

Proposed Amendment To The National Third Party Access Code For Natural Gas Pipeline Systems as Outlined in the Information Memorandum Dated May 2002

Submission by Santos Limited

23 May ,2002

1. Santos' interest in the proposed changes arises because Santos is the largest gas producer in Australia on an equity basis, with gas entering numerous Covered Pipelines including:
 - Moomba to Sydney Pipeline System,
 - Moomba to Adelaide Pipeline System,
 - Amadeus to Darwin Pipeline,
 - Ballera to Wallumbilla Pipeline
 - Wallumbilla to Brisbane Pipeline
 - Wallumbilla to Gladstone Pipeline
 - Ballera to Mount Isa Pipeline
 - Western Transmission System (Victoria)
 - Dampier to Bunbury Natural Gas Pipeline
 - Goldfields Gas Transmission System

Also, Santos has an interest in the Carpentaria Gas Pipeline Joint Venture which owns the Ballera to Mount Isa Pipeline.

2. Santos understands that the proposed changes have been prompted by practical issues arising in connection with the regulation of Envestra's pipeline networks in Victoria and Albury. Whilst Santos is supportive of changes which result in simplification of administrative processes (and consequent reduction in compliance costs), care should be taken to guard against unintended consequences. Changes made to address the somewhat unusual circumstances of Envestra should not have the effect of diminishing the effectiveness of the Code in its more general application.
3. The Code is fundamentally concerned with the regulation of "Pipelines" which are "Covered". "Pipeline" is defined broadly in the Gas Pipelines Access Law to mean "a pipe, or system of pipes, or part of a pipe, or system of pipes, for transporting natural gas...". In an interconnected system, there could in theory be a single, very large pipeline network regulated by the Code as one Pipeline. It is through the concept of Coverage however that regulation of the pipeline network is broken down into more manageable components; so called "Covered Pipelines". This is done in two ways. First, by the stipulation (in section 1.3 of the Code) that the pipeline, or part thereof, which is the subject of a Coverage application must be owned or operated by the same Service Provider or group of Service Providers. Secondly, by the Coverage criteria under section 1.9, which relate the Coverage of a pipeline system (or part thereof) to, among other things, the promotion of competition in a particular market or markets.
4. The proposition that the Code is concerned to ensure that pipelines are regulated in a manner which is conducive to access by users in the multiple separate markets that may be served by a single pipeline system is supported by section 2.4 of the Code, which invests the Relevant Regulator with a discretion to require, in respect of a single Covered

Pipeline, that the Service Provider must submit separate Access Arrangements for different parts of that Covered Pipeline.

5. The Information Memorandum contemplates amending the Code to allow either:
 - (a) a Service Provider to submit (if the Regulator agrees) a single Access Arrangement for two or more Covered Pipelines; or
 - (b) the merger of two or more Covered Pipelines into a single Covered Pipeline.

It is implicit in the Information Memorandum, although not expressly stated, that the submission of a single Access Arrangement, or the merger of Covered Pipelines, can only be approved in circumstances where the Covered Pipelines which are the subject of the application are owned by the same owner (or ultimate owner) and have a common operator. Santos considers that, if either of the proposed amendments is to be made, this requirement should be spelt out in the Code.

6. Santos considers that, consistent with Envestra's proposal, the Code amendment should relate to the administrative process of lodging Access Arrangements, rather than a merger of Covered Pipelines. The concern which has prompted the proposed change relates, as we understand it, to the administrative costs for the Regulator and compliance costs for the Service Provider where a Service Provider is required to lodge multiple Access Arrangements the terms of which are nearly identical. This concern should be overcome by permitting the Service Provider to lodge a single Access Arrangement in respect of multiple Covered Pipelines.

However, the requirements of the Code in relation to each of those separate Covered Pipelines should not be affected by this. In particular, the assessment and treatment of Services, Reference Services and Reference Tariffs should be dealt with on a Covered Pipeline by Covered Pipeline basis. The Envestra example which has prompted the Code change proposal bears this out. Even if its Victorian and Albury networks can be administratively dealt with by the Relevant Regulator under a single Access Arrangement, it is still appropriate that the issues of Services, Reference Services and Reference Tariffs be dealt with separately in relation to each pipeline network.

7. Santos considers that amending the Code to provide for the merger of Covered Pipelines would be contrary to the apparent objective of the Code (as outlined above), to regulate pipelines in segments which promote the fundamental objective of stimulating competition in individual markets serviced by pipelines. The concepts of Coverage, and Covered Pipeline, are fundamental to the operation of the Code. Access Arrangements (and accompanying Access Arrangement Information) are submitted in relation to Covered Pipelines, and the key concept of a Service is determined by reference to them ("Service" means a service provided by means of a Covered Pipeline). In turn, the concepts of Reference Services and Reference Tariffs are derived from the concept of Services. Allowing a "merger" of Covered Pipelines will make it more difficult to determine Reference Tariffs which truly reflect the costs of delivering the Services to which they relate.

In this regard Santos notes the following statement of general principle in the introduction to section 8 of the Code:

"...the Reference Tariff Principles are designed to provide a high degree of flexibility so that the Reference Tariff Policy can be designed to meet the specific needs of each pipeline system. The overarching requirement is that when Reference Tariffs are determined and reviewed, they should be based on the efficient cost (or anticipated efficient cost) of providing the Reference Services".

8. The Information Memorandum recognises that the merger of Covered Pipelines has the potential to significantly alter patterns of cost allocation and revenue recovery, and increases the risk of cross subsidisation between users of the merged pipelines.¹ It also mentions that the Relevant Regulator may need to be invested with the ability to ensure that cross subsidisation of this kind does not occur, by imposing conditions requiring a strict separation of costs between pipelines. Santos submits that this issue should not be left entirely to be dealt with in the discretion of the Regulator. The Code itself should ensure that the risk of cross subsidisation is minimised by ensuring, as a structural matter, that pipelines are Covered in respect of segments of pipe that service discrete markets, and that in approving Access Arrangements the Regulator is not required to address and reconcile the costs of servicing multiple groups of disparate and geographically dispersed Users.
9. As noted in the Information Memorandum, the merger of Covered Pipelines implies a more formal approach, involving the NCC and Ministers. It would allow the designation of Covered Pipelines under Schedule A of the Code and any subsequent Coverage determinations to be called into question. The amendment would only need to address the merger of existing Covered Pipelines, given that the issue of what is the appropriate geographic scope of a proposed new Covered Pipeline should be addressed in the context of a Coverage application, having regard to the Coverage criteria under the Code. The amendment would need to provide for a re-assessment of the initial Coverage of the pipeline having regard to those criteria.
- Santos submits that this goes well beyond what is required to address the administrative issue which has been raised by Envestra. The Envestra issue is adequately addressed by allowing a single Access Arrangement to be submitted in respect of multiple Covered Pipelines. In terms of addressing this issue, it is not clear to Santos what additional benefit is achieved by allowing the merger of Covered Pipelines – Option 2 under the Information Memorandum. Option 2 has more far reaching consequences and potentially militates against what Santos understands to be the objectives of the Code.
10. Consistent with the reasons set out above, Santos submits that even if Option 1 is implemented, it is neither necessary nor desirable for the proposed Code change to state that the Covered Pipelines that are the subject of the single Access Arrangement should be treated as a single Covered Pipeline for all purposes under the Code. All that is required is a statement in section 2.2 stating that where a Service Provider owns or operates two or more Covered Pipelines that have the same Relevant Regulator, it may submit a single Access Arrangement in relation to those Covered Pipelines (but in all other respects the requirements of the Code are unchanged).
11. The issue of Access Arrangement Information also requires consideration in this context. Santos considers that even where, for administrative purposes, a Service Provider deals with multiple Covered Pipelines under a single Access Arrangement, it should nonetheless be required to submit Access Arrangement Information on a Covered Pipeline by Covered Pipeline basis. This is fundamental to the determination of Reference Tariffs in respect of each Covered Pipeline. Allowing a single set of Access Arrangement Information to be lodged in respect of multiple Covered Pipelines increases

¹ Of course, this is already to a certain extent an issue under the Code as it stands. The potential for a degree of cross subsidisation arises between different classes of Users of Covered Pipelines, and to guard against this the Code arms the Regulator with various discretions, such as the ability to require that Access Arrangements deal with the provision of certain Services, and various provisions under section 8 of the Code which are designed to ensure the cost reflective pricing of those Services.

the risk of inadequate identification of the costs associated with the provision of individual Services. In turn, this increases the risk of cross-subsidisation by the Users of one Reference Service of the users of another Reference Service.

12. If, contrary to the submissions made above, NGPAC determines to recommend a Code change which effectively allows multiple Covered Pipelines to be merged, or otherwise treated as a single Covered Pipeline under a single Access Arrangement, then Santos submits that the Regulator should have the ability to impose conditions; in particular to require the Service Provider to propose Reference Tariffs in respect of Services delivered by each of the individual Covered Pipelines which have effectively been merged (and to provide Access Arrangement Information sufficient to support each of those Reference Tariffs).