ANGLO COAL

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21 October 2005

Dear Mr Feil

Application for coverage of the Dawson Valley Pipeline (DVP)

We refer to your letters dated 30 September 2005 and 11 October 2005 and our further correspondence.

Thank you for the opportunity to provide a submission to the National Competition Council (**Council**) in circumstances where the Council has been requested by the Minister to provide further advice before the Minister makes a decision. A copy of our submission is attached.

Should you have any questions or wish to discuss the submission further please contact Trevor Stay on 0419 155 819.

Yours faithfully
Anglo Coal (Moura) Limited

Matthew Boland
Company Secretary

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SUBMISSION BY
ANGLO COAL (MOURA) LIMITED

1. This submission addresses why the criteria for coverage of the Dawson Valley Pipeline (DVP) are not satisfied, despite the signing of agreements on 7 September 2005 for the purchase of certain assets (including the DVP) from Oil Company of Australia (Moura) Pty Limited and Oil Company of Australia (Moura) Transmissions Pty Ltd by Anglo Coal (Moura) Limited (**Anglo**) and its joint venture partner, Mitsui Moura Investment Pty Limited (**Mitsui**) (together as a joint venture **Anglo-Mitsui**).

2. As requested, the Council's analysis in its recommendation to the Minister has been considered.

3. The Minister is required to be affirmatively satisfied of each criterion set out in section 1.9 of the National Third Party Access Code for Natural Gas Pipelines (**National Gas Code**) in order to decide that a pipeline is Covered. The specific conduct and attributes of the owner or operator of the pipeline (referred to as the Service Provider) are a relevant consideration in this process.

4. In circumstances where another entity or entities may become the Service Provider, consideration of the potential conduct or attributes of that entity or entities is not a valid basis for finding that a specific criterion is presently satisfied. To the extent that the conduct and attributes of the Service Provider are relevant, then the existing Service Provider should be considered. In this case, until the purchase agreements are terminated or the purchase is completed, the Service Provider is Oil Company of Australia (Moura) Transmissions Pty Ltd.

5. However, if the effect of a change in the identity of the Service Provider is to be considered, it seems that the appropriate course is to re-consider criteria (a) and (d) in light of that change, rather than isolate certain reasoning of the Council's assessment of the criteria as presently applied.

6. Submissions are not made in relation to criteria (b) and (c).

Anglo-Mitsui Pipeline

7. Anglo-Mitsui currently own and operate the Anglo-Mitsui pipeline which is approximately 23 km in length, commencing at the Moura Mine and transporting gas to the Alinta Queensland Gas Pipeline. There is a second delivery point at the Queensland Nitrates Plant. The Anglo-Mitsui pipeline is also used to backhaul gas from the Alinta Queensland Gas Pipeline to the Queensland Nitrates Plant.

8. The Anglo-Mitsui pipeline currently has substantial spare capacity, with in excess of 50% of the pipeline's maximum capacity of 44 TJ/day not contracted. Third party negotiations previously identified to the Council are continuing.

9. Anglo-Mitsui produce gas from the Moura Mine. Sales of gas from the Moura Mine and the sale of transmission services are negotiated and entered into by Moura Sales Pty Limited, for and on behalf of Anglo-Mitsui. To the best of current management's knowledge, third party access to transport on the pipeline has never been denied by Anglo-Mitsui.

10. Anglo-Mitsui (including any related companies) are not participants in the downstream activities of aggregating or retailing gas in Queensland.

Criterion (a)

11. Criterion (a) requires the Council and the Minister to be satisfied that '*access (or increased access) to Services provided by means of the Pipeline would promote competition in at least one market (whether or not in Australia), other than the market for the Services provided by means of the Pipeline*'.

12. In doing so, the Council and the Minister must consider whether coverage of the DVP will enhance the opportunities and environment for improving competition in a dependent market, such that the likelihood of increased competition is not trivial. This position must be compared to the market without coverage.

13. The Council identified two dependent markets for the purpose of its analysis:

    (a) a downstream Queensland gas sales market; and

    (b) an upstream market for gas production and gas sales from any field that is within the feasible scope of connection with the DVP.

14. The Council concluded (at p37 of the Final Recommendation) that coverage of the DVP:

    (a) 'would be unlikely to materially promote competition in the downstream Queensland gas sales market as a consequence of the lack of ability and incentive of the pipeline to distort competition in those markets through vertical leveraging';

    (b) 'would be likely to promote competition in the upstream gas production and sales markets as a consequence of the ability and incentive of the pipeline to charge monopoly prices for transport services. However, the Council notes that the upstream market is small with little participation, and the impact of any declaration would be limited due to market power already being constrained by the presence of another transmission service'.

15. Each of these conclusions in considered on the assumption that Anglo-Mitsui is the Service Provider in relation to the DVP.

16. If Anglo-Mitsui were to become the Service Provider of the DVP, it is contended that the conclusions of the Council in relation to promotion of competition in the identified downstream market remain valid when applied to Anglo-Mitsui. In particular, it would remain the case that 'the small volumes of gas transported on the DVP into the Queensland gas sales market are unlikely to materially change the state of competition in that market or provide [the Service Provider] with an ability to exercise market power in that market through ownership of the DVP' (p35).

17. In relation to the promotion of competition in upstream markets, the geographic boundary of that market adopted by the Council is unduly narrow given the interconnected transmission pipeline network and multiple sources of gas, extending beyond fields within the scope of connection to the DVP, competing to supply the downstream market. The analysis of the upstream functional market is not accepted.

18. However, even adopting the formulation of the upstream market identified by the Council, coverage of the DVP would not promote competition in the upstream dependent market as Anglo-Mitsui would not have the incentive to exercise any market power it may have in the transmission services market to adversely affect competition in the upstream market.

19. Where there is substantial excess capacity on the DVP, which is projected by the existing Service Provider to continue for approximately 20 years, Anglo-Mitsui would face commercial imperatives to make available transmission services on the DVP. It is faced with similar imperatives on the Anglo-Mitsui pipeline. To the best of current management's knowledge, Anglo-Mitsui has never denied access to the Anglo-Mitsui pipeline and would intend to continue to adopt the same approach in respect of the DVP.

20. Anglo-Mitsui does not currently purchase gas from other producers from fields within the feasible scope of connection to the DVP, and will not do so as a result of the sale. Further, Anglo-Mitsui does not generally have interests in downstream aggregating or retailing gas in Queensland.

21. Anglo-Mitsui has not previously received an access request from the applicant in respect of the Anglo-Mitsui pipeline and therefore has not had the opportunity of establishing a commercial relationship with the applicant or with Lowell Petroleum NL and Helm Energy Australia LLC (who currently would be the only other producers in the vicinity of the DVP if the Anglo-Mitsui purchase is completed).

22. As a new Service Provider of the DVP in all these circumstances it would not be material that Anglo-Mitsui also owns the Anglo-Mitsui pipeline. Countervailing power of another market participant is only one factor to be considered in assessing whether coverage will promote competition and there is little weight to be attached to it where Anglo-Mitsui would lack the incentive to exercise any transmission market power it may have.

23. Accordingly, in the event that Anglo-Mitsui becomes the Service Provider in respect of the DVP, criterion (a) would not be satisfied.

Criterion (d)

24. Criterion (d) requires the Council and the Minister to be satisfied that '*access (or increased access) to the Services provided by means of the Pipeline would not be contrary to the public interest*'.

25. The Council noted that the upstream market identified is 'small with little participation' (p37) and that in relation to the applicant's production, the 'looking forward proportion is only a small per cent of the Queensland gas sales market' (p36). These facts together with the view that coverage would not promote competition where Anglo-Mitsui was the Service Provider, mean that the benefits of coverage would be minimal and outweighed by the regulatory costs identified by the Council.

26. On this basis, criterion (d) would not be satisfied should Anglo-Mitsui become the Service Provider.

Conclusion

27. The signing of the purchase agreements does not impact on the reasoning and conclusions of the Council in recommending that the DVP not be covered.

28. Should the purchase of the assets, including the DVP, be completed and Anglo-Mitsui becomes the Service Provider in relation to the DVP, it is contended that the Council's conclusion would remain unchanged and the DVP should not be covered.

Anglo Coal (Moura) Limited
21 October 2005