

Our Ref: 99/1039

Mr Luke Berry
National Competition Council
GPO Box 250B
MELBOURNE VIC 3001

Dear Mr Berry

**EASTERN GAS PIPELINE (LONGFORD TO SYDNEY)
APPLICATION FOR COVERAGE UNDER THE NATIONAL GAS ACCESS REGIME**

This is in response to your call for submissions from interested parties to assist the Council in determining what recommendation to make to the relevant Minister concerning coverage of the Eastern Gas Pipeline.

This submission concentrates on the issue, raised in your Issues Paper on the above application by AGL, concerning the fact that Duke has already lodged an undertaking with the ACCC for access to the Pipeline under Part IIIA of the Trade Practices Act. As suggested by the Council this issue is of a particular importance when taking into account the public interest in considering the application.

It is noted that Duke has taken the view that its proposed undertaking does as much to promote competition as an access arrangement lodged under the National Access Code, and is preferable due to “the limitations of the National Access Code”.

On the other hand AGL has expressed a concern that by lodging an access undertaking Duke is bypassing the requirements of the National Access Code in relation to access arrangements and has argued that “the public interest lies in the application of the National Code principles to third party access to this pipeline to ensure consistency of price setting and certainty for users of pipelines”.

The National Access Code was developed following a decision by the Council of Australian Governments to apply certain uniform principles to access negotiations, with the objective to establish a uniform national framework for third party access to natural gas pipelines both between and within jurisdictions. It was implemented after extensive consultation with industry and gas users and is intended to comply with the requirements of the Competition Principles Agreement.

It is understood that even if the ACCC accepted an access undertaking in respect to a pipeline, the National Access Code would continue to be applicable to that pipeline in addition to the undertaking and that the pipeline could still become a Covered Pipeline under the Code. Thus a possible regulatory overlap will be created should the ACCC consider an access undertaking for that pipeline. It is also understood that any approved access undertaking might prevail for any inconsistency between the requirements of Part IIIA and the National Access Code.

The ACCC and the NCC have issued a joint press release indicating that they “will meet soon to discuss how to deal with the undertaking and coverage processes in a way which would not compromise whether access should be granted to the services of the Eastern Gas Pipeline, and if so, the form of access”.

This submission strongly supports a coordinated approach by the ACCC and the NCC in addressing the above issues. It is expected that in their joint considerations the ACCC and the NCC will pursue a decision which will best serve the public interest not only in terms of access to this particular pipeline but also in terms of access to pipelines across Australia. In this respect, the ACCC and the NCC would need to consider the following issues:

- the prime objective of the National Access Code as a means to deliver the Council of Australian Government’s commitment to establish a uniform national framework for third party access to natural gas pipelines, both between and within jurisdictions, and the effect on that uniformity should service providers seek and be granted access undertakings under an alternative mechanism;
- the regulatory overlap that will be created by the application of an access undertaking to a pipeline to which the National Access Code continues to be applicable and the uncertainty that this would create for users of the pipeline in terms of any inconsistency between the two regimes;
- the possibility of “forum shopping” by service providers, which is particularly relevant in a number of States in terms of the distribution system operators; and
- the fact that Access Arrangements under the National Access Code have already been approved, or are in the process of being approved, for various major pipeline systems across Australia and the increase in regulatory costs an opportunity for the application of an alternative regime to those pipelines may create.

Thank you for giving interested parties the opportunity to comment on the above issues.

Yours sincerely

LES FARRANT
COORDINATOR OF ENERGY

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