

DECISION ON COVERAGE OF THE EASTERN GAS PIPELINE

I, the Hon Senator Nick Minchin,
Minister for Industry, Science and Resources, and
the Relevant Minister for Coverage Decisions, for Cross Border Transmission Pipelines, under
the National Third Party Access Code for Natural Gas Pipeline Systems

Make the following Decision in relation to the
Application for Coverage of the Eastern Gas Pipeline

16 October 2000

DECISION

In accordance with section 1.13 of the National Third Party Access Code for Natural Gas Pipeline Systems (Code) I have decided that the Eastern Gas Pipeline should be a Covered Pipeline.

The decision has effect from 1 November 2000 (being not earlier than 14 days after decision).

Code Requirements

My decision complies with the requirement in the Code (Section 1.13 and 1.15) that I, as the Relevant Minister must make a decision on Coverage.

1.13 ...the Relevant Minister must make a decision:

- (a) that the Pipeline is Covered; or*
- (b) that the Pipeline is not Covered.*

1.15 Subject to section 1.16, the Relevant Minister must decide that the Pipeline is Covered (either to the extent described, or to a greater or lesser extent than that described, in the application) if the Relevant Minister is satisfied of all of the matters set out in paragraphs (a) to (d) of section 1.9, but the Relevant Minister cannot decide that the Pipeline is Covered, to any extent, if not satisfied of one or more of those matters.

My decision is based on the criteria in section 1.9 of the Code

1.9 Subject to sections 1.4(a) and 1.10, the NCC must recommend that the Pipeline be Covered (either to the extent described, or to a greater or lesser extent than that described, in the application) if the NCC is satisfied of all of the following matters, and cannot recommend that the Pipeline be Covered, to any extent, if the NCC is not satisfied of one or more of the following matters:

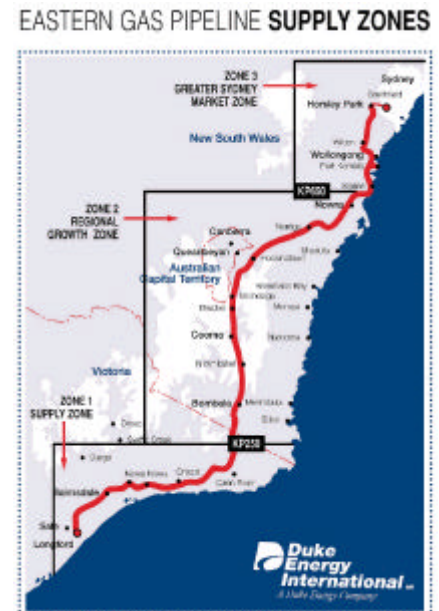
- (a) that access (or increased access) to Services provided by means of the Pipeline would promote competition in at least one market (whether or not in Australia), other than the market for the Services provided by means of the Pipeline;*

- (b) *that it would be uneconomic for anyone to develop another Pipeline to provide the Services provided by means of the Pipeline;*
- (c) *that access (or increased access) to the Services provided by means of the Pipeline can be provided without undue risk to human health or safety; and*
- (d) *that access (or increased access) to the Services provided by means of the Pipeline would not be contrary to the public interest.*

Description of the Pipeline

My decision relates to the pipeline referred to as the Eastern Gas Pipeline (EGP). The EGP is the pipeline which runs from Longford in Victoria to Horsley Park in Sydney, NSW, including lateral pipelines to Port Kembla and Smithfield, compressor stations and other appurtenances and which is covered by pipeline licences PL 175 (Victoria) and PL 26 (NSW).

Pipeline Licence	PL 175 (Victoria)	PL26 (NSW)	
Location/ Route	Eastern Gas Pipeline Longford, Victoria, to Horsley Park, Sydney	Kembla Grange to Port Kembla (lateral)	Horsley Park to Smithfield (lateral)
Future Operator	Duke Australia Operations Pty Ltd		
Length (km)	792	8	8
Pipe Diameter (mm)	457mm	209mm	209mm
Operating Pressure	14.89 MPa	14.89 MPa	14.89MPa



Source: Eastern Gas Pipeline Undertaking, Duke Energy International

Coverage Process

On 7 January 2000, the National Competition Council (NCC) received an application from AGL Energy Sales and Marketing Limited (AGL) for coverage of the EGP. The application was made under the *Gas Pipelines Access (Victoria) Act 1998* and the *Gas Pipelines Access (NSW) Act 1998* which apply the Code to gas pipelines in Victoria and NSW respectively.

On 8 May 2000, the NCC released its draft recommendation on coverage and its final recommendations on 3 July 2000. The NCC received twenty six submissions (including one which was withdrawn). The NCC's Recommendation and the public submissions are available on the NCC's website at www.ncc.gov.au.

I gave notice of four extensions to the decision period (as provided for in the Code), and in this time received additional submissions and met with the NCC and Duke separately to discuss the key issues with respect to the coverage criteria.

My decision is based on consideration of the recommendation made by the NCC, and submissions on this matter made directly to the NCC as well as to me and to my Department.

Reasons for the Decision

I am satisfied that the Eastern Gas Pipeline meets all the coverage criteria in the Code. The reasons for my decision are set out below.

Criterion (a)

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

I agree with the NCC's conclusion, and their reasons supporting that conclusion, that coverage would promote competition in the South East Australian gas sales market. I therefore consider that criterion (a) is met.

I agree with the NCC's finding that the relevant market, in which access to the pipeline may promote competition, is the market for gas sales in South East Australia. I also agree that the services provided by means of the pipeline are those related to the transportation of natural gas between Longford and Sydney, including all possible destinations between these two locations proximate to the pipeline.

This approach is consistent with the Code's objectives of:

- facilitating the development and operation of a national market for natural gas; and
- promoting a competitive market for natural gas in which customers may choose suppliers, including producers, retailers and traders.

I consider that coverage, of the Eastern Gas Pipeline, by the Code will give participants (and potential entrants) in the gas market greater certainty in relation to commercial negotiations for third party access and tariff prices. This certainty is likely to reduce barriers to entry in those markets. I note that the majority of participants in the upstream and downstream sectors, who made submissions to the NCC, support this view.

I note the NCC's firm view that based on consideration of the available evidence, there is a real likelihood of parallel pricing behaviour between the Eastern Gas Pipeline and Moomba to Sydney pipelines. I also note that the Eastern Gas Pipeline is the sole means of supplying gas to regional centres along its route south of the ACT.

Therefore the Eastern Gas Pipeline, individually and together with the Moomba to Sydney pipelines, may be able to capture economic rents through the market power it possesses. In the absence of coverage, end users may not benefit from the potential price competition between gas fields if the natural monopoly transmission pipelines were able to capture any price differentials between producers in different producing basins through discretionary tariff adjustments in the markets for their pipeline services where there are no effective substitutes.

I am therefore satisfied, on the evidence available, that the application of the Code to the Eastern Gas Pipeline, will create the conditions to allow an improvement in competition in at least one market (other than the market for the services of the pipeline) compared to the situation without coverage.

I am satisfied that criterion (a) is met for the Eastern Gas Pipeline.

Criterion (b)

that it would be uneconomic for anyone to develop another Pipeline to provide the Services provided by means of the Pipeline

I am satisfied, on the evidence available, that it would be uneconomic to develop another pipeline to provide the services of the Eastern Gas Pipeline.

I am satisfied that the Eastern Gas Pipeline exhibits natural monopoly characteristics. This, coupled with the Eastern Gas Pipeline's significant spare capacity, will make it uneconomic to develop another pipeline to provide the services of the pipeline up to the point of its fully expanded capacity.

I concur with the NCC's examination of other existing pipelines and agree that other existing pipelines, such as the Moomba to Sydney Pipeline and the Interconnect, are not effective substitutes for the services provided by the Eastern Gas Pipeline, and that it would be uneconomic to develop them to provide the services of the Eastern Gas Pipeline.

I am satisfied from the information provided in submissions and the examination by the NCC of the characteristics of the EGP, such as cost of construction, marginal cost of production per unit, projected demand, and spare capacity of the EGP that it is uneconomic from a social perspective to develop existing pipelines, or build another pipeline.

I am satisfied that criterion (b) is met for the Eastern Gas Pipeline.

Criterion (c)

that access (or increased access) to the Services provided by means of the Pipeline can be provided without undue risk to human health or safety

I am satisfied that access (or increased access) to the EGP, facilitated by the Code, can be safely provided without undue risk to human health or safety.

I note that the relevant States have regulations dealing with the safe operation of gas pipelines, and that none of the public submissions argued that this criterion was not met.

I am satisfied that criterion (c) is met for the Eastern Gas Pipeline.

Criterion (d)

that access (or increased access) to the Services provided by means of the Pipeline would not be contrary to the public interest.

I agree with the NCC recommendation that access (or increased access) to the services provided by means of the Eastern Gas Pipeline would not be contrary to the public interest.

I agree with the NCC's finding that overall, the costs of regulating the Eastern Gas Pipeline under the Code would not outweigh the benefits.

As noted by the NCC it is inevitable that any regulatory model will have some shortcomings that would cause it to fall short of the results achieved in a competitive market, but that regulation of

a pipeline is justified where regulation provides the environment or conditions for improvement on the outcome without regulation.

I am satisfied that criterion (d) is met for the Eastern Gas Pipeline.

Nick Minchin