SUBMISSION

NATIONAL GAS AMENDMENT (NGP – DEROGATION FROM PART 23) RULE 2019 | 13 DECEMBER 2018

EUAA
Energy Users Association of Australia

Mr Jashan Singh
AEMC
Jashan.singh@aemc.gov.au

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National Gas Amendment (Northern Gas Pipeline – Derogation from Part 23) Rule 2019 – Submission on Consultation Paper

The Energy Users Association of Australia (EUAA) is the peak body representing Australian commercial and industrial energy users. Our membership covers a broad cross section of the Australian economy including significant retail, manufacturing and materials processing industries. Combined our members employ over 1 million Australians, pay billions in energy bills every year and are desperate to see all parts of the energy supply chain making their contribution to the National Electricity and Gas Objectives.

Many of our members use gas as a major input to their operations and have suffered considerably in recent years from the disappearance of a competitive gas market. When members are able to source gas, the price has doubled or trebled from their previous contract. Many are unable to continue absorbing increased gas prices and therefore face an uncertain future.

Summary of Key Points

- We welcomed the construction of the Northern Gas Pipeline (NGP) and support the decision by the Northern Territory (NT) Government to implement all the recommendations of the Independent Scientific Inquiry into Hydraulic Fracturing.
- We recognise the risks that Jemena took to build the NGP given the uncertainty on the availability of gas supply from the Northern Territory at the time.
- As the NGP tariff structure was the outcome of a competitive tender process, it is not unreasonable to assume that the access principles, including tariffs, are an accurate reflection of an efficient cost level. However, we do not have sufficient information or relevant comparison pipeline to be certain of this at this time.
- We think that the economic assessment provided by the rule change proponents is seriously flawed, overly simplistic and inconsistent.
- The EUAA played a major role in the Vertigan review that led to the development of the Part 23 regulatory regime for non-scheme pipelines. Part 23 was primarily established to redress the significant information and negotiation asymmetry issues facing consumers that allowed what the ACCC described as the exercise of monopoly power by existing unregulated pipelines.
- While we remain vigilant to competition and market power issues, it appears to be less of a concern where a new merchant pipeline has been built as a result of an open, competitive tender.
- As a general principle we are not in favour of retrospective application of new rules to a recently committed project due to the potential of sovereign risk. However, we do not rule out supporting such intervention if consumers are manifestly disadvantaged under the existing arrangements.

- At this stage we are unable to address the specific questions asked by the AEMC in its Consultation Paper. Key to this is understanding:
    - If the rule change is allowed, will Part 23 replace the existing access principles or will Part 23 sit alongside the existing access principles?
    - If the latter, what will have prominence e.g. what arbitration mechanism will be used – that under the access principles (relatively short with no direction on how the arbitrator is to make their decision) or Part 23 arbitration mechanism which is expansive, containing considerable guidance on the approach to be taken by the arbitrator?
- We would also like to understand why Jemena and the NT government decided to choose an unregulated approach, assuming they knew that this approach carried the regulatory change risk it now faces, over a regulated approach that would have avoided such risks.

We look forward the AEMC's draft decision in February 2019 providing more information on these matters to assist our further consideration of the rule change proposal.

General Comments

EUAA believe that not only is more domestic gas required but more domestic gas suppliers with access to multiple, economically viable forms of transportation. We welcome moves to increase competition and encourage additional investment in all aspects of the domestic gas supply chain.

With this in mind, we welcomed the construction by Jemena of the Northern Gas Pipeline (NGP) as a means of providing an additional source of gas into the east coast market. We recognise the risks that Jemena took to build the NGP given the uncertainty on the availability of gas supply from the Northern Territory at the time.

We want to see the development of Northern Territory gas reserves and support the decision by the Northern Territory Government in April 2018 to implement all the recommendations of the Independent Scientific Inquiry into Hydraulic Fracturing.

We see these developments as only furthering the national gas objective.

Starting with a broad view before narrowing down to some specific questions. The EUAA played a major role in the Vertigan review that led to the development of the Part 23 regulatory regime for non-scheme pipelines. Part 23 was primarily established to redress the significant information and negotiation asymmetry issues facing consumers that allowed what the ACCC described as the exercise of monopoly power by existing unregulated pipelines. This was clearly identified by the ACCC in 2016 and resolved to some extent by the GMRG as they sought to level the negotiation playing field.

Many of the issues identified by the ACCC that gave rise to Part 23 do not appear to be as acute an issue with new pipelines like the NGP that were subject to open tender processes and where the operator has commercial incentives to attract customers to underwrite the project. For example, as the NGP tariff structure was the outcome of a competitive tender process, it is not unreasonable to assume that the access principles, including tariffs, are an accurate reflection of an efficient cost level.

We note at this point that while a competitive tender process is likely to deliver improved consumer outcomes, we do not have enough information about the agreement between Jemena and the Northern Territory Government or have a reasonable comparison with a similar merchant asset to have absolute confidence this is the case. However, it is also reasonable to assume that given the NGP is a merchant asset that the operator has ongoing commercial incentives to attract customers through offering reasonable prices and fair terms.

While we recognise that a reasonable amount of information is available to customers wishing to access the NGP, we feel that the dispute resolution process contained in the NGP agreement could be more expansive and better aligned to Part 23 principles to provide additional comfort for customers.

We encourage Jemena to be as transparent as possible and to continue their focus on customer outcomes that is a central platform of the recently released Energy Industry Customer Charter[1]. Ultimately if the current NGP dispute resolution process proves to be a stumbling block then further action may be required.

Regarding the economic assessment provided by the rule change proponents. Our view is that it is seriously flawed, overly simplistic and inconsistent. For example:

- The gas flowing in the NGP is not for export as LNG through Gladstone, it is for use in the domestic market (an EUAA member is a major user);
- There will not be a glut of LNG until 2030; the analysis used to conclude that the NGP tariff is the most expensive in Australia is simplistic and poor economic analysis;
- The analysis implies a large subsidy on the tariff yet claims it is uneconomic ("unreasonable")yet there are customers using it now.

Finally, as a general principle we are not in favour of retrospective application of new rules to a newly committed project due to the potential of sovereign risk. While government intervention may be required in extreme circumstances, such as where consumers are manifestly disadvantaged, we do not have a sense that this is one of those circumstances.

Critically, we would be concerned if the retrospective application of Part 23 were to materially undermine the willingness of investors to underwrite new gas pipelines or resulted in less investment in upstream gas supply. Again, we would emphasise that we do not have sufficient information to make a fully informed decision on these matters at this time and look forward to further discussions with the AEMC and Jemena.

Specific Questions

More specifically, as we seek to respond to this rule change application, we are unable to fully understand a number of factors which make it difficult to reach a conclusion of its merit. These factors include:

- Why Jemena choose to go the non-scheme pipeline route when it could have gone the scheme route and avoided the current application risk; to what extent is the sovereign risk issue that they currently face the result of this decision? As the Consultation Paper notes (p.6):

[1] https://www.theenergycharter.com.au

> "Neither the proponents or the service provider for the NGP project made use of the other regulatory options available for new pipelines such as the competitive tender process or the 15-year no-coverage determination…"

- If the NT Government and Jemena are able to amend the project Development Agreement to remove the rule change risk and if so whether they intend to do so.

- If the applicant is successful and Part 23 applies, we are unclear about the role of existing access principals. There is no guidance in the AEMC Consultation Paper on:

    - Will both apply and if so will the price be as set out in the access principles or the result of the information disclosure under Part 23 – which might men it is the same as the current access principles. What additional information will be provided under Part 23 compared with what is provided under the current access principles?
    - what arbitration mechanism would apply – the relatively short process set out in the access principals of the very extensively documented process under Part 23?

While the Consultation Paper (p. 7) refers to the GMRG noting that:

> "the Project Development Agreement signed by Jemena and the NT Government sets out the access principles that were agreed to as a result of the competitive process and are intended to address many of the same issues the framework is designed to address."

This does not appear to be the GMRG signing off that the PDA access principle are "as good as" or consistent with" the Part 23 principles. GMRG is simply stating that they were the result of a competitive process. It is passing no comment on whether the agreed access principles produce the same outcome as Part 23.

As the AEMC makes its judgement on whether the rule change promotes the NGO, we go back to the AEMC's recent explanation of how it applies the NGO[2]:

> Finally, it is worth noting that while investment, operation and use that are in consumers' long-term interests will always be efficient, it does not follow that all efficient outcomes are. This is a subtle point, but an important one. For example, there can be a number of equally efficient market and regulatory outcomes. The one that is in the long-term interests of consumers will often depend on how prices are structured, or how risks are allocated in the market. Therefore, the Commission takes into account such considerations when undertaking reviews, or making rule changes.

The above information would help us come to a view about whether or not supporting the proposed rule change better achieves the NGO than the current access principles.

We look forward to more detail being provided in the Draft Decision in February 2019. Then we will be in a better position to provide more substantive comments if required.

[2] AEMC "Applying the energy objectives – a guide for stakeholders" December 2016 p.5
https://www.aemc.gov.au/sites/default/files/content/Applying-the-energy-market-objectives-for-publication.pdf

Regards

Andrew Richards
Chief Executive Officer
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