriate progress of this matter, has already given directions as to its preparation in the event that leave to apply is given (as is now the case). Unless APA GasNet, the AER or a third party seeking to intervene applies for further or different directions, the application itself will now come on for hearing as directed on 13 August 2013.

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| I certify that the preceding sixty five (65) numbered paragraphs are a true copy of the Reasons for Decision herein of the Honourable Justice Mansfield (President), Professor Round and Mr Steinwall. |

Associate:

Dated: 5 July 2013