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# Submission to AEMC

Consultation Paper: NGP – Derogation  
from Part 23

13/12/2018

# APGA Submission to AEMC Consultation Paper Northern Gas Pipeline – Derogation from Part 23

## Introduction

The Australian Pipelines and Gas Association (APGA) welcomes the opportunity to comment on the AEMC Consultation Paper on a rule change request regarding the Northern Gas Pipeline (NGP) Derogation from Part 23. APGA is the peak body representing the owners and operators of Australasia’s gas pipeline infrastructure. Our member businesses deliver all of the gas used in Australia.

The regulatory framework which applies to gas transmission pipelines is critical to maintaining the attractiveness of the pipeline sector as a destination for investment. Gas transmission pipelines are capital intensive investments that are built to provide location specific gas transportation and storage services. The success of any pipeline investment is reliant on a strong gas market and the success of its customers businesses. It is in the interests of gas transmission businesses to work with customers to deliver affordable, tailored services that contribute to the success of each customer’s business.

## Key Issues

- APGA does not support the proposed rule change regarding the NGP Derogation from Part 23. The removal of the Derogation would not lead to better outcomes for consumers, the wider gas market, investor confidence or the regulatory framework and – in many instances – would be detrimental to these over the long-term.
- The regulatory arrangements applicable to the NGP under the access principles were intended to address many of the same issues addressed by the Part 23 access regime. Accordingly, the NGP access principles lead to outcomes similar to those that could be expected under the Part 23 access regime in relation to issues such as providing a constraint on the exercise of market power by a pipeline service provider and addressing information asymmetries.
- Key examples of similarities between the Part 23 access regime and the NGP access principles include the obligation on the pipeline service provider to publish standing tariff rates and to comply with dispute resolution and binding arbitration arrangements.
- The possibility of monopoly behaviour by the NGP is also curtailed by market realities. The NGP is not fully subscribed and is selling gas into the east coast market in competition with existing suppliers from east coast gas sources and other energy sources. Rather than seeking to exercise monopolistic market power, the commercial incentives of the NGP are quite the opposite – to offer competitive rates that support customers and encourage utilisation.
- The removal of the derogation only one year into the 15-year derogation agreement would have significant implications for the credibility of the regulatory framework. It would not only lead to the effective removal of a commonly used regulatory tool for incentivising investment in greenfields gas transmission pipelines, it would also have a direct negative impact on investor confidence and diminish prospects for future efficient investment in the sector.

## Question 1: Monopoly Pricing Outcomes

*Do the regulatory arrangements applicable to the NGP under the access principles produce similar outcomes to the access regime under Part 23 of the NGR with respect to constraining the exercise of market power by a pipeline service provider?*

The regulatory arrangements applicable to the NGP under the access principles provide a credible constraint on the exercise of market power by the service provider. So, in this respect, the arrangements should produce similar outcomes to the access regime under Part 23 of the NGR.

APGA notes that under the NGP access principles the service provider must:

- Negotiate in good faith to provide firm services and as-available services to access seekers;
- Publish tariffs for as-available services on its website, and disclose tariffs for firm services and nitrogen removal services to access seekers upon request (tariffs may increase annually in line with CPI);
- Update its published (and other) tariffs in the event of an expansion to the NGP (with tariff revisions subject to a formula that includes provision for tariffs to decrease if the expansion leads to an overall reduction in the average cost of the pipeline);
- Agree to connect the NGP to a lateral pipeline for any third party where it is operationally and technically feasible to do so, at a reasonable rate;
- Comply with a dispute resolution procedure including binding arbitration measures in the event of being unable to come to a mutually acceptable agreement with another party.

The NGP access principles effectively offer long-term assurances that tariffs will not increase at a rate higher than the rate of inflation, and could even decrease in certain circumstances. This offers pricing assurances at least equivalent to those offered under the Part 23 access regime, which only has binding arbitration (with its inherently uncertain outcomes) as its ultimate backstop in this regard.

APGA also understands that it is not materially different for a party seeking access to trigger the arbitration process under Part 23 than it is under the NGP access principles. The main difference is that an arbitration under Part 23 may include pricing issues, whereas this is not included within the scope of arbitration under the NGP access principles because maximum tariffs and a formula for determining any increases or decreases are already determined by the access principles (whereas they are not determined under Part 23).

The potential for the NGP service provider to engage in monopoly pricing behaviour is further reduced due to the market context in which the pipeline is operating. Relative to other transmission pipelines the NGP is a higher-risk investment – with only around one-third of the pipeline’s capacity having been contracted under firm long-term arrangements before the final investment decision was made. Significant NGP capacity remains uncontracted (or only contracted on a short-term basis) and the service provider has undertaken to offer future access seekers equivalent terms and conditions to those agreed with the foundation shippers.

Also of note is that the NGP is subject to competition from the existing east coast gas market suppliers. The pipeline was built to transport gas from the Northern Territory to the east coast gas market which is already serviced by east coast producers and, as such, must compete with those established sources.

In view of the robust NGP access principles and the competitive commercial environment in which the pipeline operates, there appears to be little opportunity to engage in monopoly behaviour. Even if this were possible, the real-world incentives appear quite the opposite – to offer competitive rates that support customers and encourage utilisation.

## **Question 2: Information Asymmetry Outcomes**

***Do the regulatory arrangements applicable to the NGP under the access principles produce similar outcomes to the access regime under Part 23 of the NGR with respect to information asymmetry?***

In addition to the obligations listed above in response to consultation question 1, including the requirement for the service provider to publish or disclose tariffs for firm forward haul and as-available forward haul transportation services and nitrogen removal services, the service provider must also publish on its website its standard terms and conditions and other information that is relevant to NGP access seekers.

A significant amount of relevant information on the NGP was also made public in the context of its recent construction – including costs and the amount of pipeline capacity contracted to date.

In totality, the information the service provider has already provided and is obliged to provide going forward under the access principles is quite comprehensive. It should therefore address any reasonable concerns about the possibility of information asymmetries in future NGP access negotiations. Accordingly, the outcomes of the access principles with regard to information symmetry for a newly constructed pipeline like the NGP appear similar to the outcomes that could be expected under the Part 23 access regime.

## **Question 4: Regulatory Complexity**

***Does the proposed rule lead to an increase in the complexity of regulatory arrangements?***

The proposed rule would lead to a significant increase in the complexity of the regulatory arrangements that apply to the NGP. This is because in the absence of the derogation that currently applies to the NGP, the service provider would be subject to the Part 23 access regime while still remaining subject to the agreed NGP access principles in parallel.

The obligation to comply with both access regimes simultaneously would bring inevitable costs and additional administrative complexity, and probably a significant amount of conflict and confusion in the (substantial) areas in which the two regimes overlap. For example, potential customers that didn't like the maximum price established by the current NGP access principles may opt for arbitration on this matter under Part 23 – and it is unclear what would happen if the arbitrator were to determine a different price.

## **Question 5: Costs and Benefits**

***What are the likely costs and benefits associated with the proposed rule for market participants within the NT and the east coast gas markets?***

APGA is not aware of any benefits arising from the proposed rule. However, with regard to the impact of such a move on future investment in the gas transmission sector, there are clear costs.

The proposed rule and the revocation of the NGP's derogation would increase the investment risk profile of greenfields pipelines throughout the country. It would do this in two ways. First, it would effectively remove the commonly used option of providing regulatory incentives for new pipeline investments – such as a 15-year derogation from compliance with Part 23 of the NGR – to promote efficient investment in this sector. Second, the move would have significant implications for the credibility of the regulatory framework if a 15-year derogation agreement that was entered into legally and in good faith were to be overturned after one-year. This would negatively impact investor confidence and, in turn, the prospects of future efficient investment in the gas transmission sector.