



Application for light regulation determination for Moomba to Sydney Pipeline Services by East Australian Pipeline Pty. Limited

A. Executive summary

TRUenergy welcomes the opportunity to comment on the application by East Australian Pipeline Pty. Ltd (EAPL) for a decision that the services provided by the 'covered' portion of the Moomba to Sydney gas pipeline system (MSP) be determined to be light regulation services for the purposes of the National Gas Law (NGL). The application lodged by the APA Group has been brought forward as a result of the recent changes to the NGL where the concept of light handed regulation was recently introduced. Light handed regulation refers to a negotiate/arbitrate model of regulation that allows access seekers and pipeline owners to negotiate commercial outcomes regarding the terms and conditions of access. Where the parties are unable to agree on the terms and conditions of access, then the Australian Energy Regulator (AER) will arbitrate on the access dispute.

TRUenergy could accept a decision that the services provided by the 'covered' portion of the MSP be determined to be light regulation services, provided that the National Competition Council (NCC) can satisfy itself the current 'covered' portion of the pipeline:

- does not possess market power;
- that current users and prospective users have satisfactory countervailing power; and
- that sufficient information exists in the market and from regulatory sources for prospective users to make informed pricing decisions on the pipeline.

B. Subject context

East Australian Pipeline Pty. Limited pursuant to the National Gas Law has applied for a determination to the National Competition Council (NCC) for a decision that services provided by the 'covered' portion of the Moomba to Sydney gas pipeline system (MSP) be determined to be light handed regulation services for the purposes of the National Gas Law (NGL). The 'covered' portion of the MSP is the portion of the MSP mainline from Marsden to Wilton and the Canberra, Wagga, Northern and Griffith laterals.

Regardless of whether the 'covered' portion of the pipeline is subject to full or light handed regulation, EAPL currently charges the same posted tariffs for transportation on the MSP mainline. As a result, it has requested a determination from the NCC to apply light regulation to the 'covered' portion of the pipeline to formalise the current arrangements that currently apply in the market. In order for the NCC to make a determination of light handed regulation on the 'covered' portion of the MSP, it needs to assess both the:

- likely effectiveness of the form of regulation; and
- the effect of the form of regulation.

C. Key issues

Whilst the owners of the MSP have gone to considerable effort to provide a detailed submission to support their case for light handed regulation, the NCC can only make a light regulation determination if certain provisions of the NGL are satisfied. Critically, the NCC must determine that the application lodged by the owners of the MSP satisfies section 16 of the NGL. In making a ruling under section 16 of the NGL to determine whether users would be able to negotiate effectively under light handed regulation, the NCC is required to give due consideration to seven factors. These factors expressly listed in section 16 of the NGL can be summarised into three key issues including:

1. The degree of market power of the MSP ;
2. The countervailing power of users; and
3. The ability of users to access sufficient relevant information.

1 – Market power

TRUenergy is satisfied with the negotiated terms and conditions of access it has achieved for capacity on the MSP. Our experience to date in negotiating access to the MSP has been satisfactory in terms of our ability to meet the capacity requirements for both our generation and retail customer requirements in NSW. We agree that there is a degree of competition that exists between the MSP and the Eastern Gas Pipeline (EGP). However, in accordance with the

requirements of section 16 of the NGL,¹ the NCC must be satisfied that there exists a very low degree of market power on the MSP before deciding to apply light handed regulation to the 'covered portion' of the MSP. Our expectation is that any decision to apply light handed regulation by the NCC would be need to be supported by both qualitative and quantitative analysis providing evidence of the low degree of market power of the MSP.

2 – Countervailing power of users

TRUenergy notes that competition between the MSP and the EGP, combined with the MSP's reliance on a small number of large firms for its revenue, creates conditions for a degree of countervailing market power to exist for the pipeline users. The availability of CSM from Sydney Gas to some users has also presented a potential alternative source of gas for users. However, in accordance with the requirements under section 16 of the NGL², the NCC must be satisfied that the users of the MSP possess countervailing power before determining to apply light handed regulation to the 'covered portion' of the MSP. Our expectation is that a decision to apply light handed regulation by the NCC would be supported by both qualitative and quantitative analysis that demonstrates the existence of sufficient countervailing power of users.

3 – Access of information for users

TRUenergy notes that some relevant cost information exists in the public domain about access prices of the MSP as a consequence of past regulatory pricing assessments made by the AER. While we acknowledge that this information provides some basis for prospective users to make informed pricing decisions on the pipeline, we encourage the NCC to fully explore the availability of information to ensure users will be able to effectively negotiate prices under a light-handed regime.

¹ Section 16 of the National Gas Law (NGL) specifically (s. 16 (a), (b), (c) (e), & (f).

² Section 16 of the National Gas Law (NGL) specifically (s. 16 (d), (e), & (f).

D. Conclusion

TRUenergy's experience in seeking access to the MSP on fair and reasonable terms in the current "competitive paradigm" has been acceptable. Our experience to date suggests that some degree of competition exists between the MSP & the EGP. The continued development of CSM in Queensland may encourage further pipeline development, bringing a more diverse supply of gas to the south eastern Australian market. However, whilst it is acknowledged that the owners of the MSP have gone to a considerable effort in their submission to provide evidence that the MSP has a low degree of market power, the NCC must only make a light handed determination for the services provided by the 'covered' portion of the MSP if it can satisfy itself that all of the relevant provisions of the NGL have been met. TRUenergy could accept a light regulation determination if these conditions can be demonstrated. Our expectation is that any NCC decision supporting light handed regulation would be based on strong supporting evidence.

Regards

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Manager Regulation (Access)