

# MSP LIGHT REGULATION SUBMISSION

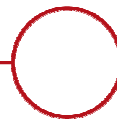
5 September 2008

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**Application for light regulation determination for  
Moomba to Sydney Pipeline services by  
East Australian Pipeline Pty Limited**

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**APA Group**



Level 19  
HSBC Building  
580 George Street  
SYDNEY NSW 2000

Tel: (02) 9693 0000  
Fax: (02) 9693 0093

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# Part 1 - Introduction and Background

## Introduction

1.1 This application is made by East Australian Pipeline Pty Limited ABN 33 064 629 009 (“**EAPL**”) pursuant to s.112 of the National Gas Law<sup>1</sup> (“**NGL**”) for a determination that services provided by the covered portion of the Moomba to Sydney gas pipeline system be light regulation services for the purposes of the NGL. The covered portion of the MSP is the portion of the Moomba to Sydney mainline from Marsden to Wilton and the Canberra, Wagga, Northern and Griffith laterals.

This submission is divided into 4 parts, which consider the following:

- Part 1 – Introduction and background;
- Part 2 – Effectiveness criteria and the form of regulation factors (ss.122(1)(a), 122(2)(b) and s.16, NGL);
- Part 3 – Comparative costs of full and light regulation (s.122(1)(b), NGL); and
- Part 4 – National Gas Objective and other factors (s.122(2)(a) and (c), s.23, NGL)

## Moomba to Sydney gas pipeline system

1.2 The Moomba to Sydney gas pipeline system (“**MSP**”) comprises the following pipelines:<sup>2</sup>

- (a) Moomba to Marsden (“**Moomba Marsden pipeline**”);
- (b) Marsden to Wilton (“**Marsden Wilton pipeline**”);
- (c) Dalton to Canberra (“**Canberra lateral**”);
- (d) Young to Lithgow (“**Northern lateral**”);
- (e) Young to Wagga Wagga (“**Wagga lateral**”);
- (f) Burnt Creek (on the Wagga lateral) to Griffith (“**Griffith lateral**”); and
- (g) Wagga Wagga to Culcairn (“**Interconnect**”).

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<sup>1</sup> The National Gas Law is set out in the Schedule to the National Gas (South Australia) Act 2008 (SA) which commenced on 1 July 2008.

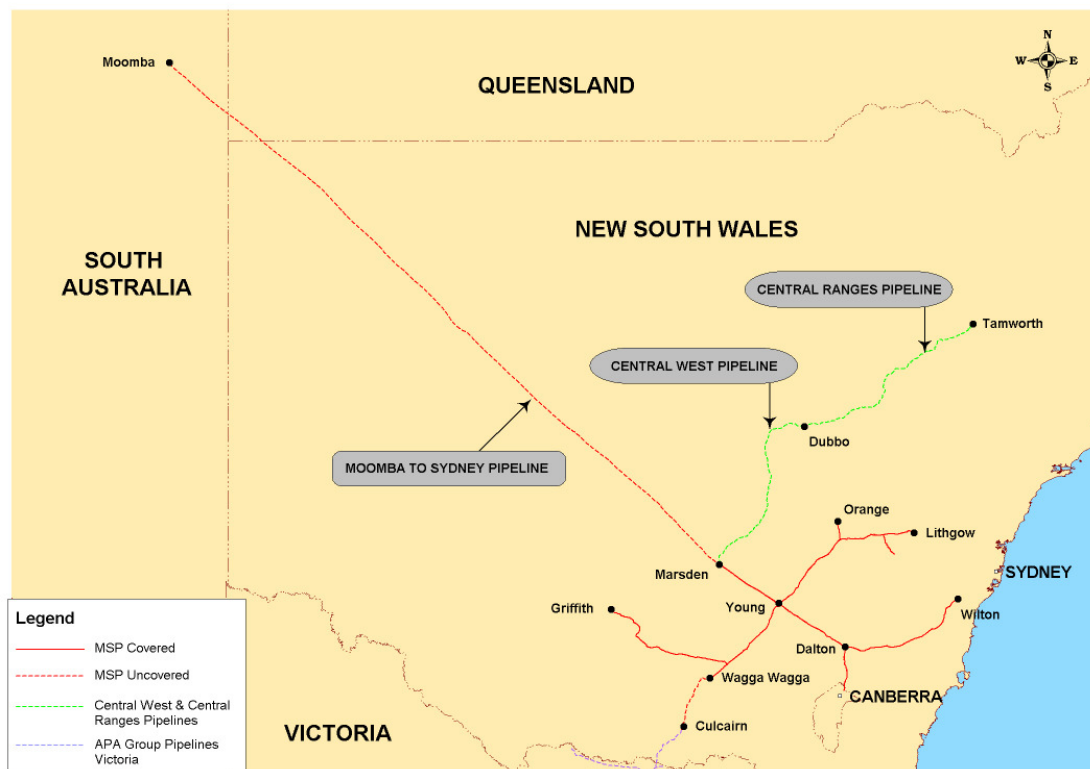
<sup>2</sup> Pipeline License details are as follows: Moomba to Queensland border (SA:PL7); SA border to NSW border (Qld:PPL21); Qld/NSW border to Wilton (NSW:16); Young to Wagga Wagga (NSW:19); Cootamundra Spur (NSW:19); Junee to Griffith/Leeton (NSW:20); Young to Lithgow (NSW:17); Oberon Spur (NSW:18); Orange Spur (NSW:22); Bathurst Spur (NSW:17); Dalton to ACT border (NSW:21); ACT/NSW border to North Watson; Wagga Wagga to Culcairn (NSW:23).

The Moomba Marsden pipeline, the Marsden Wilton pipeline, the Wagga lateral, and the Canberra lateral are jointly referred to as the “**mainline**”. The Northern lateral and the Griffith lateral are jointly referred to as the “**regional laterals**”.

- 1.3 The Moomba Marsden pipeline is not covered under the NGL. The Interconnect has never been covered even when the whole MSP was covered.
- 1.4 The main pipeline was constructed between 1974 and 1976. Various lateral pipelines were constructed in 1981, 1987 and 1993.
- 1.5 The MSP transports gas received at Moomba as well as gas received at Culcairn via the Victorian transmission system (“**VTS**”) and the Interconnect. The VTS is owned and operated by APA GasNet, a subsidiary of the APA Group.
- 1.6 The principal delivery points for gas transported by the MSP are:
  - Wilton, being the distribution network city gate for Sydney;
  - Watson, being the city gate for the ACT; and
  - various other points as well as the Uranquinty power station.
- 1.8 The MSP is owned by EAPL which is part of the APA Group. The APA Group owns and operates a number of energy infrastructure assets in Australia including the VTS and the Central West Pipeline. APA Group has also recently acquired the Central Ranges Pipeline System.<sup>3</sup> A list of all assets owned by APA Group as at the date of this application is set out at Attachment 1.
- 1.9 The diagram below shows the MSP together with the Central West and Central Ranges pipelines, noting which portion is covered under the NGL. Further details and a description of the MSP can be found at [www.pipelinetrust.com.au](http://www.pipelinetrust.com.au).

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<sup>3</sup> ASX release dated 11 August 2008 entitled “APA Group acquires the Central Ranges Pipeline NSW”.



## Regulatory background of the MSP

### Coverage

- 1.10 The *Gas Pipelines Access (SA) Act 1997*, the schedules to which comprised the Gas Access Law and the Gas Access Code came into effect on 14 August 1998. MSP was a covered pipeline for the purposes of the Law and Code by reason of its inclusion in the list of covered pipelines under the Code. The Interconnect which was constructed in 1998 was never covered.
- 1.11 In August 2000, construction of the Eastern Gas Pipeline (“EGP”) was completed. The EGP transports gas from Longford in Victoria to Horsley Park near Sydney. Following an application for coverage of the EGP by AGL, the Minister in October 2000 decided the EGP should be covered. This decision was set aside on review by the Australian Competition Tribunal (“**Tribunal**”) in 2001.<sup>4</sup>
- 1.12 On 28 April 2000, EAPL applied to the NCC for revocation of coverage under the Code for the MSP mainline. On 16 October 2000, the Minister decided that coverage

<sup>4</sup> Duke Eastern Gas Pipeline Pty Ltd [2001] ACompT2.

of the MSP not be revoked. This followed the NCC's recommendation to the same effect.

1.13 In June 2001 EAPL lodged a second application with the NCC for revocation of coverage of the MSP. In doing so it relied upon the Tribunal's decision relating to coverage of the EGP. EAPL sought revocation of coverage of the Moomba to Wilton mainline and the Canberra lateral. The NCC recommended to the Minister that coverage of the MSP not be revoked but on 19 November 2003 the Minister published his decision that coverage of that section of the MSP from Moomba to Marsden should be revoked with effect from 11 December 2003.

1.14 Consequently, the portion of the MSP mainline from Moomba to Marsden is not covered. The uncovered portion, being the mainline from Moomba to Marsden and the Wagga lateral to Culcairn, covers a distance of 1,030 kilometres (including the 88 kilometres of the Interconnect). The covered portion refers to all the remaining component pipelines of the MSP (including regional laterals) and covers a distance of 937 kilometres, which can be broken down as follows:<sup>5</sup>

- Marsden – Wilton mainline 357 kilometres;
- Canberra lateral 58 kilometres;
- Young-Wagga lateral 131 kilometres;
- Griffith lateral 179 kilometres; and
- Northern lateral 212 kilometres.

#### MSP Access Arrangement

1.15 As required under the Code, EAPL submitted a proposed Access Arrangement (“**AA**”) to the ACCC for the MSP together with the applicable Access Arrangement Information (“**AAI**”) in May 1999. Following the submission of revisions and a draft decision not to approve the AA and AAI, on 8 December 2003, the ACCC released its Final Approval decision which was not to approve the further Revised Access Arrangement and to approve its own AA.

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<sup>5</sup> Note that the Canberra and Young-Wagga laterals are considered part of the MSP mainline from a regulatory pricing perspective, whereas the Griffith and Northern laterals are considered regional laterals from a regulatory pricing perspective.

- 1.16 On 19 December 2003 EAPL applied to the Tribunal for review of the ACCC's Final Approval on various grounds. The major issue raised was the value of the initial capital base ("**ICB**") determined in the Final Approval.
- 1.17 On 8 July 2004 the Tribunal published its Reasons for Decision in which it held that the ICB proposed by the ACCC should be set aside. It held that the ICB should accord with depreciated optimised replacement cost ("**DORC**") calculated on a net present value basis with the optimised replacement cost ("**ORC**") including a 7.5% contingency for omissions. The Tribunal also held that the depreciation calculation should assume a life for the MSP as it was understood as at May 1999. The Tribunal went on to vary the determination of the ICB from \$545,430,000 to \$834,660,000.
- 1.18 The matter was appealed to the Federal Court and then to the High Court. The High Court's decision on 27 September 2007 effectively reinstated the Orders of the Tribunal on 19 May 2005. The current AA for the MSP is as approved by the Tribunal on that date.

## **Relevance of covered status**

- 1.19 In practice, whether the covered portion of the MSP is the subject of full or light regulation is largely irrelevant to existing or potential shippers for the following reasons:
- The reference tariffs under the AA apply only to services for transportation through the covered portion of the MSP. In particular, they do not apply to transport and other services from Moomba to Wilton.
  - Transport services from Moomba to Wilton account for approximately 70% of the total volume of gas transported on the MSP. As stated, none of these services are provided by the covered portion of the MSP.
  - EAPL has charged, and continues to charge, the same, posted tariffs for transport on the MSP mainline irrespective of whether the transport is on a covered or uncovered portion of the MSP.

## Pipeline services

1.20 The determination sought under s.112 applies to pipeline services. A "pipeline service" is defined in s.2 of the NGL as:

- (a) *a service provided by means of a pipeline, including:*
  - (i) *a haulage service (such as firm haulage, interruptible haulage, spot haulage and backhaul);*
  - (ii) *a service providing for, or facilitating, the interconnection of pipelines; and*
- (b) *a service ancillary to the provision of a service referred to in paragraph (a),*  
*but does not include the production, sale or purchase of natural gas or processable gas.*

1.21 "Firm haulage" (or firm transportation) refers to a haulage service where the service provider essentially commits to receive and deliver a specified quantity of gas for a user, other than in very limited circumstances.

1.22 An "interruptible service" refers to a haulage service where the pipeline operator reserves the right to interrupt the service at any time (generally in times of peak demand). Interruptible services are accordingly less reliable than firm services. Providing both firm and interruptible services enables a service provider to maximise usage by those users who value the service most highly – i.e. the highest paying sources of demand.

1.23 "Backhaul" refers to arrangements for the transport of gas where the delivery point is located upstream of the point on the pipeline where the user receives its gas supply (whether from a producer, shipper or retailer).

1.24 "Interconnection" is the right to join other facilities (processing plants, pipelines, networks and end user facilities) with the relevant pipeline.

1.25 Other types of potential services not expressly referred to in the above definition are linepack, parking and storage. Essentially, these services are all variants of a storage type service whereby pipeline capacity that is not otherwise committed for



point-to-point transportation, can be utilised by shippers for the purpose of storing gas in the pipeline. While a normal part of a point-to-point haulage service includes the balancing of inputs and outputs by each shipper on any given day, the dedicated storage type services are in addition to these embedded imbalance services and typically require dedicated capacity that may otherwise be used for haulage.

## **Pipeline services provided by the MSP**

- 1.26 There are at present only two receipt points for gas for transport on the MSP, one at Moomba and the other at Culcairn. A third receipt point, being the QSN Link's connection with MSP located adjacent to the Moomba receipt point, is scheduled to be completed in January 2009.<sup>6</sup> APA Group has also undertaken preliminary analysis in relation to a possible new pipeline from Wallumbilla located in south central Queensland to a point located on the MSP approximately midway between Moomba and Sydney. If constructed, this pipeline would transport gas from southern Queensland to NSW, Victoria and the ACT via the MSP. Subject to the possibility of this pipeline being developed, there is no current prospect of any further MSP receipt points. EAPL does, however, currently use Wilton as a backhaul receipt point.
- 1.27 There are over thirty delivery points on the MSP. These include:
- Marsden – Wilton mainline - Marsden (West Wyalong), Marsden (Central West Pipeline), Boorowa, Blakney Creek (Yass), Goulburn, Marulan, Sally's Corner, Moss Vale, Bowral, Bargo, Wilton;
  - Canberra lateral - Dalton (Canberra);
  - Young-Wagga lateral – Young township, Wallendbeen (Temora), Cootamundra, Illabo, Wagga Wagga;
  - Griffith lateral - Junee, Coolamon, Ganmain, Narrandera, Rockdale, Leeton, Griffith;
  - Northern lateral - Cowra, Blayney, Millthorpe, Orange, Bathurst, Oberon, Wallerawang Lithgow; and
  - Interconnect - Uranquinty, Henty, Holbrook-Culcairn (township) and Culcairn (Interconnect).

A complete list of receipt points is noted in Attachment 3.

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<sup>6</sup> Presentation entitled "Epicenergy – QSN Link – Delivering Qld CSM to Southern Markets, at [www.epicenergy.com.au/news](http://www.epicenergy.com.au/news)

- 1.28 Currently EAPL offers a standard "firm" transportation service as its main service. In addition, negotiable services include a "winter" transportation service and "as available" transportation services from the Moomba and Culcairn receipt points to all delivery points on the MSP. EAPL is also currently supplying a "parking/storage" services to two customers.
- 1.29 The "firm" service requires shippers to pay fixed or reservation charges for the capacity they reserve for minimum terms, typically of 12 months whether or not they use the capacity.
- 1.30 The "winter" service is the same as the "firm" service but requires a commitment typically for the 4 month winter period (June to September).
- 1.31 The "as available" service is an interruptible service. The tariff is generally at a premium to firm transportation services and may have minimum monthly charges.
- 1.32 The "parking" service is a storage service where fixed charges for the right to park or store gas in excess of a shipper's normal imbalance limit up to a maximum agreed quantity for delivery to the shipper at a later date.

## MSP gas shippers

### Existing shippers

- 1.33 There are currently 6 shippers on the MSP. For each current shipper, the following table sets out details of receipt and delivery points. Details of relative contributions to the total throughput of the MSP are set out in the Confidential Attachment.

Shipper	Customer type	Receipt points	Delivery points
AGL Wholesale Gas	Vertically integrated energy major	Moomba	Wilton Canberra Various
Origin	Vertically integrated energy major	Moomba Culcairn	Wilton Uranquinty Culcairn

Country Energy	Electricity and gas retailer	Moomba Culcairn Uranquinty	Various
EnergyAustralia	Electricity and gas retailer	Culcairn	Wilton
TRUenergy	Vertically integrated energy major	Moomba	Wilton
VISY	Large industrial user	Culcairn	Illabo

1.34 The shippers on the MSP comprise 4 categories – namely:

- Large vertically integrated energy majors – AGL, Origin and TRUenergy;
- Large energy retailers – Country Energy and EnergyAustralia;
- Industrials – Visy; and
- Power stations – Uranquinty power station.

1.35 The five energy retailers are each large, well resourced companies. A profile for each retailer is set out in Attachment 2.

1.36 Only one of the parties shown in the table, Visy, is an industrial user of transport via the MSP. However, other industrial users (noted in the Confidential Attachment), have negotiated transport tariffs and terms directly with EAPL. Under their arrangements with EAPL, these users are entitled to nominate another retailer of their choice to acquire the transport services negotiated by each with EAPL.

1.37 Currently, the only power station shipper located on the MSP is the Uranquinty power station. The power station was developed and owned by Babcock & Brown Power but acquired by Origin in July 2008. The power station is located on the uncovered Interconnect.

#### Prospective shippers

1.38 EAPL frequently receives enquiries for service for new or additional services from existing shippers as well as potential new shippers.

1.39 Potential new shippers largely comprise new power station proponents. As residential and industrial gas usage in Sydney has followed a relatively low but

steady growth pattern over the past few years, much of the growth in gas consumption is expected to come from the power generation sector. During the past 3 years EAPL also received approaches from some industrial users wanting to negotiate tariffs directly with EAPL which could be taken to any retailer for service provision. In addition, some producers have inquired about possible interconnection between the MSP and their own facilities, and for expanded services including transportation as a wholesaler/shipper and for storage as a "producer" to stabilise production.

#### Transportation contract terms and conditions

- 1.40 Each existing shipper has a gas transportation agreement with EAPL. The terms of the agreement are negotiated on a bilateral basis. The standing terms and conditions offered by EAPL are consistent with the non-price terms and conditions set out in the AA. The standing price term (or posted tariff) is currently below the approved tariff determined in the AA.
- 1.41 Shippers can, and do, negotiate with EAPL for variations to the standard terms of offer. Such negotiations have included requests for the provision of new or "tailor-made" services, particularly in the case of new power stations projects, as well as negotiations to secure particular price and non-price terms.<sup>7</sup>

## **Alternatives to shipping gas via the MSP**

#### Eastern Gas Pipeline

- 1.42 The EGP was commissioned in 2000 and covers a distance of 797 kilometres from Longford in Victoria to Wilton near Sydney. The EGP is owned and operated by Jemena. Jemena also own the Sydney gas distribution network.
- 1.43 From October 2006 to August 2007, the EGP was owned by Alinta Ltd. In August 2007 Alinta was acquired by a consortium comprising Singapore Power International and Babcock & Brown. The responsibility for the EGP passed to Singapore Power International. Jemena is the current name of the former Alinta Ltd assets and businesses (including the EGP) acquired by Singapore Power International.

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<sup>7</sup> Refer to Confidential Attachment 1 for examples of negotiated terms.

- 1.44 The EGP transports gas from the Gippsland basin in Victoria to markets in Sydney, Canberra and regional centres along the route. Gas is supplied to EGP at Longford and Orbost by local gas producers and through the VicHub facility.
- 1.45 The EGP is not a covered pipeline but Jemena states on its website that it is committed to the provision of voluntary, non-discriminatory pipeline access to third parties in accordance with its Non-discriminatory Access Policy.

#### Sydney Gas

- 1.46 Sydney Gas Ltd ("**Sydney Gas**") is an energy company listed on the Australian Stock Exchange. Its principal activity is the production of coal seam gas from fields near southwest Sydney and in the Hunter Valley.
- 1.47 In 2005 Sydney Gas sold 50% of its assets to AGL and entered into a joint venture with AGL for the development of its tenement. Sydney Gas and AGL have entered into a gas sales agreement with AGL Wholesale Gas ("**AGLWG**") for ten years with an option to renew for a further period of four years<sup>8</sup>. Under that agreement the joint venture is to deliver up to 14.5 PJ/pa to AGLWG from 2008 thereby becoming a significant producer of gas for the NSW market.
- 1.48 According to information published by Sydney Gas<sup>9</sup>, the joint venture estimates that there are around 63 trillion cubic feet of gas in place within in its Sydney basin acreage. This could satisfy the entire gas requirements of Sydney for the next 100 years at the current rate of consumption if the joint venture's prediction of gas recovery rates is realised. When successfully developed over the next 3 to 4 years, the joint venture's Camden gas project alone has the potential to provide approximately 30PJ of gas per year (approximately 25% of total NSW/ACT demand). Sydney Gas has indicated that the Hunter Valley gas exploration activities could add another 20-30PJ of production per annum given the thicker coal seams of those areas and the good gas content.
- 1.49 Sydney Gas' Camden reserves are located within the Sydney distribution network system owned by Jemena. Similarly, depending upon the location of the Hunter

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<sup>8</sup> <http://www.sydneygas.com/content.php/2.html#mod161>

<sup>9</sup> [www.sydneygas.com](http://www.sydneygas.com)

Valley reserves, gas could be transported to Sydney via the trunk line connection into the Jemena network.

### New pipelines

1.51 There are various proposals for new pipelines under consideration. These include the following.

- Epic Energy is currently constructing a pipeline from Ballera to Moomba which would link the MSP with the South-West Queensland pipeline network (referred to as the “**QNI Link**”). Construction is scheduled to be completed in 2009.<sup>10</sup>
- Queensland Gas Company (“**QGC**”) announced in May 2008 a proposal to build a pipeline called the “Hunter Gas Pipeline” (“**HGP**”) from coal seam gas fields in southern Queensland stretching 820 kilometres to Newcastle. QGC also announced an agreement with two joint venture partners to examine the feasibility of building and owning a new gas fired power station in NSW to be supplied from QGC's coal seam gas reserves in south Queensland. The power station would be a foundation customer for the HGP with contracted transportation capacity to transport 50PJ/a of gas over 20 years.<sup>11</sup>
- Sunshine Gas Limited also announced that it is evaluating with joint venture partners a project to build a pipeline by 2013 with an assumed capacity of 8 PJ/pa from the Wallumbilla gas hub in south east Queensland to Newcastle, a distance of about 850 kilometres.<sup>12</sup>
- APA has undertaken work to evaluate a possible new pipeline from Wallumbilla to a point on the MSP, approximately midway between Moomba and Sydney. The pipeline would support continued supply into Sydney via the MSP as Cooper Basin production declines.<sup>13</sup>

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<sup>10</sup> Presentation entitled “Epicenergy – QSN Link – Delivering Qld CSM to Southern Markets, at [www.epicenergy.com.au/news](http://www.epicenergy.com.au/news)

<sup>11</sup> [www.qhgp.com.au](http://www.qhgp.com.au)

<sup>12</sup> [www.sunshinegas.com.au](http://www.sunshinegas.com.au)

<sup>13</sup> Report of the Owen Inquiry into Electricity Supply in NSW, 31 July 2007 - Consultant's Report by Wood Mackenzie.

Pipelines proximate to MSP<sup>14</sup>

- 1.52 For each of the delivery points on the MSP mainline from Dalton to Wilton and the Canberra lateral, the EGP is geographically proximate. The Central West Pipeline is geographically proximate to delivery points on the Northern Lateral south of Orange. The VTS is proximate to Southern and Griffith lateral delivery points.
- 1.53 In respect of the receipt points, the Moomba to Adelaide Pipeline and the QNI Link (Moomba to Ballera Pipeline, which is currently under construction and scheduled for completion in 2009) are proximate to the MSP receipt point at Moomba. The Southern and Griffith laterals are proximate to the Culcairn receipt point.
- 1.54 By proximate, APA means in the order of 100km. APA wholly owns the MSP (and laterals), the Central West and Central Ranges Pipelines and the VTS.

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<sup>14</sup> Rule 34(2)(b) of the NGR requires an applicant to identify alternate pipelines within 100km of the pipeline the subject of the application.

## Part 2 - Effectiveness criteria (s122(1)(a))

### Approach

2.1 s122(1)(a) of the NGL requires that:

*“In deciding whether to make a light regulation determination under Division 1 or to revoke a light regulation determination under Division 2, the NCC must consider—(a) the likely effectiveness of the forms of regulation provided for under this Law and the Rules to regulate the provision of the pipeline services (the subject of the application) to promote access to pipeline services;”*

2.2 The term “effectiveness” is not defined in the NGL. The second reading speech does, however, provide some guidance as to the circumstances in which light regulation is intended to apply. In particular, it notes that the light regulation option should be available where it is likely to reduce costs “*while still providing an effective check on a pipeline’s market power*”. It goes on to note that “[!]light regulation may be particularly relevant for point to point transmission pipelines with a small number of users who have countervailing market power.”<sup>15</sup>

2.3 Light regulation essentially applies a “negotiate/arbitrate” model much like that provided for in Part IIIA of the *Trade Practices Act 1974* (“**TPA**”). The model relies on users and service providers negotiating the terms of service provision. If the parties are unable to agree on those terms, binding arbitration by the AER can be sought.

2.4 The effectiveness of this model depends on the ability and willingness of users to engage in effective negotiations against the service provider so as to make the negotiations the mechanism through which commercially acceptable terms for both parties can be agreed. In other words, the negotiations need to be commercially meaningful and this requires an ability and incentive on the part of the user to “look after itself” when negotiating with the service provider. If this is not the case, the arbitration mechanism becomes the one through which outcomes become principally

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<sup>15</sup> National Gas (South Australia) Bill 2008 Second Reading Speech, p.15.



determined. A single arbitration may be less costly than full regulation. However, the regulatory fixation of tariffs and terms for all users under full regulation, particularly where there are many users, would likely be more cost effective than a series of arbitrations, were that to be the outcome of light regulation.

- 2.5 Whether a user is able to “look after itself” in a negotiation is dependent on a range of factors including the degree of market power of the service provider, the countervailing power of the user and the access to relevant information. This is recognised in the second reading speech which notes that the National Gas Objective and the “form of regulation factors” guide the assessment of whether the circumstances are such that light regulation would be appropriate. Each of these factors is considered below in the context of the assessment of “likely effectiveness” under s.122(1).
- 2.6 In addition to considering whether users would have the ability and incentive to negotiate effectively under light regulation, s.122(1) requires a comparison of the effectiveness of full and light regulation to promote access to pipeline services. The key question here is would light regulation be at least as effective as full regulation in promoting access to pipeline services. If so, and the costs of light regulation are lower, then light regulation would be appropriate.

## **Position under full regulation**

- 2.7 At least since 2000, when APA was floated, EAPL has published terms and conditions of service including tariffs as a standing offer to users and prospective users. This “posted tariff” is made available to all shippers as the standing tariff offer.
- 2.8 Both regulated and posted tariffs for the MSP are determined by reference to distance, capacity reservation and volumes delivered (throughput). The “headline tariff” is a useful comparative measure and is based on the combined capacity and throughput tariffs for the transport of 1 GJ of gas over the 1299km mainline distance from Moomba to Wilton (assuming total throughput is equal to the maximum daily quantity (“**MDQ**”). The headline tariffs based on the regulated and posted tariffs for the MSP for the period from 1999 to the present are set out below:

<b>"Headline Rate" - detail</b>		<b>1999-00</b>	<b>2000-01</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>	<b>2004-05</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>
<b>Published "Headline Rate"</b>										
Capacity	\$/GJ of MDQ	\$ 0.68	\$ 0.62	\$ 0.62	\$ 0.62	\$ 0.62	\$ 0.62	\$ 0.62	\$ 0.64	\$ 0.65
Throughput	\$/GJ delivered	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.04
Published - Mainline & Lateral (100%LF, 1299 km to Wilton)		\$ 0.72	\$ 0.66	\$ 0.66	\$ 0.66	\$ 0.66	\$ 0.66	\$ 0.66	\$ 0.68	\$ 0.69
<b>Regulated "Headline Rate" - Mainline</b>										
Capacity	\$/GJ of MDQ					\$ 0.47	\$ 0.47	\$ 0.64	\$ 0.66	\$ 0.66
Throughput	\$/GJ delivered					\$ 0.03	\$ 0.03	\$ 0.04	\$ 0.04	\$ 0.04
Regulated - Mainline (100%LF, 1299 km to Wilton)						\$ 0.50	\$ 0.50	\$ 0.68	\$ 0.70	\$ 0.71
<b>Regulated "Headline Rate" - Lateral</b>										
Capacity	\$/GJ of MDQ					\$ 0.63	\$ 0.64	\$ 0.68	\$ 0.71	\$ 0.74
Throughput	\$/GJ delivered					\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.05
Regulated - Lateral (100%LF, 1299 km to Wilton)						\$ 0.67	\$ 0.68	\$ 0.73	\$ 0.76	\$ 0.78

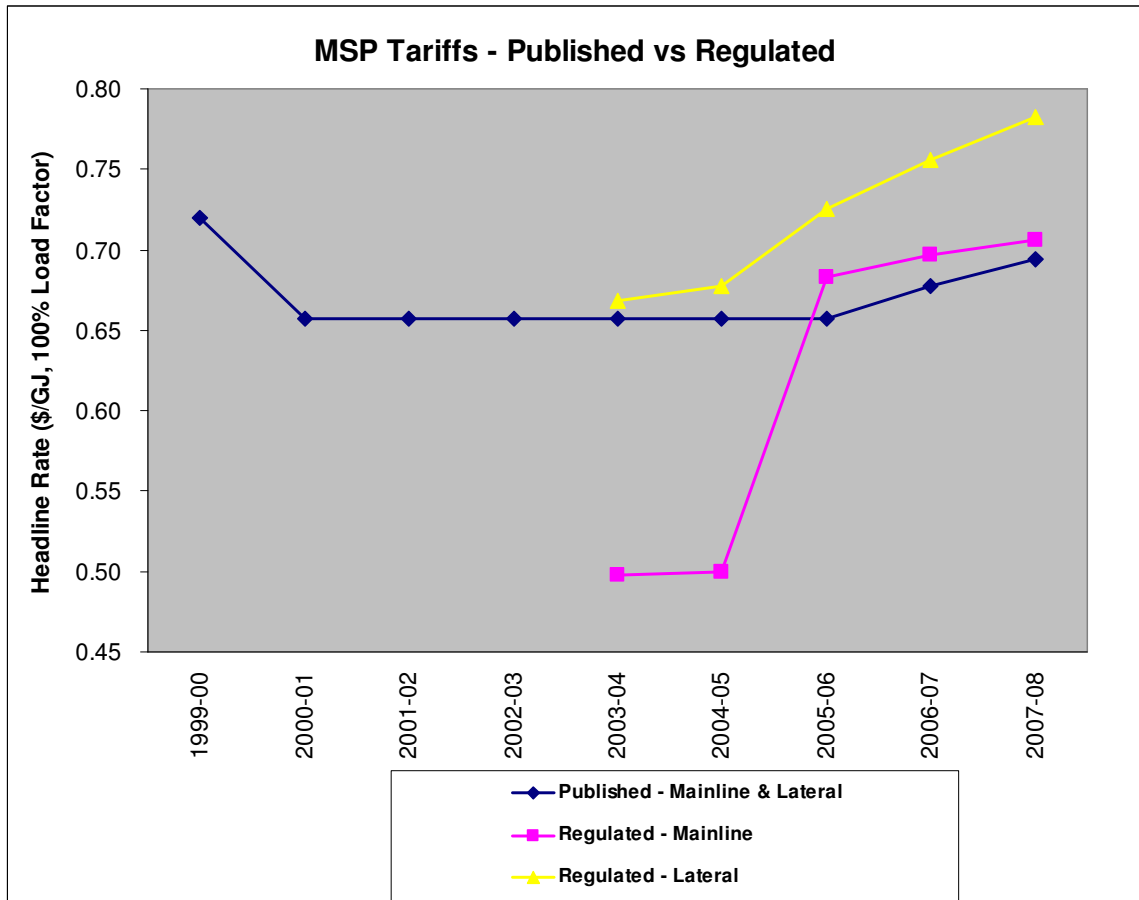
2.9 As indicated in the table above, EAPL's headline posted tariff fell from 72 c/GJ to 66 c/GJ following commissioning of the EGP in 2000. The tariff then remained constant until 2006. The comparable regulated mainline reference tariff was 50 c/GJ from December 2003 until mid 2005, when the Tribunal required an upward revision to the capital base set by the ACCC. During the 2003-2005 period, the posted tariff represented the amount payable under long term contracts. The services acquired under these applied to both the covered and uncovered parts of the MSP, whereas the reference tariff applied only to the covered portion of the MSP. All shippers required a transportation service from points on the uncovered part of the pipeline.

2.10 The posted tariffs applicable to the services on the mainline and laterals were the same and continue to be. It is only in the regulated tariffs where there is a differential between mainline and regional lateral tariffs.<sup>16</sup> The regulated reference tariff for the regional laterals ranged from 67 c/GJ to 73 c/GJ for the period 2000-2006, which was higher than the 66 c/GJ posted tariff.

2.11 After being held constant from July 2000 to July 2006, the posted tariff has increased from 66 c/GJ in 2006 to 69 c/GJ at present and reflects the need to cover costs associated with major capital maintenance works on the MSP associated with the repair of stress corrosion cracking as well as capacity augmentations on the pipeline.

2.12 Set out below is a graph comparing headline regulated and posted tariffs for the mainline and laterals:

<sup>16</sup> Note that the Mainline regulatory tariff also applies to the Wagga and Canberra laterals and the Regional Lateral regulatory tariff applies to the Northern and Griffith lateral only.



As shown in the diagram, since the High Court's decision in 2005 upholding the Tribunal's original 2003 decision, the regulated headline tariff has been higher than EAPL's posted tariff.

2.13 Given this price relativity, the starting point for negotiations with shippers has been the posted tariff rather than the regulated tariff. Currently all MSP shippers pay below the regulated tariff. As such, the effectiveness of the regulated tariff in protecting the interests of shippers by providing an effective price ceiling has been diminished.

2.14 In considering price relativity it should be recognised that the services acquired under the posted tariff and the regulatory tariff are essentially the same, that is, a firm forward haul service. The tariff structure of both tariffs are also essentially the same, with both consisting of a capacity tariff component and a throughput tariff component. Thus the tariff comparison discussed above is a comparison of "like for like" services. While certain terms and conditions of transportation are negotiated on a bilateral

basis, these terms tend to affect the overall nature and risk profile of the supplied transportation service only at the margin.

- 2.15 As with tariffs, EAPL makes available a standing offer of other terms and conditions of service provision. The non-tariff terms and conditions were generally not in contention with the ACCC and the version accepted by the ACCC in 2003 has essentially constituted the posted non-tariff terms and conditions of transport since. The transportation agreements are based on these posted non-tariff terms and any variations reflect negotiations with shippers.
- 2.16 If the MSP were subject to light regulation, EAPL would expect to continue to offer the standard non-tariff terms and conditions as approved by with the ACCC. The terms are well understood by shippers and EAPL has little reason to move away from these terms and conditions although it may seek to do so to increase operational efficiency and throughput.

## **Form of regulation factors**

- 2.17 The form of regulation factors are set out in s.16 of the NGL. Essentially the 7 factors expressly listed in s.16 consider three key issues relevant in determining whether users would be able to negotiate effectively under light regulation – namely:
- the degree of market power of the service provider (s.16(a), (b), (c), (e), (f));
  - the countervailing power of users (s.16(d), (e) and (f)); and
  - the ability of users to access sufficient relevant information (s.16(g)).
- 2.18 Each of the form of regulation factors is considered below in the context of these three considerations.

### ***MSP low degree of market power***

#### **General approach**

- 2.19 The eastern part of the MSP from Marsden to Wilton, including the main laterals, is a covered pipeline for the purposes of the NGL. Underlying this coverage decision is a presumption that this eastern part of the MSP possesses market power.

2.20 While the existence or otherwise of market power is properly a question that is pertinent to coverage decisions, the degree of market power is relevant to many of the form of regulation factors set out in s.16 of the NGL. Simplifying somewhat, where a covered pipeline's market power is great the argument for full regulation is stronger. Where the pipeline's market power is mitigated by other factors there is a greater chance that access seekers would be capable of negotiating effectively with the pipeline owner under light regulation, making the burdensome and costly machinery of full regulation unnecessary.

2.21 The Tribunal judgement in the EGP case in 2001<sup>17</sup> provides a relevant precedent for the method of assessing a gas pipeline's market power. The Tribunal concluded *"that EGP will not have sufficient market power to hinder competition based on the commercial imperatives it faces, the countervailing power of other market participants, the existence of spare pipeline capacity and the competition it faces from the MSP and the Interconnect. As EGP does not have market power, the Tribunal cannot be satisfied that coverage would promote competition in either the upstream or downstream markets."*[par. 124]

2.22 The same tests as those applied by the Tribunal can be applied to the MSP in the circumstances it faces in 2008 by considering:

- the existence of spare pipeline capacity;
- commercial imperatives faced by MSP;
- competition from EGP,<sup>18</sup> and
- countervailing power of other market participants.

The first three of these factors is considered in this section. The countervailing power point is the subject of consideration in paragraphs 2.87 to 2.107.

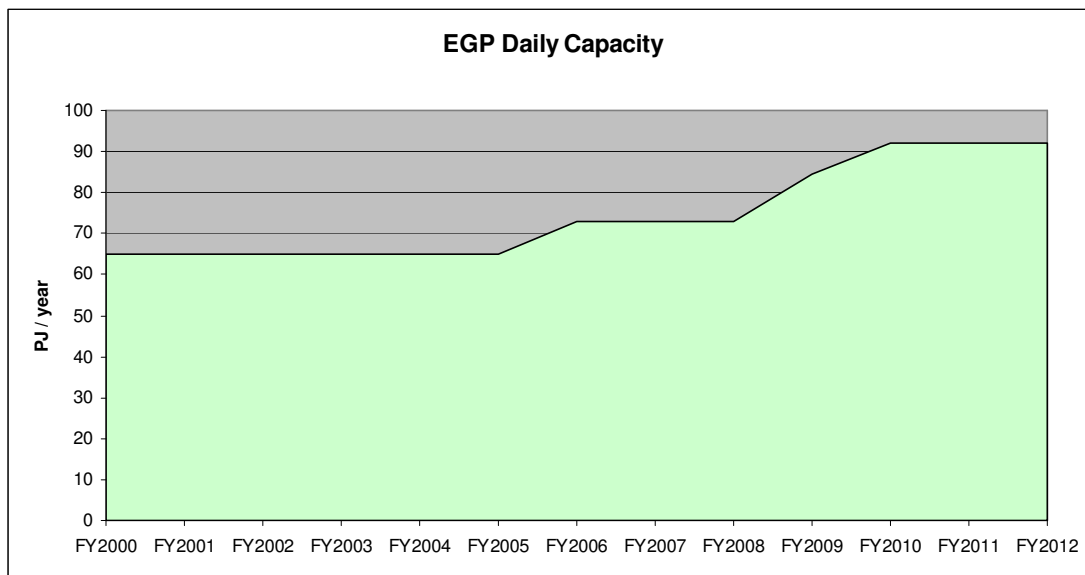
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<sup>17</sup> Re Duke Eastern Gas Pipeline Pty Ltd [2001] ACompT 2 (4 May 2001)

<sup>18</sup> Competition from the Interconnect is not mentioned here because, as a result of APA's GasNet acquisition, it is not owned independently of the MSP. Nevertheless, GasNet is subject to full regulation. For that reason, transport on the Interconnect at the regulated price may well impose some constraint on MSP pricing, notwithstanding the ownership structure.

### Existence of spare pipeline capacity

- 2.23 In considering the capacity of a pipeline, two measures are useful. The first is petajoules per annum ("**PJ/pa**") which shows the theoretical volume of gas that a pipeline could transport were it to be full everyday of the year. Pipeline throughput is, however, highly seasonal with the winter months being the peak throughput periods. For this reason, it is also useful to consider terajoules per day ("**TJ/day**") in order to consider available capacity during the year.
- 2.24 The current capacity of the MSP is 139 PJ/pa. This capacity will increase during 2009 on completion of current expansion works. Set out in the Confidential Attachment is a chart comparing MSP's available capacity with contracted volumes. The chart shows that MSP will have spare capacity from FY 2009 onward, based on current contracted positions.
- 2.25 Information provided publicly by EGP indicates that its throughput was 63 PJ in 2007 and that its capacity is currently 73 PJ/pa.<sup>19</sup> The chart below, based on published information on the EGP, indicates the growth in EGP capacity to date and expected capacity in future.<sup>20</sup>



<sup>19</sup> See <http://jemena.com.au/operations/transmission/egp/default.aspx> (accessed 20 August 2008).

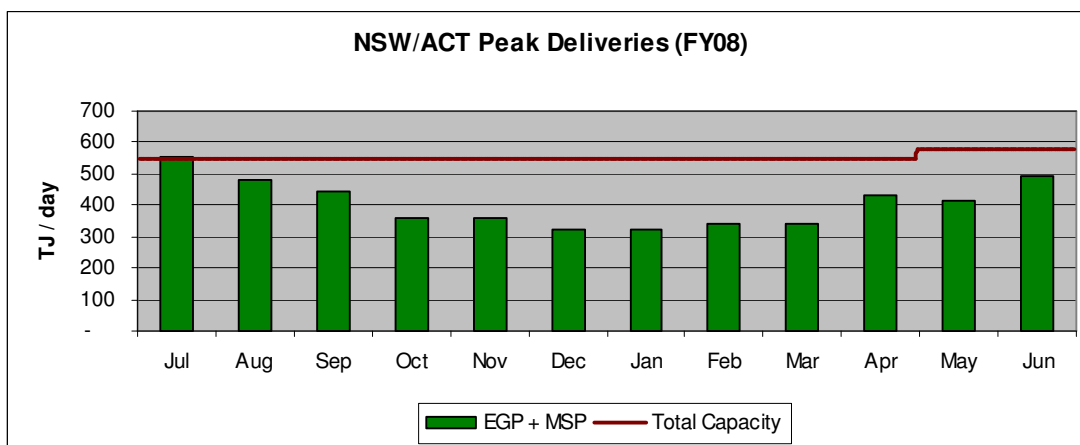
<sup>20</sup> See <http://www.jemena.com.au/operations/transmission/egp/default.aspx> (accessed 20 August 2008).

2.26 Total demand for NSW and ACT is estimated as follows (in PJ). This is based on an aggregate of total throughput for each of the MSP, EGP and Sydney Gas.<sup>21</sup>

	2000	2001	2002	2003	2004	2005	2006	2007	2008
<b>PJ</b>	121	125	117	119	116	117	122	119	115

2.27 Over the 9 year period shown in this table, the total market demand for gas in NSW has fluctuated somewhat between a minimum of 115 PJ/yr and a maximum of 125 PJ/yr. This level of market demand (measured in throughput terms) is significantly less than the combined maximum capacities of the MSP and EGP of 312PJ/pa once the MSP's current expansion programme is completed prior to winter 2009 next year.

2.28 Considering the peak demand position as TJ/day, the following chart shows for the financial year ended June 2008, the peak demand for the MSP and EGP combined for each month (referred to as coincident peaks) against the total combined capacities of the two pipelines.<sup>22</sup>



2.29 The chart shows an aggregate MSP and EGP capacity of 550 TJ/day for the period to May 2008. The peak demand for NSW/ACT during this period was in July 2007 at which time there was no available capacity. However in May 2008, the MSP augmented capacity by 50 TJ/day taking aggregate MSP and EGP capacity to 600 TJ/day. At this level, there was available capacity of 106 TJ/day over the peak

<sup>21</sup> The information is publicly available on each pipeline's website.

<sup>22</sup> The peak demand figures include volumes for parking and imbalances for the MSP. The demand for EGP is provided on [www.jemena.com.au](http://www.jemena.com.au).

demand (of 494 TJ/day) in June 2007. The July 2008 peak (not shown in the chart) was 546 TJ/day compared to the available capacity of 600 TJ/day. The chart indicates that for peak demand days during the winter period of 2008, on an aggregate demand basis, there is available capacity. While it may be that on any given day during the coincident peaks, either or both of the MSP and EGP are fully committed, this position is transitory only.

2.30 In addition, the capacities of both the MSP and EGP can be increased significantly through compression. For the MSP, there is the possibility of adding up to 6 new mainline compressors. Fully compressed, the MSP's capacity would be approximately 256 PJ/pa. Similarly in the case of the EGP, significant increased capacity would follow increased compression. APA believes that EGP could take a further 2 compressors which would bring EGP's maximum capacity up to 120 PJ/pa. The cost of adding a compressor is relatively modest compared with the resulting increase in capacity in the case of the first few compressors. The capacity augmentation to result from compression decreases with each additional compressor making each additional compressor comparatively more costly relative to capacity increased.

2.31 Accordingly, capacity constraints are not an issue and the commercial imperatives facing both pipelines would incline them to compete strongly on price and other terms of supply so as to maximise throughput.

#### Commercial imperatives on MSP

2.32 The Tribunal noted in the EGP case [par.117] that:

*“There are strong commercial incentives for Duke to increase the throughput of the EGP, given its high capital cost, low operating costs and spare capacity. There are three pipelines which can supply gas to the market in Sydney, although lesser numbers to the ACT and other places in NSW. The three pipeline operators all stated that it was in their own financial interests to increase market share, and that this may involve undercutting the prices of other pipelines where that was financially justified.”*

2.33 This assessment is equally valid for the MSP going forward, particularly given the spare capacity created by the loss of market share to the EGP that has taken place since 2000.



2.34 The MSP's regulated initial capital base was determined as \$834.66m in 2005. Based on the current regulatory decision its operating costs are approximately \$22 million<sup>23</sup> per annum and the variable costs associated with the throughput of additional volumes are negligible (previously in MSP regulatory decisions variable costs have been set at 4% of total costs).<sup>24</sup> Given such high fixed costs and low variable costs, maximising throughput is a commercial imperative for MSP.

### Competition from EGP

2.35 The MSP and EGP offer services that are good substitutes for each other. Both supply gas transport services to Sydney and Canberra. The MSP-hauled gas emanates primarily from Moomba and the EGP-hauled gas emanates primarily from Longford. The largest customers on the MSP have gas supply contracts with both producers, so gas supply is not an impediment to those shippers switching pipelines.

2.36 For example, AGL's 2003 Annual Report noted [p.24] that

*"In December, AGL secured a \$4.5 billion gas and transportation portfolio which will provide diversified and market competitive gas supplies into the future. ... The Gippsland gas contract will complement existing Victorian arrangements ... and additionally supply NSW and ACT markets through the Eastern Gas Pipeline or the Wagga Wagga to Wodonga Interconnect. This portfolio provides increased diversification, competitive prices and improved risk management through reduced reliance on one source of supply."*

2.37 The substitution threat implicit in these factual points has become a reality. Since completion of the EGP in 2000, MSP's throughput has progressively declined from 116 PJ to 51 PJ in 2008 as shown in the table below.<sup>25</sup>

	2000	2001	2002	2003	2004	2005	2006	2007	2008*
<b>MSP</b>	116	96	92	93	83	72	74	50	51
<b>Total Demand (PJ)</b>	121	125	117	119	116	117	122	119	115

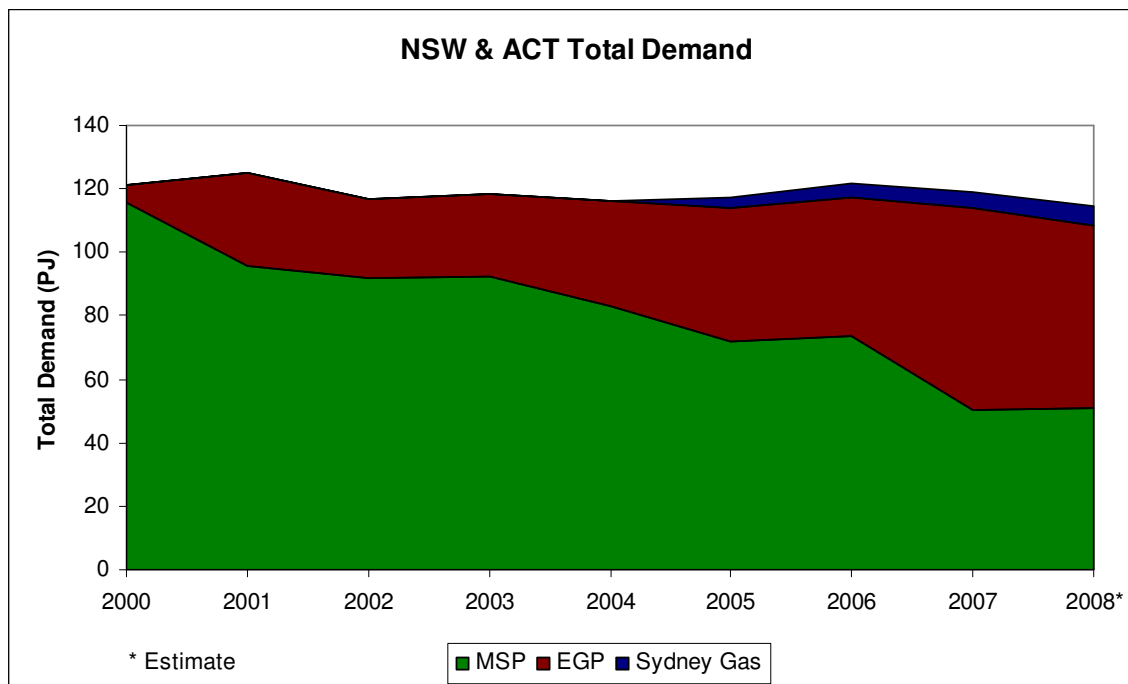
<sup>23</sup> This includes operating costs for the uncovered section.

<sup>24</sup> See for example ACCC 2003 Final Decision EAPL Access Arrangement for MSP 2 October 2003, p xiii.

<sup>25</sup> The numbers in this table were generated from APA internal data (top line) and by combining this MSP data with public information on the EGP and Sydney Gas available from their respective web sites.

2.38 This reduction in throughput is entirely due to increases in market share by EGP and more recently, by Sydney Gas.

2.39 The MSP's share of annual NSW and ACT gas deliveries has declined from 100% to less than 50%, with the MSP and EGP shares representing an approximately equal number of PJ in 2008. The chart below shows the growth of EGP-for-MSP substitution over the intervening time.



2.40 This chart shows that while total NSW/ACT gas deliveries have been approximately constant over the 9 year period, the MSP has steadily lost market share to EGP, leading to a reduction of MSP volumes in both relative and absolute terms.

2.41 Sydney Gas Limited has emerged over the past several years as a potentially significant supplier of coal seam methane (“**CSM**”) gas to the Sydney market. Its 2006 Annual Report announced a significant long-term gas supply contract with AGL. According to its Fourth Quarter Activity Report (dated 31 July 2008), Sydney Gas supplied approximately 15 TJ/day from its Camden gas field in 2006.<sup>26</sup>

<sup>26</sup> Sydney Gas Limited Annual Report 2006, p. 11.

2.42 Gas-fired power stations represent the most likely source of growth in gas usage in NSW in the coming two decades. It is significant that of the power station projects currently under consideration most are either:

- planned to be built at locations that could be served by either the MSP, the EGP, the Jemena distribution network, or the Interconnect; or
- proposed by firms that have bargaining leverage with EAPL through relationships on other pipelines or the option not to proceed with the power station.

2.43 Now that the general assessment of the degree of MSP market power has been undertaken, it is necessary to interpret that assessment in light of the specific form of regulation factors set out in s.16 of the NGL. The factors most directly pertinent to the issue of market power are (a), (b), (c), (e), and (f).

### **Factor (a) presence and extent of barriers to entry in a market for pipeline services**

2.44 The existence of high barriers to entry, if established, would tend to suggest a preference for heavy regulation. It should be borne in mind, though, that a pipeline should not be covered in the first place if barriers to entry were absent, as it would presumably lack market power. The case could be made that high barriers to entry tend to reduce a pipeline user's negotiating strength by limiting the alternatives to a negotiated settlement that may be available to the user. The weaker the user's negotiating position, the more likely that full regulation would be more effective than light regulation.

2.45 Seen in this light, the preference for one form of regulation or another would turn on the height or extent of barriers to entry, rather than their existence. The high capital costs of pipeline construction and the requirement to arrange foundation shipper contracts are likely to constitute barriers to entry. Nevertheless, the height of entry barriers has been reduced over the MSP's life to date, and the alternatives available to users have been enhanced by the following developments:

- construction of new pipelines providing alternative routes to market for users and gas producers;

- the practice, among large pipeline users that hold significant capacity on long term contracts, of reselling transport to third parties in competition with the pipeline owner;
- emergence of CSM as a substantial new source of gas supply; and
- greater use of swap contracts as an alternative to pipeline transport.

New pipelines providing alternative supply routes

2.46 Alternative pipelines tend to reduce barriers to entry for new gas basins to supply customers that may have previously been captive to a single basin and its associated transmission pipeline.

2.47 The diagram below shows the MSP along with a number of other pipelines in south-eastern Australia that form what is effectively a meshed network of pipelines linking the major gas basins with all of the major population and industrial centres.



2.48 Until 2000, the MSP was the only pipeline servicing users in Sydney, Canberra and regional New South Wales. The EGP commenced operation in 2000 providing Longford-sourced gas to Sydney users as an alternative to the MSP. The

Interconnect commenced operations in 1998 and provided an alternate source of supply for volumes of up to 30 TJ per day.<sup>27</sup>

- 2.49 These pipeline developments mean that gas shippers have a greater range of options to obtain gas from different basins and through different pipeline routes than they did when the MSP was first constructed, thereby making shippers less reliant on the MSP than previously.
- 2.50 In the case of producers, the Moomba to Adelaide pipeline commenced operation in 1974. More recently, construction of the Ballera to Moomba pipeline by Epic Energy has commenced and is expected to be completed in 2009.<sup>28</sup> On completion of the pipeline, Moomba producers will be able to ship gas into Queensland and Queensland sourced gas will be able to flow south into NSW.
- 2.51 These pipeline developments mean that gas producers at Moomba and Longford have a greater range of options to deliver gas to customers than they did when the MSP was first constructed.

#### Resale of pipeline capacity by MSP's large shippers

- 2.52 A secondary market in MSP transportation services will tend to lower barriers to entry by potentially placing MSP's largest customers in competition with the pipeline owner to sell haulage on the same pipeline. In effect, the wholesale customers of MSP can enter the market as sellers. This type of competition can be particularly efficient because it does not require the construction of new facilities.
- 2.53 AGL in particular has sold delivered gas to other shippers on the MSP that may otherwise have acquired haulage services directly from MSP. APA is aware that from about 2000 to 2006, AGL sold delivered gas to Country Energy at the Wagga Wagga receipt point. AGL also has wholesale arrangements in place with a number of large industrial customers that approached EAPL directly for an offer for MSP haulage (see Confidential Attachment for details). APA also understands that Origin has recently entered into an arrangement with Energy Australia for the delivery of

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<sup>27</sup> Depending upon the season, demand for gas in Victoria and the pressure of the GasNet system, the Interconnect's capacity can range from 17TJ to 60TJ. 30TJ is an average estimate of capacity.

<sup>28</sup> See ASX Announcement 13 July 2007 by Hastings Fund Management Limited, "Epic Energy signs foundation contract with AGL underpinning construction of the QSN Link (formerly known as the BMI).

gas to Sydney. Also, the Colangra power station project (which is due to be commissioned in March/April 2009) recently went out to tender for the supply of commissioning and ongoing gas. APA understands that the tender was open to wholesalers and producers. APA was also approached to respond by offering terms of haulage and capacity.

2.54 In each of these cases, users had the option of acquiring haulage services from EAPL and gas from producers, or of acquiring a bundled delivered gas service from a wholesaler such as AGL and Origin. In this way, the large wholesalers are active resellers of MSP capacity through the provision of the bundled service. The currently proposed short term trading market will further facilitate this secondary market. This market will be operational by 2010.

2.55 Another possibility is of the MSP producers bundling haulage and gas for on sale of delivered gas to retailers. This currently occurs in Queensland with the South West Queensland Producers ("**SWQP**") selling to retailers, delivered gas (comprising haulage and gas) at delivery points and meter stations served by the Roma to Brisbane pipeline ("**RBP**"). Retailers have the choice of acquiring haulage from the RBP (and separately gas from producers) or of acquiring haulage as part of the bundled service offering from the SWQP. In this way, the SWQP compete with the RBP for the provision of haulage services. A similar arrangement may arise in respect of the MSP thereby providing a further competitive constraint on MSP.

#### New pipeline developments and emergence of CSM

2.56 New gas sources tend to lower barriers to entry by enabling gas to be supplied from new locations that do not rely on the MSP for transport. In the case of Sydney Gas, for example, its Camden field can supply Sydney via the Jemena gas distribution network. This CSM development makes it possible for that distribution network to enter in competition with the MSP and EGP.

2.57 Recent shareholder presentations by Origin and AGL have emphasised the importance of CSM as a future source of gas supply. For example, Origin's Managing Director Grant King, presenting to the June 2008 UBS Resources Conference noted that "*Since 2000 CSG reserves have grown from a few hundred petajoules (PJ) to over 9,400 PJ ...while CSG production has also grown significantly supplying ~120 PJ and approximately 70% of the Queensland market in the 12*

months to March 2008.”<sup>29</sup> AGL’s Managing Director and CEO Michael Fraser, presenting to the June 2008 UBS Australian Infrastructure & Utilities Conference noted that AGL’s current portfolio of upstream gas interests included 1,120 PJ contracted CSM from the Bowen Basin, significant equity and contract positions in CSM in Moranbah, as well as an equity interest in CSM production in the Sydney Basin.<sup>30</sup>

2.58 Other producers currently involved in CSM exploration and production in NSW include:

- Eastern Star Gas in the Central Ranges area of Northern NSW<sup>31</sup>;
- Santos which has commenced drilling in the Central Ranges district<sup>32</sup>;
- Lucas Energy in the Hunter region north of Sydney<sup>33</sup>; and
- Apex Energy in the Illawarra region<sup>34</sup>.

2.59 The rapid emergence of CSM means, among other things, that conventional gas transport routes along established pipelines including the MSP are now more vulnerable to be bypassed by new pipelines that specifically link new CSM fields to the major centres of gas demand. An investor presentation by AGL in May 2008 made this point clearly with the slide that is copied below:<sup>35</sup>

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<sup>29</sup> Slide 5. <http://www.originenergy.com.au/files/UBSConferenceFinal.pdf> (accessed 12 August 2008).

<sup>30</sup> Slide 5.  
<http://www.agl.com.au/Downloads/UBS%20Conf%20MD%20pres%2011%2006%2008.pdf>  
(accessed 12 August 2008).

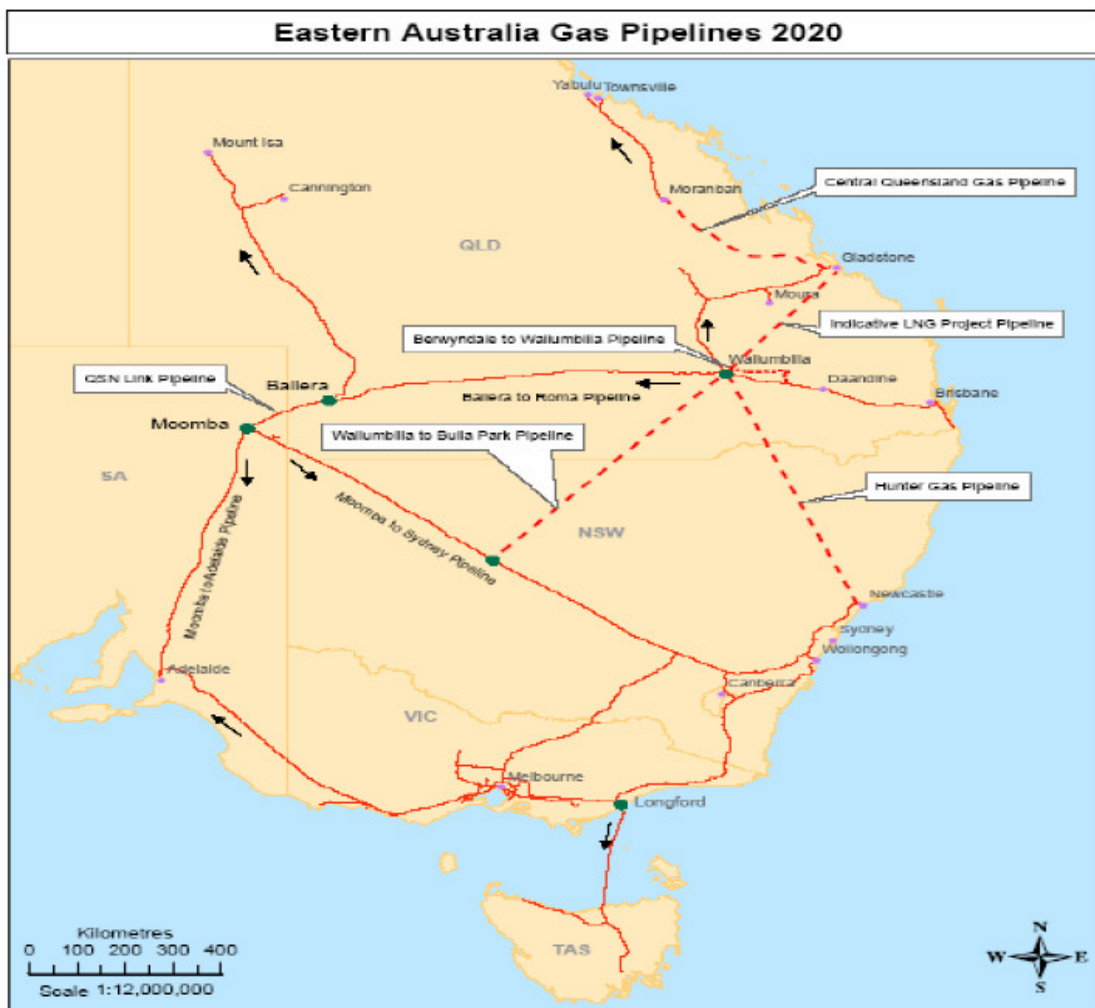
<sup>31</sup> [www.easternstar.com.au](http://www.easternstar.com.au)

<sup>32</sup> [www.santos.com.au](http://www.santos.com.au)

<sup>33</sup> [www.lucas.com.au](http://www.lucas.com.au)

<sup>34</sup> [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au) – report entitled "Illawarra Coal Seam Gas Exploration Drilling Programme".

<sup>35</sup> Slide 89,  
<http://www.agl.com.au/Downloads/2008%20Equity%20Strategy%20Day%2013%2005%2008.pdf>  
(accessed 12 August 2008).



2.60 This slide shows the potential for a new Wallumbilla to Bulla Park pipeline that would permit the transportation of CSM from Queensland and Central/Northern NSW to southern markets along a new route that would substantially bypass the uncovered portion of the MSP. A second potential new pipeline route from Wallumbilla to Newcastle (the Hunter Gas Pipeline) would bypass the MSP entirely.<sup>36</sup>

### Swap contracts

2.61 Swap contracts can lower barriers to entry by permitting geographically remote producers to supply gas without investing in a new pipeline. They can compete to supply gas without necessarily facing the entry hurdle of having to build a pipeline.

<sup>36</sup> This pipeline project is referred to in two QGC press releases: [http://www.qgc.com.au/01\\_cms/details.asp?ID=200](http://www.qgc.com.au/01_cms/details.asp?ID=200) ("New pipeline to create hub at heart of QGC's acreage" 27 May 2008) [http://www.qgc.com.au/01\\_cms/details.asp?ID=128](http://www.qgc.com.au/01_cms/details.asp?ID=128) ("New markets")



- 2.62 While the most immediate and potent substitution threat comes from alternative pipelines, such as the EGP, some shippers are capable of creating substitution threats that would tend to reduce entry barriers through other means. A particularly pertinent substitution threat is available through the use of swap contracts, through which a gas producer or shipper could compete to provide gas to a particular gas customer without actually having to build a pipeline.
- 2.63 By means of a swap contract, it is possible to supply gas to a point that is not connected to the wholesaler's acceptance point. Such a contract requires 1) that the gas holdings of another party be physically connected to the customer delivery point, and 2) that the other party derives some benefit by supplying the first wholesaler's customer. Such a swap could work, for example, if the first wholesaler is connected to the other party's customer.
- 2.64 There have to date, however been few examples of swap arrangements with the existing swap contract between Origin and Santos being the only one that APA is aware of. Under this contract, Origin delivers gas to Santos at Wallumbilla in return for which Santos delivers an equal quantity of gas to Origin at Moomba.<sup>37</sup>
- 2.65 While the potential for swap contracts to enhance a shipper's bargaining position with a pipeline should not be overstated, the conditions under which a swap would represent a credible threat are increasingly easy to satisfy as the Eastern Australian pipeline grid becomes more interconnected and the holdings of gas reserves by the integrated energy majors become more widespread.

### **Factor (b) network externalities between natural gas services of the same provider**

- 2.66 The network externality form of regulation factor is designed to consider whether interdependencies are a source of market power; that is, whether the interdependent nature of network services predisposes the pipeline towards natural monopoly status such that it is more efficient to have one service provider for a given geographic area.

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<sup>37</sup> See [https://www.originenergy.com.au/files/gasswapagreement\\_2.pdf](https://www.originenergy.com.au/files/gasswapagreement_2.pdf) for the news release announcing the contract and explaining the details.

2.67 The Expert Panel report notes that compared to electricity transmission networks, network externalities and associated interdependencies are less pronounced for gas transmission pipelines which provide end-to-end services that can be operated independently without loss of efficiency:

*“In contrast, individual gas transmission pipelines typically can be operated independently with little loss of overall efficiency, and it is also typically feasible to assign capacity rights associated with the asset’s existing and new capacity. Thus, users can be provided with a choice about which pipeline to use where there are multiple, independent pipelines, and users can also be provided with a choice about whether they wish to use (and contribute to) any augmentation. Thus, ongoing competition between pipelines (i.e. where multiple pipelines serve the same markets) is feasible, and ‘market forces’ can be left to play a greater role in deciding when new investment should occur (that is, users can be left to contract for their needs, and pipelines get built when sufficient capacity in a pipeline will be contracted).”<sup>38</sup>*

2.68 The network externality concern arises primarily for electricity distribution networks and, to some extent perhaps, for gas distribution networks. For gas transmission pipelines, like the MSP, the stand-alone nature of operation, coupled with competition from the EGP removes the possibility of network externalities creating a natural monopoly over a given geographical area.

2.69 Considering the specific circumstances of other pipelines owned by the APA group, those in Western Australia, the Northern Territory and Queensland do not currently connect to the MSP. When Epic’s QSN Link (from Ballera to Moomba) is completed in 2009, there will be a physical link between APA’s Roma-Brisbane Pipeline (“**RBP**”) and the Carpentaria Gas Pipeline and the MSP. However, this linkage is unlikely to be a source of market power for two reasons. First, the link between them (the QSN Link and the South West Queensland Producers) is owned by a separate firm—Epic. Second, the gas flows East from Roma and South from Moomba and North from Ballera, so there is no likelihood that any gas would flow from the MSP to RBP or CGP or vice versa.

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<sup>38</sup> Expert Panel on Energy Access Pricing—Report to the Ministerial Council on Energy, April 2006, p. 13.

- 2.70 The SEAGas pipeline, in which APA holds a 33% interest, does not connect to the MSP. While the VTS does connect to the MSP through the Interconnect, the full regulation status of GasNet precludes the possibility that APA's joint ownership of it and the MSP could be a source of market power.
- 2.71 There is a possibility of bundling services on connected pipelines to obtain network benefits. This type of bundling does occur for services that have off take points on the laterals of the MSP and the Central West Pipeline ("**CWP**") (which connects to the MSP at Marsden). In this case, the CWP shippers are dependent on the MSP, although the MSP's dependence on the CWP and the other laterals is much less pronounced due to the small throughput on the laterals.

### **Factor (c) network externalities between natural gas service and other services of provider**

- 2.72 While the APA Group does provide services other than natural gas transport services, it does not believe that there are any significant network externalities between these and the services provided by means of the MSP.
- 2.73 Specifically, the gas processing facilities owned by APA are in Queensland and deliver gas into the RBP. Other assets owned and operated by APA are nowhere in the vicinity of the MSP. These electricity assets include Murraylink, Directlink and two small power stations in Queensland and gas storage assets which are in Western Australia and Victoria. Major gas distribution networks owned or operated by APA are in Brisbane, Adelaide, and Victoria. In short, all other assets of the APA group (with the exception of the VTS mentioned above) are geographically remote and operationally separate from the MSP.
- 2.74 APA also provides operation and maintenance services to Mariner Income Fund, the owner of the ethane pipeline which runs parallel to the MSP from Moomba to Orica's chemical plant in Botany, Sydney.<sup>39</sup> The pipeline is a dedicated ethane pipeline with a single customer; being Orica. It is difficult to see how APA could bundle the transportation services of the MSP together with the operating and maintenance

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<sup>39</sup> APA has a 6% interest in the pipeline owner and also owns 100% of the management company to the ethane pipeline (APA (MIT) Pty Ltd).

services as the nature of the services and the customers for the services are very different

- 2.75 In addition, each acquirer of MSP services (apart from natural gas customers on the Central West and Central Ranges pipelines) does so pursuant to a contract for the provision of MSP services uniquely, and does not provide for other APA services or other APA assets.<sup>40</sup>
- 2.76 For these reasons the other services of the APA Group do not create any network externalities with the MSP that might give rise to market power.

### **Factor (e) presence and extent of any substitute in a market for the pipeline service**

- 2.77 The availability of substitutes for the service provided by the MSP enhances the bargaining position of MSP users, and suggests a preference for light regulation. From a user's perspective, the most obvious substitute is gas transmission through the EGP. The appropriateness of light regulation, from the standpoint of this factor, turns on how good a substitute the EGP is. As discussed in paragraph 2.39, the progressive loss of market share by MSP to EGP since 2000 evidences the high degree of substitutability between the two pipelines.
- 2.78 Sydney Gas Limited currently supplies approximately 12 TJ/day (at 100% load factor) of CSM to Sydney from its Camden gas field in competition to the MSP and EGP.<sup>41</sup> Sydney Gas is directly connected to the Jemena distribution network in Sydney and does not rely on the MSP or EGP.
- 2.79 Similarly, in the case of producers at Moomba or producers connected via the QSN Link the Moomba to Adelaide Pipeline System provides a substitute source of gas transportation to demand centres. In addition the QSN Link may potentially provide some capability for gas to be transported to Queensland.

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<sup>40</sup> Note that services for the laterals are included as services for the MSP. MSP transportation contracts cover services provided by both the mainline and MSP laterals.

<sup>41</sup> Sydney Gas Limited Annual Report 2006, p. 11.

- 2.80 The attractiveness of these alternatives and the evidence of market share loss and switching behaviour suggest that demand for MSP transport services is relatively elastic.
- 2.81 In the case of MSP storage services, these services can be provided by the EGP as well by purpose built gas storage facilities. While there are currently no ready built gas storage facilities proximate to the MSP, the construction of such facilities for users with "peaky" demand profiles may be commercially feasible. Power stations in particular, have high demand for storage services given the need to take large quantities of gas in very short periods of time when scheduled. As part of any new power station build, gas storage facilities could be constructed. For example, in the case of the Uranquinty power station (commissioned in June 2008); the original project design included the construction of a storage facility. EAPL was able to offer the power station a storage service using the existing MSP southern lateral. This use of existing infrastructure provided the power station with a less costly service than through construction of a dedicated storage facility.

### **Factor (f) presence and extent of any substitute in market for electricity or gas**

- 2.82 The availability of substitutes for the service provided by the MSP enhances the bargaining position of MSP users, and suggests a preference for light regulation. From a user's perspective, non-pipeline substitutes will depend on the nature of the user's business. For some types of users, there will be no non-pipeline substitute. These may include gas retailers, gas fired power stations, and industrial plants that do not have alternative fuel capability.
- 2.83 Nevertheless at the end-user level, it is more feasible to substitute away from gas in the event of price increases than to substitute away from electricity. This point was recognised in the MCE Expert Panel's report:<sup>42</sup>

*"Gas and electricity markets also display different characteristics in terms of the price elasticity of demand and the ability for consumers to seek substitutes. Energy services, and in particular electricity services, are*

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<sup>42</sup> MCE Expert Panel report, op. cit., pp. 49-50.

*generally considered to have relatively inelastic demand. This inelasticity reflects the essential nature of electricity to commercial and industrial activity and to modern domestic life. This is less so for gas which is considered to be a 'fuel of choice', meaning that it is subject to more competition from substitutes."*

*"While the cost of network services is only part of the final energy price seen by energy consumers, the energy price responsiveness of users can impose some constraints on the exercise of market power in some circumstances.*

*"For gas, it could be said that there is a stronger substitution effect, particularly for locations that do not require space heating to any great extent. Electricity, in general, provides a better substitute for gas than gas does for electricity. Consumers are better able to exercise a choice on the source of their energy supply where there are competing sources of supply to a common area."*

- 2.84 To some extent, the ability of end-users to switch to electricity or other fuels such as LPG, coal, wood and diesel imposes some constraint on the pricing decisions of all players in the gas supply chain, including pipeline owners.
- 2.85 While it is difficult to be definitive about the causes, there has been some degree of fluctuation in the level of gas consumption in Sydney as a whole over the period 2000 to 2008. In addition to variations due to weather, this fluctuating demand for gas may reflect a degree of end-user substitution and demand elasticity as between gas and electricity and other fuels.
- 2.86 The importance of substitution between gas and alternate fuels is also illustrated by the example of the Central Ranges Pipeline which was completed in 2006. The proponents of this pipeline project asked EAPL for a discounted tariff to enable the project to proceed. At the posted tariffs for the MSP and the regulated Central West Pipeline, the Central Ranges Pipeline project was not viable because households and industrial users could meet their needs at lower cost using electricity or other fuels (including coal, wood, LPG and diesel) instead of gas. Subsequently, EAPL offered a discounted tariff to all shippers six months prior to commencement of the project. Even with these lower tariffs, the project has not met projected volume targets, primarily due to competition from alternate fuels.

## ***Countervailing power of users***

- 2.87 An access seeker with countervailing power does not need to rely on full regulation to obtain an efficient pipeline tariff because it can discipline pipeline pricing itself. If there is one access seeker with countervailing power that can play a lead role in negotiations with the pipeline owner, and if other access seekers can obtain the benefit of prices negotiated by that leader, then a single firm or small number of firms with countervailing power may suffice to discipline access pricing, without the need for full regulation.
- 2.88 Countervailing power depends on the existence and attractiveness of alternatives to a negotiated settlement with the pipeline owner. A firm need not be large or powerful to wield countervailing power; it only needs to have good alternatives. Even a small footloose customer has significant countervailing power as a result of the ability to take its business elsewhere. The evaluation of countervailing power therefore comes down to an evaluation of each customer's alternatives to buying gas transport from the MSP. This analysis of alternatives is necessarily specific to each type of customer. The types are considered in turn below.
- 2.89 The fact of pipeline competition and its current intensity means that shippers who are capable of switching between pipelines do wield substantial countervailing power in negotiations with either pipeline. The primary prerequisite for a shipper to use that countervailing power is the ability to switch gas supplies from either Moomba or Longford.
- 2.90 Some (if not all) shippers active on the MSP have gas supply contracts with both Moomba and Longford producers, making the process of switching pipelines relatively straightforward. There may be other shippers that lack dual-source gas supply contracts although APA understands that Longford gas is available. This availability is further enhanced by the announced development of additional gas fields by BHP Esso off Australia's south east coast (the Turrum oil and gas project) and by Santos in the Bass Strait (Kipper project).<sup>43</sup> Nonetheless, in the case of any single gas source shippers (meaning shippers with gas supply contracts with

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<sup>43</sup> [http://www.exxonmobil.com/Australia-English/PA/Newsroom/NewsReleases/AU\\_NR\\_MR\\_2008\\_Turrum.asp](http://www.exxonmobil.com/Australia-English/PA/Newsroom/NewsReleases/AU_NR_MR_2008_Turrum.asp) – Santos ASX/Media Release dated 19 December 2007 entitled "Kipper Project Sanctioned".

only one basin), those shippers can still potentially benefit from the switching threat made by the largest pipeline customers. As the non-discrimination clause of the NGL (s.136) would apply to the services sought by the largest customers, it would oblige the MSP to offer all customers any price advantage obtained by the larger shippers unless otherwise efficient to do so.

#### Vertically integrated energy majors

- 2.91 AGL and Origin are the two largest energy wholesalers and retailers in Australia. Both are vertically integrated with upstream gas reserves, wholesale and retail assets. They are themselves pipeline developers. They are the MSP's two largest customers. AGL accounts for over half of MSP's current throughput while Origin also accounts for a significant share. This load is critical to the viability of the MSP.
- 2.92 Both of these customers have an apparent strategy of diversifying supply in order to minimise dependence on any one pipeline. Both make use of the EGP for gas transport. AGL in particular has switched significant volumes from MSP to EGP since the latter commenced operation in 2000.
- 2.93 AGL has stated, for example in its 2003 Annual Report, an intention to source gas and transport more flexibly by pitting the MSP and Cooper Producers against the EGP and Longford Producers in order to obtain more favourable prices.
- 2.94 In addition to sourcing gas from Longford, Origin also holds substantial gas reserves in the Otway and Bass basins, giving it further incentive to utilise the EGP instead of the MSP to supply NSW and ACT.
- 2.95 As vertically integrated firms, both AGL and Origin have upstream reserves, the energy infrastructure knowledge and the retail market shares to support credible threats of bypass. Bypass can occur through a simple switch of pipeline, through swap contracts, and through the underwriting or development of new pipeline construction. Firms such as these operate both as gas retailers and owners of gas reserves. This position has been further heightened by the recent emergence of large CSM reserves in Queensland and NSW. When a single firm owns both the gas reserve and the retail customers, it is in a strong position to threaten to employ swap



contracts<sup>44</sup> or to construct new pipelines that might bypass existing pipelines as a potential response to unsatisfactory pipeline pricing, terms and conditions. Examples of shippers constructing pipelines include:

- AGL's construction of the 115km, 400mm high pressure Berwyndale to Wallumbilla gas pipeline (announced on 17 January 2008);<sup>45</sup>
- Origin's construction of the Mortlake power station project which includes the construction of a 78km dedicated underground natural gas transmission pipeline;<sup>46</sup> and
- Origin's involvement in the SEAGas pipeline in 2004<sup>47</sup>.

2.96 Finally, firms who are shippers of other APA pipelines around Australia or potential foundation shippers for new APA pipeline developments may exert commercial pressure on APA to ensure satisfactory pricing, terms or conditions on the MSP. The multiple-market interface between APA and some of its shippers gives these shippers countervailing power, even if the shipper may not be a large user of the MSP at present. Some examples of these multiple-market interactions include AGL (customer of RBP, the VTS and SEAGas in addition to MSP), Origin (customer of RBP, VTS, and SEA gas pipeline), TRUenergy (customer of VTS and SEA gas pipeline). Several proponents of power stations on the MSP route are also customers of other APA pipelines.

#### Stand-alone energy retailers

2.97 Firms such as Energy Australia and Country Energy constitute another important group of actual and potential pipeline users. Unlike the integrated energy majors, these energy retailers tend to operate stand-alone energy businesses that may lack the geographic diversity and the vertical linkages in gas that give the majors such a vast suite of alternatives.

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<sup>44</sup> On 6 May 2004, Origin and the Cooper Basin Producers, led by Santos, reached conditional agreement to swap up to 200 PJ of gas. Origin agreed to deliver gas produced in its central Queensland fields to the Producers at Roma. In return for the gas from Origin, the Producers agreed to redirect an equal quantity of Cooper Basin produced gas to Origin at the Moomba Gas Hub. For details, see the press release at [http://www.originenergy.com.au/files/gasswapagreement\\_2.pdf](http://www.originenergy.com.au/files/gasswapagreement_2.pdf) (accessed 12 August 2008).

<sup>45</sup> <http://www.agl.com.au/about/ASXReleases/Pages/AGLtodeveloptheBerwyndaletoWallumbillagaspipeline.aspx>

<sup>46</sup> <http://www.originenergy.com.au/files/Mortlakefactsheet2.pdf>

<sup>47</sup> Note that the co-developers of this project were also gas retailers being TruEnergy and International Power

- 2.98 These stand-alone retailers possess two attributes that give them countervailing power with the MSP. First, like the energy majors, they generally have the ability to source gas from either the MSP or the EGP. They may also have some ability to source gas from local CSM suppliers such as Sydney Gas. It is understood that Energy Australia uses the EGP to transport Gippsland Gas to Sydney.<sup>48</sup>
- 2.99 Second, these customers represent a source of customer diversity for the MSP. Strategically, it is in MSP's interest to reduce its reliance on the largest customers by diversifying its customer portfolio through an accommodation of expansion of the smaller retailers and other shippers. Such diversification reduces certain commercial risks associated with having a single dominant customer. Diversification assists in managing imbalances and smoothing load profiles.
- 2.100 Shipper diversification has become significant on the MSP since 2000. Whereas in 2000 AGL accounted for more than 95% of MSP's throughput, the current share is significantly less (see Confidential Attachment for details).
- 2.101 Taking into account these strategic considerations MSP has an incentive to offer pricing and terms to stand-alone energy retailers that are no worse than those offered to the energy majors. Currently, all MSP shippers pay the posted tariff, with a few minor exceptions (noted in the Confidential Attachment). Section 136 of the NGL would rule out inefficient price discrimination if the MSP were subject to light regulation.

#### Power stations

- 2.102 Depending on the specific circumstances, power stations can wield countervailing power in one of two ways:
- A power station owner that is not yet committed to construction can threaten to build the power station in a location served by a rival pipeline, or not to build it at all; or

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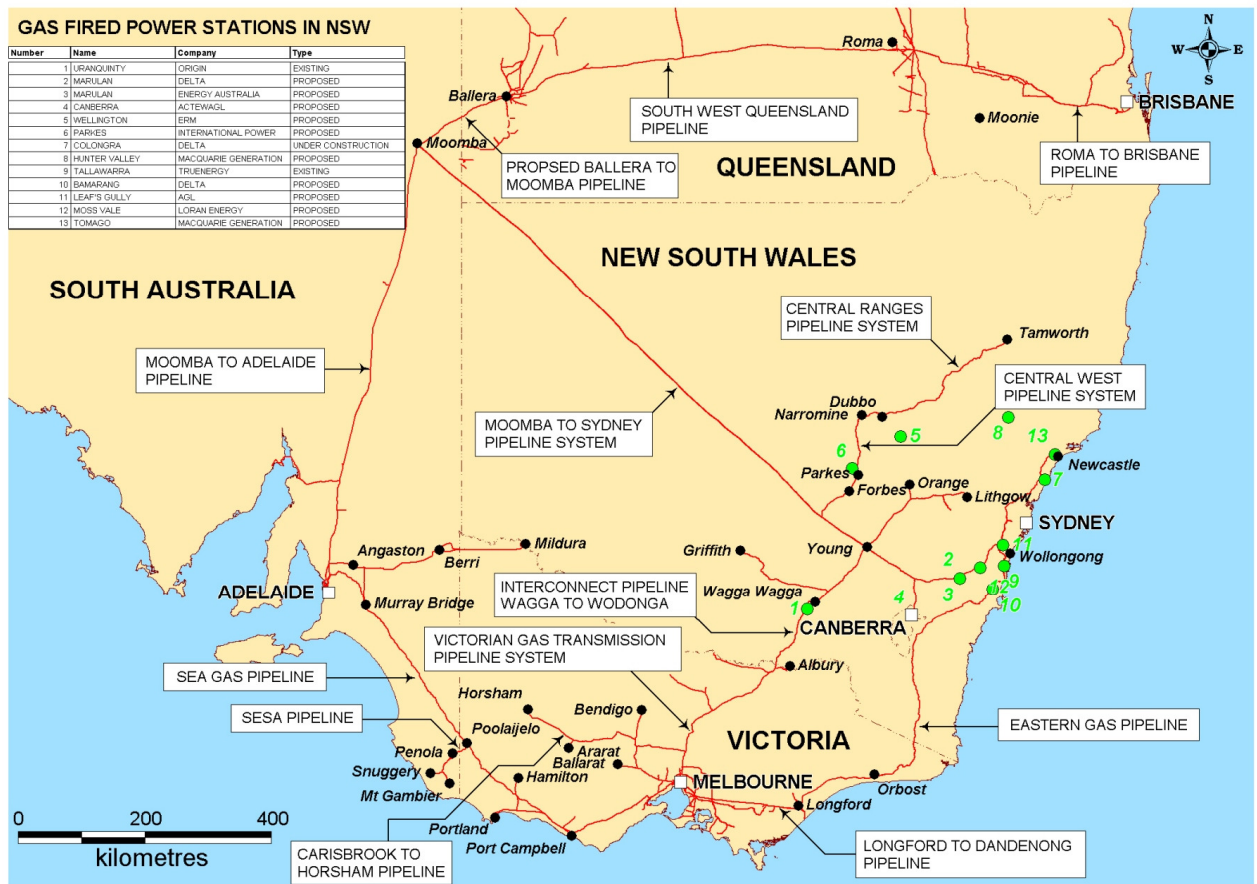
<sup>48</sup> The EUAA stated, in a May 2003 submission to the ESC, "*We understand that Energy Australia sources gas from the Victorian spot market largely for shipment to NSW to supplement its gas supply contract and their market share in Victoria is very small.*" [http://www.esc.vic.gov.au/NR/rdonlyres/0CCB957C-7077-48CB-9A1F-F769576B4E95/0/SubEUAA2\\_SignProducerMay03.pdf](http://www.esc.vic.gov.au/NR/rdonlyres/0CCB957C-7077-48CB-9A1F-F769576B4E95/0/SubEUAA2_SignProducerMay03.pdf) (p. 4. Accessed 12 August 2008)

- A power station that is built in the vicinity of two pipelines can threaten to obtain gas transportation from a rival pipeline.

2.103 It is usual practice for power station proponents to base their initial financial commitment on a network of long-term contracts with all key suppliers, including the pipeline owner. Once established, these contracts protect the power station owner's investment from hold-up threats. The countervailing power that is derived from the owner's freedom of choice over power station location and whether the project proceeds is employed to lock the pipeline into long-term arrangements.

2.104 APA receives numerous enquiries from potential gas power station projects. In APA's experience, proponents of power stations will take into account the competing offers of the EGP and MSP in considering the location of the power station project. For example, of the several potential power station developments about which APA has been approached for MSP services, approximately two thirds are in the geographical vicinity of both the MSP and EGP. This choice of location would make it possible for proponents to secure supply from either source.

2.105 This is indicated in the following map which shows the location of proposed and actual power station projects for which MSP services have been requested.



Key to map above:

No.	Name	Company	Type
1	Uranquinty	Origin	Existing
2	Marulan	Delta	Proposed
3	Marulan	Energy Australia	Proposed
4	Canberra	ACTEWAGL	Proposed
5	Wellington	ERM	Proposed
6	Parkes	International Power	Proposed
7	Colongra	Delta	Under Construction
8	Hunter Valley	Macquarie Generation	Proposed
9	Tallawarra	TRUenergy	Existing
10	Bamarang	Delta	Proposed
11	Leaf's Gully	AGL	Proposed
12	Moss Vale	Loran Energy	Proposed
13	Tomago	Macquarie Generation	Proposed

2.106 There are currently two existing gas fired power stations served by the MSP or the EGP—the Uranquinty power station located on the Interconnect pipeline, and the Tallawarra power station located near the EGP south of Wollongong. In the case of the Tallawarra power station, the project developers actively negotiated tariffs and terms for gas transportation with both EGP and MSP prior to committing to the project. EGP was successful in securing the load ahead of MSP.

## Large industrials

2.107 Large industrial gas customers have, and often exercise the option of buying gas transport services from a large pipeline customer instead of contracting directly with the pipeline. This option gives large industrial customers a degree of countervailing power with respect to the pipeline. In essence, the industrial customers are able to promote a form of competition between the pipeline owner and its major customers, like AGL, who can and do act as resellers of transport capacity. This competition is evidenced by the terms of supply negotiated by industrial customers details of which are discussed in Confidential Attachment.

## ***Access to information***

2.108 An important point of distinction between light regulation and full regulation is the degree of mandatory information disclosure by the pipeline owner. Under full regulation, the owner is obliged to prepare voluminous access arrangement information documents which are publicly disclosed. These documents contain a great deal of detail on pipeline costs, capital expenditure plans, utilisation forecasts, and other matters that are designed to enable an interested member of the public to virtually replicate the service provider's estimate of the revenue requirement and reference tariffs.

2.109 Under light regulation, however, this particular form of information disclosure is not mandatory. The effectiveness of light regulation depends, in part, on the quality and extent of the information that would be available to access seekers without that mandatory disclosure.

2.110 Matters such as the price, availability, terms and conditions of supply for pipeline services, still need to be disclosed by the pipeline owner under light regulation through (among other requirements), reporting obligations to the AER and ring fencing reports.<sup>49</sup> Trading tools such as bulletin boards will keep potential access seekers informed about capacity and utilisation on the pipeline.<sup>50</sup> Other forms of mandatory disclosure, including the AER annual monitoring programme and

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<sup>49</sup> Information disclosure requirements under the NGL and Rules for light regulation pipelines includes disclosure of price and terms and conditions of offer (r36), rules relating to facilitating access requests (s107, r108, r109, r112), registers of spare capacity (r111), ring-fencing obligations (s141), performance reports to AER (s64). Reports to AER on access negotiations (r37).

<sup>50</sup> See Chapter 7 of NGL.

obligations concerning continuous disclosure to the ASX will ensure that certain fundamental facts concerning the pipeline owner's corporate affairs and the pipeline itself will continue to be publicised in a timely manner.

- 2.111 In relation to cost information, a large component of the relevant cost information is already in the public domain as a consequence of past regulatory pricing assessments of the MSP. Much of this information, such as the ICB, is time-invariant. Other parts of this information, such as the WACC and depreciation schedules, can be deduced from current macroeconomic settings (the risk-free rate, inflation, market risk premium, etc) and past regulatory precedent (asset lives, debt/equity ratios, gamma, etc). In other words, the largest part of the MSP cost base can be readily deduced by a third party without reference to any new information disclosure by the owner. Such return on capital costs make up approximately 70% of MSP's total costs with the remainder made up of operating expenses and other costs.
- 2.112 The only cost components remaining for consideration relate to capital and operating expenditure. Capital expenditure tends to either be a major capital works programme (in which case a market announcement maybe required under the ASX Listing Rules) or ongoing stay in business capital which generally continues at a constant rate over the life of the asset making previous costs (disclosed as part of the prior regulatory process) a good predictor for future costs.<sup>51</sup>
- 2.113 Similarly, as operating expenditure tend to continue at a constant rate over the life of the asset, previous costs act as a good predictor for future costs.<sup>52</sup> In addition, operating cost is less than 25% of the annual total of MSP's costs.<sup>53</sup> Thus small variations in operating cost are likely to have less impact on pricing than changes in the rate of return and other observable variables. Shippers are also able to apply industry accepted benchmarks for assessing operating costs for pipelines. For example, the ACCC has previously accepted that the pipeline operating cost should

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<sup>51</sup> It can be observed in Table 1 of the Moomba Sydney Pipeline Access Arrangement Information that stay in business capital expenditure is typically less than \$1.5 million per annum on an asset with a capital base of over \$800 million. As such this cost item is not particularly significant.

<sup>52</sup> It can be observed in Table 4 of the Moomba Sydney Pipeline Access Arrangement Information that the operating cost for the Moomba Sydney pipeline in real terms lies between \$18.6 million and \$19.1 million per annum over a six year period.

<sup>53</sup> This can be observed in Tables 4 and 7 of the Moomba Sydney Pipeline Access Arrangement Information.

be in a range of 2% of replacement cost for uncompressed pipelines to 5% of replacement cost for fully compressed pipelines<sup>54</sup>.

2.114 As discussed above in paragraph 2.95, both Origin and AGL are themselves pipeline developers. These firms clearly possess the necessary technical and commercial expertise to enable them to assess the reasonableness of MSP costs.

2.115 Additional reporting and information disclosure requirements likely to be implemented in the future, which may assist shippers in negotiating with pipelines include the following:

- Establishment of a short term trading market ("**STTM**") for gas at the Sydney hub by 2010.<sup>55</sup> This would likely set a transparent delivered gas price to Sydney on a daily basis from which a transport price could be inferred.
- Establishment of a Gas Statement of Opportunities ("**GSOO**"), which will include long term supply and demand forecasts.<sup>56</sup>
- Information disclosure under the AER's Draft Annual Compliance Guideline. When finalised, these guidelines will apply to light regulation pipelines. The current draft guidelines expand on the current ring-fencing reporting requirements and will require light regulation pipelines to report on price discrimination and access negotiations.<sup>57</sup>

2.116 APA considers that the information provision required under the NGL and the Rules in particular, when combined with existing publicly available sources, would provide shippers with sufficient information to enable them to negotiate effectively with APA were the MSP subject to light regulation.

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<sup>54</sup> ACCC (2001) Final Decision Access Arrangement proposed by Epic Energy South Australia Pty Ltd for the Moomba to Adelaide Pipeline System Date: 12 September 2001 p57 and p 203

<sup>55</sup> The is currently being developed by the Gas Market Leaders Group (GMLG), which has been established under the Ministerial Council for Energy (MCE).

<sup>56</sup> The is currently being developed by the Gas Market Leaders Group (GMLG), which has been established under the Ministerial Council for Energy (MCE).

<sup>57</sup> AER, 2008, Draft Annual Compliance Guideline July 2008, page 4

## **Incentive to negotiate/arbitrate**

- 2.117 The issue around incentives to negotiate or arbitrate comes down to one simple question: given the potential upside, is it worth the trouble to negotiate hard over pipeline access pricing, terms and conditions? Perhaps the clearest indication that shippers have such an incentive is the fact that such negotiating does in fact occur.
- 2.118 For example a contractual dispute between AGL and EAPL that commenced in December 2006 resulted in AGL taking the matter to the ACCC under s.6 of the Gas Code. This matter was escalated to the Federal Court. The Court proceedings were discontinued when a commercial settlement was reached in mid 2007.
- 2.119 A more general answer to the incentive question may be different for different classes of customer. In the analysis of this point, a distinguish may be made between non-power station end-customers (being industrial, commercial, and retail/residential gas users) on one hand and power station end-customers on the other.

### Industrial, commercial and residential gas usage

- 2.120 The fact motivating this inquiry into incentives is that, for many pipeline users, the cost of gas haulage on the MSP represents a relatively small part of the total cost of doing business. Management time and effort may consequently be prioritised to other areas. A firm may not take advantage of its ability to obtain a better pipeline tariff if it lacks the commercial incentive to invest in that endeavour. In contrast, where a user has both the ability and incentive to engage in a vigorous negotiation on terms and conditions of supply, light regulation is more likely to be effective.
- 2.121 The table below, representing APA's internal estimates of the relative magnitude of the components of the delivered price of gas (per gigajoule) to various classes of end-customer, is presented in order to evaluate this incentive.



	<b>Industrial</b>	<b>Commercial</b>	<b>Retail/Domestic</b>
Wellhead gas price	\$3.50-\$5.00		
MSP Transmission <sup>58</sup>	\$1.00 - \$1.25		
Distribution Network	\$1.00-\$4.00	\$5.00 - \$10.00	\$15.00 - \$25.00
Retailer Margin (5 - 10%)	\$0.25 - \$0.50	\$0.50 - \$1.60	\$2.00 - \$3.10
Total delivered price	\$5.75 - \$10.70	\$10.00 - \$17.85	\$21.50 - \$34.35

2.122 At first glance, the MSP transmission price, at between \$1.00 and \$1.25 per GJ appears to represent a small component of the total delivered price of gas to all customer types except industrial users.

2.123 It is important to recognise, however, that the MSP transmission price is large in comparison to the retailer margin for all of these end-customer types. A 5% reduction in the MSP tariff would represent a 10-20% increase in the retailer margin for industrial customers, a 3-10% increase in the retailer margin for commercial customers, and approximately a 2% increase in the retailer margin for domestic customers. The impact on retailer profitability would be greater than these figures because profit represents only a portion of the retailer margin. The remainder of the retailer margin would represent the recovery of fixed and common costs of retailing, including back office functions and marketing.

2.124 Accordingly, the prospect of a reduction in MSP transmission prices would be worth the effort of gas retailers to bargain hard. A further relevant consideration is that MSP transmission represents one of the few parts of the delivered cost of gas on which meaningful price reductions could conceivably be achieved through negotiations. The prospects of negotiating price reductions for the two largest components of the delivered gas price, being the wellhead price of the gas molecules and the distribution network charges, is limited.

2.125 The wellhead price of gas is determined in a complex manner on the basis of price arbitration (in most cases) between the gas producers and the energy retailers. The gas producers have considerable countervailing power which has only recently been challenged by the emergence of competition between gas basins to serve major centres such as Sydney and Adelaide. The nature of this price-setting process, the

<sup>58</sup> Note that these figures are an estimate of the load factor adjusted tariffs. For this reason, the figures differ to the headline posted tariffs.

economics of exhaustible resources, and the range of alternatives facing a gas producer means that a user has very little realistic prospect of negotiating a lower gas molecule price.

- 2.126 Distribution network charges are subject to full regulation, and are likely to remain so for the foreseeable future. The distribution network tariffs are set by regulation, with very little, if any, scope for bargaining.

#### Power station gas usage

- 2.127 Gas-fired power stations differ from other end-users in that their load profile is uneven over a 24 hour period and may differ substantially from one day to the next. This feature of generation demand arises from the peak or intermediate nature of gas-fired generation. Gas-fired generation is not always dispatched. When it is dispatched it is often for relatively short periods of the day corresponding to high or shoulder demand periods on the NEM.
- 2.128 For this reason, the gas transport service required by power stations is not the firm forward reference service to which the regulated tariff applies. Instead, each power station must negotiate a custom-made gas transport service with the pipeline. In this sense, a move to light regulation from heavy regulation would make little difference at all to power station customers of the pipeline.
- 2.129 Some insight into the financial importance of the delivered price of gas to a power station operator can be gleaned from data contained in the 2007 report “Fuel resource, new entry and generation costs in the NEM.”<sup>59</sup> For the NCEN NEM region (Central NSW, containing Sydney and other locations served by the MSP), the report projects a delivered gas price of \$4.20/GJ in 2007/08.<sup>60</sup> If this energy value was converted at 100% efficiency to electricity (the most optimistic possible assumption), the energy cost would be  $3.6 \times \$4.20/\text{GJ} = \$15.12/\text{MWh}$ . This input cost represents 22.5% of the Short Run Marginal Cost (SRMC) estimated for a new entrant peaking Open Cycle Gas Turbine power station in the same NEM region in the same year.<sup>61</sup> This delivered gas cost represents 45.67% of the SRMC estimated for a new entrant

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<sup>59</sup> Fuel resource, new entry and generation costs in the NEM, Report 2—data and documentation. Final report prepared for NEMMCO, ACiL Tasman, 6 June 2007.  
<http://www.nemmco.com.au/psplanning/410-0090.pdf> (accessed 12 August, 2008).

<sup>60</sup> Ibid., p.80, Table 54.

<sup>61</sup> ACiL Tasman estimates this cost to be \$67.10/MWh. Ibid., p. 105, Table 75.

base/intermediate load Combined Cycle Gas Turbine power station in the same NEM region in the same year.<sup>62</sup>

2.130 If the relativity between MSP transport price and delivered price of gas implied by the detail above continues to apply for power stations, then the MSP tariff would represent between 20% and 25% of the delivered price of gas in the NCEN NEM region. On this analysis, the MSP tariff would represent between 4% and 11% of the SRMC of power generation on the most optimistic assumption of 100% energy conversion efficiency. The lower the actual energy conversion efficiency, the higher the percentage of SRMC accounted for by the MSP tariff. This analysis establishes that the MSP pipeline price is an important cost element for gas-fired generation and that the power station operator would have a strong incentive to bargain hard to minimise the price.

## **Light handed effective for all shippers**

2.131 Section 136 of the NGL prohibits price discrimination under light regulation. Section 136(1) states that “*A covered pipeline service provider must not engage in price discrimination when providing light regulation services.*” Section 136(2) qualifies this prohibition somewhat by stating that subsection (1) “*does not apply if the covered pipeline service provider engages in price discrimination that is conducive to efficient service provision.*”

2.132 The term “price discrimination” is not defined in the NGL so it presumably carries the straightforward meaning that different prices may not be charged for the same service.<sup>63</sup>

2.133 Under light regulation, the practical effect of s.136 would likely be to confer on all access seekers the benefits that are able to be negotiated by those pipeline shippers with the greatest amount of countervailing power—the vertically integrated energy majors. In other words, as long as the energy majors negotiate for the types of pipeline services that are demanded by other shippers, these other shippers should be able to receive equivalent pricing by reason of the non-price discrimination

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<sup>62</sup> ACiL Tasman estimates this cost to be \$33.11/MWh. Ibid., p. 102, Table 73.

<sup>63</sup> This is the way “discrimination” was interpreted in the now repealed section 49 of the Trade Practices Act 1974 banning anti-competitive price discrimination.

requirement regardless of the degree of countervailing power they may have. This is subject to any efficient [rice discrimination which is permitted under S.136.

2.134 Even relatively small shippers should not be disadvantaged in the event that MSP is granted light regulation status. This protection would not necessarily be available to small shippers under full regulation in the current circumstances of the posted tariff being lower than the regulated tariff, as there is no corresponding prohibition against price discrimination in that case.

## Position of laterals

2.131 The covered part of the MSP includes four laterals being the Canberra, Wagga, Northern and Griffith laterals.

2.132 The major receipt point on the Canberra lateral is Canberra. Canberra is also served by the EGP. For the reasons set out above in respect of Sydney the EGP effectively constrains any market power the MSP may have in respect of the Canberra lateral. The proximity of the EGP to the Canberra lateral receipt points is shown below.



- 2.133 In the case of the Wagga lateral, shippers on the lateral can source gas from Victoria via the regulated VTS and the uncovered Interconnect as a substitute to using the MSP. This effectively constraints any ability to exercise market power in respect of the lateral.
- 2.134 In terms of the form of regulation factors, the position of the Northern and Griffith laterals differs from the MSP mainline principally because of limited switching opportunities between the MSP and EGP, or of sourcing CSM from Sydney Gas Limited.
- 2.135 Nevertheless, two factors give lateral customers significant protection. First, the shippers on the Northern and Griffith laterals are in fact all major shippers on the MSP mainline with strong countervailing power. The Confidential Attachment sets out the capacity throughput for each shipper on each of the laterals. By far, the largest part of capacity on either of these laterals is held by AGL. Country Energy and Energy Australia are also significant shippers.
- 2.136 Each of the five lateral shippers is capable of using its bargaining position with EAPL on the MSP mainline to ensure that it obtains attractive terms on the laterals.
- 2.137 Second, the total capacity reservation on each of these laterals is below the capacity of the lateral. The current capacity of the Griffith lateral is approximately 9 TJ per day and the Northern lateral is approximately 22 TJ per day. The current contracted volumes for the laterals are less than capacity. This spare capacity situation occurs despite the fact that lateral transmission tariffs are presently well below the regulated tariff. As a matter of commercial reality, APA would not be in a position to charge even the regulated tariff to lateral customers. To do so would be to risk volume reductions on the laterals that might threaten their commercial viability.
- 2.138 In relation to the Central West and Central Ranges pipelines, both of which are owned by APA, APA does not expect a change to light regulation for the MSP to have any impact. The two pipelines rely on the uncovered part of the MSP not the subject of the application. The only exception to this would be in the case of a backhaul of Victorian sourced gas via either the Interconnect or the EGP which would use the covered part of the MSP. This however, would be unlikely to occur given that

gas and haulage from Moomba would be likely significantly cheaper than the alternatives.

## **Summary on effectiveness criteria**

- 2.138 For the reasons discussed in this Part 2, light regulation would be no less effective than full regulation in regulating for the provision of services by the covered portion of the MSP to promote access to the pipeline services.
- 2.139 The reasons for this are two-fold. First, the degree of any market power MSP may have is low due to the commercial imperative for MSP to maximise throughput, the substitution threat from the EGP and more recently Sydney Gas and the significant countervailing power of users. On the regional laterals where pipeline alternatives are limited, the degree of any market power is low given the substitution threat of alternate fuels such as electricity as well as spare capacity on the pipelines.
- 2.140 Second, the information required by users to enable them to negotiate effectively with APA would be available under light regulation. This includes core costs details (such as the ICB) as well as capacity data. Further costs information can be derived from industry sources, particularly by the large users which are pipeline developers in their own right.
- 2.141 These factors combine to provide users with an ability to negotiate effectively under light regulation. Users would also have the incentive to do so. The estimated margin and cost figures discussed in paragraph 2.123 suggest users have a financial incentive to negotiate to obtain the most favourable terms. This is evidenced by the experience to date of users negotiating with APA and in the case of AGL, taking access dispute proceedings against EAPL (referred to paragraph 2.118).
- 2.142 In addition, for the reasons discussed below in Part 4, a change to light regulation would be consistent with the national gas objective.
- 2.143 For these reasons, the “effectiveness” criteria set out in s.122 (1)(a) are satisfied in the case of the MSP.

## **Part 3 - Comparative cost of forms of regulation (s122(1)(b))**

### **Overview and approach**

- 3.1 Section 122(1)(b) of the NGL requires an assessment of the differences in likely costs between the full and light forms of regulation for the MSP. This assessment requires consideration of the likely costs for efficient service providers, efficient users and prospective users and end users.
- 3.2 This requires a comparison of two counterfactuals – namely, the likely costs of the MSP under light regulation compared with the likely costs of its continued full regulation. In considering the cost differences, this submission focuses on the differences in application between the two forms of regulation as it would apply to the MSP and attributes cost estimates to those differences.
- 3.3 The consideration of costs set out in this section focuses on
  - the costs to APA as the service provider; and
  - the costs to the shippers being the users.
- 3.4 In the case of shippers who are also industrial end users, these shippers are both “users” and “end users” for the purposes of s.122(1)(b)), and, as such, the cost savings of light regulation attributable to these shippers is relevant in their capacity as both users and end users.
- 3.5 For other end users, the degree of any cost savings attributable to a change to light regulation would depend on the extent the cost saving from light regulation is passed through by shippers. This is something that APA is unable to comment on. For this reason, this submission focuses on the cost savings of light regulation for APA and the shippers, but not for end users
- 3.6 The assessment of the costs of regulation outlined in this Part 3 assumes APA is an efficient service provider. This assumption is consistent with general capital market disciplines on APA to minimise costs and maximise efficient outcomes. For the same

reason, it is also assumed that current and prospective users are efficient for the purposes of s.122(1)(b).

## **Nature and outcomes of commercial negotiations unaffected by form of regulation**

- 3.7 As discussed above, shippers and prospective shippers on the MSP currently negotiate tariffs and transportation agreements with APA. The nature of the negotiations that currently occur with shippers would be unlikely to be adversely affected by a change to light regulation.
- 3.8 In relation to access to information, as discussed in paragraphs 2.110 to 2.116, the information provision obligations under the NGL, the Rules, ASX Listing Rules and generally available industry information will enable shippers to continue to negotiate effectively with APA. In APA's experience, the key information which shippers rely on to negotiate with APA include the following:
- Currently offered and prior MSP tariffs and terms, including previous regulatory benchmarks;
  - Currently offered and prior EGP tariffs and terms;
  - Tariffs and terms offered by other pipelines, including other APA pipelines;
  - The cost of gas supply from competing basins;
  - The costs of bypass.
- 3.9 This information would continue to be available to shippers in negotiating with APA under a light handed regime.
- 3.10 While light regulation does not require the disclosure of detailed cost of supply information such as stay in business capital and operating cost information, as is the case under full regulation, the availability of prior cost information through the full regulatory process, the disclosure requirements under the NGL and Rules as well as the involvement of some shippers in their own pipeline developments means that shippers would be able to ascertain sufficient cost information to effectively negotiate with APA for MSP services. Major shippers can and do perform their own estimates of pipeline costs and use these in tariff negotiations. As such, APA would expect that



the difference in cost to shippers of estimating the necessary cost information between full and light regulation would be relatively minor.

- 3.11 As discussed in paragraph 2.13, the starting point for MSP tariff negotiations is the posted tariff which is currently already lower than the regulated tariff. Each shipper on the MSP currently pays below the reference tariff. The structural reasons for this are discussed in Part 2 and include competition from the EGP and shipper countervailing power. These structural aspects which discipline the level of the posted tariff are unlikely to be affected by a change to light regulation. Given this, the effectiveness of the reference tariff to shippers negotiating with APA currently and in the foreseeable future is diminished. Rather than providing a meaningful price ceiling, the regulated tariff is currently largely redundant to the negotiation process with the standing posted tariff being the starting offer.
- 3.12 With the negotiation process being largely unaffected by a change to light regulation, APA would also expect the likely outcomes of negotiations to remain largely unaffected. As such, given the commercial negotiation process currently determines prices and will continue to determine prices under light regulation there is unlikely to be any material cost difference in the negotiation process itself to APA, shippers, prospective shippers and end users were the MSP to be subject to light regulation.

## **Differences between forms of regulation**

- 3.13 There are three key differences from a comparative costs perspective between the full and light forms of regulation. They are:
- the management of access arrangement processes;
  - compliance with required regulatory processes; and
  - dispute resolution.

## **AA and AAI processes**

- 3.14 The main cost of full regulation is the requirement under s.132 of the NGL for a service provider to submit a full access arrangement (“**AA**”) and (“**AAI**”) in accordance with the Rules.

- 3.15 Under full regulation APA will be required to submit an AA and AAI for the MSP for consideration by the AER by December 2008 and every 5 years<sup>64</sup> thereafter. In contrast, light regulation pipelines must only publicly provide the price and terms and conditions for access, and report periodically to the regulator on access negotiations.<sup>65</sup>

### **Costs to APA**

- 3.16 The development and regulatory evaluation/approval of an AA and AAI for the MSP to a position would be acceptable by the regulator would be expected to take about 18 months, based on previous APA Group experience of preparing AAs. This time frame can be further supported by reference to AER Guidelines which suggest a six month pre lodgement consultation period<sup>66</sup> and the NGR which provides for up to a 13 month AA process following submission (r13).

### MSP

- 3.17 Historically, AA-related costs for the MSP have been high, predominantly due to the determination of an initial capital base and a subsequent series of appeals. APA does not submit that costs of this order would necessarily be the correct level of costs to be considered in assessing the move to light regulation because a substantial portion of these historic costs were of a one-off character. Appeals to the Tribunal, Federal Court and High Court concerning the MSP's ICB will not be repeated.
- 3.18 However, it should be noted that in its initial AA proposal of 1999 EAPL proposed AA costs of \$1.385 million<sup>67</sup> which would be incorporated into the capital base and amortised over the five years of the access arrangement period. This amount included internal labour costs of \$731,000, external consultants costs of \$369,000, external legal costs of \$240,000 and other costs of \$45 000. Prior to the judicial

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<sup>64</sup> Note that there is some flexibility in the time frames applying to access arrangement duration but five years is a general standard .

<sup>65</sup> Rule 36 and 37.

<sup>66</sup> ACCC, 2005, National Third Party Access Code for Natural Gas Pipeline Systems Access Arrangement Process Guideline December 2005, p3

<sup>67</sup> ACCC (2000) Draft Decision on the Access Arrangement by East Australian Pipeline Limited for the Moomba to Sydney Pipeline System December 19 2000 pp19-20

appeals, the ACCC appeared to accept these costs as reasonable by including in the Draft Decision access arrangement costs of \$1.4 million.<sup>68</sup>

- 3.19 Further, the agreed financial model that underpins the current MSP AA has an assumed AA cost for the subsequent AA due in 2009 of \$586,000.
- 3.20 Given the unique history of the MSP's regulated price and coverage decisions, other appropriate proxies for forward-looking AA costs may be found in other APA pipelines, such as VTS and the Roma-Brisbane Pipeline, and the non-APA Dampier-Bunbury Pipeline. These are discussed below.

#### GasNet as a proxy

- 3.21 The recent AA and AAI process for the VTS completed in June 2008, provides a useful indicator of future AA costs for the MSP.
- 3.22 APA owns and operates both the MSP and the VTS. The two assets have established capital bases, which are of a similar order of magnitude.<sup>69</sup> They each serve major population centres (as opposed to mining sites or other specialised end users) and have users who are predominantly large energy wholesalers and retailers. For these reasons, APA considers the GasNet AA process to be a reasonable (but not perfect)<sup>70</sup> indicator of likely costs for the next MSP AA process.
- 3.23 In June 2006, approximately eleven months prior to the proposed GasNet AA and AAI being lodged, work on the GasNet AA and AAI commenced as documentation was prepared and detailed modelling and capital assessment was undertaken. APA lodged the draft AA and AAI for the VTS in April 2007 and the AER released its final approval accepting a revised AA and AAI in June 2008. Taking into account both internal and external processes, the development of the GasNet AA and AAI took approximately 24 months.

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<sup>68</sup> ACCC (2000) Draft Decision on the Access Arrangement by East Australian Pipeline Limited for the Moomba to Sydney Pipeline System December 19 2000 p 34.

<sup>69</sup> The GasNet capital base is approximately \$550 million and the capital base for the regulated section of the MSP is currently estimated at slightly over \$400 million.

<sup>70</sup> The MSP and GasNet do have different characteristics which may result in differences in the relative complexities and costs of the AA regulatory processes for each asset.

- 3.24 Based on then current estimates of external costs, such as engineering and legal costs, GasNet submitted that the AA include regulatory reset costs of \$950 000 for the AA period. This compared with \$1.05 million approved by the regulator for the previous AA.<sup>71</sup> These regulatory reset costs of \$950 000 were accepted by the AER and included in the cost base which will be recovered by GasNet via the AA tariffs.
- 3.25 The actual final external costs of the GasNet AA are shown below. This table shows that the actual external cost was \$1.015 million and that the \$950,000 sought and approved was a slight underestimation of the final actual external cost of preparing the AA.

#### **External Costs of the GasNet Access Arrangement in the period 2006 to 2008**

<b>Cost Category</b>	<b>Cost (Nominal \$)</b>
Consultants	\$285,561
Contractors Labour	\$118,922
Legal Fees	\$570,673
Miscellaneous	\$40,247
<b>Total</b>	<b>\$1,015,403</b>

- 3.26 In addition to these external costs, APA incurred significant internal costs associated with the development of the AA. These costs include the costs of a regulatory manager, analysts, engineers, other technical and financial managers as well as senior management involvement. Using a conservative estimate of a manager and an analyst working full time on the VTS AA for 18 months, internal costs of salaries and overheads can be estimated to be \$450,000.
- 3.27 Accordingly, overall the cost of the VTS AA to APA was approximately **\$1,500,000**.<sup>72</sup>

#### Other Proxies

- 3.28 Another useful indicator of costs is the Roma to Brisbane Pipeline (“**RBP**”) AA process. The RBP is owned by APA. The AA process was undertaken in 2006-07.

<sup>71</sup> ACCC, 2007, Draft Decision Revised access arrangement by GasNet Australia Ltd for the Principal Transmission System 14 November 2007 p117

<sup>72</sup> It should be recognised that work on AAs continues at a low level between AA reset times – for example capital expenditure is subject to prudence tests prior to internal approval and then recorded for incorporation into the capital base roll forward calculation.

- 3.29 The regulator accepted the proposed AA costs of \$500,000.<sup>73</sup> The total actual external costs for this access arrangement were \$366,831. In addition to these external costs, internal APA staff salaries and overheads are estimated to be in the order of at least \$450,000, based on a conservative estimate of a manager and an analyst working full time on the RBP AA for 18 months. Thus overall the cost of the RBP AA to APA was approximately **\$817,000**.
- 3.30 Other examples include the AA process of the Dampier Bunbury Pipeline in 2005 where the ERA allowed regulatory review costs of \$800,000.<sup>74</sup> For the Goldfields Gas Pipeline (“GGP”) 2004-2005 AA process, APA’s internal costings show legal and regulatory costs of \$4m (net of ERA charges which were an additional \$1.6m) of which a large proportion would have been in respect of the AA process.<sup>75</sup> This included the cost of restarting the AA process following the WA Supreme Court’s decision in the Dampier to Bunbury Pipeline proceedings in 2002.<sup>76</sup>
- 3.31 While each pipeline has its own particular characteristics which may affect the level of complexity and cost associated with an AA process, based on APA’s experience, APA would expect the costs associated with the next MSP AA process to be in the range of **\$500,000 - \$1,500,000**.

#### Potential for Increased Costs due to Appeals

- 3.32 As noted in Part 1, at the previous regulatory review the MSP was subject to protracted legal proceedings culminating in a High Court determination.

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<sup>73</sup> ACCC, 2006, Final Decision Revised access arrangement by APT Petroleum Pipelines Ltd for the Roma to Brisbane Pipeline 20 December 2006 p84

<sup>74</sup> ERA, 2005, Final Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline, 11 November 2005, proposed figure shown on P59 and acceptance shown on 68

<sup>75</sup> It should be noted that the Access Arrangement for the Goldfields Gas Pipeline which was finalised in 2005 did not have explicitly recognised costs for the Access Arrangement process. General regulatory costs were provided in the process and from these the cost of the Access Arrangement may be inferred. For example the table of costs on p74 of “ERA, 2005, Final Decision on the Proposed Access Arrangement for the Goldfields Gas Pipeline 17 May 2005” shows that regulatory costs increased substantially at the time of the Access Arrangement, but these costs are not explicitly identified as Access Arrangement costs.

<sup>76</sup> [Re: Dr Ken Michael Am; ex parte Epic Energy \(WA\) Nominees Pty Ltd Anor \[2002\] WASCA 231 \(23 August 2002\)](#)

3.33 Likewise other full regulation regulatory reviews of some pipelines have resulted in legal action. These are shown below. (Note this table does not include the appeals etc that have applied to gas networks subject to full regulation)

<b>ACCESS ARRANGEMENT</b>	<b>APPEALED</b>
<b>ACCC / AER</b>	
GasNet system 2003-2007 access arrangement	[2003] ACompT 6 (23 December 2003)
Moomba to Adelaide pipeline system (Epic Energy) 2002-2005 access arrangement	[2002] ACompT 4 (27 November 2002) [2003] ACompT 5 (10 December 2003)
Moomba to Sydney pipeline system (EAPL) 2004-2009 access arrangement	[2004] ACompT 8 (8 July 2004) [2005] ACompT 1 (18 March 2005) [2005] ACompT 3 (3 May 2005) [2006] FCAFC 83 (2 June 2006) East Australian Pipeline Pty Limited v Australian Competition and Consumer Commission [2007] HCA 44
Wallumbilla to Rockhampton pipeline system (Duke and Epic Energy)	[2003] ACompT 2 (10 May 2002)
<b>ERA/OffGAR</b>	
Dampier to Bunbury Natural Gas Pipeline (DBP) revised Access Arrangement for 2005-2010	[2006] GRB(WA) No. 2 of 2005 (18 July 2006)
Dampier to Bunbury Natural Gas Pipeline Access Arrangement for 2000-2004	(2002) 25 WAR 511 [2004] GRB(WA) No's 1, 2, 3 of 2004

3.34 Given the not infrequent occurrence of appeals, APA submits that some allowance for appeal costs should be taken into account in any consideration of the costs of full regulation.

3.35 The MAPS, MSP and 2002-2004 DBP appeals centred on disputes relating to the capital base. However, the MAPS and MSP proceedings covered other matters in

dispute - namely, involving the rate of return, extensions and expansions in the case of the EPIC proceedings, and credit rating and cost of debt issues in the case of the MSP proceedings.

- 3.36 Other appeals have focussed on issues unrelated to the capital base. The GasNet appeal in 2003 was focussed on issues relating to rates of return and asymmetric risk. The DBP appeal in 2006 centred on issues relating to gas quality specifications and its impact on tariffs.
- 3.37 Given the MSP's capital base has been set, any disputes as part of future AA processes are likely to be limited to matters such as rate of return, operating expenditure, capital expenditure, asset age and non price issues such as extensions and expansions and gas quality specifications. GasNet has been subject to three AA processes, one of which resulted in an appeal.
- 3.38 For the GasNet appeal in 2003 to the Tribunal, the cost was approximately \$1.1 million to GasNet. Based on the GasNet figure, APA would expect an appeal to the Tribunal in relation to a future MSP AA and MSP appeal costs process to be approximately \$100,000 per day for every day of hearing. It is difficult to estimate the cost of a Tribunal appeal any more definitely given the potential variances in the terms and nature of any proceedings.

#### Overview of Costs to APA of AA process

- 3.39 Overall an AA for the MSP could be expected to cost APA in the order of \$500,000 - \$1.5m. A further amount representing estimated costs of an appeal to the Tribunal (say for every third reset) based on the GasNet experience would increase these costs.
- 3.40 This represents a cost saving to APA under light regulation as no AA would be required.

## Costs to shippers and end users

3.41 An internal review of recent transmission regulation decisions in both gas and electricity<sup>77</sup> shows that there is typically significant involvement from either individual users or groups representing users or end users.<sup>78</sup> While APA cannot accurately quantify the costs to shippers and end users, they are likely to be material.

3.42 The typical regulatory decision process provides the following opportunities for users or groups representing users to put forward issues.

- An issues paper may be released by the regulator following receipt of the relevant documentation from the service provider and an initial public forum may be held.
- Either in conjunction with the issues paper and forum or more generally, the regulator will provide an opportunity to respond to the initial documentation lodged by the service provider. While this varies from asset to asset, five to ten submissions in total could be expected with three to four submissions from users, prospective users or user groups. Additional submissions would be expected from government departments, other infrastructure owners, and other interested parties.<sup>79</sup>
- A further public forum may be held. User groups often make presentations at this forum.
- The regulator will release a draft decision, which provides a formal opportunity for users to respond. While this varies from asset to asset seven to ten submissions in total could be expected with three to four submissions from users, prospective users or user groups. Additional submissions would be expected from other interested parties.
- In addition to the above process there are other opportunities for users and representative groups to provide input into the regulatory process via correspondence, tele-conferences and face to face meetings with regulators.

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<sup>77</sup> Review surveyed include recent revenue or pricing decisions related to Powerlink 2006-7 (Electricity), Electranet 2007-2008 (Electricity), SP Ausnet (Victoria) 2007-8 (Electricity), GasNet 2007-8 (Gas).

<sup>78</sup> End user groups typically involved include the Energy Users Association of Australia (EUAA) and Major Energy Users (MEU).

<sup>79</sup> Note that during the first round of public consultation on the MSP AA in 2000, the ACCC received approximately 35 submissions from users and other interested parties.



- 3.43 While user and user group involvement varies it is not unusual to have users or user groups presenting at public forums and making detailed, weighty submissions. These submissions may also include attached consultants reports.
- 3.44 The recent GasNet AA provides a useful case study. The involvement of users and end users in the recent GasNet process is outlined below.
- Proposed access arrangement was lodged with the ACCC in April 2007.
  - ACCC released an issues paper in May 2007 to which six responses were received – these responses were all from either users, end users or groups representing end users.
  - ACCC released a Draft Decision in November 2007 to which eleven organisations besides GasNet made a response. Seven of these eleven responses were from organisations which could be characterised as users, prospective users or groups representing users or end users. Some of these responses included work which was undertaken by consultants.
  - Throughout the process GasNet had discussions with some of the users and end users who made submissions. APA assumes that some of the users and end users also had discussions with the ACCC.
- 3.45 It is difficult to quantify every party's costs through such a process, but the extent of time commitment from senior managers and regulatory teams in every organisation would be significant. Taking shippers and end users as a group, it is not inconceivable that the total costs to that group would be of a similar magnitude to the pipeline's cost of the AA and AAI processes.

### ***Cost of ongoing AA management and compliance***

#### **Costs to APA**

- 3.46 There are a numerous ongoing regulatory compliance obligations that apply to both full regulation pipelines and light regulation pipelines, notably:
- ring fencing requirements (NGL s139-141, s143, s147-148),
  - access dispute resolution (NGL, s185, s195, s200, s202-204, s206, s214);
  - facilitation of access (NGR, r108-109, r111-112); and
  - confidentiality (NGR r138-139).

3.47 The costs of complying with these obligations is assumed to be similar for both light and full regulation pipelines.

3.48 There are numerous ad hoc regulatory tasks relating to responding to proposed laws, regulations and regulatory guidelines and reviewing coverage and regulatory decisions relating to other regulated assets. These tasks are undertaken for both light and full regulation pipelines, but due to the nature of full regulation, it is reasonable to assume that the costs for such activities are likely to be greater for full regulation pipelines.

3.49 There are specific ongoing regulatory compliance obligations which apply only to either full regulation pipelines or light regulation pipelines. These are outlined below.

#### Ongoing compliance obligations

3.50 In addition to incurring costs related to the establishment and revision of an AA there are also specific ongoing internal costs associated with managing and complying with full regulation and AAs including:

- AA queue management (NGL s135, NGR r103);
- complying with AA capacity trading requirements and AA change of receipt and delivery point requirements (NGR r105-106);
- facilitation of access by posting the AA on a website (NGR r107); and
- ensuring compliance with AAs. This in turn requires:
  - management of AA tariff escalation processes including AA tariff escalation correspondence;
  - management of cost pass through processes (including nil return correspondence);
  - ensuring consistency of contracts with AAs where applicable; and
  - management of internal compliance programs to ensure AA processes and requirements are being met by staff. In the case of APA this involves an internal quarterly compliance report by relevant managers and officers.

3.51 In the case of light regulation pipelines, in addition to incurring costs related to publishing tariffs and terms and conditions on its website there are also specific ongoing internal costs associated with managing and complying with light regulation including:

- reporting to the AER on access negotiations relating to light regulation services (NGR r37);
- updating tariffs and terms and conditions on the website; and
- management of internal compliance programs to ensure tariffs and terms and conditions are being met.

3.52 The costs to the pipeline of complying with these ongoing compliance obligations is likely to be somewhat lower under light regulation, as the tasks appear somewhat less onerous. Under light regulation, the pipeline has an option to submit a limited AA. As this election is voluntary on the part of the pipeline, this cost is not included in this analysis.

#### Comparison of Ongoing regulatory Costs

3.53 It was noted that costs to the pipeline of meeting ongoing compliance obligations is likely to be somewhat lower under light regulation. APA estimates (based on budgeted amounts) that the costs of ongoing regulatory management for each individual full regulation asset are approximately \$36,000 per annum, whereas the costs for each light regulation asset are estimated to be \$27,000 per annum. (These estimates include the costs of complying with obligations common to both types of assets).

3.54 These estimates are based on the following assumptions, and take into account the fact that at the time the estimates were made APA had 11 regulated assets:

- Half of all budgeted regulatory costs relate to ongoing compliance and associated tasks;
- The costs of meeting regulatory obligations that apply equally to both full and light regulation pipelines are identical for both types of pipelines;

- The costs of meeting regulatory obligations that apply only to full pipelines are assumed to be approximately twice that of the costs of meeting regulatory obligations that apply only to light pipelines.

3.55 It should be recognised that these estimates are not based on experience as the introduction of light regulation has only occurred recently.

3.56 On this basis, APA estimates that the cost savings to it for ongoing regulatory compliance associated with a change to light regulation for the MSP would be approximately \$9,000 per annum or \$45,000 over 5 years. This difference is not material and given the potential variance, is not included in the total costs assessment in section 4.

### **Costs to shippers and end users**

3.57 The costs of ongoing AA management and compliance are generally incurred by the regulated entity and the regulator, rather than shippers and end users. Costs to shippers and end users of ongoing AA management and compliance are likely to be minimal.

### **Dispute resolution**

3.58 Each of the existing shipper agreements contains a commercial dispute resolution clause which provides for any dispute to be resolved by arbitration. For existing shippers, there will be no substantive difference to the costs associated with the resolution of disputes under full or light regulation while their contracts are on foot.

3.59 In respect of new and prospective shippers, under full regulation, access disputes can be brought against MSP to require compliance with the access arrangement terms and conditions. The outcomes and remedies that can be sought by potential users in relation to reference services are limited to those terms and conditions set in the access arrangements.<sup>80</sup>

3.60 In contrast, under light regulation, the outcomes and remedies arising from the arbitration are not limited to terms and conditions in an access arrangement. For

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<sup>80</sup> Under s.189 of the NGL, the AER must give effect to applicable access arrangements.

example, as noted above, currently each shipper pays below the regulated tariff. In this circumstance, tariff disputes are likely to be at levels below the regulated tariff. Such dispute could be dealt with under light regulation arbitration as the outcomes are not bound to the access arrangement regulated tariff. They would be bound to the reference tariff under full regulation. The efficiency benefits of the increased flexibility under the arbitration mechanism are discussed by reference to the national gas objective in Part 4.

- 3.61 In order to assess the comparative cost of access disputes and arbitration (under full and light regulation respectively); APA has assumed that the frequency of disputes under each form of regulation would be unlikely to differ materially.
- 3.62 During the ten years of operation of the National Third Party Access Code for Natural Gas Pipeline Systems, only one access dispute had been commenced, that being by AGL against APA in 2007 (refer to section 4 of Part 2 above). Similarly, under Part IIIA of the *Trade Practices Act 1975*, only two arbitrations have occurred in the 10 years of its operation.<sup>81</sup>
- 3.63 The comparative cost of an access dispute with an arbitration would depend on the nature and scope of the dispute and the approach taken by the AER in determining the dispute. For any given dispute, it would be reasonable to assume that the costs associated with an access dispute and an arbitration would be in the same order of magnitude on the basis that the AER would determine both.

## Costs comparison

- 3.64 The table below summarises APA's estimates of likely costs and cost savings to APA of a change from full to light regulation for the MSP for a 5 year regulatory reset period. It should be recognised that these estimates are based on limited sample sizes and are subject to large error tolerances.

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<sup>81</sup> Refer to [www.accc.gov.au](http://www.accc.gov.au) for details of the Part IIIA arbitrations by Services Sydney against Sydney Water in 2007 and Virgin Blue against Sydney Airport in 2007.

	<b>Full regulation</b>	<b>Light handed regulation</b>	<b>Cost saving of change to light handed for 5 year reset period</b>
Commercial negotiations			No change
AA and AAI process	\$500,000 to \$1.5m	n/a	\$500,000 to \$1.5m (additional cost savings associated with appeals from AA processes)
Ongoing compliance			No material difference although some cost savings associated with light regulation
Arbitrations by existing shippers			No change
Arbitrations by new shippers			No change
<b>Total cost saving to APA</b>			<b>\$500,000 to \$1.5m (plus any AA appeal costs)</b>

3.65 As set out in the table above, a move to light regulation for the MSP would result in a cost savings to EAPL of between \$500,000 and \$1,500,000 for every five-year period because the costs of preparing and obtaining approval for the AA and AAI would be saved. In addition, costs associated with any appeals arising from the AA process would also be saved.

3.66 The principal cost savings to existing and prospective shippers of a change to light handed regulation would relate to their participation in the AA and AAI processes including submission, public consultation processes and any subsequent dispute process.

- 3.67 While the cost savings to shippers are more difficult to estimate, clearly they are also significant. Taking shippers and end-users as a group, it is possible that the cost savings would be comparable to the pipeline's savings.
- 3.68 As noted in paragraph 3.5, it is difficult for APA to comment on whether light regulation would result in any cost savings to end users as this depends on the extent of any pass through by shippers. In the case of industrial customers, however, given their position as both users and end users, cost savings of light regulation can be attributed to them in both their capacities.

## **Part 4 - National Gas Objective and Other Factors**

### **National Gas Objective**

- 4.1 Section 122(2) (a) requires the NCC to have regard to the national gas objective in considering the criteria for light regulation set out in s.122 (1).
- 4.2 The national gas objective is to “*promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.*” (NGL, s23)
- 4.3 In evaluating whether this objective would be met by light regulation of the MSP it is necessary to consider efficiencies (productive, allocative and dynamic) in the provision of MSP pipeline services as well as in upstream and downstream markets where competition is the key driver to welfare gains.

### ***MSP pipeline services***

#### Cost savings

- 4.4 There are three principal reasons why a change to light regulation for the MSP would enhance efficiency (and therefore welfare) in the provision of pipeline services.
- 4.5 The first relates to the cost savings to APA, shippers and end-users associated with the change to light regulation. This effect was quantified and explained in some detail in Part 3 of this submission. These improvements would make expenditure on the MSP more productively efficient.



### Reduced risk of regulatory error

- 4.6 Regulation is generally recognised as providing “second best” outcomes compared with those achieved through the process of competition.<sup>82</sup> The regulatory process is intended to deliver outcomes that approximate those that would otherwise have been achieved had the market for the provision of the regulated service been competitive. Inherent in this process is a degree of regulatory risk associated with the regulator “getting it wrong”. This is often referred to as the risk of regulatory error. There are efficiency costs associated with regulatory error which translate as a loss of welfare. These efficiency costs arise from the distortion of price (and other) signals from those that would result from a competitive process. Such distortions may result in, among other things, inefficient investment decisions such as under investment, which in turn may have adverse impacts in terms of productive, allocative and dynamic efficiencies.
- 4.7 Regulatory risk also impacts the cost of capital for pipelines. Regulatory risk covers both the risk of regulatory error as well as the risks associated with outcome uncertainty. The greater the perceived risk, the greater the cost of capital. Conversely, the lower the perceived risk, the lower the regulatory risk premium attached to cost of capital. This cost saving will have a positive impact on productive efficiency.
- 4.8 The regulatory risks are inherently greater under full regulation compared with light regulation. This is because the regulator has a greater role in determining outcomes (that is, the terms and conditions of access including tariffs) compared with light regulation. It follows that a change to light regulation can be expected to result in a reduction in the regulatory risks and outcome uncertainties, and therefore, the cost of capital. Both the reduction in regulatory risk and cost of capital, would be efficiency enhancing.

### Increased flexibility

- 4.9 The third efficiency benefit arises from potentially greater flexibility of outcomes under light regulation compared with full regulation. As noted in above, under full regulation, an access dispute in relation to reference services has a limited range of

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<sup>82</sup> See Productivity Commission "Review of the Gas Access Regime", No.31, 11 June 2004.

outcomes, namely, a determination by the regulator that the service provider comply with the AA. Under light regulation, an arbitration can result in outcomes not bound by reference to the terms and conditions set out in the AA.

- 4.10 Even outside the context of a dispute, APA and shippers may be more inclined to develop/request more unique/specialised and useful service offerings and terms, in the absence of prescriptive outcomes determined by the regulator and set out in the AA. While shippers do currently negotiate with APA, the terms of offer and existing contracts do largely reflect the terms of the AA (although the posted tariffs are lower than the regulated tariffs). The flexibility of outcomes can be expected to be efficiency and welfare enhancing in circumstances such as the MSP where shippers enjoy significant countervailing power thereby facilitating effective negotiations for service provision.

### **Upstream markets**

- 4.11 To the extent that light regulation reduces investment risk it would make the threshold for new pipeline capacity investments easier to achieve. Under light regulation, therefore, one might expect a more rapid pattern of capacity augmentation to meet emergent demand than one would have experienced under full regulation, with all the rigidities that imposes.
- 4.12 Pipeline capacity is recognised as one of the enablers of competition between gas basins. Consequently, greater investment certainty under light regulation may help intensify competition in upstream markets.

### ***Downstream markets***

- 4.13 Much of Part 2 of this submission was directed to an analysis of the likely effectiveness of downstream market players' attempts to negotiate pipeline access under light regulation. The conclusion of that Part was that downstream firms would be at no disadvantage under light regulation compared to full regulation.
- 4.14 Competition in the downstream markets in which shippers compete (including the retail sale of gas and electricity) is likely to be either unaffected or enhanced by a

change to light regulation for the MSP. EAPL has not engaged in any significant price discrimination in the past. In relation to future conduct, competition may indeed be enhanced due to the operation of the non-discrimination requirement of s.136 which would prevent APA from discriminating between shippers in the provision of like services (unless otherwise efficient to do so). This protection means that shippers will be able to continue to compete on “an equal footing” at least in respect of the MSP’s transportation services in circumstances (such as those currently prevailing) where the posted tariffs is lower than the regulated tariff. This would promote competition among downstream firms by removing any input cost advantage that certain shippers may have been able to negotiate historically. This protection is only available under light regulation and not under full regulation.

4.15 For the reasons noted above, light regulation of the MSP would be consistent with the National Gas Objective.

## **Other relevant factors – AER costs**

4.16 Section 122(2)(c) of the NGL allows the NCC to have regard to “any other matters it considers relevant” in assessing an application for light handed regulation.

4.17 In relation to the comparative costs of full and light regulation, APA considers it appropriate for the NCC to have regard to the likely cost savings to the AER.

4.18 The conduct and determination of the AA and AAI process consumes significant resources by the AER. Typically, under the AA process the AER;

- Engages in pre consultation with the asset owner
- Commissions consultants reports on the AA and AAI as submitted
- Releases Issues paper and co-ordinates public forums
- Engages in discussions with the asset owner and other parties to confirm facts
- Receives and assesses submissions from multiple parties on the AA, AAI and related issues
- Releases a Draft Decision
- Receives and assesses submissions from multiple parties on the Draft Decision

- Engages in further discussions and assesses arguments put forward by parties
- Releases a Final Decision
- Potentially, writes their own AA if the submitted AA is non-complying and / or act as a party to an appeal

4.19 APA estimates that the AER would spend similar amounts of labour and time on assessing an AA and AAI and making Draft and Final Decisions as asset owners do in compiling and submitting the AA and AAI and making arguments to support their case. On this basis, APA would estimate that the AER's costs of considering and determining an AA process would be between \$500,000 to \$1.5 million per AA. Much of this cost could be saved and internal resources redeployed by a change to light regulation for the MSP.

4.20 The AER is also the counterparty to any proceedings arising from the AA and AAI process. APA would estimate that the legal and other costs incurred by the AER would be similar in magnitude to those incurred by the pipeline service provider. On this basis, APA would estimate additional cost savings to the AER of a change to light handed regulation to be approximately \$100,000 per day of every day of Tribunal proceedings.

# **Attachment 1**

## **APA Group – Company Details**

### **1. List of APA owned assets**

This list covers all major APA Group owned assets but is not exhaustive

#### **Asset Management**

APA Asset Management (operates Envestra assets)

#### **Corporate Shareholdings**

17% of Envestra Limited

33% of Seagas Pipeline

6% of Mariner Income Fund (owns the Moomba to Botany ethane pipeline)

100% of APA (MIT) Pty Limited provides some management services to Mariner Income Fund

#### **Electricity generation**

Daandine Power Station

X41 Power Station

#### **Electricity Transmission**

Directlink Interconnector

Murraylink Interconnector

#### **Gas Networks**

Allgas Gas Network (South East Queensland)

Central Ranges Gas Networks

#### **Gas Pipelines**

Amadeus Basin to Darwin Pipeline (96% owned)

Bonaparte Gas Pipeline (under construction)

Carpentaria Gas Pipeline

Central Ranges Gas Pipeline

Central West Gas Pipeline

Goldfields Gas Pipeline (88%) and associated laterals

Mid West Pipeline (50%)  
 Moomba to Sydney Pipeline  
 Parmelia Gas Pipeline  
 Roma to Brisbane Pipeline  
 SESA Pipeline  
 Telfer Gas Pipeline  
 Victorian Principal Transmission System

### **Gas Processing**

Kogan North Gas Processing  
 Tipton West Gas Processing

### **Gas Storage**

Mondarra Gas Storage  
 Victorian LNG Gas storage

## **2. Substantial Security Holders**

APA comprises Australian Pipeline Trust (**APT**) and APT Investment Trust (**APTIT**). APA is listed on the Australian Stock Exchange as stapled units in each of APT and APTIT. Security holders that hold more than 5% of currently issued units are as follows:

	<b>Securities</b>	<b>%</b>	<b>As at (2008):</b>
Petronas International	78,491,701	16.76%	4-Jul
Lazard Asset Mgt Pacific Co	28,936,761	6.18%	15-Aug
Investors Mutual	27,433,193	5.86%	4-Jul
Total Securities	468,241,154		

## **Attachment 2**

### **Shipper information**

AGL Energy Limited – [www.agl.com.au](http://www.agl.com.au)

AGL Energy was formed following the merger of AGL and Alinta in October 2006 resulting in the integration of both companies' energy infrastructure assets and the separation of AGL's energy retail, generation and gas upstream assets. AGL Energy sells gas and electricity primarily in Australia and New Zealand and has other interests in Chile. LPG is also extracted and sold, with other investments in the gas industries and property. AGL Energy is listed on the ASX and had a market capitalisation of \$5,749,000 as of 5 September 2007. Since 2007 AGL Energy has become an integrated energy company focusing on providing gas and electricity to over 3 million retail customers in Australia. Its total revenue for the year ended 30 June 2007 was \$3.8 billion.

Origin Energy Limited – [www.originenergy.com.au](http://www.originenergy.com.au)

Origin Energy is a vertically integrated Australian energy company involved in oil and gas exploration and production; electricity, natural gas and LPG retailing; energy trading; power generation; and asset management. In addition to providing homes and businesses with natural gas, electricity and LPG, the company provides customers with a range of energy related products and services. It is one of Australia's leading energy retailers. In FY2007 Origin Energy generated total revenue of \$6,254,000 and had a market capitalisation of \$8.17 billion as at 14 April 2008.

TRUenergy Holdings Pty Ltd – [www.truenergy.com.au](http://www.truenergy.com.au)

TRUenergy, previously known as TXU, is a gas and electricity provider for residential customers and businesses and also owns three power stations and a gas plant. The group operates in Victoria, South Australia and New South Wales. Its total revenue in the year to 31 December 2006 was \$2.38 billion. About 85% of its revenue is generated by its merchant energy business which includes electricity and gas distribution to residential customers and businesses. TRUenergy is ultimately wholly owned by the Hong Kong based CLP Group.

Country Energy – [www.countryenergy.com.au](http://www.countryenergy.com.au)

Country Energy was formed from the merger between energy retail and distribution companies Advance Energy, Southern Energy and North Power in 2001 and in 2005 it merged with another rural New South Wales energy retailer, Australian Inland. The company's sole shareholder is the State Government of New South Wales. It provides electricity to around 800,000 people in New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory. Its total revenue in the year ended 30 June 2007 was \$2.1 billion.

Energy Australia – [www.energyaustralia.com.au](http://www.energyaustralia.com.au)

Energy Australia was formed in 1996 from a merger between Orion Energy and Sydney Electricity. It operates solely in the supply of electricity and gas in South Australia, Victoria, Queensland, ACT and New South Wales. Its total revenue for the year ended 30 June 2007 was \$2.89 billion. It is one of Australia's largest gas and electricity suppliers, supplying energy to over 1.5 million Australian homes and businesses.



## Attachment 3

### Rule 34 - Compliance Checklist

Clause 34 of the National Gas Rules (“**NGR**”) specifies information required to be included in an application for a light regulation determination. These information requirements are set out as follows:

*(1)(a) Application to be in writing*

The application is in writing

*(1)(b) Identify the pipeline that provides, or is to provide, the services for which the determination is sought and include a reference to a website at which a description of the pipeline can be inspected; and*

Refer to paragraphs 1.2 -1.9

*(1)(c) Include a description of all pipeline services provided or to be provided by means of the pipeline; and*

Refer to paragraphs 1.20 -1.32

*(1)(d) Include the applicant's reasons for asserting that the pipeline services should be light regulation services; and*

The services provided by the covered part of the MSP should be subject to light regulation as the criteria set out in s.122 of the NGL are satisfied for the reasons set out in this submission.

*(1)(e) Include other information and materials on which the applicant relies in support of the application*

Refer to the information and material set out in this submission.

*(2)(a) The capacity of the pipeline and the extent to which that capacity is currently utilised; and*

Refer to the paragraph. 2.23 to 2.31 and to the Confidential Attachment.

*(2)(b) For a transmission pipeline, a description of:*

- (i) All locations served by the pipeline (i.e. all locations at which receipt or delivery points for natural gas carried by the pipeline exist); and*

- (ii) All pipelines that currently serve the same locations; and
- (iii) All pipelines that currently pass within 100 km of any location served by the pipeline; and

The current delivery points on the MSP are as follows:

<b>Mainline</b>	<b>Northern</b>	<b>Young Wagga</b>	<b>Burnt Creek-Griffith</b>	<b>Interconnect</b>	<b>Wagga Culcairn</b>
Bulla Park Ethane (on uncovered section)	Cowra	Young Township	June	Culcairn (Interconnect south)	Uranquinty
Marsden POT (West Wyalong)	Blayney	Wallendbeen - (Temora)	Coolamon	Wagga Wagga	Henty
Marsden	Millthorpe	Cootamundra	Ganmain	Uranquinty (Power Station) (on uncovered section)	Holbrook - Culcairn (township)
Boorowa	Orange	Illabo	Narrandera		
Yass (Blakney Creek)	Bathurst	Wagga Wagga	Rockdale		
Goulburn	Oberon		Leeton		
Marulan	Wallerawang		Griffith		
Sally's Corner	Lithgow				
Moss Vale					
Bowral					
Bargo					
Wilton (From Moomba)					

For details of MSP receipt points, refer to paragraph 1.26. For details of which pipelines are proximate to these receipt and delivery points, refer to paragraphs 1.52 to 1.54.

*[Note that clause (2)(c) applies to distribution networks and therefore is not applicable to the MSP]*

*(2)(d) A description of the pipeline services provided, or to be provided, by the pipeline; and*

Refer to paragraph 1.20 to 1.32

*(2)(e) An indication of any other sources of energy available to consumers of gas from the pipeline; and*

Refer to paragraph 2.82 to 2.86

*(2)(f) The identity of the parties with an interest in the pipeline and the nature and extent of each interest; and*

The MSP is wholly owned by East Australian Pipeline Pty Limited ABN 33 064 629 009. Staff who operate the pipeline are employed by APT Management Services Pty Limited ABN 58 091 668 110. Some marketing services on the MSP are supplied by Petronas.

Both East Australian Pipeline Pty Limited and APT Management Services Pty Limited are wholly owned subsidiaries of the APA Group (APA). APA comprises Australian Pipeline Trust and APT Investment Trust. APA is an ASX-listed energy transportation company owned by approximately 100,000 security holders.

APA operates an internalised management structure with direct operational control over its assets.

Security holders that hold more than 5% of currently issued units in APA are noted in Attachment 1.

*(2)(g) A description of the following relationships:*

*(i) any relationship between the owner, operator and controller of the pipeline (or any 2 of them);*

*(ii) any relationship between the owner, operator or controller of the pipeline and a user of pipeline services or a supplier or consumer of gas in a location or geographical area served by the pipeline;*

*(iii) any relationship between the owner, operator or controller of the pipeline and the owner, operator or controller of any other pipeline serving any one or more of the same locations or the same geographical area; and*

EAPL is the owner, operator and controller of the MSP. EAPL is a wholly owned subsidiary of the APA Group.

APA has no ownership interest in any shipper or producer using the MSP and as far as it is aware, no shipper or producer using the MSP has any ownership interest in APA.

APA owns 100% of the Central Ranges and the Central West Pipelines as well as the VTS.

*(2)(h) An estimate of the annual cost to the service provider of regulation on the basis of light regulation and on the basis of full regulation; and*

Refer to paragraphs 3.1 to 3.68.

*(2)(i) Any other information the applicant considers relevant to the application of the National Gas Objective or the form of regulation factors in the circumstances of the present case.*

Refer to paragraphs 4.1 to 4.20