

**Energy Markets Reform Forum**  
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The Executive Officer  
National Gas Pipeline Advisory Committee  
Level 13, Wakefield House  
30 Wakefield Street  
ADELAIDE SA 5000

Dear Sir/Madam

Proposed Amendment To The National Third Party Access Code For Natural Gas  
Pipeline Systems: Darwin-Moomba Natural Gas Pipeline

The Energy Markets Reform Forum (EMRF) welcomes the opportunity to provide its views on the proposed amendment. The EMRF comprises companies which are major energy and energy infrastructure users and include the following members: Tomago Aluminium, AMCOR, OneSteel, INCITEC, Visy Paper, BHP Steel and BHP Petroleum.

The proposed Darwin-Moomba pipeline appears to be an exciting proposal, which would bring a new source of gas supply and potentially enhance competition in gas markets in South and South East Australia. However, the proposed amendment to the Code (Option A)-to remove the possibility of 'regulatory overlap' between Part IIIA and the National Gas Pipelines Code – is not supported. The EMRF, whilst having some sympathy for concerns expressed about regulatory overlap has reservations with the proposed amendment, on the following grounds:-

1. The Gas Pipeline Access Code: Specific Criteria Relevant To Industry

The national gas pipelines access code has been developed to address the specific needs of the gas pipeline industry. It provides for access arrangements that meet criteria that are more specific to the needs of the industry than the criteria that would apply to an undertaking or an arbitration determination under the generic provisions of Part IIIA. In particular, the reference tariff principles established by the gas pipeline access code includes criteria relating to asset values and information disclosures that are more specific than would apply under the criteria in relation to the generic provisions of Part IIIA.

## 2. The Gas Pipelines Access Code: Consistent Application To Industry

According to the ACCC it has to date received 19 applications for approval of access arrangements. Of these, three applications relate to pipelines whose coverage was subsequently revoked; four applications involve extensions pending the outcome of revocation applications. Of the remaining 12 applications, access arrangements for two have been approved, a draft submission has been released on another, while the remainder are being addressed. Of the two access arrangements approved, the Central West pipeline decision applied to a greenfields pipeline. There have been no appeals and no request for arbitration.

A key benefit from the implementation of the code is its broadly consistent application to an entire industry, and convergence in regulatory outcomes and comparability of tariffs would be expected with further experience in its operation (Government of Western Australia. Submission to the Productivity Commission Inquiry into Part IIIA of the Trade Practices Act 1974 and Clause 6 of the Competition Principles Agreements. January 2001, p 26).

The concept of maintaining competitive neutrality in the regulatory treatment of all pipelines is important. Different rules which deliver potentially different outcomes to different pipelines would fragment regulation of the industry. A single regulatory regime for gas pipelines must be maintained. Moreover, there is no evidence that the Code cannot allow for the regulatory review of greenfields pipelines.

## 3. Forum Shopping and Perceptions

It is highly undesirable for pipeline companies to have the option of applying for approval of an Access Undertaking under Section 44ZZA of the Trade Practices Act (Part IIIA) or seeking approval of an Access Arrangement under the Code. If industry were to 'prefer' the former approach, then there could be a perception, if the Access Undertaking is accepted by the ACCC that it has been 'captured' by the industry.

The EMRF, accordingly, considers that Option C consisting of:-

- In the short to medium term, progressing any desirable amendments identified under section 4 that could improve the Code's application to greenfields Pipelines prior to the major review of the Code;
- In the medium term, addressing the issue of regulatory overlap and the broader issues regarding regulatory certainty for greenfields Pipelines as part of the major review of the Code, taking into account the outcomes from the Part IIIA review.

should be proceeded with. It is noted that neither APIA nor EPIC Energy have categorically expressed the view that new pipeline developments cannot be built under the Code. We do not accept APIA's suggestion that there is a lack of 'regulatory certainty' under the Code.

Yours sincerely

Warren Martin  
Chairman, Energy Markets Reform Forum and