
1. Introduction

Great Southern Energy is a retailer of electricity in New South Wales, Victoria, Queensland, the Australian Capital Territory and South Australia and a retailer of natural gas in New South Wales and Victoria. Great Southern Energy was formed in 1996 through the merger of 9 southern New South Wales electricity distributors.

Great Southern Energy's wholly owned subsidiary Great Southern Energy Gas Networks Pty Limited also reticulates natural gas in southern New South Wales.

This submission is made on behalf of Great Southern Energy and Great Southern Energy Gas Networks Pty Limited, and references in it to "Great Southern" include both of them.

Great Southern supports the Coverage under the National Third Party Access Code for Natural Gas Pipeline Systems (the "**Access Code**") of both the Eastern Gas Pipeline and the Moomba to Sydney Pipeline System.

Great Southern considers that, not only do both pipelines satisfy the tests for Coverage set out in section 1.9 of the Access Code, but there are also a number of other factors which support both pipelines being Covered Pipelines. Section 2 of this submission sets out why Great Southern believes that the test in section 1.9 of the Code is satisfied and section 3 goes on to examine other factors which Great Southern believes support coverage.

Coverage of both pipelines is important to Great Southern as it believes that certainty as to its ability to access the transmission capacity in each of the pipelines and the terms of such access will aid its retail operations in New South Wales and potentially Victoria.

More fundamentally Great Southern believes that Coverage would increase the overall usage of natural gas by protecting users of gas from abuse of market power. Great Southern considers that this would be of substantial benefit to both its retail and network businesses.

2. Criteria for coverage

Section 1 of the Access Code sets out the basis on which pipelines can become "Covered Pipelines" under the Access Code and how Coverage can be revoked. Section 1.9 sets out the basis on which Pipelines become Covered and provides:

"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."

Similarly, section 1.31 sets out the basis on which Coverage can be revoked. Section 1.31 provides:

"Subject to section 1.26(a), the NCC cannot recommend that Coverage of the Covered Pipeline be revoked, to any extent, if the NCC is satisfied of all of the matters set out in paragraphs (a) to (d) of section 1.9, but the NCC must recommend that Coverage of the Covered Pipeline be revoked (either to the extent described, or to a greater or lesser extent than that described, in the application) if the NCC is not satisfied of one or more of those matters."

Great Southern believes that all of these criteria are satisfied in respect of both the Eastern Gas Pipeline and the Moomba to Sydney Gas Pipeline System and that, as a result:

- (a) the NCC must, under section 1.9 of the Access Code, recommend that the Eastern Gas Pipeline be a Covered Pipeline; and
- (b) the NCC is not, under section 1.31 of the Access Code, able to recommend that Coverage of the Moomba to Sydney Gas Pipeline System be revoked.

2.2 Section 1.9(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."

Great Southern agrees with much of the NCC's analysis in relation to section 1.9(a) of the Access Code. In particular, Great Southern agrees that:

- (a) [#]The relevant markets for the determination of whether access or increased access to services provided by the Eastern Pipeline or the Moomba to Sydney Pipeline System would promote competition in at least one market are the market for the wholesaling and retailing of natural gas in South East Australia. Great Southern considers that there are, at present, separate functional markets for the wholesaling and retailing of natural gas although Great Southern accepts the NCC's contention that this could, to some extent, be as a result of historic regulation and government policy.
- (b) [#]The tests to determine whether or not there would be such a promotion of competition is a "with/without" test. Further, Great Southern agrees with the NCC that in relation to both the Eastern Gas Pipeline and the Moomba to Sydney Pipeline System, such tests must be analysed on the basis of the pipelines being unregulated and not on the basis of either pipeline having submitted an access undertaking under Part IIIA of the *Trade Practices Act 1974*.

However, Great Southern considers that the NCC may have overlooked the importance of medium to long term certainty in relation to the potential for new entry (and hence the promotion of competition) into the markets for the wholesaling and retailing of natural gas.

In Great Southern's view, it is less likely that entities would seek to enter the markets for the wholesaling and retailing of natural gas if the long term structure of pipeline tariffs and applicable access terms were uncertain. This is because, in the absence of such certainty, there may be little incentive for a new entrant to devote substantial resources to seeking out new customers when changes in pipeline tariffs or access terms may mean its operation becomes substantially less competitive.

Great Southern believes if the Eastern Gas Pipeline and Moomba to Sydney Pipeline System were both covered under the Access Code then it is more likely that new entrants would be attracted to the gas wholesaling and retail markets as it would be easier for them to secure transmission capacity into these markets. For this reason, Great Southern believes that Coverage of both the Eastern Gas Pipeline and Moomba to Sydney Pipelines under the Access Code would promote competition in the markets for the wholesaling and retailing of natural

gas in South East Australia. Great Southern notes that it believes that such increases in competition would occur in all areas served by the Eastern Gas Pipeline and Moomba to Sydney Pipeline System including those north of the Australian Capital Territory.

Great Southern believes that the promotion of competition which results from coverage of the Eastern Gas Pipeline and Moomba to Sydney Pipeline System would be of particular importance given the constraints in the transmission capacity in the Moomba to Sydney Pipeline System. These constraints appear to increase the ability of the operator of that pipeline to argue that capacity is not available on that pipeline to retailers which compete with AGL due to the shareholding links between AGL and EAPL (both currently and if the proposal for AGL and Petronas to transfer their interests in the Moomba to Sydney Pipeline System to a public listed company, the Australian Pipeline Trust, proceeds).

2.3 Section 1.9(b)

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

§ [#]The Services provided by means of the Pipeline

Great Southern agrees with the NCC's approach to defining the services provided by the Eastern Gas Pipeline. Great Southern also believes that, in considering the services offered by pipeline owners, regard must be had to the start and end point of the gas transportation service, not least because only one pipeline may connect a gas user to a producer of gas and, as a result, neither of these parties have any choice as to how to transport their gas.

Great Southern agrees with the NCC conclusion that, for the Eastern Gas Pipeline, the relevant services are the transportation of natural gas from Longford to Sydney and include firm and interruptible haulage, interconnection, backhaul and linepack services between these locations.

Great Southern believes that similar services are provided from Moomba to Sydney and across the Interconnect by the Moomba to Sydney Pipeline System.

§ [#]Would it be uneconomic for anyone to develop another pipeline to provide these services.

Great Southern agrees with the NCC's conclusion that it would be uneconomic for anyone to develop a pipeline to provide the services provided by the Eastern Gas Pipeline from Longford to Wilton.

On the basis of the information contained in the NCC's draft recommendation, Great Southern accepts that the development of the section of the Eastern Gas Pipeline running from Wilton to Horsley Park was uneconomic development and hence that it is uneconomic to develop another pipeline to provide those services.

Great Southern believe that the NCC's analysis in respect of the Eastern Gas Pipeline has equal application to the Moomba to Sydney Pipeline System. For this reason, Great Southern believes that it is uneconomic to develop another pipeline to provide the services provided by the Moomba to Sydney Pipeline System.

For this reason, Great Southern believes that both the Eastern Gas Pipeline and the Moomba to Sydney Pipeline System satisfy section 1.9(b) of the Access Code.

2.4 Section 1.9 (c)

That access (or increased access) to the Services provided by the means of the Pipeline can be

provided without undue risk to human health or safety.

Great Southern supports the NCC conclusions that access or increased access to the Services provided by the Eastern Gas Pipeline can be provided without undue risk to human health or safety. Great Southern notes that it believes that this is also the case in relation to the coverage of the Moomba to Sydney Pipeline System.

2.5 Section 1.9 (d)

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

Great Southern agrees with the NCC's conclusion that Section 1.9(d) of the Access Code is satisfied with respect to the Eastern Gas Pipeline. Great Southern believes that the NCC should reach a similar conclusion with respect to the Moomba to Sydney Pipeline System.

In particular, Great Southern notes that:

- (a) The clear intention behind the Access Code is that the Code, rather than access undertakings under Part IIIA of the *Trade Practices Act*, govern access to services provided by gas pipelines (as shown by the preambles to the Gas Access Act quoted on page 64 of the NCC's draft recommendation).
- (b) The reference tariffs provided for under the Access Code do not prohibit operators of pipelines from offering other services or undertaking entrepreneurial activity given the ability for operators of Covered Pipelines to agree (or have arbitrated) "Negotiated Services" under the Access Code to the extent that their needs are not met by the Reference Service. From Great Southern's perspective, the Reference Services only provide a "baseline" against which the parties (and any Arbitrator appointed under section 6 of the Access Code) can access the reasonableness of terms proposed by a pipeline owner for a "Negotiated Service".
- (c) If appropriately applied, the tariffs principles set out in section 8 of the Code provide sufficient certainty for the owner of a Covered Pipeline in the longer term. In particular, Great Southern notes section 8.9 of the Access Code which, if appropriately applied by the Relevant Regulator of the pipeline under consideration, provide substantial certainty to the pipeline owner that, subject to optimisation of the pipeline, the pipeline owner will continue to receive an adequate return on its expenditure in the longer term.

3. Other factors which support coverage

3.1 Information Disclosure

EAPL have raised with the NCC whether the information disclosure requirements of the Code have the potential of inadvertently facilitating price setting behaviour which could lead to tacit collusion. Great Southern does not agree that the information disclosure requirements will harm competition in this way or facilitate collusion between pipeline owners. Great Southern agrees with the response made by the NCC to this submission that the ACCC, as the Relevant Regulator, has discretion over the type of information that is released under the Code, and could exercise its discretion if the disclosure was leading to anti-competitive outcomes.

However, Great Southern believes that a more fundamental response can be made in that one of the key goals of access regulation is to eliminate anti-competitive conduct by pipeline owners (such as collusion) by regulating the revenue that a pipeline can derive. The information disclosure powers are a key part of this by helping to reduce the information asymmetry between the owner of a Covered Pipeline and its regulator and customers. As such the information disclosure provisions increase competition rather than allowing for tacit

collusion.

3.2 Protection of Retailers

Great Southern disagrees with EAPL's view that an Access Undertaking under Part IIIA of the *Trade Practices Act* would protect retailers in a more satisfactory manner than Coverage under the Access Code. Great Southern believes that the more prescriptive nature of the Access Code provides retailers and other users of the services provided by a pipeline with greater certainty as to the terms in which those services will be provided. The less prescriptive regime contained in Part IIIA of the *Trade Practices Act* leaves such users exposed to potential variation and the terms in which access is provided and, as such, may make those users less likely to enter the relevant market and, as such, reduce competition. Great Southern agrees that Coverage of both Pipelines ensures regulatory consistency, discourages forum shopping and promotes a uniform national framework. In Great Southern's view, this consideration supports the Coverage of both Pipelines.

**SUBMISSION BY GREAT SOUTHERN ENERGY TO
THE NATIONAL COMPETITION COUNCIL IN
RELATION TO COVERAGE OF THE EASTERN
PIPELINE AND THE MOOMBA TO SYDNEY PIPELINE
SYSTEM UNDER THE NATIONAL GAS ACCESS CODE**