AGL Energy Limited
ABN: 74 115 061 375

72 Christie Street
St Leonards NSW 2065

Locked Bag 1837
St Leonards NSW 2065

T: 02 9921 2999
F: 02 9921 2552
www.agl.com.au

A few words.

Mr John Feil

Executive Director

National Competition Council

GPO Box 250, Melbourne, VIC, 3001

Email: gas@ncc.gov.au

2 October 2008

EAPL Application for Light Regulation Determination on the Moomba to Sydney Pipeline

AGL refers to the application before the National Competition Council (NCC) by the East Australian Pipeline Pty Limited (EAPL), part of the APA Group, for a light regulation determination on the Moomba to Sydney Pipeline (MSP) and wishes to make the following submission.

AGL's position

AGL's first observation is that the current arrangement whereby the MSP is uncovered from Moomba to Marsden but covered from Marsden to downstream networks and laterals has not been a satisfactory one. Our preference is for the entire pipeline to come under one category, be it full regulation or light regulation. As a shipper and retailer, this provides for greater certainty as to the framework under which we would be having negotiations with the service provider. It also avoids the potential discontinuity or mismatch between services provided on the "separate" sections or the cost and revenue allocations between the two.

AGL's preference is to negotiate with EAPL under the light regulation regime. We acknowledge that, notwithstanding our alleged countervailing power, a pipeline owner can exercise market power, particularly when constraints appear, as these are not readily relieved in the short term. We have outlined some apparent inconsistencies in EAPL's submission, but on balance we believe that the negotiate/arbitrate model is an effective way to achieve commercial resolution. In our mind, the granting of a light regulation determination by the NCC entails

an obligation on the part of the applicant to ensure customer responsiveness and flexibility in service provision.

Comments with respect to the application:

The EAPL submission provides a number of arguments in support of their application for a light regulation determination. AGL seeks clarification on some of the arguments being put forward:

Capacity available

EAPL go to great lengths throughout the document to argue that there is "capacity" available. They claim in paragraph 2.26 that the current level of market demand is "..significantly less than the combined maximum capacities of the MSP and EGP of 312P/pa". This "evidence", which is simply peak day throughput multiplied by 365 days, is certainly at odds with gas industry practice, which is to measure capacity in terms of Maximum Daily Quantity (MDQ) or Maximum Hourly Quantity (MHQ). On the latter measures, it is very much our experience that there is little spare capacity available. This "evidence" is somewhat akin to a traffic engineer alluding to the presence of excess capacity by reference to lighter traffic during the non-peak hours of the day.

This apparent selectiveness of the capacity metric is underscored further in their discussion of tariffs in paragraph 2.8. Why would it be the case that the capacity charge is designed to capture 94-95% of the service provider's haulage revenue, with the balance given over to throughput, if throughput is such an important measure for them?

The graph shown under paragraph 2.28 does in fact highlight that capacity was constrained relative to demand in NSW in July 2008. This constraint emerged when the Uranquinty, Tallawarra and Colongra power stations were not yet fully operational. Whilst EAPL claim that they have since augmented their capacity by 50TJ/day, they are silent on what this supply/demand picture will look like when the above-mentioned gas-fired power stations come into play (let alone the others set out in paragraph 2.105), bearing in mind that NSW has a winter peak in electricity as well as a summer peak.

Contrary to assertions made by EAPL, the Eastern Gas Pipeline (EGP) is fully contracted and additional capacity is only available through long term commitments via further expansion (refer Jemena website http://www.jemena.com.au/operations/transmission/egp/assetDetails/transServices/default.aspx.) Therefore EAPL's argument about spare capacity can be questioned.

There is a genuine issue around capacity constraints in a contract carriage market environment. Given that capacity constraints are not relieved without lead time, any drawn out arbitration puts additional pressure on the prospective buyer of future capacity. And when the constraint is eventually relieved by a shipper taking out a long-term contract for additional capacity, we often witness the additional capacity of the pipeline over and above that required to alleviate the

supply/demand imbalance possibly sold at a lower price that the long-term contract price.

Alternatives to the MSP

AGL does not have the ability to switch supply between Moomba and Longford at will as implied throughout the applicant's document. This assertion conveniently ignores the Take or Pay (ToP) parameters that often govern these long-term supply contracts. These contracts for Moomba and Longford gas are long-term supply arrangements, neither of which can individually supply AGL's NSW demand in full. The statement that Moomba and Longford gas buyers are able to switch pipelines at will (paragraph 2.90) conveniently ignores ToP obligations and the fact that neither pipeline will be able to supply peak demand on its own.

AGL's customer base and supply sources do not give AGL the choice of doing business with EAPL alone — it must do business with both EAPL and Jemena EGP.

As mentioned above, EGP is fully contracted and additional capacity (MDQ) is only available through long-term commitments via further expansion. We are left to conclude that EAPL's arguments about alternatives being readily available do not hold true for the short to medium term.

There is a reference in paragraph 2.41 to the effect that the coal seam methane (CSM) produced at Camden by the Sydney Gas Company is emerging as a potential competitor to the MSP and EGP. A quick glance at the National Gas Bulletin Board operated by VENCorp clearly demonstrates that the daily production rate of 14TJ clearly falls short of this "generous" assessment by EAPL of its capacity, apparently based on a 2006 annual report by the company.

Resolution of access disputes through arbitration

If the MSP is subjected to light regulation, then should AGL and EAPL not be able to agree the terms and conditions of access (including tariffs and charges), AGL would need to seek arbitration in order to achieve regulatory oversight of price and non-price terms. We disagree with the contention in EAPL's application for light regulation that the cost of arbitrating under light regulation will be much the same as the costs of an access dispute under full regulation. In arbitration under full regulation, the arbitrator is obliged to apply the approved access arrangement. Under light regulation, the arbitrator must set the price and non-price terms in dispute. The arbitration therefore becomes a "substitute" for the costly process of setting tariffs, terms and conditions that occurs in approving an access arrangement under full regulation.

We understand that in the telecommunications industry, light regulation has resulted in dozens of arbitrations, which are costly both in time and money, and the determinations of those arbitrations become quasi-access arrangements.

AGL lodged a dispute with the ACCC against EAPL in late 2006 as the two parties could not agree on MDQ reallocation and services from 2007 onwards. Our experience confirms strongly that the light regulation arbitration process needs to be robust and timely enough to resolve disputes in a commercially effective timeframe. Our earlier reference to the time pressures around negotiating of constraint-relieving capacity augmentation emphasises the point that a drawn-out arbitration process merely serves to put additional pressure on the potential buyer of additional capacity.

Access to information

AGL's decisions, both in negotiating access and in deciding whether to seek arbitration, may not be as well informed as under full regulation because it will not have the benefit of effectively regulated prices in approved access arrangements as a reference point or access to the information made available in the assessment of proposed access arrangements.

Whilst EAPL argue that a lot of this information would be available from the historical full regulation process, this information will obviously not be updated and as useful. Information asymmetry may increase over time and may prove to be a weakness in the light regulation model. This will be an issue in deciding whether to go to arbitration, as we might not get the appropriate information until we actually commence arbitration.

Queuing policy

The application by EAPL makes no reference to a queuing policy that would apply in the event that a light regulation determination is given. Given that a lightly regulated pipeline service provider will publish the terms and conditions to all access seekers, it is AGL's expectation that a queuing policy will be set out that is consistent with the queuing requirements of the Rules (rule 103). It is vital for access seekers to know beforehand what this mechanism is, be it first-comes-first served or through a publicly notified auction, and that this be applied in a consistent manner.

Rule 112 of the NGR specifies that the service provider respond to access requests in a structured manner but is silent on whether capacity be allocated according to a publicised queuing policy. As an access seeker, AGL feels it is good commercial practice for the management of queues to be clearly communicated and adhered to. Whilst there is provision for priority issues to be resolved as part of an access dispute, it is preferable for all parties to avoid this expense and time delay.

Should you have any queries, please contact George Foley on (03) 8633 6239.

Yours sincerely

Tom Leonardi

Head of Wholesale Gas