



THE HON IAN MACFARLANE MP
MINISTER FOR INDUSTRY AND SCIENCE

26 MAY 2015

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Mr David Crawford
President
National Competition Council
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MELBOURNE VIC 3001

MS15-000917

Dear Mr Crawford

Thank you for your letter of 28 April 2015 regarding the National Competition Council's final recommendation on an application from GLNG Operations Pty Ltd for a 15 year no-coverage determination concerning the Comet Ridge to Wallumbilla Pipeline Loop (CRWP Loop). I note that the Council, in accordance with Section 155 of the National Gas Law (NGL), classified the CRWP Loop as a transmission pipeline and as such I am the relevant Minister with responsibility for making the final determination on this matter.

I have decided to grant a 15 year no-coverage determination for the CRWP Loop. Please find attached my determination and statement of reasons. In making my decision I have carefully considered the pipeline coverage criteria, the National Gas Objective and the Council's final recommendations, in accordance with Section 157 of the NGL.

Given the two public consultation processes undertaken by the Council, I did not seek further submissions. I have also written to the applicant, and the Australian Energy Market Commission to advise them of my decision. Under the National Gas Rules, my decision and statement of reasons must be published on the Council's website. I would appreciate if you could arrange for this publication.

Yours sincerely

Ian Macfarlane

Encl. (1)

MINISTER'S DETERMINATION

I, the Hon Ian Macfarlane MP, Minister for Industry and Science, being the relevant Minister to make a 15 year no-coverage determination on a gas transmission pipeline under section 156 of the National Gas Law (NGL), as it applies as a law of Queensland, make the following determination in relation to an application from GLNG Operations Pty Ltd (GLNG).

The Application Process

On 13 February 2015, GLNG applied to the National Competition Council (the Council) for a 15 year no-coverage determination (the application) in respect of the Comet Ridge to Wallumbilla Pipeline Loop (CRWP Loop). GLNG is ultimately jointly owned by Santos Limited, PETRONAS, Total and KOGAS.

Following a public consultation process, in which no submissions were received, the Council published its draft recommendation on 20 March 2015. The Council's draft recommendation classified the CRWP Loop as a transmission pipeline and favoured granting a 15 year no-coverage determination.

Prior to giving public notice of the application, the Council sought additional submissions from the applicant, GLNG, and the applicant provided its response by way of a letter dated 17 February 2015. Following a second round of public consultation, in which the Council received one submission from the applicant, GLNG, the Council released its final recommendation on 29 April 2015 recommending that I decide to make a 15 year no-coverage determination. The Council's draft and final recommendations, and the submission received, are available on the Council's website: www.ncc.gov.au.

In accordance with section 156 of the NGL, and rule 124(2)(a) of the National Gas Rules made under the NGL, I am providing my determination to the applicant, the Council and the Australian Energy Market Commission within 30 business days of receiving the Council's final coverage recommendation. Considering there was opportunity for interested parties to provide submissions to the Council, I have not requested further submissions or comments in relation to the application.

Description of the Pipeline

My decision relates to the Comet Ridge to Wallumbilla Pipeline Loop (CRWP Loop), as outlined in Map 1 of Attachment A. The CRWP Loop is a 119km long pipeline with a diameter of 610mm and a design capacity of 750TJ/day. I understand that the CRWP Loop begins at the Wallumbilla Gas Supply Hub, initially travelling 93km north-west and then turning north-east for 26km and connecting to the GLNG Gas Transmission Pipeline (GTP) inlet at Fairview. The CRWP Loop will run almost in parallel to the existing Comet Ridge to Wallumbilla Pipeline (CRWP), which is a separate uncovered pipeline also owned by GLNG. The CRWP Loop has been constructed within the CRWP's 25 metre easement wherever practicable. The CRWP Loop had not been used for the haulage of natural gas on a commercial basis before the applicant, GLNG, applied under section 151 of the NGL for a no-coverage determination (see section 12 of the NGL).

I understand the CRWP Loop has been constructed as a part of the Gladstone LNG project (GLNG Project), which involves the transportation of Coal Seam Gas (CSG) from gas fields in Roma, Arcadia, Fairview and Comet Ridge to GLNG's LNG processing plant at Curtis Island (Queensland) for conversion to LNG and export. The CRWP Loop will be utilised as a part of the GLNG Project to provide additional capacity to transport gas between Wallumbilla and Comet Ridge, which will ultimately enable more gas to flow to the LNG processing plant at Curtis Island. I understand the CRWP Loop is currently only capable of transporting gas from south to north, but could operate in a southerly direction if additional compression was to be installed at Fairview.

A further description of the CRWP Loop is available in Chapter 3.9 and Annexure 4 and 5 of GLNG's application, which is available on the NCC's website: www.ncc.gov.au.

Decision

In accordance with Part 2 of Chapter 5 of the NGL, I am making a 15 year no-coverage determination in respect of the CRWP Loop.

This decision is based on the application, the applicant's submission to the Council in response to its draft recommendation and the Council's final recommendation. In making my decision I gave effect to the pipeline coverage criteria in section 15 of the NGL, in accordance with section 157(1)(a) of the NGL.

In deciding whether or not the pipeline coverage criteria are satisfied in relation to the CRWP Loop, in accordance with section 157(1)(b) of the NGL, I:

- 1) Have had regard to the national gas objective in section 23 of the NGL;
- 2) Have had regard to the Council's no-coverage recommendation; and
- 3) Have taken into account submissions and comments received by the Council from the applicant.

In relation to the pipeline coverage criteria in section 15 of the NGL, I am satisfied that criterion (c) is met but I am not satisfied that criteria (a), (b), and (d) are met. Given that I am not satisfied that all of the pipeline coverage criteria are satisfied in relation to the CRWP Loop, in accordance with section 157(2)(b) of the NGL, I must make a 15 year no-coverage determination in relation to that pipeline.

This determination takes effect from the date of this determination set out at the end of the Statement of Reasons.

My Statement of Reasons follows.

STATEMENT OF REASONS

In accordance with Rule 124 of the National Gas Rules, I provide this statement of reasons for my decision to grant a 15 year no-coverage determination in respect of the CRWP Loop to GLNG Operations Pty Ltd (GLNG).

Pipeline coverage criterion (a): That access (or increased access) to pipeline services provided by means of the pipeline would promote a material increase in competition in at least one market (whether or not in Australia), other than the market for the pipeline services provided by means of the pipeline.

NCC final conclusion on criterion (a): *The Council does not consider that criterion (a) is satisfied.*

Ministerial Findings on criterion (a)

Pipeline coverage criterion (a) requires that I assess whether access to services provided by means of the CRWP Loop would materially improve the opportunities and environment for competition in a dependent market. I agree with the Council's finding that the relevant dependent markets include:

- **Gas Production Market:** A market for the production of gas upstream of the CRWP Loop for the purpose of supplying gas to downstream customers, either as LNG or for domestic consumption.
- **Domestic Gas Sales Market:** A market for the sale of gas in domestic markets downstream of the CRWP Loop, including in the Gladstone, Rockhampton, Moura and Wide Bay regions, as well as broader geographical regions potentially connected to upstream gas supplies via the CRWP Loop and a range of other pipeline infrastructure with which it could potentially be connected.
- **LNG Market:** A downstream market for the international sale of LNG.

Gas Production Market

GLNG submits that there is one upstream third party within 50km of the CRWP Loop, which is not aligned to one of the major CSG to LNG projects or otherwise has existing exploitation arrangements that could potentially seek access to the CRWP Loop. However, this tenement does not have any proven gas reserves and may be more likely to use alternative pipelines such as the Queensland Gas Pipeline (QGP) to transport gas. The Council generally agrees with GLNG's submissions in relation to the upstream gas production market.

Further, I understand that in December 2014 Senex Energy Limited (Senex) and Queensland Gas Company Joint Venture completed a swap of Surat Basin gas permits.¹ As a result of this swap, Senex acquired a 100 percent interest in, and operatorship of, three Surat Basin gas permits (ATP 767, ATP 795 and ATP 889) that fall within 50km of the CRWP Loop. I understand that Senex has yet to announce the development path for the acquired resources. Thus, there are now two upstream third parties that independently own exploration tenements within 50km of the CRWP Loop, which could potentially seek access to the CRWP Loop.

¹ <http://www.asx.com.au/asxpdf/20141216/pdf/42vhj2z45snw2k.pdf>

I also note that the GLNG Project is vertically integrated, and may therefore have some incentive to limit access to the CRWP Loop. However, I agree with the Council that the impact of these incentives is likely to be insignificant. This is due to the presence of two other LNG producers currently operating in competition with the GLNG Project and the range of alternative pipelines, such as the QGP, that parties may seek access to. As such, I have determined that access to the CRWP Loop is unlikely to promote a material increase in competition in the upstream gas production market.

Domestic Gas Sales Market

I agree with the Council's finding that the downstream domestic gas sales market in the Gladstone, Rockhampton, Moura and Wide Bay regions are already serviced by existing infrastructure and sources of supply, including the QGP, and therefore, GLNG does not have market power in the downstream domestic sales market arising from the CRWP Loop. As such, I determine that access to the CRWP Loop is unlikely to promote a material increase in competition in the domestic gas sales market.

LNG Market

I agree with the Council that the international LNG market is already a competitive market, and access to the CRWP Loop is unlikely to promote a material increase in competition in this market. This is consistent with previous reasoning adopted, including in the no-coverage determination of the GLNG Gas Transmission Pipeline (GTP) in 2013 (to which the CRWP Loop connects). Given that access to the GLNG GTP is required to sell gas transported on the CRWP Loop in the LNG market, it follows that access to the CRWP Loop alone is unlikely to promote a material increase in competition in the LNG market.

National gas objective

The national gas objective, set out in section 23 of the NGL, 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'. In deciding whether pipeline criterion (a) is satisfied in relation to the CRWP Loop, I have had regard to the national gas objective, including by considering whether there is a causal connection between access and the level of competition in a dependant market (recognising that an increase in competition is likely to be in the long term interests of consumers of natural gas). However, as outlined above, I have determined that access, or increased access, to the services provided by the pipeline are unlikely to promote a material increase in competition in a dependent market.

Accordingly, I am not satisfied that criterion (a) is met in relation to the CRWP Loop.

Pipeline coverage criterion (b): That it would be uneconomic for anyone to develop another pipeline to provide the pipeline services provided by means of the pipeline.

NCC final conclusion on criterion (b): *The Council does not consider that criterion (b) is satisfied.*

Ministerial Findings on criterion (b)

Pipeline coverage criterion (b) requires me to consider whether it would be uneconomic for anyone to develop another pipeline to provide the pipeline services provided by means of the CRWP Loop.

The coverage criteria in section 15 of the NGL generally serve the same function as the declaration criteria in sections 44G and 44H of the *Competition and Consumer Act 2010* (Cth) for the National Access Regime in Part IIIA of that Act. The Australian Competition Tribunal and court decisions in respect of one set of criteria have been routinely cited and applied in relation to the equivalent provisions of the other. Accordingly, the case law concerning declaration criterion (b) in the National Access Regime is relevant to the interpretation of pipeline coverage criterion (b) in the NGL.

Consistently with the decision of the High Court of Australia in *Pilbara Infrastructure Pty Ltd v Australian Competition Tribunal* (2012) 246 CLR 379; [2012] HCA 36 (*Pilbara Infrastructure*), criterion (b) requires me to be satisfied that there is not anyone (including existing and possible future market participants) for whom it would be profitable to build another pipeline to provide the relevant pipeline services. I note that this decision has overturned previous interpretations of criterion (b), which had focussed on the presence of natural monopoly characteristics or on net social benefits.

The High Court in *Pilbara Infrastructure* explained the test as follows:

The better view of criterion (b) is that it uses the word “uneconomical” to mean “unprofitable”. It does not use that word in some specialist sense that would be used by an economist. Further, criterion (b) is to be read as requiring the decision maker to be satisfied that there is not anyone for whom it would be profitable to develop another facility. It is not to be read as requiring the testing of an abstract hypothesis: *if* someone, anyone, were to develop another facility. When used in criterion (b) “anyone” should be read as a wholly general reference that requires the decision maker to be satisfied that there is no one, whether in the market or able to enter the market for supplying the relevant service, who would find it economical (in the sense of profitable) to develop another facility to provide that service (at [77]).

The Council found that the presence of significant existing and ongoing investment in pipeline transmission infrastructure, both in the immediate vicinity of the CRWP Loop, and more broadly between the Surat/Bowen basins and Gladstone, demonstrates that they cannot be satisfied that it would be uneconomic to develop another pipeline to provide the CRWP Loop’s pipeline services. The Council noted the advantage GLNG has in building the CRWP Loop next to its existing CRWP, enabling costs to be saved in land tenement rights, pipeline approvals, as well as geographic and geological surveys. I agree with the Council that this factor is insufficient to satisfy me that building an alternative pipeline is uneconomic.

I understand there are significant examples of recent, existing and ongoing investment in pipeline transmission infrastructure in the vicinity of the CRWP Loop, including previous expansion of the QGP and potential future expansion that would increase the capacity of the QGP. These examples tend to indicate that there may be a party who may find it economical to develop another pipeline to provide the pipeline services provided by means of the CRWP Loop. Existing pipelines such as the Australia Pacific LNG Pty Limited pipeline and Queensland Curtis LNG pipeline demonstrate it has been profitable in the past to develop similar projects connecting CSG production in Surat/Bowen basins to LNG processing facilities at Gladstone. However, I am reluctant to agree that existing pipelines necessarily demonstrate that another pipeline would be economical to build in the future. The announcement by Royal Dutch Shell on 29 January 2015² that its Arrow LNG project “is off the table” demonstrates that conditions facing new investments have recently changed, largely impacted by falling oil prices. While I find it important to note this recent market development, as a stand-alone case and in light of existing and ongoing investment in pipeline transmission infrastructure in the vicinity of the CRWP Loop, I do not find it sufficient to satisfy me that there is not anyone for whom it would be uneconomical to build another pipeline to provide the services provided by means of the CRWP Loop.

In deciding whether pipeline coverage criterion (b) is satisfied in relation to the CRWP Loop, I have had regard to the national gas objective (set out above), noting that the efficient investment in and competition for the provision of pipeline services is in the long term interests of natural gas consumers.

As such, I am not satisfied that criterion (b) is met in relation to the CRWP Loop.

Pipeline coverage criterion (c): That access (or increased access) to the pipeline services provided by means of the pipeline can be provided without undue risk to human health or safety.

NCC final conclusion on criterion (c): *the Council is satisfied in respect of criterion (c).*

Ministerial Findings on criterion (c)

I am satisfied that access (or increased access) to the pipeline services provided by the CRWP Loop could be provided without undue risk to human health or safety. I note that in its application GLNG accepts that this criterion is satisfied. No submissions from the applicant or other parties, including the Council, presented any opinions to suggest this criterion is not satisfied. I also note that the gas industry in Australia is characterised by the safe use of natural gas pipelines through appropriate operator practice and regulation.

In deciding whether pipeline coverage criterion (c) is satisfied in relation to the CRWP Loop, I have had regard to the national gas objective (set out above) particularly in relation to the efficient operation and use of natural gas pipeline services in the long term interests of consumers, including with respect to safety.

Therefore, I am satisfied that criterion (c) is met in relation to the CRWP Loop.

² <http://s06.static-shell.com/content/dam/shell-new/local/corporate/corporate/downloads/quarterly-results/2014/q4/q4-2014-analyst-presentation-transcript.pdf>

Pipeline coverage criterion (d): That access (or increased access) to the pipeline services provided by means of the pipeline would not be contrary to the public interest.

NCC final conclusion on criterion (d): *The Council is not satisfied in respect of criterion (d).*

Ministerial Findings on criterion (d)

Pipeline coverage criterion (d) requires me to be satisfied that access (or increased access) to the pipeline services provided by means of the CRWP Loop would not be contrary to the public interest.

The term ‘public interest’ is not defined in the NGL. The High Court in *Pilbara Infrastructure* considered that the range of matters to which the Council and, more particularly, the Minister may have regard when considering whether to be satisfied that access (or increased access) would not be contrary to the public interest is ‘very wide indeed’ (at [42]). Furthermore, the High Court in that case considered that conferring on the Minister the power to decide in relation to criterion (f) under section 44G(2) of the *Competition and Consumer Act 2010*, which corresponds to pipeline coverage criterion (d), ‘is consistent with legislative recognition of the great breadth of matters that can be encompassed by an inquiry into what is or is not in the public interest and with legislative recognition that the inquiries are best suited to resolution by the holder of a political office’ (at [42]).

I therefore consider that pipeline coverage criterion (d) may extend to a broad range of matters including but not limited to: consideration of economic efficiency, regulatory costs, disruption effects and costs and investment effects. I have also had regard to the national gas objective by considering whether the public interest (specifically in relation to the long term interests of natural gas consumers) might be served by an increase in competition. Additionally, and in line with the national gas objective, it is important to encourage efficient investment in capital intensive infrastructure assets such as gas transmission pipelines. The granting of a no-coverage determination improves regulatory certainty for investors.

I consider that in this case, a critical issue for criterion (d) is the outcome of criterion (a), where both the Council and I find that access would not promote a material increase in competition in any likely dependent market (in the absence of any other apparent public benefits). Given that the Council and I are not satisfied that criterion (a) is met, I am not, in this case, satisfied that access to the CRWP Loop would lead to any public interest benefits of the kind that may be expected to flow from access to pipelines, in particular, competition-related benefits. There are no other apparent public benefits that would result from granting access to the services provided by means of the pipeline.

Therefore, I am not satisfied that criterion (d) is met in relation to the CRWP Loop.

Given that I am not satisfied that all of the pipeline coverage criteria are satisfied in relation to the CRWP Loop, in accordance with section 157(2)(b) of the NGL, I must make a 15-year no-coverage determination.



The Hon Ian Macfarlane MP
Minister for Industry and Science

26/5/2015

Map 1: GLNG Project Map

