

21 February 2001

The Executive Officer
NGPAC Secretariat
L19, Wakefield House
30 Wakefield Street
Adelaide SA 5000

Dear Ms Middleton

Submission to NGPAC on Proposed Amendment to the National Third Party Access Code for Natural Gas Pipeline Systems

The Australian Petroleum Production and Exploration Association (APPEA), representing the upstream gas and oil industry in Australia, welcomes this opportunity to comment on the amendment to the National Third Party Access Code for Natural Gas Pipeline Systems (the Code) proposed by the Australian Pipelines Industry Association (APIA) at the request of Epic Energy in the context of its proposed new gas transmission pipeline from Darwin to Moomba.

The APIA proposal seeks to amend the Code in order to remove – on an interim basis pending the outcome of forthcoming reviews – the possibility of ‘regulatory overlap’ that could arise by the dual regulation of a new pipeline under both the Code and Part IIIA of the *Trade Practices Act 1974* (TPA).

APPEA understands that underlying the proposal is a concern by Epic that it will be difficult to attract equity or debt finance for the proposed pipeline if it is subject to the Code. Epic believes that an access undertaking under Part IIIA would provide greater tariff certainty for a longer period, say 15-25 years, than is typically available under the Code. However, APPEA is of the view that there is no evidence that the Code has been the cause of cessation of investment in economic pipelines. Indeed, additional pipelines have been financed and constructed under the Code.

The Australian Competition and Consumer Commission (ACCC) has indicated that the Code reflects worthwhile principles that are likely to be relevant to any consideration of an access undertaking and that, pipeline owners/operators would be recommended to provide sound reasons should they wish to depart from the principles reflected in the Code.

It is not clear, therefore, that the greater tariff certainty that Epic is seeking is either required to obtain financing or that it could necessarily be achieved under an access undertaking accepted by the ACCC.

APPEA’s main concern is that the effect of the proposed amendment is to create an alternative option for the regulation of new pipelines, in that they would be regulated by means of an access undertaking under Part IIIA and not the Code. Possible pipelines which might seek exemption from the Code include Darwin to Moomba, Victoria to South Australia, and Papua New Guinea to Queensland. This would potentially render the application of the Code redundant for new pipelines and is not what was anticipated when industry and governments established the Code.

Under Part IIIA, there is no obligation to disclose information, to ring fence, to seek approval for associate contracts, for prices to be tied to costs, for prices to be subject to periodic review, etc. While the ACCC has adopted guidelines covering access undertakings, consistent with its approach noted above, they are not legally binding and can be amended at any time. Hence, the result could be a less detailed regime for some pipelines and a less transparent process.

APPEA notes that a review of Part IIIA is presently being undertaken by the Productivity Commission and that a review of the Code has also been foreshadowed to follow the Part IIIA review. The APIA proposal seeks to accommodate these reviews by proposing the amendment operate on an interim basis pending their outcome. APPEA believes that the proposed amendment should be seen as a whole new regulatory option which is of much more significance than just to APIA's current proposal. In view of the wider and significant implications, the amendment should not be implemented even on an interim basis before the present and foreshadowed reviews, and should be considered more fully in the light of the reviews' outcomes.

Yours sincerely

Barry Jones
Executive Director