2 October 2008

Mr John Feil
Executive Director
National Competition Council
GPO Box 250
Melbourne
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By Email: gas@ncc.gov.au

Dear Mr Feil

APPLICATION FOR LIGHT REGULATION OF THE MOOMBA TO SYDNEY PIPELINE

1.0 Introduction

1.1. Origin Energy Retail Ltd (Origin) appreciates the opportunity to make a submission on East Australian Pipeline Pty Limited's (EAPL) application for light regulation under the National Gas Law (NGL) of the covered portion of the Moomba to Sydney Pipeline (MSP). Origin is a shipper on the MSP and is therefore an interested party in the form of regulation applied to the pipeline.

1.2. Origin does not oppose EAPL's application. In Origin's view, the opportunities for flexibility in terms and conditions and specialised service offerings, combined with the availability of legislative safeguards, outweigh the risk of light regulation increasing the scope for EAPL to exercise market power.

1.3. Origin considers, however, that the application somewhat overstates the degree to which the MSP's market power is mitigated by opportunities for competition or substitution, and users' countervailing market power and access to information.

1.4. Origin's understanding is that EAPL's application is the first use of the new light regulation powers in the NGL. Should the National Competition Council grant light regulation status to the MSP, the pricing outcomes and the effectiveness of the safeguards the NGL provides for users will be an important test of the ability of light regulation to promote the national gas objective. This being the case, the Australian Energy Regulator (AER) will need to monitor the impact of light regulation on prices and access particularly carefully.

1.5. Origin's comments below discuss the suitability of light regulation for the MSP in light of the national gas objective and the form of regulation factors under the NGL.

2.0 National gas objective

2.1. In relation to the overarching national gas objective, Origin acknowledges the likely cost savings to the pipeline operator under a light regulation regime, which should therefore reduce the need for the pipeline operator to raise prices over time. Additional efficiencies for users as a result of light regulation are likely to be minimal.

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2.2. Origin considers that any benefits from light regulation to shippers are most likely to be found in increased flexibility in pipeline services. For example, this could mean more specialised terms and conditions, or the ability for dispute arbitration to provide a more flexible range of remedies and outcomes.

3.0 Form of regulation factors

3.1. Barriers to entry

3.1.1. The application argues that the construction of alternative pipelines, for example to link new coal seam methane fields to demand centres, makes existing pipelines such as the MSP vulnerable to new entrants. The fact remains that in many access negotiations the threat for users or producers to construct an alternative pipeline is often a remote threat. Construction of an alternative pipeline is a very significant investment, involving a considerable time lag and a high degree of regulatory uncertainty. Accordingly, for short to medium term negotiations, the barriers to entry remain material.

3.2. Substitutes for MSP service

3.2.1. The application focuses on the scope for major users with access to both the MSP and EGP to simply shift load between the pipelines should they face unfavourable pricing on one pipeline.

3.2.2. In reality, users have less flexibility for substitution than is implied by the application. For example, there are instances where shippers or major customers have existing facilities that are dependent on the MSP or its laterals. Even shippers who have access to gas at both Moomba and Longford and transportation contracts on both MSP and EGP are unable to switch their load between pipelines as simply as the application suggests. They are constrained, for example by the availability of capacity on the other pipeline and the need to realise their investment in their upstream gas supply contracts (eg take or pay obligations). The MSP is also an important route to market for the burgeoning coal seam gas industry.

3.2.3. The ability for new investment to choose to locate near the pipeline that provides the most favourable prices also appears somewhat overstated. The location of gas-fired generation or other major gas consuming industrial facilities depends on other factors, including the availability of suitable development sites. Clearly the argument that developers can choose their location on the basis of pipeline access costs does not apply to investment proposals to expand existing facilities.

3.3. Availability of information to users to inform negotiations

3.3.1. The application argues that most pipeline cost information is in the public domain due to past regulatory decisions, or can be deduced from macroeconomic circumstances, and that pipeline users are therefore no worse off under light regulation. Clearly, however, past regulatory information will become less and less relevant over time. To some extent, the effect of light regulation will be to transfer the analysis and collation of pipeline cost data from the MSP to access seekers.

3.4. Countervailing market power of users

3.4.1. As the application notes, the countervailing power of pipeline users depends on the existence of alternatives to negotiated settlement. Accordingly, most of the arguments regarding barriers to entry and the availability of substitutes outlined above apply equally to mitigate the countervailing power of users.

3.4.2. The lack of short term alternatives or substitutes for MSP services, including the geographic reliance of some existing facilities on the MSP, are of particular relevance in this regard.

4.0 Importance of regulatory scrutiny and recourse

4.1. Origin understands that this application is the first use of the light regulation powers under the NGL. As noted above, should light regulation status be granted to the MSP, Origin believes the AER will need to take an active role in ensuring that light regulation remains consistent with the national gas objective and delivers acceptable pricing and access outcomes.

4.2. Origin acknowledges that the NGL itself provides several safeguards in relation to light regulation. First, the light regulation framework requires the pipeline operator to publish the prices for the services it offers and prohibits the pipeline operator from engaging in price discrimination. EAPL's application argues that this means that "different prices may not be charged for the same service".

4.3. Second, as EAPL point out in their application, the light regulation framework establishes a "negotiate/arbitrate model". The availability under the NGL of binding dispute arbitration by the AER provides an important check on the pipeline's ability to dictate prices under light regulation.

4.4. Finally, a shipper has the ability under section 118 of the NGL to apply to the NCC for revocation of a light regulation determination. This is clearly a last resort option.

4.5. On balance, the availability of the above measures in the NGL reduces concerns that light regulation of the MSP would increase the opportunities for EAPL to exercise market power.

Please do not hesitate to contact me on 02 8345 5250 or Andrew Cleland on 02 8345 5152 if you wish to discuss any of these matters further.

Yours sincerely

[Transmitted electronically]

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