

EMA's decision on IPC's application under Section 38 of the Gas Act

(1) The Island Power Company Pte Ltd ("IPC") has been seeking to gain access to the Singapore portion of an existing offshore gas pipeline (also known as the Singapore Pipeline) that transports gas from Sumatra to Singapore. The Singapore Pipeline is owned and operated by PowerGas Ltd ("PowerGas"). Gas Supply Pte Ltd ("GSPL") currently has an agreement with PowerGas to use the pipeline to transport gas to generation companies in Singapore. But IPC has not been successful in negotiating a transportation agreement with PowerGas to gain access to this pipeline.

(2) Hence in July 2007, IPC made an application (under Section 38 of the Gas Act) to the Energy Market Authority ("EMA"), requesting it to exercise its legislative powers to direct the terms of an access agreement between itself and PowerGas. This would then allow IPC to bring the gas into Singapore. However, shortly after IPC made its application, its gas sales agreement ("GSA") with its gas seller in Indonesia was cancelled.

(3) EMA has reviewed IPC's application carefully and consulted with the relevant parties. We have decided that before any direction for access terms can be issued, IPC needs to procure a new GSA. In addition, there must be in place an allocation agreement ("AA") between IPC, GSPL, GSPL's seller of gas, and IPC's seller of gas, before such a direction can be issued.

(4) At present, the only gas flowing through the Singapore Pipeline is what GSPL brings in. Should IPC come in to use the same pipeline, we will need some way to determine how the commingled gas delivered through the pipeline is to be measured and allocated between the relevant parties. This is why an AA is needed. It will help to minimize the possibility of contractual disputes between IPC and GSPL and their respective sellers of gas, which can in turn affect the downstream supply of gas to Singapore.

(5) IPC also needs to secure a GSA with its gas seller, because EMA has to review the actual terms of any such agreement. Then, we will be able to assess (in context) how best a transportation agreement between IPC and PowerGas can be made, so as to minimize any potential disruptions to the existing gas transportation arrangements between PowerGas and GSPL.

(6) Once IPC meets these requirements of an AA and a new GSA, EMA will issue the necessary access directions, subject to the availability of pipeline capacity, and also to further consultation with all relevant parties.

(7) Further details of EMA's decision are given in the attached Appendix.

Appendix

Details of EMA's Decision on IPC's Application under Section 38 of the Gas Act.

Introduction

(1) Section 38(2) of the Gas Act provides that if a person is unable to negotiate access to a relevant facility, he may, after giving the owner of the facility not less than 28 days notice, apply to the Authority for directions under this section in order to secure rights of access to that facility. The powers for the Authority to issue such directions come from Section 38(4), which stipulate that the Authority can specify the terms it considers the owner of the relevant facility should enter into an access agreement with the applicant, in the event certain criteria are met.

(2) On 10 July 2007, Island Power Company Pte Ltd ("IPC") applied to the Authority for directions to be issued pursuant to this provision. About three months later, IPC's Gas Sales Agreement ("GSA") with ConocoPhillips (Grissik) Ltd ("Conoco") was terminated.

(3) This paper highlights the key issues and considerations relating to the Authority's decision on IPC's Section 38 application. It is not intended to be exhaustive, and certain commercially sensitive information has been omitted.

The Regulator's role

(4) When an application for directions in order to secure rights of access to a relevant facility is made under Section 38, the Authority has a duty to decide whether the application has to be considered further, rejected, or subject to such conditions as the Authority may decide upon. In arriving at a decision, the Authority has to take into account all relevant factors within the factual matrix of a particular case. The Authority is required to give all relevant parties a fair hearing.

(5) There can be no assumption that an applicant for access will necessarily be granted a direction according to the terms that it desires. The Authority must have regard to all the circumstances of the particular case in the exercise of its discretion.

(6) The Authority as the regulator is required to, and has maintained a neutral and impartial stance throughout and has not pre-judged any of the issues prior to giving all relevant parties the opportunity to be heard.

The main issues

(7) In determining IPC's application subsequent to the termination of IPC's Gas Sales Agreement ("GSA") with Conoco, the Authority has indicated to IPC that before issuing directions under Section 38, IPC has to satisfy a number of conditions precedent. These are firstly, that an allocation agreement ("AA") between IPC, Gas Supply Pte Ltd ("GSPL"), IPC's seller of gas, and Pertamina must be in place. Secondly, IPC is to be

required to procure the execution of a fresh Gas Sales Agreement (“GSA”) within a reasonable time.

The requirement of an upstream allocation agreement

(8) Without such an upstream AA, the existing method of measurement of gas as stipulated in GSPL’s GSA remains.

(9) Accordingly, without an upstream AA, the risk of upstream contractual disputes remains (in the event IPC’s gas is co-mingled with GSPL’s gas). In the Authority’s view, this would leave open the possibility of a threat to downstream gas system security.

The requirement of IPC having to procure the execution of a fresh GSA

(10) At present, there is gas actually flowing through the Singapore Pipeline, which is imported by GSPL. This is gas that is utilized by some of the generation companies in Singapore.

(11) The Authority is of the view that it is essential to know the terms of any GSA IPC might be able to secure, so that it can form a view as to how best (if at all) a transportation agreement may be made between IPC and PowerGas so as to cause minimum disruption to the existing arrangements between PowerGas and GSPL.

Powers to issue a conditional direction

(12) According to IPC, the Authority does not have the powers to issue such a conditional direction pursuant to Section 38(4) of the Gas Act. Accordingly, in arriving at its decision, the Authority relies on another enabling provision of the Gas Act, which is Section 38(6), as stated below.

Section 38(6) of the Gas Act

(13) Section 38(6) of the Gas Act states,

“The Authority may require any person who requires access to a gas pipeline or gas pipeline network or who is undertaking the trading of gas at any point (whether actual or notional) in a gas pipeline or gas pipeline network to enter into any agreement designated by the Authority for the purposes of this section.”

The Authority’s decision

(14) Given that the need for an AA and GSA respectively remain valid in the assessment of the Authority, the Authority has decided to require IPC to enter into the following agreements pursuant to the powers under Section 38(6) of the Gas Act:

- (a) a new GSA with an upstream Indonesian gas seller of IPC’s choice;

(b) an AA between IPC, GSPL, IPC's seller of gas, and Pertamina.

(15) Upon the successful fulfillment of both requirements referred to in paragraphs 14(a) and (b) above, and subject to:

(a) available capacity in the Singapore Pipeline; and

(b) the usual consultation process with all relevant parties in order to ensure the practical workability of any direction to be given,

the Authority will thereafter issue such directions pursuant to Section 38(4) of the Gas Act, and will specify the terms on which the Authority considers PowerGas Ltd should enter into an access agreement with IPC.

(16) In view of IPC's various submissions declaring its non-intention to hoard capacity in the Singapore Pipeline, the Authority will thereafter be open to considering any application by any party, in connection with the utilization of the Singapore Pipeline for the purposes of bringing in natural gas to Singapore.