

17 January 2020

Ms Lesley Dowling
Gas & Governance Branch
Energy Division
Department of the Environment and Energy
GPO Box 787
Canberra ACT 2601

(via e-mail to: gas@environment.gov.au)

Dear Ms Dowling

RE: CONSULTATION RIS – GAS PIPELINE REGULATION REFORM

The Australian Petroleum Production & Exploration Association (APPEA) is the peak national body representing upstream oil and gas explorers and producers active in Australia. APPEA's member companies account for more than 90 per cent of Australia's petroleum production. Further information about APPEA can be found on our website, at www.appea.com.au.

The Australian oil and gas industry has invested over \$350 billion in natural gas production, transport, liquefaction and export facilities over the last decade¹. This investment will deliver returns for Australia for decades to come, through increased gas supply for Australian customers, export revenue, jobs, royalties and taxes.

According to the Department of Industry, Innovation and Science liquefied natural gas (LNG) is now Australia's second largest export commodity after iron ore, with export revenue of \$50 billion in 2018-19, and has more than doubled over the last two years (from \$22.3 billion in 2016-17).² The oil and gas industry supports 80,000 jobs directly and indirectly in Australia and hundreds of thousands more in the manufacturing industry.

APPEA welcomes the opportunity to comment on the *COAG Energy Council Consultation RIS on Options to improve gas pipeline regulation* (the Consultation RIS). APPEA's comments should be read in conjunction with comments from our member companies.

APPEA's submission addresses specific aspects of the Consultation RIS, focussing on those areas that are particularly important for the upstream oil and gas industry.

Reforms in recent years to the regulatory framework for natural gas pipelines has increased information available to the market and transparency for consumers of pipelines services. It is an important element of the natural gas supply chain, that the ACCC has calculated can account for up to 25 per cent of the price of natural gas paid by consumers in the southern states.³

¹ Data derived from Department of Industry, Innovation and Science, [Resources and Energy Major Projects List](#) publication series and [APPEA Financial Survey](#).

² Department of Industry, Innovation and Science, [Resources and Energy Quarterly September 2019](#).

³ ACCC, [Gas Inquiry 2017-2020 Interim report December 2017](#), p. 11.

In recent years, the implementation of the Part 23 Information Disclosure and Arbitration Framework has resulted in greater transparency for all gas market participants and enhanced commercial outcomes for stakeholders.

APPEA recognises and understands that further improvements can still be made to the reporting and information disclosure provisions of pipeline regulations and the Consultation RIS provides an opportunity to do that.

However, APPEA would also like to caution against regulation for the sake of it, as over-regulation or regulation that imposes cost on service providers for no additional benefit can often lead to perverse outcomes for consumers and lead to higher prices for all market participants.

Investments in natural gas projects and related infrastructure, like pipelines, remains a high-risk investment in what is a highly capital-intensive industry. Australia is generally seen as a secure place to invest, by the global investment community and Australia relies heavily on the international investment community to provide the investment capital for its projects. Constant changing of the rules and regulations that apply to the industry can act as a dampener on the confidence of the investment community and make it difficult for projects to secure funding. It adversely affects investor confidence and increases the risk rating for Australia. Therefore, proper care needs to be given to reforms considerations to ensure they are done for the benefit of the community and the market participants with identified issues addressed through the reforms.

SPECIFIC COMMENTS

When Pipelines Should be Regulated

When to Regulate:

APPEA supports the proposed Option 2 in the Consultation RIS. Amending the framework to allow pipelines providing third party access to obtain an exemption from regulation. APPEA supports retaining the Greenfield exemption mechanism and incorporating this as an exemption mechanism within Part 23 as proposed by the paper. This is a sensible measure that is likely to lead to lower overall costs for the market participants.

APPEA also agrees that there is no rationale behind changing requirements for pipelines that are not providing third party access. Generally, pipelines not providing third party access are built for a specific purpose or for servicing a particular project. They are therefore not in a position to allow access to other providers. Putting additional regulatory burden on these pipelines will result in additional costs for no additional benefit.

APPEA notes the National Gas Rules have consistently recognised the justification for exempting single use/non-market facing assets from unnecessary regulation, where currently Part 18 exempts lateral pipelines connecting production facility to trunk pipelines. APPEA recommends consistency in exemptions, such that lateral pipelines are exempt from regulation more fully.

Gas producers operate laterals and other single use assets delivering gas from field production assets generally as part of an integrated production system, where they are not necessarily structured or equipped to be operators of third party access pipelines. The additional associated cost for these gas operators to become third party access pipelines should be considered, where there would be no benefit to the gas market more broadly.

APPEA would support drafting legislation with *an automatic granting of exemptions* where the regulator could remove the exemption if the conditions were not met in the future, limiting wasting regulatory resources on case-by-case exemption of consistent categories of pipelines ie laterals, greenfield exemption pipelines etc.

Governance arrangements:

APPEA supports Option 1 (Status quo) in the Consultation RIS. The RIS does not identify any substantial issues with the current arrangement.

Under the status quo, the relevant Minister makes all coverage, revocation of coverage and greenfield exemption decisions with regard to advice from the National Competition Council (NCC). The NCC (despite the fact it relies on ACCC for secretariat services) is an independent statutory entity.

APPEA believes that there are opportunities for the current system to be streamlined and improved to improve timeliness of decisions and efficacy of the process.

However, APPEA is concerned that the Options presented in the Consultation RIS to “*Accord a single organisation (either the ACCC or the AER/ERA) responsibility for deciding when a pipeline should be regulated or exempt from regulation*”, is a significant conflict of interest as well is inconsistent with good regulatory practice.

Currently, there is a separation of functions between the decision maker (NCC and the Minister) and the regulatory bodies (ACCC/AER). The proposal to merge those responsibilities seems to be a breach of good public policy practice.

Forms of Regulation and the movement between the alternative forms

APPEA does not believe that the coverage test is an appropriate check point between determining the appropriate form of regulation. This has been reaffirmed by the ACCC, AEMC reviews and the Vertigan report.

The application of Part 23 has made it unlikely that there is any major pipeline that is still under-regulated.

APPEA sees potential benefit in strengthening Part 23 and reducing the forms of regulation to two as proposed in Option 2 of the Consultation RIS. However, APPEA believes that there should be clarity in rules that will determine the form of regulation that will be applied to a pipeline between heavy-handed or light handed. The pipeline proponents/operators should be able to determine the category that would apply to their pipelines and proceed with applications accordingly. The regulator should oversee the process and monitor the market for any misconduct or market power issues.

APPEA supports retaining the existing approaches to monitoring and referral functions of the relevant regulator. As the Consultation RIS states “...*the relevant regulator can monitor light regulation negotiations only and is treated like any other interested person in terms of being able to apply for a form of regulation assessment.*” APPEA sees this as relevant and sufficient to ensure the market is working appropriately.

Governance arrangements:

Please see comments in the previous section.

Information disclosure requirements

APPEA acknowledges that appropriate information disclosure by market participants is necessary and important for the market to function efficiently. APPEA also acknowledges that even though the Part 23 reforms have brought substantially more disclosure and led to great market transparency there remains an opportunity to improve outcomes further.

However, APPEA would like to caution the COAG Energy Council and the Department on the proposed changes, particularly for exempt pipelines. These regulatory reporting measures can put a significant cost impost on reporters that then can potentially lead to higher cost for consumers. Any additional regulatory burden should have clearly identified value add that will benefit the market participants. This is particularly relevant in the case for pipelines that do not provide third party access or were established as sole purpose assets to deliver for a project.

Negotiation frameworks and dispute resolution mechanism

Dispute Resolution Mechanisms:

APPEA supports Option 2 of the Consultation RIS as proposed – “*Maintain the Part 23 dispute resolution mechanism for the lighter handed regulation and the full regulation mechanism for the heavier handed regulation*”.

We would welcome the opportunity to discuss these comments with you. Please feel free to contact Mr Damian Dwyer, Deputy Chief Executive on (02) 6247 0960 or at ddwyer@appea.com.au if you have any queries.

Yours sincerely

Andrew McConville
Chief Executive