

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PIPELINE AUTHORITY (CHARGES) BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for
Resources, the Hon Alan Griffiths, MP)



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GENERAL OUTLINE

This Bill puts in place new haulage tariff arrangements which allow The Pipeline Authority (TPA) to achieve, over time, a fair and reasonable rate of return on the current worth of its total assets. TPA is a statutory authority established pursuant to the provisions of the Pipeline Authority Act 1973. On behalf of the Commonwealth, it operates the Moomba-Sydney gas pipeline (and the associated lateral pipelines to Cootamundra, Junee and Wagga Wagga; to Canberra; to Orange, Bathurst, Blayney and Lithgow; and to Oberon).

Existing haulage tariff arrangements are non-commercial as they do not permit TPA to earn any overall profit on the main bulk of its business until the year 2006, and to earn only inadequate profits over the following 10 years. As a consequence, the Commonwealth is, in effect, heavily subsidising the transportation of gas in NSW.

For the main trunk line and some of the lateral lines, the Bill provides for a 25% increase in haulage tariffs to apply from 1 January 1991 and for a further 25% increase to operate from 1 January 1992. It also provides for the impact of these haulage tariff increases to be passed on to consumers and establishes a mechanism for compensation to be paid to a gas supplier for any loss of profit it might sustain arising from reductions in the overall demand for gas attributable to the above haulage tariff increases. In assessing the amount of any compensation regard is to be had to the extent to which a supplier has taken action to mitigate any loss of profit by seeking alternative markets for the gas.

FINANCIAL IMPACT

The haulage tariff increases provided for in this Act will significantly increase the revenues received by TPA. Indicative estimates of the increase in gross revenues (before any allowance for a possible reduction in the volume of gas transported as a result of the tariff increases) are set out below.

1990-91	1991-92	1992-93
\$m	\$m	\$m
9	28	39

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

1. Provides for the Act to be cited as the Pipeline Authority (Charges) Act 1990

Clause 2 - Commencement

2. Provides that the Act shall come into operation on the day it receives the Royal Assent.

Clause 3 - Objects

3. Establishes the principal objects of the Act - in particular, to gradually increase the haulage charges for the carriage of natural gas from Moomba in South Australia to New South Wales to a level at which sufficient revenue is generated to enable TPA to earn a fair and reasonable rate of return on the current worth of its total assets.

Clause 4 - Interpretation

4. This clause defines various terms used in the Act. In particular, it defines the pipelines owned by TPA and the meaning of the term "current worth" in relation to TPA's assets.

PART 2 - ADJUSTMENT OF CARRIAGE RATES

5. Divisions 1 to 3 of this Part specify the financial arrangements to apply in respect of TPA's pipelines on or after 1 January 1991. The new arrangements are to be effected by adjusting the pricing provisions in the existing contracts between TPA and The Australian Gas Light Company (AGL), which is currently the Authority's only customer for gas haulage.

Division 1 - Moomba-Sydney pipeline system

Clause 5 - Interpretation

6. This clause ensures that gas delivered from Moomba to the point at which the gas passes into the Oberon pipeline is subject to the haulage tariff increases provided for in clause 6.

Clause 6 - Carriage of natural gas through the Moomba-Sydney pipeline system

7. This clause provides for increased haulage tariffs to apply to gas hauled by TPA through the Moomba-Sydney pipeline system on or after 1 January 1991. By clause 4 of the Bill, this system is defined to include the main trunk line from Moomba to Wilton, near Sydney, as well as the lateral pipelines to Cootamundra, Junee and Wagga Wagga; and to Orange, Bathurst, Blayney and Lithgow. It carries the great bulk of the gas hauled by TPA and encompasses all of TPA's pipelines except for the lateral lines to Canberra and Oberon. The current haulage tariff charged for this system represents a pure cost recovery arrangement. As such, it does not provide for any profit component for TPA.

8. Sub-clause (2) provides that, where the rate per gigajoule charged for haulage is less than the adjusted rates set out in sub-clauses (3) to (5), then the adjusted rates shall apply. Sub-clause (3) provides for the first 25% haulage tariff increase to apply for the 1991 calendar year (which will result in the current rate charged to the various delivery points along the system of 80 cents per gigajoule being increased to \$1 per gigajoule). Sub-clause (4) provides for the second 25% increase to apply during the 1992 calendar year (increasing the tariff to \$1.25 per gigajoule).

9. Sub-clause 5 provides for the haulage tariff to apply after calendar year 1992 to be set by regulation.

Division 2 - Oberon pipeline

Clause 7 - Carriage of natural gas through the Oberon pipeline

10. This clause specifies the haulage tariffs to apply to the Oberon Pipeline (defined by clause 4 of the Bill as extending from a point near Brewongle in NSW to a delivery point at Oberon) on or after 1 January 1991. The haulage tariff arrangements set out take into account the fact that, unlike the Moomba-Sydney pipeline system, the existing haulage tariff for the Oberon pipeline incorporates a profit component for TPA, and is specified as a monthly charge rather than a rate per gigajoule for a particular year.

11. Sub-clause (2) provides that, where the monthly amount required to be paid for the haulage of gas is less than the adjusted amount provided for in sub-clause (3), then the adjusted amount will apply. Sub-clause (3) specifies two means for determining the adjusted amount for any calendar month from January 1991. The first is by a memorandum of agreement between TPA and the person owning the gas hauled to Oberon. Sub-clauses (4) and (5) describe the conditions attaching to a memorandum if it is to be effective. In particular, it must be approved by the responsible Minister who can only do so if he is satisfied that the tariff to apply is consistent with TPA earning a fair and reasonable return on the current worth of its assets.

12. If there is no memorandum of agreement in force, sub-clause (3) provides that the adjusted amount is to be fixed by regulation.

Division 3 - Canberra pipeline

Clause 8 - Sale of natural gas carried through the Canberra pipeline

13. This clause specifies the price to apply to natural gas delivered by TPA to the Australian Capital Territory from Moomba on or after 1 January 1991. The arrangements between TPA and AGL in respect of gas hauled to Canberra differ significantly from those applying to gas hauled to delivery points along the Moomba-Sydney pipeline system and to Oberon. TPA purchases gas from AGL at Moomba and then transports it to the delivery point in the ACT where it is resold to AGL for reticulation to consumers. There is no separate haulage component specified in the current sale contract between TPA and AGL. Accordingly, the adjustments provided for by this clause relate to the value of natural gas sold rather than to the haulage tariff per se.

14. The arrangements for adjusting the price of natural gas sold on or after 1 January 1991, set out in sub-clauses (2) to (5), are essentially the same as those proposed for the Oberon pipeline described in paragraphs 11 and 12 above. As for Oberon, this reflects, in part, the fact that the current price charged incorporates a profit component for TPA.

Division 4 - Adjustment of contracts

15. The provisions of Division 4 of the Bill will enable the increases provided for by Divisions 1, 2 and 3 of Part 2 to be passed through to consumers of gas, as intended by the Government.

Clause 9 - Application of Division

16. This clause outlines the contracts to which Division 4 applies. They include, in particular, all contracts between AGL and its subsidiaries (which distribute gas to various parts of NSW and the ACT) and between AGL's subsidiaries and final consumers of gas.

Clause 10 - Interpretation

17. Defines the term "Moomba gas".

Clause 11 - Recovery of additional costs occasioned by this Act

18. Sub-clauses (1) and (2) specify that any provisions of a State law that fix, or provide for the fixing of, the price at which natural gas may be sold, do not apply to contracts falling within Division 4. They ensure that legislative provisions in either NSW or the ACT which regulate the price of natural gas will not prevent the additional costs incurred as a result of the operation of Part 2 from being included in gas prices charged to consumers.

19. Sub-clause (4) provides a mechanism for excluding state laws fixing the price of gas from the operation of sub-clauses (1) and (2) in order to provide for situations where these laws may be made consistent with the intent of this legislation in relation to the passing through of additional costs caused by the operation of Part 2.

Clause 12 - Provision for adjustment of fixed price contracts

20. The purpose of this clause is to enable a gas distributor to pass through (via an increase in the price of gas sold) the additional costs it is called upon to bear as a result of the application of Part 2, in situations where that is not permitted under contractual arrangements made before the commencement of this Act (referred to as fixed price contracts).

21. Sub-clauses (2) and (3) specify that, in these situations, a seller must give a purchaser written notice of the increase in sale price to apply, and that the date of introduction of the increase must not be earlier than 28 days after the date such notice is given or earlier than 1 January 1991.

22. The extent to which the increases in costs are passed on to particular types of consumers (domestic, commercial and industrial) will be a matter for the commercial judgement of the relevant gas distributors. Distributors will be able to pass on a less-than-proportionate share of the increased costs to some consumers and a more-than-proportionate share on to others, in accordance with their judgement of what is the most appropriate marketing strategy.

23. Sub-clauses (4) and (5) enable a purchaser who has received a notice under sub-clause (2) to elect, no later than the day specified in the notice, to bring the contract to an end in those situations where it was entered into prior to 22 August 1990.

PART 3 - COMPENSATION

Clause 13 - Interpretation

24. Under the provisions of Part 3, a supplier may be eligible for compensation payments. This clause defines the term supplier in a way which limits its application to AGL and its subsidiary companies.

Clause 14 - Entitlement to compensation

25. Sub-clause (1) provides for compensation to be claimed from the Commonwealth by a supplier in each calendar year from 1991 up to and including the year 2006 when the current long-term contract between AGL and TPA for the haulage of gas is due to expire. Compensation is only payable in respect of a loss of profit suffered as a result of the operation of Part 2.

26. Sub-clause (2) specifies that any such loss of profit is to be measured by reference to the quantity of gas sold in a particular year vis-a-vis the quantity which would have been sold in that year had this Act not applied. Thus, the basic criterion for measuring any loss of profit will be a reduction in expected future profit on certain specific assumptions rather than the profit level currently being achieved by AGL, etc.

27. Sub-clause (3) provides that a supplier will not be entitled to compensation unless the relevant Minister is satisfied that it has passed on the additional costs arising from Part 2 in increased prices charged to its customers for gas. As a result, a supplier will not be compensated under this Part for any loss of profit if the supplier chooses to absorb some or all of these additional costs rather than passing them on. A supplier will be able to pass on a less-than or more-than proportionate share of the costs to particular consumers but, to be eligible for compensation under this Part, the supplier must, in aggregate, pass on the additional costs in full.

Clause 15 - Mitigation of loss

28. This clause specifies that, in determining the amount of compensation to be paid, the Minister must have regard to the extent to which a supplier has taken action to mitigate the extent of any loss of profit by endeavouring to find alternative markets for any gas sales lost as a result of the price increases.

Clause 16 - Claims for compensation

29. This clause specifies the procedures to be followed by a supplier wishing to submit a claim for compensation to the Minister in respect of a calendar year. In particular, the claim must specify the extent of the decrease in demand for natural gas during the year caused by the operation of Part 2, the amount of compensation claimed and the means by which this was arrived at.

Clause 17 - Time limit for claim

30. This clause provides that a claim for compensation must be made within 3 months of the calendar year to which it relates.

Clause 18 - Minister either to accept claim and notify an amount of compensation or to reject claim

31. This clause sets out the procedures for the Minister to determine any claims for compensation submitted pursuant to clause 16. Sub-clause (1) sets out the procedure the Minister is required to follow if a claim, or part of a claim, is accepted, including the requirement that an offer of compensation should provide an explanation of how the amount was arrived at. Sub-clause (2) sets out the procedures for rejection of a

claim by the Minister, including the requirement to provide the supplier with the reasons for any such rejection. Sub-clause (3) provides that the failure of the Minister to respond to a compensation claim within 3 months is to be taken as a rejection of the claim, hence preventing any undue delay in considering the claim.

Clause 19 - Supplier may accept or reject compensation

32. This clause provides for a supplier to either accept or reject an offer of compensation made by the Minister under sub-clause 18(1) within 2 months of receipt and, in the case of rejection, requires the supplier to detail both the amount of compensation which it considers is payable and the basis of the calculation.

Clause 20 - Minister to determine compensation

33. Sub-clauses (1) and (2) require the Minister to re-consider any claim by a supplier made under paragraph 19(1)(b) and to detail a final offer, having regard to any additional information provided by the supplier in support of its claim.

34. Sub-clause (3) provides for the situation where the Minister fails to respond to a claim under paragraph 19(1)(b) within one month of its receipt. In those circumstances, the Minister will be deemed to have made an offer of compensation identical to that made under the notice provided to the supplier pursuant to sub-clause 18(1), that is, an offer identical to the original offer of compensation made by the Minister. Again, this sub-clause prevents any undue delay in the consideration by the Minister of a claim.

Clause 21 - Review of decisions

35. This clause provides that, on application, a supplier may have the decision made by the Minister concerning a compensation claim reviewed by the Administrative Appeals Tribunal (AAT). Sub-clause (2) provides that the Minister is to make this fact known to the supplier at the time that he advises him of a decision under sub-section 18 (2) (rejecting the claim) or section 20 (making a final offer of compensation).

Clause 22 - Payment of compensation

36. This clause obliges the Commonwealth to pay to the supplier the amount of compensation determined under this Part, including amounts specified after review by the AAT.

Clause 23 - Interest payable on compensation

37. This clause provides for the payment of interest on compensation amounts in recognition of the delay between the time when a claim is made and when it is paid. Sub-clauses (2) and (3) provide for the payment of interest on compensation owed by the Commonwealth, at a rate specified in or ascertained in accordance with the regulations, for the period from the date of lodgement of a claim by the supplier until the day when payment is made. Interest is not, however, payable for any period where the payment of compensation is delayed through a default or delay of the supplier, or for the period after which an offer of compensation is received by the supplier but is rejected and where the amount of compensation finally determined is less than the amount offered to the supplier by the Minister in the first instance.

38. For reasons of equity sub-clause (4) provides for interest owing to the supplier but not paid after each period of three months from the date of a claim having been lodged to be added to the amount of compensation payable.

PART 4 - COURTS TO ENSURE JUST TERMS

Clause 24 - Courts to ensure just terms

39. This clause provides that, if the application of any of the provisions in the Bill, including the compensation provisions for a supplier set out in Part 3, would result in an acquisition of property having been made on other than just terms the appropriate court may determine suitable compensation. The clause ensures that, in this event, the parties affected would have appropriate redress.

PART 5 - MISCELLANEOUS

Clause 25 - Authority to act commercially

40. This clause places certain requirements on TPA in regard to its future business operations. In particular, TPA must pursue a policy directed at securing a reasonable rate of return on the current worth of its

total assets. Any new contracts which TPA enters into for the haulage or sale of natural gas must provide for amounts to be paid which are not less than those obtained through the operation of Divisions 1 and 3 of Part 2.

Clause 26 - Commonwealth guarantee

41. This clause specifies that neither a provision of this Act nor anything done under this Act will have the effect of activating any guarantee by the Commonwealth of the due performance by TPA of its obligations under any contract.

Clause 27 - Regulations

42. This clause provides for regulations to be made not inconsistent with this Act.

