

Decision on Gas Trading Licence Renewal Application – Alinta Sales Pty Ltd

17 June 2010

Economic Regulation Authority



WESTERN AUSTRALIA

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For further information, contact:

Economic Regulation Authority
Perth, Western Australia
Phone: (08) 9213 1900

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DECISION

1. Pursuant to section 11K and 11S of the *Energy Coordination Act 1994 (Act)*, the Authority approves the renewal of Alinta Sales Pty Ltd's (**Applicant**) gas trading licence to sell gas to small use customers transported through a gas distribution system, subject to, and in accordance with, the terms set out in the trading licence, for a period of 10 years.
2. As required by section 11T(1) of the Act, the Authority will publish a notice of its approval of the application for renewal in the *Government Gazette* as soon as is practicable.

Background

3. On 1 July 2000, the Applicant was granted a gas trading licence GTL9 for the maximum period of 10 years under the Act, which expires on 30 June 2010. The licence authorises the Applicant to sell gas to small use customers in the Coastal, Great Southern and Goldfields-Esperance supply areas of Western Australia.
4. On 31 March 2010, the Applicant submitted an application for renewal of its gas trading licence pursuant to section 11P of the Act.
5. Pursuant to section 11S of the Act, and subject to section 11K of the Act, the Authority must renew a licence if it is satisfied that the Applicant:
 - has and is likely to retain; or
 - will acquire within a reasonable time after the renewal and then is likely to retain, the financial and technical resources to carry out the functions authorised by the licence under the Act.
6. The Authority has considered the meaning of “likely” and, consistent with its interpretation under similar legislation, considers that it means more probable than not or a greater than 50% chance.
7. Section 11K of the Act states that the Authority must not exercise a power conferred by Part 2A Division 4 of the Act (general licensing provisions) unless the Authority is satisfied that it would not be contrary to the public interest to do so.
8. A notice regarding receipt of the Application was published on the Authority’s website on 20 April 2010 and submissions closed on 12 May 2010. The Authority received no submissions concerning the application to renew the Applicant’s licence.

REASONS

9. The Authority engaged the Paxon Consulting Group (**Paxon**) to examine the financial capacity of the Applicant to undertake the activities authorised by the gas trading licence.

10. On 18 December 2009, the Applicant's parent company, Alinta Energy Limited (**Alinta Energy**), announced that it had restructured its \$2.7 billion senior syndicated loan facility with its 11 senior lenders. As part of that restructure, the repayment of the facility was extended to 30 September 2012. The negotiated interest rate was subject to Alinta Energy meeting debt reduction targets.¹ On 29 April 2010, Alinta Energy announced that it was progressing "deleveraging opportunities for the business including asset sale and capital management options".²
11. The Applicant is a party to a Deed of Cross Guarantee (**Deed**), which is a formal agreement where a group of entities covenant with the trustee for the benefit of each creditor. Each group entity guarantees to each creditor payment in full of any debt in accordance with the Deed.
12. It is unknown whether the guarantee provided by the Applicant under the Deed will be required to be enforced after September 2012 and, if so, as a result of such enforcement, the Applicant would no longer have the financial resources to carry out the functions authorised by the licence. However, for the purpose of assisting the Authority's decision, Paxon has considered the likely result if Alinta Energy is unable to raise additional equity or sell assets by September 2012 to satisfy its lender obligations.
13. Paxon has stated that the Applicant is a viable entity in its own right. Paxon also notes that if the guarantee was to be enforced, the appointment of a liquidator is unlikely because the value of the Alinta Group's enterprise is largely contained in the interconnected intangible assets such as the gas trading licence, customer relations database, and other key systems. As such, if the Applicant was to be in receivership or administration, the appointee would likely arrange the injection of funds into the business to ensure that it could undertake the activities authorised by the licence and therefore be sold as a going concern.
14. For these reasons, Paxon concluded that, even if the guarantee was enforced against the Applicant, for the purpose of section 11S of the Act, the Applicant is still "likely" to retain the financial resources to undertake the activities authorised by the licence. The Authority agrees with these conclusions and therefore is satisfied that the Applicant has, and is likely to retain the financial resources to undertake the activities to be authorised by the licence.
15. The Authority engaged the consultant GHD to examine the technical capacity of the Applicant to undertake activities authorised by a trading licence. Following the assessment, GHD concluded that the Applicant has, and is likely to retain; or will acquire within a reasonable time after the grant, and is then likely to retain, the technical resources to undertake the activities authorised, or to be authorised, by a gas trading licence. The Authority agrees with these conclusions.
16. In its consideration of the Application, the Authority considered the public interest, including the matters set out in section 11H(3) of the Act as required by section 11K(2). Accordingly, the Authority is satisfied that approval of the renewal of a trading licence to the Applicant would not be contrary to the public interest.

¹ Alinta Energy Limited, ASX Release, *Market Update: Comprehensive Restructure*, 18 December 2009.

² Alinta Energy Limited, ASX Release, *Appointment of adviser by the Alinta Energy directors to assess deleveraging proposals*, 29 April 2010.

17. In accordance with section 11WE of the Act, the Authority can only grant a trading licence if it has approved the Standard Form Contract under which the applicant intends to supply gas. The Applicant submitted a Standard Form Contract as part of the Application. This contract is identical to the one previously approved in May 2009. As such, the Authority determined that no public consultation be undertaken on the Standard Form Contract. The Authority approved the Standard Form Contract on 13 May 2009.