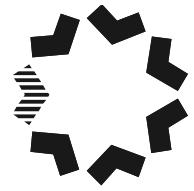


NATIONAL  
COMPETITION  
COUNCIL



## **Wagga Wagga Gas Distribution Network**

**Application under the National Gas  
Law for a revocation of coverage  
determination for the Wagga Wagga  
Gas Distribution Network**



**Draft Recommendation**

**17 June 2013**

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## Abbreviations, definitions and glossary

AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
APA	APA Group
Application	Application by Envestra Ltd under s 102 of the NGL for a revocation of coverage determination, received by the Council 1 May 2013
CCA	<i>Competition and Consumer Act 2010</i> (Cth)
Council	National Competition Council
criterion (a)	Section 15(a) of the NGL
criterion (b)	Section 15(b) of the NGL
criterion (c)	Section 15(c) of the NGL
criterion (d)	Section 15(d) of the NGL
Gas Code	<i>National Third Party Access Code for Natural Gas Pipeline Systems</i> (Schedule 2 to the Gas Pipelines Access (South Australia) Act 1997)
IPART	Independent Pricing & Regulatory Tribunal
MSP	Moomba to Sydney pipeline
NGL	National Gas Law, which is set out in the Schedule to the <i>National Gas (South Australia) Act 2008</i> (SA) and applied as a law of South Australia by that Act and as a law of other States and Territories by an application Act in each jurisdiction
Pj	Petajoule. A petajoule equals 1,000,000,000,000,000 joules.
WWGDN	Wagga Wagga Gas Distribution Network

## 1 Draft recommendation

- 1.1 Envestra Ltd has applied for revocation of coverage of the Wagga Wagga Gas Distribution Network (**WWGDN**).
- 1.2 Under the National Gas Law (**NGL**), the Council is responsible for considering this application and making a recommendation to the relevant Minister.
- 1.3 The Council classifies the WWGDN as a distribution pipeline. It is located wholly within New South Wales. As such the relevant Minister to consider the Council's recommendation and decide on Envestra's application is the NSW Minister for Resources and Energy; the Hon Chris Hartcher MP.
- 1.4 Under the NGL the Council must recommend, and the Minister must make, a coverage revocation determination where one or more of the pipeline coverage criteria is not satisfied in relation to a pipeline. Where all the pipeline coverage criteria are met a revocation determination should not be made and a pipeline should remain covered.
- 1.5 On the basis of the information available at this stage the Council finds that the coverage criteria are met in relation to the WWGDN and therefore it should recommend to the Minister that he not revoke coverage of the WWGDN.
- 1.6 The Council now invites written submissions on this draft recommendation. The Council will consider these submissions before finalising its recommendation to the Minister.
- 1.7 Submissions in response to this draft recommendation should be provided to the Council by **5pm on Monday 8 July 2013**. Submissions should be emailed (in both MS Word and PDF formats) to [gas@ncc.gov.au](mailto:gas@ncc.gov.au), with a hard copy sent to Wagga Wagga Revocation, National Competition Council, Level 21, 200 Queen Street, Melbourne, VIC, 3000. For efficiency of referencing all submissions should contain numbered paragraphs. All enquiries may be directed to the Council on (03) 9981 1600.

## 2 Background

- 2.1 Envestra Limited has applied to the Council under s 102 of the NGL for revocation of coverage of the WWGDN. The effect of the revocation of coverage would be to terminate regulation of the price and other terms of access to the network under the NGL. Envestra paid the appropriate fee.
- 2.2 The WWGDN distributes gas within the city of Wagga Wagga and the neighbouring town of Uranquinty. In 2011-12 the network delivered approximately 1.7PJ of gas to just over 20 000 end users. The network is 690 km in length. It is connected to the Moomba to Sydney Pipeline (**MSP**) via the Young to Wagga Wagga lateral<sup>1</sup> and is also connected to the Victorian Transmission System via 'the Interconnect'.<sup>2</sup> Both of these transmission pipelines are owned and operated by the APA Group (**APA**). Figure 1 illustrates the location of the WWGDN and related pipelines.
- 2.3 Envestra is listed on the ASX. Its shareholders comprise the APA (33%), Cheung Kong Infrastructure Holdings—a Hong Kong listed infrastructure investor (18%), institutional investors (25%) and holders of smaller parcels of shares (< 100,000 shares) (24%).
- 2.4 In addition to its shareholding in Envestra, APA owns and/or operates a range of other gas transmission and distribution assets, including both the gas transmission pipelines linking the WWGDN to eastern Australian gas supplies. APA also provides pipeline operation, maintenance and construction services to Envestra, including in relation to the WWGDN.
- 2.5 The WWGDN is a covered pipeline by virtue of its inclusion in the original Schedule A list of covered pipelines under the *Gas Code*.<sup>3</sup>
- 2.6 The WWGDN is currently classified as a distribution pipeline as it reticulates gas within a market. This classification is not disputed by any party. The network is wholly located within NSW. As a result of the network's classification and location, the relevant Minister to consider the Council's recommendation and decide on Envestra's application is the NSW Minister for Resources and Energy; the Hon Chris Hartcher MP.

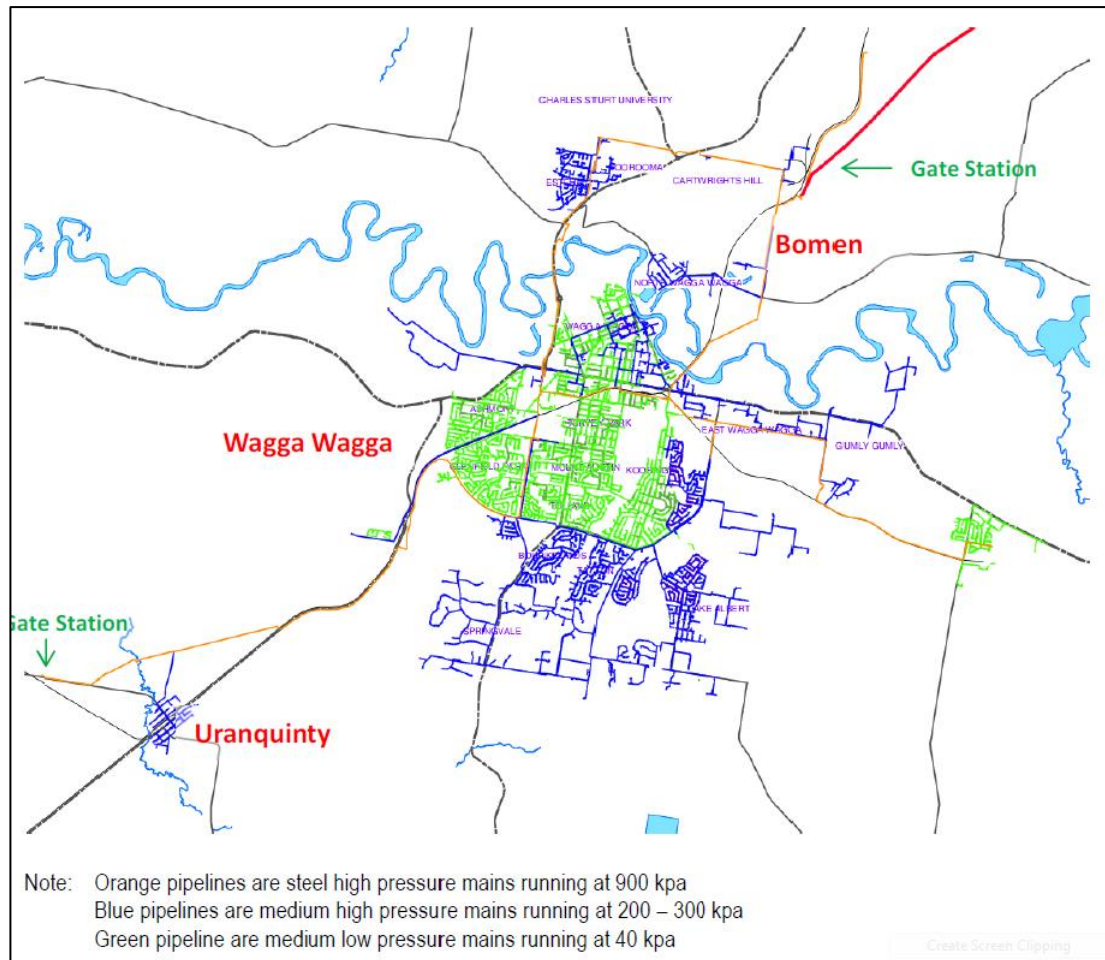
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<sup>1</sup> The MSP is partially covered, with coverage of this pipeline from Moomba to Marsden having been revoked in 2003. The covered portion of the MSP runs from Marsden, through Young, to Sydney and includes the Young to Wagga Wagga lateral. In 2008 the Council determined that the covered part of the MSP should be subject to light regulation (see paragraphs 5.18—5.21)).

<sup>2</sup> The Victorian Transmission System and the Interconnect are both covered pipelines subject to full regulation.

<sup>3</sup> National Third Party Access Code for Natural Gas Pipeline Systems—set out in Schedule 2 to the now repealed *Gas Pipelines Access (South Australia) Act 1997*.

Figure 1: Wagga Wagga Gas Distribution Network (from application)



### 3 Revocation of coverage

- 3.1 Under s 102 of the NGL a person may apply for a determination that a covered pipeline no longer be a covered pipeline. Such an application is made to the Council which must then make a recommendation to the relevant Minister as to whether the pipeline should continue to be a covered pipeline.
- 3.2 In making its recommendation the Council:
- (a) must give effect to the pipeline coverage criteria; and
  - (b) in deciding whether or not the pipeline coverage criteria are satisfied, must have regard to the national gas objective (NGL, s 105(1)).
- 3.3 The pipeline coverage criteria and national gas objective are set out in sections 15 and 23 of the NGL respectively. For ease of reference these sections are reproduced in Figure 2.

**Figure 2: Pipeline coverage criteria and the national gas objective (ss 15 and 23 of the NGL)**

<p><b>15—Pipeline coverage criteria</b></p> <p>The pipeline coverage criteria are—</p> <p>(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 1 market (whether or not in Australia), other than the market for the pipeline services provided by means of the pipeline;</p> <p>(b) that it would be uneconomic for anyone to develop another pipeline to provide the pipeline services provided by means of the pipeline;</p> <p>(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;</p> <p>(d) that access (or increased access) to the pipeline services provided by means of the pipeline would not be contrary to the public interest.</p> <p><b>23—National gas objective</b></p> <p>The objective of this Law 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.</p>
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- 3.4 The NGL further provides (in s 105(2)) that:
- (2) The NCC gives effect to the pipeline coverage criteria as follows:
    - (a) if the NCC is satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline—the recommendation must be in favour of the pipeline continuing to be a covered pipeline;
    - (b) if the NCC is not satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline—the recommendation must be in favour of the pipeline no longer being a covered pipeline.

- 3.5 The provisions in the NGL relating to coverage do not differentiate between transmission and distribution pipelines.
- 3.6 The Council must apply the *standard consultative procedure* set out in the National Gas Rules (Rule 8) in considering applications for revocation of coverage. This procedure requires that the Council generally provide its recommendation within a 4 month timeframe (see Rule 19).
- 3.7 As required the *standard consultative procedure* has been used in relation to this application:
- Public notice of the application was published in *The Australian* on Tuesday 7 May 2013.<sup>4</sup>
  - Written submissions on the application were sought with a closing date of 28 May 2013.
  - Four submissions were received in response to the application. A list of submissions is included in Appendix A. All the submissions received were from energy retailers (including both the companies supplying gas in the area serviced by the WWGDN) and their representative organisation, and opposed the revocation of coverage of the WWGDN. These submissions have been considered in preparing this draft recommendation.
  - In addition, Envestra provided the Council with a response to the submissions and, at the Council's request, Origin Energy (**Origin**) and Energy Australia provided some additional detail in relation to some issues raised in their submissions. This information has been published on the Council's website and taken into account in preparing this draft recommendation.
  - Further submissions are now invited in response to this draft recommendation. This will provide the applicant and other interested parties with a final opportunity to provide information to the Council before it finalises its recommendation. These submissions should be provided to the Council before 5pm on Monday 8 July 2013.
  - After considering these submissions the Council will finalise its recommendation to the relevant Minister.
- 3.8 On receipt of the Council's recommendation the relevant Minister must decide whether to make a coverage revocation determination. In doing so the Minister is bound by similar requirements to those applying to the Council in making its recommendation.
- 3.9 In essence, the Council must recommend, and the Minister must make, a coverage revocation determination where one or more of the pipeline coverage criteria is not satisfied.

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<sup>4</sup> The Council also placed this notice in *The Daily Advertiser* in Wagga Wagga on the same day.



- 3.10 In its application, Envestra argues that the WWGDN does not satisfy criteria (a) and (d) and therefore coverage should be revoked. These coverage criteria are considered further in sections 4 and 5 of this recommendation.

**Criteria (b) and (c)**

- 3.11 Envestra accepts that the other coverage criteria (criteria (b) and (c)) are satisfied in relation to the WWGDN.

- 3.12 In relation to criterion (b) Envestra accepts that it would be uneconomic for anyone to develop another pipeline to provide the services of the WWGDN, noting:

The significant excess capacity in the network and limited prospects for growth in demand for natural gas indicates the network has sufficient capacity and ability to meet demand for natural gas in the service area for the foreseeable future. Coupled with large sunk costs a new entrant would confront, Envestra considers it would be uneconomic (unprofitable) for anyone to duplicate this network. (Application at [92])

- 3.13 In relation to criterion (c), Envestra notes the NGL and the licencing conditions applying to the WWGDN impose strict obligations in relation to safety which operate irrespective of whether the pipeline is covered or not.

- 3.14 Other than noting that Envestra accepts criteria (b) and (c) are satisfied in relation to the WWGDN no submissions addressed these criteria.

- 3.15 The Council agrees that criteria (b) and (c) are satisfied in relation to the WWGDN. These criteria are not considered further in this recommendation.

## **4 Criterion (a) – material promotion of competition in a dependent market**

- 4.1 Criterion (a) requires that access (or increased access) to the pipeline services provided by means of the pipeline [to which an application relates] would promote a material increase in competition in at least 1 market (whether or not in Australia), other than the market for pipeline services provided by means of the pipeline.
- 4.2 This criterion allows for coverage to be revoked (or denied—when considering a coverage application) where access would not materially enhance the conditions or environment for competition in any dependent market.
- 4.3 The promotion of a material increase in competition involves a reduction in barriers to entry or other improvement in the opportunities and environment for competition such that competitive outcomes are materially more likely to occur.
- 4.4 In assessing whether criterion (a) is satisfied, the Council:
- identifies the relevant dependent market(s)
  - confirms that the dependent markets are separate from the market for the pipeline services, and
  - assesses the effect of access (or increased access) on each dependent market in order to determine whether access (or increased access) would materially promote competition in that market.

### **Dependent markets**

- 4.5 In its application Envestra identifies dependent markets upstream and downstream of the WWGDN.
- 4.6 The upstream market identified is described as one for transmission services and the wholesale gas supply market (which includes gas supplied from the Gippsland, Bass, Otway, Cooper and Bowen/Surat basins). The downstream market identified is one for gas sales in the Wagga Wagga and Uranquinty area serviced by the WWGDN.
- 4.7 The Council agrees with Envestra’s identification of a dependent downstream market for gas sales in the area serviced by the WWGDN. However, rather than bundling various products and services, the Council prefers to consider upstream effects of access (or increased access) to the extent necessary in the context of an eastern Australian gas wholesale market and a separate market for transmission services linking eastern Australian gas sources to the WWGDN.
- 4.8 Criterion (a) requires consideration of the effect of access on competition in markets other than the market for the pipeline services provided by, in this case, the WWGDN. It is therefore necessary to ensure that the dependent markets identified are separate from the market for WWGDN services.
- 4.9 The separation of the supply chain for natural gas into functional markets for production and wholesale supply, transmission, distribution and retail sale with each

functional level being functionally and economically separable is well recognised. The nature of the business conducted, assets engaged and differences in market participation at each of these levels indicates that each is functionally and economically separate from the others.

- 4.10 This conclusion is reinforced by the inclusion of structural and operational separation (ie ring fencing) requirements in the NGL. The Council notes these provisions only apply to the service provider of a covered pipeline. There are, however, no indications that Envestra's business model may change such that it might seek to become involved in any dependent market as a result of coverage of the WWGDN being revoked. Furthermore, Envestra's involvement with other covered pipelines seems likely to preclude such a development.
- 4.11 The Council is satisfied that pipeline services provided by the WWGDN are provided in a separate market from any of the dependent markets it proposes to consider.

## **Effects of access on competition in dependent markets**

### **Envestra's position**

- 4.12 Although Envestra identifies dependent markets, its consideration of the effect of access or increased access on competition is generalised and spans a number of markets.
- 4.13 Envestra contends that continued coverage of the network will not promote a material increase in competition in upstream or downstream dependent markets and notes that coverage to date appears to have had no material effect on competition (Application at [58]).
- 4.14 The company's position is summarised in the following statements (Application at [87]):
- Envestra has no related retail, transmission or gas wholesale interests to which it could leverage any market power into a dependent market
  - Envestra is indifferent between the sources of gas and transmission pipelines used to supply the network given both transmission connection points are under common ownership
  - Envestra has a strong incentive to increase throughput on the network given the large sunk costs, low network utilisation and the lack of any competitive advantage relative to electricity. Increasing throughput has the effect of lowering the unit cost for access to the network, which in turn makes gas more competitive when compared against alternative fuel sources and therefore more attractive to existing and potential end users
  - Envestra's pricing decisions are constrained by the ability of customers to substitute electricity for gas (particularly given the

worsening of the competitive position of gas relative to electricity in New South Wales)

- Envestra's pricing decisions are also constrained by the ability for large industrial users to bypass the distribution network and connect directly to a transmission pipeline
- Envestra's pricing decisions are further constrained by the countervailing power of retailers given they are large, vertically integrated participants with a sophisticated understanding of the energy market.

4.15 Envestra also notes that:

The fact that there is currently one major retailer of gas in Wagga Wagga, despite a decade of Full Retail Contestability, also suggests that coverage of the network has not facilitated competition in the downstream market to a material extent. Moreover, coverage will not impact on upstream markets given the very small size of the Wagga Wagga natural gas market, which accounts for just 0.3% of the gas consumed in the eastern Australian gas market (Application, page 4).

## **Submissions**

4.16 As with the applicant, the submissions received from other parties considered the effect of coverage on competition without direct reference to specific dependent markets. All four submissions received disagreed with Envestra's assertion that coverage would not materially promote competition. The submissions made a number of similar points contending:

- that in the absence of coverage network users could be exposed to inefficient (monopoly) prices and non-price terms of access which would restrict the development of competition
- that only covered networks have more than one retailer supplying gas to small customers. A key factor in a retailer's decision to enter a new market is the regulatory regime in that market.
- negotiations with Envestra (and other distribution businesses) are fraught even in relation to covered pipelines and removal of coverage would significantly exacerbate this situation
- unlike transmission pipeline services (where substitute services can emerge as new pipelines are developed) gas distribution pipelines have no substitutes
- the limited competition that can be observed in some gas retail markets (including in the Wagga Wagga area) is a symptom of inadequate margins and retail price regulation which may not persist in the medium term

- removal of coverage would increase uncertainty and reduce transparency and accountability in setting access prices for gas retailers and users and potential users
- Envestra's retention of 'onerous' access terms for access to uncovered pipelines which have been disallowed in relation to covered pipelines illustrates the scope for imposition of terms and conditions of access that may restrict the development of further competition if coverage is not retained
- the costs (particularly the up-front costs of replacing appliances) faced by residential and other smaller users of gas in switching to electricity, and the large dedicated capital expenditures already incurred by large gas customers, are such that Envestra is not sufficiently constrained in setting access prices and other terms by the risk of customers switching to other energy sources (in particular electricity)
- the time and cost involved in reinstating coverage would allow price and other outcomes to deteriorate considerably before any remedy from reinstating coverage would be available. Furthermore, a retailer may prefer to apply the resources required in making an application for revocation instead to entry into another market where there is an existing regulatory regime.

### **Council consideration**

4.17 The Council must consider criterion (a) in relation to the relevant dependent markets discussed in paragraphs 4.5 to 4.11. It appears to the Council that most of the contentious issues raised in the application and submissions are appropriately considered in the context of the market for gas sales in the area serviced by the WWGDN (see paragraph 4.25 and following).

4.18 For completeness it is also necessary to consider the effects of access to the WWGDN on the conditions for competition in the upstream markets for wholesale gas supply and gas transmission.

#### *The eastern Australian wholesale gas market and the market for gas transmission services*

4.19 Envestra has no interests in the upstream eastern Australian wholesale gas market.

4.20 Envestra also has no relevant interests in gas transmission, although it acknowledges that APA (Envestra's largest shareholder) owns and operates both of the transmission pipelines<sup>5</sup> that connect the WWGDN to eastern Australian gas supplies.

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<sup>5</sup> The Moomba to Sydney pipeline (via the Young to Wagga Wagga lateral) and the Victorian Principal Transmission System (via the Interconnect).

- 4.21 Envestra argues that without vertical interests, it has no scope or incentive to exert market power to limit competition in the upstream market, for example by refusing or minimising supply from a particular transmission pipeline.
- 4.22 The Council accepts that Envestra has little or no scope or incentive to limit competition in any upstream market.
- 4.23 The Council also considers the value and volume of gas that might be transported on the WWGDN is insufficient for access to that pipeline to have any material impact on the state of competition in these upstream markets or for the state of coverage of the WWGDN to affect competition in these markets.
- 4.24 Even if this application were to be regarded as a precursor to the removal of coverage of other gas distribution pipelines in NSW or eastern Australia more broadly,<sup>6</sup> given the relative size and significance of the WWGDN it is unlikely that the Council would conclude that access (or increased access) to the WWGDN would materially promote competition in the upstream dependent markets.

*The downstream market for gas sales in the area serviced by the WWGDN*

- 4.25 The Council considers that competition in the market for gas sales in the area serviced by the WWGDN is limited. One seller has the vast majority of market sales. The only other seller has a minor share of the market and no new entry has occurred. This situation has persisted for some time.
- 4.26 The Council is of the view that the limited competition seen in this (relatively small) market principally reflects the lack of incentives for new market entry or expansion given available margins and the difficulties of competing for new customers in the presence of retail price controls.
- 4.27 The Council considers that it is likely that additional incentives for competition in gas supply will emerge in NSW (including in the area serviced by the WWGDN) in the short to medium term. In recent draft reports, both the Australian Energy Market Commission (**AEMC**) and the NSW regulator, the Independent Pricing and Regulatory Tribunal (**IPART**), have concluded that competition in gas supply in NSW is sufficiently effective to allow regulation of retail prices to be removed.<sup>7</sup> Acknowledging the preliminary findings of these agencies, the Council agrees with Origin that competition is likely to become more vigorous when retail price regulation is removed and some improvement of margins is allowed. The Council recognises, however, that the development of further competition in the market for gas sales in the area serviced by the WWGDN (and more generally) may be limited by availability of gas supplies and increased gas prices (both in absolute terms and perhaps relative to electricity).

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<sup>6</sup> AGL in its submission expresses a concern that “the revocation of the Wagga Wagga Network would introduce a precedent that could open the way for networks in other regional towns to follow a similar process of revocation”. Energy Australia raises this matter also.

<sup>7</sup> See AEMC 2013 and IPART 2013.

- 4.28 The Council does not accept that, the lack of competition notwithstanding, coverage of the WWGDN justifies revoking coverage on the basis that it has not lead to greater levels of competition. Importantly, in considering criterion (a) the Council not only examines the current and past state of competition but also considers the likely effect on competition of, in this case, increased access in the future on reasonable terms and conditions. In so doing, changes in the regulatory landscape such as offered by the anticipated removal of retail price controls must be considered.
- 4.29 Downstream, Envestra holds no interest in gas supply at the retail level and is prevented from doing so by the ring fencing requirements in s 139 of the NGL.<sup>8</sup>
- 4.30 The Council accepts Envestra's position that the lack of involvement in gas retailing removes any incentive to leverage the market power it has through ownership of the WWGDN.
- 4.31 The Council also accepts in principle Envestra's contention that the nature of the capital and operating costs associated with a distribution pipeline and the availability of spare capacity make additional throughput desirable and this may constrain Envestra's access pricing. However, the strength of that constraint depends on the prospects for increasing throughput and the relative contribution to Envestra's profits from reducing (or limiting) prices to attract additional throughput or raising prices to existing users.
- 4.32 It is not clear to the Council that the prospects for attracting additional throughput are such that access prices will be constrained in the absence of coverage.<sup>9</sup> Even if access prices are constrained, perhaps by historic levels and the risk of re-regulation, the Council is concerned that non price access terms, and measures to transfer risk between a pipeline owner and other parties, may adversely affect the prospects for competition in the sale of gas in the area serviced by the WWGDN.
- 4.33 The Council has similar concerns about Envestra pointing to the decline in gas consumption and the consequent reducing use of the WWGDN as a further constraint on its ability to increase prices.
- 4.34 The Council acknowledges that Envestra flags its intention to pass back to customers the regulatory costs it will avoid in the event that coverage of the WWGDN is revoked. It proposes to do this by: not applying an already approved increase in regulated distribution prices; limiting future price increases to no greater than the CPI; and continuing marketing incentives such as appliance rebates. Envestra also foreshadows its intention to continue to publish its tariffs for access to the WWGDN in order to demonstrate that it is not discriminating among energy retailers and to engage with retailers to determine mutually agreeable access terms for the WWGDN.

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<sup>8</sup> Given Envestra's interests in other covered distribution pipelines, it seems likely the company will remain subject to the ring-fencing provisions in the NGL even if coverage of the WWGDN was revoked.

<sup>9</sup> The population of Wagga Wagga, for example, is projected to grow only minimally in the period to 2031.

- 4.35 While the Council has little reason to doubt the *bona fides* of Envestra's stated intentions to return some of the savings in regulatory costs to customers, limit future price increases and engage with retailers in relation to access terms, these intentions can only be given limited weight given difficulties that would arise in enforcing such promises in relation to an uncovered pipeline.
- 4.36 In this regard, the Council also notes the comment by Energy Australia querying whether gas distribution network prices should be falling as they are said to have done recently in Victoria (rather than rising in line with the CPI) and the complaints voiced by each retailer in relation to the difficulties they face in negotiating with Envestra (and other distribution businesses).
- 4.37 Envestra argues that any ability it may have to price above efficient costs is constrained by the availability of alternative fuels—electricity and LPG—and also the prospect that industrial users could bypass the WWGDN and connect directly to a transmission pipeline via a new lateral pipeline. Accordingly, Envestra says users have a degree of countervailing power as they can switch to alternative energy sources.
- 4.38 Envestra also contends that the gas retailers possess countervailing power as both the existing retailers operating in the district (Origin and Energy Australia) are experienced and sophisticated energy market participants.
- 4.39 The Council considers that while in principle the matters outlined above could be expected to constrain the ability of Envestra to use market power and thereby adversely impact on competition in the relevant dependent market, the feasibility of such matters must also be taken into account. The purported alternatives for users are not without costs. Installing new appliances or machinery that use an alternative source of fuel to gas requires expenditure by the user. Similarly, assuming it is even possible, configuring existing appliances or machinery to use an alternative fuel source also comes at a cost. The Council considers that in both the domestic and industrial contexts such costs are likely to be substantial, allowing exploitation of significant market power without triggering significant switching.
- 4.40 For an industrial user, constructing a lateral to connect directly to an available transmission pipeline involves substantial planning, approval processes, engagement of appropriate contractors and not insignificant cost. While this does not deny the prospect of an industrial user bypassing the WWGDN it does suggest this avenue is a medium term prospect rather than something readily at the disposal of the industrial user.
- 4.41 The Council also acknowledges that while gas prices to end users are likely to be constrained by the cost of gas relative to other energy sources, this constraint may not prevent some parties in the supply chain increasing margins at the expense of others.
- 4.42 The Council agrees that the two existing retailers, Origin and Energy Australia can be expected to have some countervailing power due to their experience and knowledge of the gas sector. Any new entrant retailer would also be likely to possess some



countervailing power as it is more likely than not that it will be a retailer operating in some other energy market that can leverage off its knowledge and experience to negotiate with Envestra in order to start operating in the Wagga Wagga region. However, the strength of such countervailing power of any retailer cannot necessarily be expected to benefit end users and, in particular, households. Under current regulatory arrangements gas retailers are generally allowed to pass through distribution cost increases, which limits the incentive for retailers to resist such increases. As such the application of any countervailing power by a retailer may be an inadequate response to any possible anticompetitive conduct affecting end users.

- 4.43 The Council also considers that the costs and risks of competing in the market for gas sales in the area serviced by the WWGDN, especially for smaller second tier gas retailers, are likely to be lower if the conditions for access to the WWGDN (and the basis for the determination of these in the future) are known in advance. The *ex ante* regulation associated with a covered pipeline seems more likely to allow this, and also provides some certainty to retailers in deciding to enter a new market, than would be the case for an uncovered pipeline (or indeed a pipeline subject to light regulation).
- 4.44 While, as Envestra notes, revocation does not preclude coverage in the future should conditions and satisfaction of the coverage criteria permit, reimposing coverage can be a costly exercise. In the Council's view, were coverage to be revoked as a result of this application, the prospect of the WWGDN being re-covered provides only a limited constraint on setting access prices and other terms in relation to the WWGDN, especially in the shorter term.
- 4.45 In addition to the issues canvassed in the application and submissions the Council is concerned that revocation of coverage at this time might affect the scope for removal of retail price regulation of gas sales in NSW.
- 4.46 The Council is aware that the AEMC is to report to the NSW Government on competition in electricity and gas markets in NSW including whether and how price caps should be removed. The AEMC has published a draft report (AEMC 2013) and is seeking additional submissions before making its final report and recommendations in September. The Council believes that were the revocation of coverage of the WWGDN (perhaps as a precursor to other revocation action) to discourage removal of retail price regulation the scope for additional competition in the area served by the WWGDN and more widely would be significantly reduced. In such circumstances continued coverage would materially promote competition including in the relevant dependent market.
- 4.47 Having regard to the submissions received that Council is also concerned that the costs associated with the transactional interfaces between gas retailers and distribution pipeline operators are significant. Unlike the electricity sector where most of these processes have been standardised and automated, in the gas sector many pipelines appears to have bespoke requirements and retailers have to interface with each different system. There seems to be significant scope for these costs to be

reduced and for competition to be enhanced as a result. The Council understands that some initiative may be under way in this regard. However, it appears to the Council that any such initiatives, and positive developments in this regard more generally, are more likely to flourish within a regulated environment than where a pipeline is uncovered.

- 4.48 Having regard to the information available at this stage, the Council is satisfied that access (or increased access) would promote a material increase in competition in the market for gas sales in the area serviced by the WWGDN.

### **Conclusion on criterion (a)**

- 4.49 The Council's considers at this stage that criterion (a) is satisfied in respect of the market for gas sales in the area serviced by the WWGDN.

## 5 Criterion (d) – Access not contrary to the public interest

- 5.1 For criterion (d) to be met in relation to the WWGDN it is necessary that access (or increased access) to the pipeline services provided by the network not be contrary to the public interest.
- 5.2 This criterion allows for coverage to be revoked (or denied—when considering a coverage application) where access would be contrary to the public interest, notwithstanding that the other coverage criteria may be met.<sup>10</sup>

### Approach to the assessment of criterion (d)

- 5.3 The coverage criteria in s 15 of the NGL serve the same function as the declaration criteria in ss 44G and 44H of the *Competition and Consumer Act 2010* (Cth) (CCA). Satisfaction of the declaration criteria allows for infrastructure services to be subject to access regulation in the same way as satisfaction of the coverage criteria in the NGL allows for coverage (and hence access regulation) of pipeline services. Despite some wording differences, 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.<sup>11</sup> Declaration criteria (a) and (b) in the NGL are the equivalent to coverage criteria (a) and (b) in the CCA. Coverage criterion (f) is the equivalent to declaration criterion (d).
- 5.4 In its *Pilbara Rail* decision,<sup>12</sup> the High Court overturned the previous interpretation of declaration criterion (b)<sup>13</sup> which had linked the word “uneconomical” to the presence of natural monopoly characteristics in the supply of a service. Instead the High Court held that “uneconomical” meant “unprofitable” and that:
 

[109] If the Minister is satisfied that it would be uneconomical (in the sense of unprofitable) for anyone to develop an alternative facility, criterion (b) is met.
- 5.5 The Council sees no basis for distinguishing the interpretation of coverage criterion (b) from the effect of the High Court’s interpretation of declaration criterion (b) or for not taking into account the implications of the *Pilbara Rail* decision for the declaration process as a whole in considering the coverage process in the NGL.
- 5.6 The satisfaction of criterion (b) in relation to the WWGDN is not at issue (see paragraph 3.12). However, when one turns to the consideration of whether access (or increased access) to the WWGDN is contrary to the public interest under coverage

<sup>10</sup> This criterion does not allow for coverage of a pipeline on ‘public interest grounds’ when any other coverage criterion is not satisfied; it can only operate to override coverage being available in situations where all other coverage criteria are satisfied.

<sup>11</sup> Some key precedents in relation to regulation of gas pipelines predate the NGL and relate to the coverage criteria contained in the *Gas Code* (see footnote 3). Those criteria are identical to those in s 15 of the NGL.

<sup>12</sup> *The Pilbara Infrastructure Pty Ltd v Australian Competition Tribunal* (2012) 290 ALR 750.

<sup>13</sup> Sections 44G(2)(b) and 44H(4)(b) of the CCA.

criterion (d), the scope of benefits that can be taken to arise from access due to the satisfaction of criterion (b) is, as a result of the High Court's interpretation, narrower than would have been the case under the previous interpretation, where avoidance of the costs from the unnecessary duplication of infrastructure facilities would likely have resulted in a significant public benefit from access.

- 5.7 To the extent that the consideration of coverage criterion (d) focuses on a comparison of the costs of access with the benefits that follow from access such a comparison is likely to disregard benefits not captured in the assessment of criteria (a) and (b). Alternatively a fuller examination of the benefits of access may be required if coverage criterion (d)<sup>14</sup> is to involve a fully developed cost benefit analysis. However, this latter approach seems inconsistent with other statements by the High Court in the *Pilbara Rail* decision.
- 5.8 In the *Pilbara Rail* decision the High Court also directly considered the application of declaration criterion (f). In particular, the Court stated:

[42] ... It is well established that, when used in a statute, the expression "public interest" imports a discretionary value judgment to be made by reference to undefined factual matters. As Dixon J pointed out in *Water Conservation and Irrigation Commission (NSW) v Browning*, when a discretionary power of this kind is given, the power is "neither arbitrary nor completely unlimited" but is "unconfined except in so far as the subject matter and the scope and purpose of the statutory enactments may enable the Court to pronounce given reasons to be definitely extraneous to any objects the legislature could have had in view". It follows that the range of matters to which the NCC 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. And conferring the power to decide on the Minister (as distinct from giving to the NCC a power to recommend) 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.  
[footnotes omitted]

- 5.9 The High Court also noted that, like declaration criterion (c) in the CCA (which deals with the national significance of an infrastructure facility) consideration of declaration criterion (f) "may also direct attention to matters of broad judgment of a generally political kind" (*Pilbara Rail* [43]). The High Court contrasted this sort of judgment with that involved in consideration of other of the criteria which it regarded as of "a more technical kind" (*Pilbara Rail* [44]).
- 5.10 The Council considers that a detailed technical examination of the costs and benefits of access is inconsistent with the High Court's view of the judgment involved in

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<sup>14</sup> and declaration criterion (f)

considering declaration criterion (f) and by implication the equivalent public interest provision in the NGL– coverage criterion (d).

- 5.11 The Council also questions whether a situation where one criterion is not satisfied simply because another criterion is also not satisfied is consistent with the schemes for determining coverage under the NGL and declaration under the CCA. This is particularly the case where the costs or difficulties associated with regulated access are unremarkable and would not alone engage criterion (d).
- 5.12 Furthermore, in circumstances where access would not promote competition coverage or declaration will not be available because the criterion that addresses that issue (criterion (a)) will not have been satisfied. In the Council’s view it is unnecessary and inappropriate to also find that criterion (d) is not satisfied, essentially because criterion (a) is unable to be satisfied.
- 5.13 The Council considers that the preferable approach to coverage criterion (d)<sup>15</sup> is to seek generally to identify any matter that could mean access (or increased access) might be contrary to the public interest and then assess whether the likelihood and consequences of that matter make access contrary to the public interest.<sup>16</sup> The Council considers that this approach is more consistent with the *Pilbara Rail* decision in that it involves a judgment that the Council is well able to advise on, and a Minister is well placed to make, rather than a detailed technical examination of costs and benefits for which only partial information is likely to be available.

## **Envestra’s position**

- 5.14 Envestra’s approach involves an assessment of the relative costs and benefits associated with access. Envestra contends that there are no benefits to offset the regulatory costs associated with coverage of the WWGDN and that as a result continued coverage is contrary to the public interest and criterion (d) is not satisfied.
- 5.15 The benefits of coverage are taken to be those that arise as a consequence of satisfaction of criterion (a)—that is benefits from increased scope for competition in dependent markets “as well as any other benefits not captured by this criterion” (Application at [96]). Envestra identifies the costs of coverage as including direct regulatory costs, disruption costs and adverse impacts on investment and economic efficiency arising from regulation.
- 5.16 On this approach Envestra argues that where criterion (a) is not satisfied there are no competition benefits arising from coverage. Envestra also states that in relation to access to the WWGDN it is unaware of any other public benefits arising from coverage.

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<sup>15</sup> And declaration criterion (f).

<sup>16</sup> Ultimately it will be for a Court to determine the proper interpretation of the coverage criterion (d) (and declaration criterion (f)) and the approach to be taken to assessing whether those criteria are satisfied.

- 5.17 Although Envestra notes that an absence of public benefits may of itself prevent satisfaction of criterion (d) it goes on to consider the regulatory costs flowing from coverage. Envestra notes that it has limited its consideration to the direct costs of regulation.
- 5.18 The NGL provides for two forms of regulation of covered pipelines—*full regulation* and *light regulation*. The Council is responsible for determining the form of regulation applicable to a covered pipeline, either in conjunction with a coverage application or through a separate application for a light regulation determination.<sup>17</sup>
- 5.19 *Full Regulation* centres on *ex ante* approval by the relevant regulator (generally the Australian Energy Regulatory (AER)) of an access arrangement put forward by a pipeline operator relating to the terms and conditions for access to a pipeline. As described by Envestra, development and approval for an access arrangement can take up to two years to complete with any merits review adding further to the time and resources required.
- 5.20 *Light Regulation* is intended to be a less expansive and less costly form of regulation which involves voluntary submission of a limited access regime (largely dealing with non-price terms of access) and if necessary *ex post* determination of access prices through a negotiate/arbitrate process similar to that for services declared under Part IIIA of the CCA.
- 5.21 A more detailed comparison of the key features of Light and Full Regulation, drawn from the Council's *Guide to Light Regulation*, is reproduced in Appendix B.
- 5.22 The cost of regulation under each form of regulation may differ significantly. The costs of light regulation can increase significantly where a number of access disputes require arbitration.
- 5.23 As the WWGDN is currently subject to full regulation Envestra's application, unsurprisingly, focuses on the costs associated with that form of regulation. However, helpfully, Envestra also discusses the costs that might arise under light regulation.
- 5.24 Envestra notes that under full regulation the main cost is the requirement to submit and have approved by the AER a full access arrangement in accordance with the specific and detailed requirements of the National Gas Rules. Importantly, Envestra in the application contends that:

[104] ... the costs associated with a full Access Arrangement review process are to a large extent independent of the size of the network due to the prescriptive nature of the NGR – the requirements of the NGR are the same irrespective of the size of the network. For example, the Queensland network has an annual revenue of approximately \$70 million compared to South Australia of \$240 million and yet incurred similar regulatory costs.

<sup>17</sup> For more information on the form of regulation of pipelines see the Council Guide: NCC Light regulation of covered pipeline services—A guide to the function and powers of the National Competition Council under the National Gas Law, Part C – Light regulation of covered pipeline services, July 2011.

[105] For example, determining the appropriate input values to be used when deriving the weighted average cost of capital (WACC) is independent of network size. Twenty consultant reports were submitted to the AER by Envestra supporting its WACC derivation as part of the Victorian network's recent full Access Arrangement review (and indeed a similar number were submitted for the South Australian and Queensland reviews that were finalised just prior to the commencement of the Victorian review process). Envestra would expect to submit a similar number of reports for Wagga Wagga if revocation is not granted.

- 5.25 Envestra accepts that some other regulatory costs are sensitive to the size of the network. Costs of preparing capital and operating cost forecasts should, for example, be lower than for larger networks.
- 5.26 Envestra further contends that regulatory costs are unlikely to diminish over time and may increase as additional regulatory requirements are imposed.
- 5.27 In relation to the WWGDN, under full regulation Envestra estimates a regulatory cost of \$2.8 million for each five year regulatory period. Envestra notes that this equates to approximately \$100 per customer.<sup>18</sup> The elements of Envestra's cost estimate are shown in Figure 3.
- 5.28 Envestra says that this estimate is conservative as, for example, it does not include the costs to retailers or consumers of participation in the regulatory process. It also notes the recent changes to the National Gas Rules to allow greater use of benchmarking in the AER's decision making. Envestra considers that these changes are likely to further increase its regulatory costs if the WWGDN remains covered.

**Figure 3: WWGDN Expected regulatory costs per (5 year) regulatory period**

	\$000
<b>Envestra Costs</b>	
consultants	700
Internal staff costs	1500
<b>Access Arrangement Process</b>	<b>2200</b>
Avoided compliance reporting	100
<b>Total</b>	<b>2300</b>
<b>AER Costs</b>	
Access Arrangement process	500
<b>Total</b>	<b>2800</b>

- 5.29 In relation to light regulation of the WWGDN, noting it has no direct experience of this form of regulation, Envestra estimates that the relevant approval processes could

<sup>18</sup> The Council notes that the costs of regulation also need to be considered in the context of the revenues and profits Envestra earns from the WWGDN. In the regulatory period 2010-15 Envestra is expected to receive revenues of \$50 million from the WWGDN (AER 2012, Table 4.2).

cost around \$0.25 million, although it argues that the cost of light regulation could rise significantly (up to and including the level associated with full regulation) if disputes arise leading to access arbitration proceedings.

## Submissions

- 5.30 Submitting parties dispute Envestra's estimate of the costs of regulation and Envestra's claims that there are no benefits from coverage that could be considered to offset such costs in any event.<sup>19</sup>
- 5.31 Origin states that based on its experience, a smaller network is likely to require a less onerous access arrangement. The ERAA also queries Envestra's claims that the cost of an access arrangement is independent of the size of the network. Origin also notes the WWGDN is a less complex system and a smaller proportion of Envestra's overall business, particularly when compared to Envestra's South Australian and Queensland networks. Origin considers that developing an access arrangement for the WWGDN should be less onerous and costly.
- 5.32 Origin submits that it would expect synergies across Envestra's business such that in preparing for and undertaking an access arrangement for the WWGDN Envestra is unlikely to be starting from scratch and would be able to use the consultants' reports already obtained for other networks along with existing legal advice. Origin says Envestra should be able to use reports commissioned for compliance on other covered networks and apply them to the regulatory needs of the WWGDN before starting anew. Energy Australia also takes up this point noting that "there is no company in a better position than Envestra to maximise the economies of scale and leverage the review data used in [its] larger networks to offset the [access arrangement] costs to the Wagga Wagga network."
- 5.33 In respect of Envestra's actual cost claims and return to users should coverage be revoked:
- (a) Origin "notes that the \$2.3 million represents more than total capital expenditure on the network over the current regulated period, and over two thirds of the operational expenditure budget." Origin queries "how it can be a commercial undertaking for Envestra to spend as much on the network's five year capital outlay solely on one regulatory application."
  - (b) Origin and Energy Australia query the utility in considering the \$0.5 million Envestra nominates as the costs to the AER in reviewing its access arrangement as the AER is unlikely to be able to avoid such costs whether or not the WWGDN is covered.
  - (c) AGL considers that revocation would introduce financial uncertainties for customers, particularly those that have invested in new

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<sup>19</sup> The effects of access on competition and consequent public benefits are canvassed in the Council's consideration of criterion (a) in section 4 of this recommendation.



connections or equipment. While AGL supports Envestra's claims that it could return the costs of regulation to users via a reduced tariff, AGL prefers a move to review the process of regulation rather than to remove regulation itself. AGL also states that it considers that the costs of regulation are to some extent controllable by Envestra.

- (d) Energy Australia submits that both the AER and Envestra could investigate how the costs of regulation can be reduced. Energy Australia considers that, over the long term, without coverage the costs to consumers could be higher.

## **Council consideration**

- 5.34 The Council accepts that the costs of full regulation of the WWGDN are significant although it considers the quantum may be disputed. The Council notes that applications put to it for light regulation of covered pipelines put the costs savings from removing the requirement to have an access arrangement within the range \$400 000–1.5 million. While direct comparisons cannot be made the Council considers Envestra's stated \$2.3 million cost for preparing and gaining approval for an access arrangement to be excessive.
- 5.35 Noting that under the NGL uncovered pipelines remain subject to some level of ongoing regulation the Council also considers that the reduction in regulatory costs attributed to the revocation of coverage may also be overstated. The Council is of the view that some of the regulatory costs identified by Envestra may not evaporate if coverage is revoked. In particular, it is conceivable that information gathering to support greater use of benchmarking by the AER could extend to uncovered as well as covered pipelines in order to provide a fuller data set. On the other hand the Council accepts that there are likely to be some other costs of regulation that are not captured in Envestra's calculations (including at least some of those noted in the application).
- 5.36 The Council agrees with the various submissions that state many of the costs to Envestra of full regulation of the WWGDN are within its control and should be able to be reduced due to synergies that are likely to exist across Envestra's business. However the Council acknowledges that the incentives to manage the costs of regulation may not be as sharp as they need to be.
- 5.37 The Council also notes that were the WWGDN not to be covered, Envestra and the existing and potential users of the WWGDN will need to negotiate the full range of access terms and conditions—a process which may involve significant costs. It may well be that the costs of negotiating access on a commercial basis will increase should coverage be revoked which will in turn erode the regulatory cost saving suggested by Envestra.
- 5.38 Although the WWGDN is subject to full regulation, in considering whether the costs of regulation are such that access may be contrary to the public interest, the Council

is of the view that where the prospect for light regulation exists, then the costs of this form of regulation may be the more relevant comparator.

- 5.39 Envestra's estimate of its likely costs under light regulation appears reasonable. However, the nature of light regulation means that regulatory costs may rise depending on the number of disputes (if any) that occur under the regime. From the tone and content of the submissions the Council has received there appears to be a significant prospect of disputes arising under light regulation.
- 5.40 At this stage, other than the cost-benefit reasoning already discussed, no party has suggested, and the Council itself has not identified, any reason why access (or increased access) to the WWGDN would be contrary to the public interest.
- 5.41 The Council does not regard the cost of regulation of the WWGDN, whether under the current full regulation regime or under the prospect of light regulation, to be such as to make access (or increased access) contrary to the public interest. While either form of regulation involves costs, in relation to the WWGDN these costs are unremarkable and unlikely to exceed the benefits which would flow from the promotion of competition due to continued access on fair and reasonable terms through continued coverage of the WWGDN.
- 5.42 The Council is, at this stage, satisfied that access (or increased access) to the pipeline services provided by the WWGDN would not be contrary to the public interest.

### **Conclusion on criterion (d)**

- 5.43 The Council's preliminary view is that criterion (d) is satisfied.

## Appendix A Information taken into account by the Council

### A.1 Application and submissions

Author	Date	Title	Confidentiality
Envestra Limited	1 May 2013	<i>Wagga Wagga Network Revocation Submission</i>	Yes. Separate confidential and publication versions provided to Council.
Energy Australia Pty Ltd	27 May 2013	<i>Submission re application for revocation of coverage – Wagga Wagga gas distribution system</i>	
Energy Retailers Association of Australia	28 May 2013	<i>Submission re application for revocation of coverage – Wagga Wagga gas distribution network</i>	
AGL Energy Limited	28 May 2013	<i>Submission, letter to NCC re revocation of Wagga Wagga gas network</i>	
Origin Energy Limited	28 May 2013	<i>Submission</i>	
Envestra Limited	5 June 2013	<i>Letter to National Competition Council</i>	
Energy Australia Pty Ltd	5 June 2013	<i>Energy Australia Response to Envestra's Application for Revocation of Coverage – Wagga Wagga Gas Distribution System, Supplement 1</i>	
Origin Energy Limited	6 June 2013	<i>Application for revocation of coverage of the Wagga Wagga natural gas distribution network – response to NCC request for additional information</i>	

## A.2 References

Author	Date	Title	Confidential
AEMC	2013	<i>Review of Competition in the Retail Electricity and Natural Gas Markets in New South Wales, Draft Report, 23 May 2013, Sydney</i>	No
AER	2012	<i>State of the Energy Market 2012</i>	No
IPART	2013	<i>Review of regulated gas prices and charges for gas, 2013 to 2016, Draft Report, April 2013</i>	No

## A.3 Legal sources

<b>Tribunal and court decisions</b>
<i>The Pilbara Infrastructure Pty Limited v Australian Competition Tribunal</i> [2012] HCA 36 ( <b>Pilbara Rail</b> )
<b>Legislation</b>
<i>Competition and Consumer Act 2010</i> (Cth) ( <b>CCA</b> )
<i>National Gas Rules 2009</i> ( <b>NGR</b> )
<i>National Gas (South Australia) Act 2008</i> (SA) ( <b>NGL</b> )

## Appendix B Key features of light v. full regulation

Full (access arrangement) regulation	Light regulation (additions or differences from full regulation)
<p>Service provider subject to general duties:</p> <ul style="list-style-type: none"> <li>• Must be a specified legal entity (principally a corporation - s 131).</li> <li>• Must not engage in conduct to prevent or hinder access (s 133).</li> <li>• Obligated to disclose gas supply information in certain circumstances (r 138).</li> </ul>	No difference.
<p>Subject to 'ring-fencing' requirements</p> <ul style="list-style-type: none"> <li>• Must not carry on a related business (s 139).</li> <li>• Must keep marketing staff separate from associate's related businesses (s 140).</li> <li>• Must keep consolidated and separate accounts (s 141).</li> <li>• Must comply with any AER regulatory information instrument about information reporting (s 48).</li> <li>• Must keep sensitive information confidential (r 137).</li> <li>• Any additional ring-fencing requirements imposed by the AER under s 143.</li> </ul>	No difference.
<p>Contracts with associates must not be entered into, varied or given effect to if they substantially lessen competition in a market for natural gas services or breach competitive parity rule unless approved by the AER under the rules (ss 147 and 148 and r 32). Entering into or varying an associate contract must be notified to the AER (r 33).</p>	No difference.

Full (access arrangement) regulation	Light regulation (additions or differences from full regulation)
<p>Subject to rules relating to facilitating requests for access and information disclosure:</p> <ul style="list-style-type: none"> <li>• Requirements to publish information and access arrangement (r 107).</li> <li>• Must provide certain information about tariffs (r 108).</li> <li>• Must not bundle services (r 109).</li> <li>• Must respond to request for access in structured manner (r 112).</li> </ul>	<p>Subject to same rules as for full regulation pipelines and additionally:</p> <ul style="list-style-type: none"> <li>• Must report annually to the AER on access negotiations (r 37).</li> <li>• Must publish terms and conditions of access, including prices on offer, on website (r 36).</li> </ul>
<p>Requirement to submit and have in force a full access arrangement which sets out terms and conditions of access and reference tariffs for services likely to be sought by a significant part of the market (s 132). Importantly:</p> <ul style="list-style-type: none"> <li>• Non-price conditions subject to AER approval, including capacity trading requirements, changes of receipt and delivery points, extension and expansion requirements and queuing requirements (rr 103 - 106).</li> <li>• Total revenue to be set by the AER taking into account the revenue and pricing principles (s 24 and 28) and using the building blocks approach to economic regulation (r 76) which is highly dependent upon: <ul style="list-style-type: none"> <li>• rules relating to the establishment and roll forward of a regulatory capital base</li> <li>• determination of a rate of return on capital</li> <li>• assessment of regulatory depreciation allowances and schedules</li> <li>• estimates of corporate income tax (where post-tax model adopted)</li> <li>• maintenance and reporting of incentive arrangements</li> <li>• determining allowances for operating expenditure</li> <li>• creating a reference tariff variation mechanism based upon total revenue and appropriate cost allocation, and</li> <li>• complex arrangements relating to surcharges, capital contributions, speculative</li> </ul> </li> </ul>	<p>No requirement to submit or have in force a full access arrangement. A limited access arrangement (governing only non-price terms and conditions) may be submitted for approval by the service provider if it chooses to do so (s 116).</p> <p>Note that only conforming capital expenditure is included in a capital base while a pipeline is on full regulation, however if a light regulation pipeline returns to full regulation actual capital expenditure in the intervening period is rolled into the capital base (r 77(3))</p>

Full (access arrangement) regulation	Light regulation (additions or differences from full regulation)
investment and capital redundancy (see generally Part 9 of the National Gas Rules).	
Requirement to submit detailed access arrangement information with an access arrangement and keep this information available (rr 42 - 43). This extends to detailed financial and operational information (r 72). The AER may also impose additional information requirements to allow them to assess an access arrangement as a regulatory information instrument (s 48).	No general requirement to submit or have approved access arrangement information. Minimal access arrangement information on capacity required if service provider chooses to submit a limited access arrangement (r 45(2)).
Requirements relating to compliance (usually annually) with the reference tariff variation mechanism to increase reference tariffs by the control mechanism (including any pass through arrangements) (r 97).	No such requirements imposed.
<p>A user or prospective user is able to notify to the dispute resolution body (the AER everywhere but Western Australia) an access dispute about any aspect of access to pipelines services provided by means of a covered pipeline (s 181) and the access determination may deal with any matter relating to the provision of a pipeline service to a user or prospective user (s 193). The dispute resolution body must take into account the national gas objective and revenue and pricing principles in resolving a dispute (s 28). Existing user rights and usage are protected (s 188) and the applicable access arrangement must be applied (s 189). Geographical extensions of a pipeline cannot be ordered (r 118(1)(b)).</p> <p>Note that pipeline services which are not likely to be sought by a significant part of the market (i.e. non-reference services) may still be the subject of an access dispute even though no price is provided by the access arrangement (s 181).</p>	<p>Access dispute provisions apply, any approved limited access arrangement must be applied, but otherwise price and non-price terms and conditions set by the dispute resolution body.</p> <p>In relation to capacity expansions, for a light regulation pipeline the access seeker needs to fund the expansion entirely (r 118(2)(a)), an extension or expansion requirement in an access arrangement governs the ability for a service provider to be required to fund the expansion of a full regulation pipeline (r 118(2)(b)).</p>
Price discrimination between users recognised in both prudent discount provisions (r 96) and pricing principles for distribution services (r 94). While service providers can offer other discounts, these would not be reflected in reference tariffs (r 96).	Prohibition on engaging in price discrimination unless that discrimination is conducive to efficient service provision (s 136).

Full (access arrangement) regulation	Light regulation (additions or differences from full regulation)
Must comply with queuing requirements in an approved access arrangement (s 135).	Where a limited access arrangement is in force, the queuing policy must be complied with under s 135. Where no limited access arrangements are in place, issues about the priority of access could be resolved as part of an access dispute.
Other than for the queuing requirements, service providers and users are free to agree on alternative terms and conditions of access than set out in the access arrangement (s 322).	No difference.
Pre-existing contractual rights protected (ss 188 and 321)	No difference.
The extent to which an extension or expansion of a pipeline is taken to be part of the covered pipeline, and regulated by the regime, is governed by the extensions and expansion requirements in the access arrangement (s 18).	As for full regulation where a limited access arrangement applies, but otherwise all extensions and expansions are taken to be part of the covered pipeline (s 19).
May apply to be uncovered if the pipeline no longer satisfies the coverage test (s 102).	No difference. Note also that any person can at any time apply to revoke the light regulation determination (s 118).
Must, for interconnected transmission pipelines, disclose information to the Bulletin Board: <ul style="list-style-type: none"> <li>Nameplate rating (r 170).</li> <li>3-day capacity outlook (r 171).</li> <li>Linepack/capacity adequacy indicators (r 172).</li> <li>Nominated and forecast delivery nominations (r 173).</li> <li>Actual delivery information (r 174).</li> </ul>	No difference.
Must, unless an exempt distribution network, maintain a register of spare capacity on its website (r 111).	No difference.