



Central West Pipeline application for light regulation

On 2 October 2009 APT Pipelines (NSW) Pty Limited, which is part of the APA Group, applied for light regulation of the Central West Pipeline (CWP) pursuant to section 112 of the National Gas Law (NGL). The CWP transports gas from Marsden on the Moomba to Sydney Pipeline mainline to Forbes, Parkes, Narromine and Dubbo in the central west of New South Wales. The CWP is a covered pipeline by reason of its inclusion in the list of covered pipelines under Schedule A of the Gas Code, and subsequently the NGL.

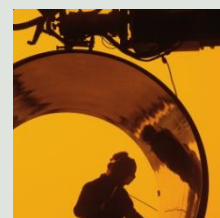
In essence, the determination as to whether or not light regulation should be applied to a pipeline depends on a comparison of the effectiveness and costs of full regulation (which requires an approved access arrangement) and light regulation.

Because covered pipelines have a level of market power, both forms of regulation have provisions to protect users and other parties that are dependent on access to the pipeline. Many of the obligations on covered pipelines under the NGL apply to both full and light regulation pipelines. The key difference between the two forms relates to the requirement to submit an access arrangement for approval by the Australian Energy Regulator

under full regulation. An access arrangement provides for up-front price regulation in that it must specify a reference tariff which requires approval from the Australian Energy Regulator.

After evaluating the application and the submission made by Country Energy in response to the application, on 30 November 2009 the Council issued a draft determination in favour of light regulation of the CWP. In the draft determination, the Council concluded that the light regulation of the CWP would likely be as effective as full regulation in protecting users and other parties that are dependent on access to the pipeline. This is due to the availability of relevant pipeline costs information, as well as the legislative protections contained within the light regulation regime such as recourse to binding arbitration of access disputes. The Council further considered that light regulation is likely involve modest but significant cost savings for the service provider and would be consistent with the promotion of the national gas objective.

Interested parties now have until 5pm on 21 December 2009 to make a submission on the draft determination. The Council expects to release its final determination by 20 January 2009.



A copy of the Council's draft determination is available on the Council's website at www.ncc.gov.au

Re Services Sydney declaration revoked

On 1 October 2009, the Premier of New South Wales, the Hon Nathan Rees, revoked the declaration made by the Australian Competition Tribunal (Tribunal) in *Re Services Sydney Pty Ltd* [2005] ACompT 7. This declaration applied to

certain services provided by Sydney Water's sewage reticulation network. The Premier's decision follows the Council's recommendation that he revokes the declaration following the certification of NSW's access regime for water

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industry infrastructure services (**WICA Access Regime**) as an effective access regime.

A declaration under Part IIIA of the *Trade Practices Act 1974 (TPA)* may be revoked if competitive circumstances change such that the declaration criteria are no longer satisfied. One consequence of the certification of the WICA Access Regime was that access to the services declared in the *Re Services Sydney* matter were effectively regulated by that regime and the declaration criterion in s44H(4)(e) of the TPA (relating to the existence of an effective access regime) was no longer met.

The Re Services Sydney declaration

In early 2004 Services Sydney applied for declaration under Part IIIA of the TPA of certain services provided by Sydney Water's sewage reticulation network. The Council made a recommendation to the designated Minister, the Hon Robert Carr, Premier of NSW, that six services — the sewage interconnection and transportation services provided by Sydney Water's Bondi, Malabar and North Head reticulation networks — be declared.

The Premier of NSW did not make a decision within 60 days of receiving the Council's recommendation so was deemed to have made a decision not to declare the services. Services

Sydney applied to the Tribunal for review of the deemed decision.

The Tribunal was satisfied that the Services Sydney application met the criteria for declaration. It declared the sewage interconnection and transportation services provided by Sydney Water's Bondi, Malabar and North Head reticulation networks for a period of 50 years, effective from 21 December 2005.

Certification of the WICA Access Regime

In the October 2009 edition of *Accessible* we reported on the decision to certify the WICA Access Regime as effective. The WICA Access Regime deems the sewerage interconnection and transportation services provided by Sydney Water's Bondi, Malabar and North Head reticulation networks to be the subject of coverage declarations. These are the same services as those that were declared in *Re Services Sydney*.

As the declaration criterion in s44H(4)(e) of the TPA was no longer met, the Council made a recommendation (foreshadowed in the Council's final recommendation on the NSW application for certification of the WICA Access Regime) that the *Re Services Sydney* declaration be revoked.



Wheat export marketing inquiry

On 11 November 2009 the Council made a submission to the Productivity Commission's inquiry into the operation of the *Wheat Export Marketing Act 2008*. One of the requirements for accreditation as a bulk wheat exporter under this regime is that exporters who own or operate port terminal services must pass an access test by having in place an approved access undertaking. As part of its inquiry the Productivity Commission is required to consider the continuing appropriateness of the access test.

In its submission the Council expressed the view that little if any evidence has been provided to establish the need to regulate access to port terminal services for bulk wheat export.

In such circumstances, the Council submitted that it is undesirable to continue applying unwarranted access regulation to port terminal services. In the event that access regulation is required, the Council's view is that the National Access Regime in Part IIIA of the TPA is the appropriate mechanism for regulating access to port terminal services.

A copy of the Council's submission is available on the Productivity Commission's website at <http://pc.gov.au/projects/inquiry/wheatexport>

Council's roles and responsibilities – the National Gas Law

In the October 2009 edition of *Accessible* we outlined the Council's role in relation to declaration and certification matters. In this article we outline the Council's role and responsibilities under the National Gas Law (NGL) and National Gas Rules.

The NGL is set out in the schedule to the *National Gas (South Australia) Act 2008 (SA)*

which commenced on 1 July 2008. It is applied as a law of other Australian jurisdictions by way of application acts in those jurisdictions. The NGL replaces the Gas Pipelines Access Law (including the Gas Code) which previously regulated pipeline services throughout Australia.

The Council is the body under the NGL that is responsible for recommending whether or not

to apply access regulation in respect of a pipeline. The Council is also responsible for classifying pipelines, determining whether pipelines be the subject of full or light regulation, and for making recommendations on greenfields pipeline incentives.

Coverage and revocation of coverage

The NGL applies economic regulation/third party access only to 'covered pipelines'. These are pipelines which meet the coverage criteria, which largely correspond to the declaration criteria in Part IIIA of the TPA.

Applicants seeking coverage or coverage revocation under the NGL for a gas pipeline apply to the Council. The Council's role is to consider whether the pipeline meets the coverage criteria and to make a recommendation to the relevant Minister.

Where a pipeline which is the subject of a coverage application has not been classified (see below), the Council must classify the pipeline as either a transmission or distribution pipeline. The Council must also determine whether the pipeline is a cross-boundary pipeline. If so, the Council must determine which jurisdiction the pipeline is most closely connected with. Classification of a pipeline determines the relevant Minister for determining the coverage or revocation application.

In considering a coverage or coverage revocation application, the Council undertakes a public 'standard consultative procedure'. This process involves publishing the application, inviting and considering submissions on it, producing a draft recommendation, inviting further submissions on the draft and then producing a final recommendation.

Under the NGL, the Council generally must provide its final recommendation to the relevant Minister within *4 months* from the date of receiving such an application.

Classification/reclassification

Gas pipelines covered under the NGL are classified as either transmission or distribution pipelines. In general terms, pipelines are classified on the basis of whether their primary function is to convey gas to a market (transmission) or to reticulate gas within a market (distribution). The classification of a pipeline affects the regulatory requirements that apply to it.

In addition to classifying a pipeline when considering an application for coverage, the Council is responsible for determining applications for the reclassification of pipelines which have already been classified.

When considering an application for reclassification, the Council conducts a public 'expedited consultative procedure' under which submissions are required only once, after the Council has published its draft recommendation. The Council generally must make its decision within *4 months* from the date of receiving a classification application.

Light regulation

Gas pipelines covered under the NGL may be subject to 'full' or 'light' regulation. Broadly speaking, there is a greater level of regulatory involvement in full regulation, and more scope for negotiated outcomes not involving the regulator with light regulation. One of the key differences between full and light regulation is that there is no requirement to have in force a full access arrangement for a pipeline which is the subject of light regulation.

The Council is responsible for determining applications for light regulation (and for revocation of an existing light regulation determination). The Council considers what form of regulation is appropriate and applies the criteria set out in the NGL.

When considering a light regulation application, the Council undertakes the standard consultative procedure and then determines whether or not to apply light regulation. The Council generally must make its determination within *4 months* from the date of receiving an application.

Greenfields pipeline incentives

15 year no-coverage determinations

The NGL allows for investors in proposed new 'greenfields' gas pipeline developments to seek a 15 year no-coverage determination. The Council's role is to consider whether one or more of the coverage criteria will not be met for the 15 year period for which the no-coverage determination would apply, and to make a recommendation to the relevant Minister.

In considering an application for a no-coverage determination, the Council undertakes the standard consultative procedure. The Council must provide its recommendation to the relevant Minister within *4 months* from the date of receiving a no-coverage application.

Price regulation exemptions

Price regulation exemptions are available only to international pipeline projects which will bring foreign gas to Australia. If a price regulation exemption is granted the main effect is that no price regulation will apply for 15 years from commissioning, but other protections of non-price regulation and facilitating access will apply.

Stop Press

The *Trade Practices Amendment (Infrastructure Access) Bill 2009* was introduced into Federal Parliament on 29 October 2009. When passed, the Bill will implement a package of reforms to Part IIIA of the *Trade Practices Act 1974* to enhance the National Access Regime. An outline of these reforms can be found in the June 2009 edition of *Accessible*. More detailed information about these reforms will be provided in the February 2010 edition.

The Council's role is to consider whether an application meets the legislative requirements for a price regulation exemption and to compare the benefits and detriments to the public of granting or not granting the exemption.

The Council makes a recommendation to the Commonwealth Minister whether or not to grant the exemption. The Council generally must provide its recommendation to the

Commonwealth Minister within *30 business days* from the date of receiving an application. The Council invites and considers submissions on such applications (to the extent permitted by the tighter timeframe), and generally will not produce a draft recommendation for consideration before producing its final recommendation.

Council's responsibilities and time targets under the National Gas Law: a snapshot

Responsibilities under the National Gas Law	Time limit*
Coverage of gas pipelines (and revocation of coverage) – consider application and make a recommendation to the Minister	4 months
Light regulation of gas pipelines (and revocation of light regulation) – consider application and make a light regulation determination	4 months
Classification of pipelines as distribution or transmission and whether or not cross-boundary – consider application and classify pipeline	4 months
15 year no-coverage determinations for new gas pipelines – consider application and make a recommendation to the Minister	4 months
Price regulation exemptions for international gas pipelines – consider application and make a recommendation to the Minister	30 business days

*Extensions to these time limits are generally available in exceptional circumstances.

Who's who in regulation – the AER

The Australian Energy Regulator (**AER**) is Australia's independent national energy market regulator and began operation on 1 July 2005. The AER's overall objective is to promote efficient investment and prices in the Australian energy sector to benefit the long term interests of energy consumers.

The AER is responsible for the economic regulation of the electricity transmission and distribution sectors of the national electricity market, monitoring the wholesale electricity market and enforcing electricity market rules. These functions will expand as non-economic distribution and retail functions are transferred to the AER under legislation being drafted in 2009.

The AER is also responsible for the economic regulation of covered gas transmission and distribution networks and for enforcing the National Gas Law (**NGL**) and National Gas Rules (**NGR**) in all jurisdictions except Western Australia (where this role is performed by the Economic Regulation Authority of Western Australia).

In relation to electricity networks, the AER's main functions include:

- regulating the revenues of transmission and distribution network service providers and monitoring the wholesale electricity market
- monitoring compliance with the National Electricity Law, National Electricity Rules and National Electricity Regulations and bringing enforcement proceedings against market participants
- establishing service standards for electricity transmission network service providers, and
- establishing ring-fencing guidelines for business operations in relation to regulated transmission services.

The AER's main functions in relation to the regulation of covered gas pipelines include:

- approving access arrangements submitted under the NGL and NGR
- reviewing annual reference tariff variations in accordance with access arrangements
- monitoring service providers' compliance with their obligations under the NGL and NGR and bringing enforcement proceedings
- hearing and determining access disputes, and
- approving competitive tendering processes.

**NATIONAL
COMPETITION
COUNCIL**



**Level 9
128 Exhibition Street
Melbourne
Victoria 3000**

**GPO Box 250
Melbourne
Victoria 3001**

**Phone:
(03) 9285 7474
Fax:
(03) 9285 7477**

**Email:
info@ncc.gov.au**

**Website:
www.ncc.gov.au**