

# The Northern Gas Pipeline:

## Submission on AEMC's Draft Rule Determination

National Gas Amendment (Northern Gas Pipeline – Derogation From Part 23)  
Rule 2019



Institute for Energy Economics  
and Financial Analysis  
IEEFA.org

9<sup>th</sup> April 2019

Bruce Robertson, Analyst Gas/LNG  
Australasia

# Executive Summary

The AEMC has not followed the National Gas objective in its draft decision to grant the Northern Gas Pipeline a derogation to the National Gas Law. It has failed to protect the long-term interests of consumers of Natural Gas with respect to price, safety, reliability and security of supply.

It has been negligent in its failure to use current investment assessment methods to assess the risks to the consumer and protect their long term interests.

The AEMC has been negligent in not doing the necessary work to ascertain if the high price being charged by Jemena is in the long term interests of the gas consumer. The derogation gives Jemena the opportunity to charge high tariffs with little oversight.

The granting of the derogation to the National Gas Law for the Northern Gas Pipeline is not consistent with the National Gas Objective and should not proceed.

## 1. Climate Change

The AEMC is bound to follow the National Gas Objective in its decision making process.

The National Gas Objective 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, safety, reliability and security of supply of natural gas “*

In its draft determination on the Northern Gas Pipeline (NGP) the AEMC has declined to consider the effects of Climate Change.<sup>1</sup> The AEMC stated:

*“Decisions on the use of fracking and the production of gas, and the potential implications of these actions, are matters for the Northern Territory Government. These issues do not fall within the AEMC’s statutory decision-making framework.”*

The AEMC claims it is outside of its remit to consider the implications of Climate Change. This is quite simply not the case if it is serious in implementing the National Gas Objective.

There was a time in the Australian investment community when Environmental and Social Governance (ESG) issues, such as climate change, were not assessed in the investment process.

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<sup>1</sup> AEMC- Draft Rule Determination - Northern Gas Pipeline - derogation from Part 23 21 February 2019 page 47

This has changed.

Institutional investors adhere to ESG principles not because they have a social conscience but because ESG principles highlight risks to any investment.

In not assessing the real and present risks of climate change the AEMC is not using best practice in investment. Indeed its process is stuck in decades past.

By being so out of date and not assessing key risks such as climate change, the AEMC is not looking after “the long term interests of consumers of natural gas” as enshrined in the National Gas Objective. It is not assessing a key risk to “the price, safety, reliability and security of supply of natural gas”

This dereliction of its duty is inexcusable.

## 2. Governance Risks at Jemena

The AEMC is failing to assess governance risks at Jemena. This runs contrary to the National Gas Objective.

Jemena is currently under investigation by the Australian Taxation Office. This fact is noted in their most recent accounts.<sup>2</sup>

*“The Australian Taxation Office is currently conducting a transfer pricing audit in relation to the Company's convertible instruments. No liability has been recognised”*

The AEMC appear to think that Jemena's alleged non-payment of tax is not an issue for them to consider.<sup>3</sup>

*“Any possible investigation by the ATO is not relevant to the AEMC's considerations.”*

The payment of tax is a fundamental tenet of good corporate governance. If a company is hit with taxation fines and back taxes it may look to recover those costs from the consumer. In Jemena's case this could occur via the derogation to the National Gas Laws that is in the process of being granted to them by the AEMC as per the draft determination.

The AEMC is failing to implement Environmental and Social Governance (ESG) principles and is therefore exposing the Australian Gas consumer to future risk regarding the price, reliability and security of supply of Natural Gas.

This runs contrary to the National Gas Objective.

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<sup>2</sup>SGSP (Australia) Assets Pty Ltd 31 December 2018 Accounts page 53

<sup>3</sup> AEMC Draft Rule Determination page 48

### 3. Pricing investigations inadequate

The AEMC does not appear to have investigated the pricing proposed by Jemena, to assess whether it is a reasonable outcome for the Gas consumer in Australia. This has 4 aspects:

- i) The tariff proposed is broken up into 2 components a \$1.40/GJ charge to ship gas and a \$0.72/GJ charge to remove nitrogen. The total tariff charged by Jemena, to ship the gas from Tennant Creek to Mt Isa, is A\$2.12. One third of that charge is Nitrogen removal. There appears to have been no attempt by the AEMC to ascertain if the Nitrogen removal fee is a reasonable charge. The AEMC is granting a derogation, which allows prices to increase with little scrutiny, when it does not know if the tariff charged is reasonable. This is not consistent with the National Gas Objective and gives no protection for customers.
- ii) The existing tariff (excluding the \$0.72 nitrogen removal charge) makes the Northern Gas Pipeline (NGP) the most expensive in Australia on a per km basis.<sup>4</sup> The NGP will charge the highest tariffs in Australia for the transport of gas at 0.23 cents per kilometre. This is almost double than the average 0.13c tariff/km charged in Australia. There is little justification for such a rich charge in any of the investigations done by the AEMC.
- iii) There appears to have been no attempt to ascertain what the tariff paid by the anchor customer, Northern Territory Power and Water Commission. This tariff has a material effect on the economics of the pipeline. Without ascertaining the tariff charged to the anchor customer, the AEMC is unable to fulfil its obligations under the National Gas Objective of ensuring that the price for consumers is reasonable.
- iv) The AEMC has relied on the proponent, Jemena's press release of its overall costs of the NGP, without doing its own independent investigations. Jemena appears to have been happy to mislead the Australian Taxation Office with its alleged transfer pricing scheme. The AEMC should do independent investigations if the costs claimed are indeed the costs incurred. It does not appear, for example, that the AEMC has sighted the contract for the physical construction of the NGP and the expense incurred. The AEMC appears to be negligent in its implementation of the National Gas Objective, it has simply not done the necessary work.

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<sup>4</sup>EEFA Submission to the EIS for the Northern Gas Pipeline page 5