TRANSCRIPT OF PROCEEDINGS

Phone: 1300 502 819
Email: clientservices@sparkandcannon.com.au
Web: www.sparkandcannon.com.au

Adelaide | Brisbane | Canberra | Darwin | Hobart | Melbourne | Perth | Sydney

AUSTRALIAN ENERGY MARKET COMMISSION

MR J. PIERCE, CHAIRMAN
MR C. POPPLE, COMMISSIONER
MS A. WARBURTON, COMMISSIONER
MS M. SHEPHERD, COMMISSIONER

HEARING ON NORTHERN GAS PIPELINE – DEROGRATION FROM PART 23

SYDNEY

10.40 AM, TUESDAY, 7 MAY 2019

MR PIERCE: Good morning, everyone. Thanks for being here today. I'm declaring open this pre final determination hearing on the Northern Gas Pipeline - Derogation from Part 23 Rule Change Request. This hearing has been requested by the Environmental Justice Australia and will be conducted under section 310 of the National Gas Law. I'll be chairing the hearing today, my name is John Pierce and I'm the chair of the Australian Energy Market Commission. Also with me are my fellow commissioners. On my left Michelle Shepherd and on my right Allison Warburton and Charles Popple.

Four organisations and a private individual have registered to present to this hearing and some participants are attending as observers only. The presentations will follow the order and time periods allocated in the agenda, which you all would have been sent, namely the Institute for Energy Economics and Financial Analysis for 15 minutes; David Barnden, and I hope I've pronounced that correctly, a private individual for 10 minutes; Jemena for 10 minutes; the Australian Pipelines and Gas Association for 10 minutes and the Northern Territory Department of Treasury and Finance for 10 minutes. Lock the Gate Alliance are attending as observers. During the allocated time each speaker is to present their views to the commission.

The start of each presentation slot will be marked by the ringing of a bell apparently with a warning bell at 2 minutes prior to the end of the time. This hearing is being recorded by an independent service provider. The transcript will be checked for accuracy by the AEMC and published on the AEMC website along with other documents that are used today by the presenters.

While the commissioners may ask questions of the speakers to clarify any points made, this hearing is for commissioners to listen to the views of stakeholders. The commissioners will listen to the speakers and consider the points made at the time of making the final rule determination. This hearing does not provide a forum for discussion or debate with the commissioners, the AEMC staff or other stakeholders that are here today.

I would emphasise the need for this hearing to be conducted in a spirit of mutual respect for each of the people making their presentations and to allow the hearing to proceed smoothly would you please allow each presenter to make their points without interventions. Any disruption to these proceedings or what may be regarded as offensive remarks will result in a warning and if it persists then the offending parties will be asked to leave the hearing or in fact the hearing may be terminated. Any defamatory remarks that are made in the hearing will be redacted from the transcript.

With that sort of introduction I now call our first presenter Bruce Robertson from the Institute for Energy Economics and Financial Analysis.

MR ROBERTSON: Thank you, John. I'm here today for one reason and one reason alone and that is because the AEMC is not doing its job. The AEMC's job is set out clearly in the National Gas Objective. It basically is to protect the long-term interest of consumers of gas with respect to price, safety, reliability and security of supply. Now, why is the AEMC not doing its job? Well, the marker of your job obviously is price and if we look at the current spot price in Sydney it's over 60 per cent higher than the theoretical price that the ACCC says we should be paying. The current spot price in Australia is 160 per cent, that's two and a half times that consumers pay in the US and worst of all Australians pay 23 per cent more than our customers in Asia, so we pay more than the people in Asia pay for gas and their gas has to be liquefied, a process that costs $4 and shipped which is another 70 cents, that's if you include the costs of capital. Part of the cost of gas is in very high pipeline costs. This has been highlighted repeatedly by the ACCC and the monopoly pricing power of gas pipeline operators has also been noted by the ACCC and that that is not giving consumers of gas in Australia economic outcomes.

Now, today we're talking about the Northern Gas Pipeline. The Northern Gas Pipeline is emblematic of the failure of the AEMC to do its job and provide consumers of gas in Australia with gas at a reasonable price. The Northern Gas Pipeline is by far the most expensive pipe in Australia. It is 27 per cent more expensive per kilometre than the next pipe and 575 per cent more expensive than the Moomba to Sydney pipe, just to take one example. According to the AEMO core logic it's roughly two times what a reasonable price would be financing it at 7 per cent and we consider that 7 per cent is a very generous interest rate given the current environment. It should be nearer 5. So what we are seeing is we're seeing this pipe is owned by Jemena, the governments of Singapore and the governments of China, a corporation that is currently under investigation for tax avoidance and evasion according to their own accounts by the Australian Taxation Office and so what the AEMO is presiding over is a massive wealth transfer from the people of Australia, the gas consumers in Australia, to the governments of Singapore and the governments of China. This wealth transfer amounts to $2.7 billion, just over that, over the life of the 15-year project, if the project is expanded to the levels that Jemena expect.

Now, the AEMO also is negligent in its assessment process. It fails to take into account, commonly accepted now in investment circles, forms of risk. These form three basic things; environmental and social governance risks. It fails to take into account climate change. It fails to take into account the fact that Jemena does not pay tax properly in Australia that we have highlighted. These are very important factors and should be taken into account because they form the risk assessment paradigm that all investment institutions today in Australia work under, that is one of environmental and social governance.

The result of this is the gas in Australia is too expensive and we're seeing gas use decline in an era when it was expected that with renewables going from .7 per cent to nearly12 per cent in the last decade in the national electricity market you would have expected gas use to increase to fill the gap. Gas use has declined in the national electricity market and gas powered generation has declined due to the exorbitant prices that Australians have to pay for gas. The secondary effects of this are obviously unemployment, we've seen that already with RemaPak Industries shutting shop and people getting redundancy notices and a large part of that is due to pipeline cost that you preside over in your National Gas Objective, so this is a dramatic failing of governance on your part and I believe that the wealth transfer that is occurring if indeed the development does scale up in the Northern Territory, in Queensland a large proportion of that will accrue to the governments of Singapore and the governments of China due to your poor advising of the government of the Northern Territory.

This is not a competitive process as you claim. There were only four people that tendered. Four people is not competition. There were only two that had serious propositions, according to you, and were allowed to proceed, so you effectively have a duopoly setting the price and that is the case with nearly all gas pipelines in Australia, gas transmission pipelines, it's a duopoly that sets the price. A fundamental tenant of economics, if you talk about competition, is for there to be more than two people. I liken it to selling milk to Woolworths and Coles. You're not going to get a good price for your milk if you try and sell to a duopoly. It's that simple.

So I don't believe that you've done sufficient work in international benchmarking of the costs of the Northern Gas Pipeline. I don't believe you've done sufficient work in domestic benchmarking of costs of the Northern Gas Pipeline. I don't believe that you've even considered the massive nitrogen charge, which incidentally we made the mistake in our submission of not including in the total tariff and the numbers I quoted you earlier are out by a considerable margin because the nitrogen charge is actually compulsory and so it's not $1.40 that they're charging per gigajoule, it's $2.10 is the price and we've worked our numbers off $1.40 which is a headline price. You guys have not even assessed whether the 70 cents they're going to charge is a reasonable cost. This is negligence and this is not doing your jobs and I am here for that simple reason; that you're failing to do your job. You're not applying the National Gas Objective. You are not giving consumers a reasonable price in Australia for their gas. Pipeline costs are important in that equation and pipeline costs in Australia are extraordinarily high.

The Northern Gas Pipeline, that one little bit of pipe from Tennant Creek to Mount Isa, which is not even going to connect a source of gas with a consumer because the end consumer will be the LNG plants as we know from the plans

down in Gladstone if this goes ahead to its full extent, that little bit of pipe is costing the equivalent of 60 per cent of the cost of gas delivered in the US. 60 per cent for that one little bit of pipe and it doesn't even get it to the customer in the end. So your process of international benchmarking obviously isn't there and the outworking of this is we're seeing high electricity prices, high gas prices, putting people out of work and destroying the future of the Australian economy. So I just would like to ask how can you justify this in any way, shape or form? How can you justify your position of not applying the National Gas Objective to the Northern Gas Pipeline? Would you care to respond or do you not want to respond?

MR PIERCE: I'll respond with a question because this is a hearing of course. So given that there's essentially an access regime within the current Northern Territory contract and the choice is really between two different access regimes what do you see as being the major differences between essentially the choices that are available to us?

MR ROBERTSON: I see it as pretty simple. Australia has an access regime, it has a set of laws that are meant to govern these pipelines and I believe you should refuse a derogation. Principally I believe you should refuse a derogation because a derogation does not just apply to the straw that they're putting in today, this 12-inch pipe that is already in place. It applies to a much larger project. It applies to the 300 terajoules a day, not the 90 terajoules a day that the 12-inch pipe is, so what you're doing is is you're doing your economics on an uneconomic project and then you're scaling up that and allowing them to charge a massive fee on a much larger project and so I believe that the derogation should be refused and that they should to apply the existing law.

MR PIERCE: So what do you think the difference in the outcomes would be if the access regime was under part 23 rather than at - - -

MR ROBERTSON: I think it would give greater protection to the consumer because the appeals process is more robust in the law as it stands and you are allowing an appeals process that is less robust and so I think that the derogation should be refused. It's that simple. We've got a perfectly good set of laws, why should the company set a new set of laws? Why? I mean why should they? I mean we've got a pipeline here that is exorbitantly expensive as it is. They're forcing a nitrogen removal charge on all these customers that they may not actually need in some cases and the total tariff, as I said, is $2.10. It is an exorbitant tariff, it is not a small tariff and you've done no work on the benchmarking of that extra 70 cents, none at all. Is that a reasonable charge? I don't know. But do you know? I don't think you do. Because you haven't done the work and not doing the work is negligent and that's what I'm saying you are. You are negligent in the carrying out of your duties. You are not

doing the work. You are not doing international benchmarking studies. You are not doing domestic benchmarking studies on how much this pipeline costs and I'd hazard a guess you haven't even read any of our submissions.

MR PIERCE: Okay, thank you.

MR ROBERTSON: Thank you.

MR PIERCE: Our next presenter is David Barnden, and I hope I've pronounced that correctly, David, previously at the Environmental Justice Australia, but I think attending as a private individual today.

MR BARNDEN: Thank you, Mr Pierce, and thank you to the commission for the opportunity to appear. I appear as a private individual. I have over 10 years' experience as a corporate lawyer investigating corporate and government misconduct in financial markets and other industries. I have provided a presentation today and I'll just go through a few points in my allotted time.

A large part of my presentation relies or harks back to the commission's reliance on a competitive tender process. Here we have a situation where Jemena, the proponent, the company in receipt of the benefits of the derogation, refused in its negotiations with the Northern Territory government to have the National Gas Rules apply to it, so at the outset we have a company which says, "I'm sorry, I'm not even going to engage with you unless you accept that the National Gas Rules do not apply to this project and the project is not covered," so the Northern Territory government went along with that. I mean it's pretty difficult to see how that's a competitive tender process when you have industry having so much sway over a government. Even before the start of negotiations we have a situation where the foundation customer, the Northern Territory, back in 2006 entered into a 25-year contract to ship gas from the Blacktip gas field, starting in 2009, back into the territory of Amadeus gas pipeline. In 2006 the Northern Territory's utility commission said the contract quantities for that gas field far exceed the projected usage in a high use scenario up to 2016. So you've got the Northern Territory government entering into this contract, take or pay contract, with huge amounts of gas that they were never going to use, and this pipeline exists, the Northern Territory is the foundational customer, the reason this pipeline exists is because the Northern Territory has bought 30 terajoules of gas a day that it can't use.

And it's difficult for me to understand how this is a competitive tender process when you have the Northern Territory government simply trying to cut their losses. It's done a deal. The foundational deal is a 10 year contract with Incitec Pivot in Mount Isa, and that company says we're saving $55 million a year buying gas from the Northern Territory over 10 years. It's really difficult

to understand how the circumstances that have led to this tender actually give it a flavour of a competitive process.

With regard to the ATO transfer pricing investigation which Bruce has mentioned, the AEMC's response in its draft determination is completely inadequate. It says: "Any possible investigation by the ATO is not relevant to the AEMC's decision." We query how a competitive process can be underpinned by tax evasion, potential tax evasion. The ATO's threshold to investigate or to start up an audit for tax evasion is where the company can't demonstrate internal processes or methods that it's used to calculate interest.

In this circumstance with respect to $800 million of convertible notes, that company restructure happened a week after the incorporation of the subsidiary company which was to build the Northern Gas Pipeline. And we calculate, over this - the period that these convertible notes run for, to 2050. It's a half billion dollars worth of tax the Australian taxpayer misses out on. It's clearly relevant to a competitive tender process. I'll stop there on that point.

We're very disappointed and slightly confused that the AEMC in its draft determination thought climate change risks were not relevant. It's a simple case that this $11 billion company, who issues notes on the Singapore Stock Exchange, says precisely that in its Singapore Stock Exchange filing. It says that climate change will have an impact on gas supply. I'd be interested in Jemena's views on whether they think the Commission is right or they're right.

There's a real disconnect, so cognitive (indistinct) in what the AEMC says about climate change, and its refusal to engage with that issue in regards to the National Gas Objective. It's untenable, you have government departments like APRA saying climate change is a real risk for a lot of investments. It fits nearly into existing prudential standards and we just have the AEMC completely ignoring that, and I don't know why. It's unbelievable in this day and age.

The AEMC states that these issues do not fall within the AEMC's statutory decision making framework. Nothing could be further from the truth. And then you've got the impacts, the climate impacts which this derogation will facilitate and encourage - as Mr Robertson said, it applies to 300 terajoules a day and that's what the access principles say. We have not seen a project development agreement, we have not seen the contract, we do not know if Jemena has to stick to that 300 terajoules a day, because the access principles give the company a right to change the access principles at any time.

We've simply been told this. As a matter of public interest I think you should release that contract instead of redacting it in all of this documentation. And the effect is that it gives a free kick. Jemena in its Singapore Stock Exchange

announcements effectively gloat. They say - and in response to Mr Pierce's question to Mr Robertson about the difference between having the Australian framework apply and not having it apply. In May 2018 the company said simply tariffs would be subject to economic regulation if the pipeline was covered as a full regulation pipeline as provided in the National Gas Law.

It's clear that it's a financial imperative to companies owned by offshore governments to have this derogation. There's nothing that says the consumer will benefit if this derogation were removed. And the company does say in fact, you know, if regulations change it might affect their own profits and financial position. There's nothing about consumers. I strongly urge the Commission to recommend to remove the derogation.

MR PIERCE: Thank you. I think our next presentation is from Jemena, is this right, Usman Saadat.

MR SAADAT: Thank you for the opportunity to make a statement before the Commission today. We welcome to the AEMC's draft determination, we think that the AEMC has rightly considered the access principles agreed by Jemena as part of the project development agreement with the NT government, and that these principles provide the adequate level of protection against Jemena's ability to exercise market power when negotiating with prospective users of NGP services.

These access principles, especially provisions that determine maximum charges for use of the NGP, were the out workings of a competitive procurement process. The derogation effectively maintains the regulatory arrangements applying at the time Jemena committed the investment to the NGP and future capacities that form the base of that commitment. We also concur with the views of the Commission that revoking the derogation is likely to give rise increased regulatory complexity, increased uncertainty of outcomes and adverse outcomes, such as forum shopping by potential users.

In the opening remarks I note that those who may notably be affected by derogation, that is the users and their voice that has been communicated to the Commission through the submissions of the EUAA, in fact support the continuation of the NGP derogation. And speakers that follow me, those from the NT government and the APGA also maintain that the derogation afforded to the NGP is relevant and appropriate.

I do want to make a few (indistinct) observations about the claims by the rule proponents themselves. The rule change proponents make a number of unreferenced and incorrect statements about the development of the NGP and the obligations that are imposed on Jemena by the access principles and Jemena strongly rejects them. There were a significant number of untrue

allegations in the proposals and submissions by the rule change proponents.

We recommend that the AEMC should exercise great caution accepting any claim of fact made by the proponents. In fact many of the rule change proponent's suggestions recommend a number of changes to the AEMC's assessment that we believe would actually exceed the Commissioner's authority. Many of the concerns also continued to suggest an incomplete understanding of the rule change proponents of the operation of the access principles, which I'll talk about.

I do want to just comment on the competitive tender process, especially given the previous speaker's comments on that as well. The conclusion of the process was started in October 14 and concluded in November 2015. A competitive process run by the NT government. In fact, whilst it had the final shortlist of four bidders started with 11 short listed bidders, and nine initial bids. And the details of this competitive process are outlined in our December submissions to the Commission.

The NT government was not at any disadvantage during those negotiations, in fact, having had that choice, it could have made a different choice and certainly right to the very end of the process the NT government was negotiating with Jemena and one other party. Further, the introduction of the access principles came well before Jemena was the successful final bidder. There is also no basis for the rule proponent's claim that Jemena is exerting market power whilst consumers will ultimately suffer a loss as a result of high tariffs. In fact Jemena proactively introduced a concept of a rolling tariff for relevant expansions and extensions to make this bid even more competitive. That was not part of the access principles, it was something that Jemena introduced.

For the record, on the issue of coverage. During the tender process the NT government initially sought proposals to development the pipeline as a covered pipeline and Jemena was unwilling to develop the NGP on that basis, that it be a covered pipeline. We believe that the regulation of natural gas pipelines in Australia does not compel businesses to undertake investment in ew pipelines, in fact there is a long history of providing incentives for new investments in gas transmission pipelines.

And therefore, subsequently the NT government introduced a set of principles outlining terms of access which would be provided in lieu of coverage. These principles have been given effect ultimately in the project development agreement and cover a number of things, such as access requests, arbitration and tariffs. These access principles, at the time that they were entered into, resulted in more obligations placed to Jemena in relation to the NGP than that would have existed at that time for any other uncovered pipelines.

That cannot be therefore construed as an evasion of regulation, either by Jemena or by the Commission which is rightly exercise its power to make a rule that contributes to the NGO. Given the market circumstances in this case, the existence of these access principles. The rule proponents also sort of contend that the Commission hasn't investigated NGP's prices and costs, and put forward some very simple per kilometre basis analysis.

These comments to us suggest that the tender process for the NGP did not give rise to a competitive outcome. However, we believe there's no basis for such assertions. First, the tariffs and tariff structure were part of the evaluation criteria used by the NT government in assessing the tenders, in fact the Chief Minister was cited as pointing our tariffs as being extremely compelling.

Secondly, and if there's a source of a greater sort of analysis that we can speak to, the ACCC also stated that in regard to the rate of return earned by Jemena under the NGP, it provided a competitive benchmark against which to assess other pipeline owners, that's part of the ACCC East Coast Gas Enquiry. And therefore in our view, consistent with the draft determination, prices determined under a competitive process should be presumed to be cost reflective unless shown otherwise.

It is simply not the case that under the derogation tariffs can increase with little scrutiny, and I will explain that now. The access principles in fact set maximum tariffs for firm forward haul and firm nitrogen removal services. The only escalation is for inflation of CPR each year. As a result, these tariffs to shippers cannot exceed these published rates, and Jemena cannot behave like a monopoly without out of control and unilaterally increase these tariffs. That would be a breach of the access principles.

Further, under the rolled in provisions that Jemena volunteered as part of the negotiation process, prices initially set at these levels established through the competitive process. But these prices can then change in line with efficient costs where relevant expansions are made, which ensures that pipeline users share in any economies of scales will unfold. So not only do we have maximum tariffs, relevant and expansions provide for reductions in prices.

More relevantly, under the PDA the penalty for non-compliance with the terms of access principles can extend to coverage being imposed on the NGP, which is an extreme threat. Under the PDA Jemena does not have the ability to unilaterally change the access principles, nor unilaterally change prices. In relation to concerns that Jemena can merely notify the NT government of changes in tariffs, that notification only relates to tariffs that are otherwise permitted through the access principles, and merely for the indexation of CPI, or following an expansion and extension.

It is also important for the Commission just to reconsider how the derogation itself applies to the NGP. The derogation is for 15 years following commissioning which only started on 3 January 2019, and it applies including any extension or expansion of the capacity of that pipeline, subject to access principles. The access principles apply to the NGP and any expansion and extension that do not - I repeat, do not result in the capacity of the NGP exceeding 300 terajoules a day, or extending the kilometres beyond 622 kilometres or the construction of a pipeline.

These are all termed as large expansions under the access principles, and these large expansions are not the subject of access principles. Accordingly, the derogation - derogation does not apply to large expansions. And Part 23 would apply, unless there were to be a further derogation. As a consequence, assertions by rule proponents that the derogation could apply to parts of the capacity of a completely new pipeline, are simply incorrect as the scope of their derogation is limited.

I want to just, before I close, I want to draw how the derogation actually came about. At the completion of the tender process in November 15, a number of events occurred of significance after the fact. These began with ACCC's enquiry into the East Coast Market in 2016 and then culminated on 1 August 17 with the implementation of the binding arbitration and information disclosure regime under Part 23. As part of that commencement of the NGR, it represented a significant change in the regulation of gas pipelines, in particular uncovered pipelines.

In light of this material, change to the regulatory framework, the derogation to the NGP was developed by the NT government in consultation with COAG's Gas Market Reform Group. The GMRG was also of the view that the access principles agreed, as part of the competitive tender process, addressed many of the same issues that Part 23 was intended to address.

MR PIERCE: Thank you. You'll conclude at that point. The next presenter is Steve Davies, from the Australian Pipeline and Gas Association.

MR DAVIES: Good morning, Commissioners. The Australian Pipelines and Gas Association welcomes the opportunity to be here today. APGA's members build, own and operate Australia's gas transmission infrastructure which connects our disparate supply basins and demand centres, while offering a range of services to gas producers, retailers and users. APGA is the peak body representing gas transmission infrastructure, and an active participant during the last two decades of gas market reform.

Have an excellent understanding of the investment environment for gas infrastructure, the National Gas Law and the National Gas Rules, and their role

in promoting the gas (indistinct) infrastructure for Australia. And I just note that the jurisdiction of the National Gas Law does not apply to gas processing facilities, so having the access principles that Jemena has agreed to cover nitrogen processing, the access principles actually afford users of the Northern Gas Pipeline more protection than the National Gas Law.

The latest government figures show that natural gas provides more energy to the economy than electricity. In 2016-17 Australia wide, natural gas provided 910 petajoules of energy to electricity's 820 petajoules. All of that natural gas is delivered safely, reliably and efficiently through Australia's network of 38,000 kilometres of high pressure gas transmission pipelines that have a replacement value of over $50 billion.

It is the investment in these pipelines that has led to the evolution of a pipeline network across Eastern Australia's gas markets, promoting basin on basin competition and leading to the emergence of trading (indistinct) it is this network that is facilitating the next evolution in trading flexibility and competition across markets. Importantly, the investment that has occurred has occurred across a mix of regulated and unregulated assets and is being achieved through bilateral negotiation and contracts, as envisaged under the regime established in the National Gas Law.

Pipeline investment is critical to maintaining the supply of energy and securing new and competitive sources of gas supply. The investment made by pipeline companies supports gas supply, electricity generation, industrial manufacturing, residential heating and cooking for all Australians. The need for continued investment is widely recognised. In its December 2018 interim of its ongoing gas enquiry, the ACCC stated:

> *Gas users long term concerns about prices in the East Coast gas market could be alleviated is there is timely investment in gas development and key infrastructure.*

The Energy Users Association of Australia, as part of this process, has stated that they welcome news to increase competition and encourage additional investment in all aspects of the domestic gas supply chain. Investment decisions require long term thinking and commitments, often over 20 to 30 years. The stability and robustness of the regulatory framework is a significant contributor to a positive environment in which to make those decisions and the National Gas Law plays a critical role. The first four words of the National Gas Objective are "to promote efficient investment". The need for efficient investment is paramount. Without investment, the other aspects of the National Gas Objective lose significant meaning.

The gas transmission companies of Australia are all service providers. None

have vertically integrated production or retail businesses. Pipeline owners work actively with customers to provide the capacity and services that market participants need. Ultimately pipeline companies know the ongoing success of the pipeline industry is contingent of the ongoing success of our customers and the gas markets of Australia.

In the new environment of increased gas prices, pipelines are working with customers to deliver outcomes that minimise transportation costs, maximise flexibility and help customers stay in business. The Australian gas market is relatively small. The fact that the building of three LNG facilities in Queensland has tripled the east coast gas demand is evidence of this.

There has been a reference to the importance of international benchmarking when we're assessing prices in Australia. I'm not sure if there's another 600-kilometre 12-inch pipeline that exists anywhere in the world. That is an incredibly narrow pipeline for that length of distance. If there is one it's certainly not 1000 kilometres from the closest international port or 2000 kilometres from the closest city of above 1 million people.

The opportunities to build new infrastructure are limited and competition is fierce. The costs of building a pipeline are largely inflexible. The steel will be bought from a handful of international mills, regardless of who is building the pipeline; the same contractors will compete for the construction project, regardless of who is building the pipeline; and the same conditions and approvals process will apply regardless of who is building the pipeline.

Pipeline project proponents are left to compete with each other on their appetite for capital risk, which comes down to two important aspects: how slowly a proponent is willing to recover its costs, directly influencing the foundation tariff, and how much re-contracting risk a proponent is willing to take, directly influencing the length of foundation contracts. Other speakers have and will discuss the process set up by the NT Government to create a highly competitive outcome for the Northern Gas Pipeline.

There can be no doubt that that process secured the best possible access conditions for the Northern Territory Government and the access principles, agreed to by Jemena, ensure other users of the NGP will enjoy the same efficient service conditions. This is supported by the Energy Users' Association of Australia, who state in their submission that they recognise the NGP tariff structure was the outcome of a competitive tender process and that it is not unreasonable to assume that the access principles, including tariffs, are an accurate reflection of an efficient cost level. It's simply not credible that further application of Part 23 of the National Gas Rules will provide an enhanced outcome for the users of the Northern Gas Pipeline.

APGA supports the AEMC's draft decision. In addition to adding complexity to the operation and use of services of the Northern Gas Pipeline, changing the National Gas Rules as a result of this weak rule-change proposal would damage the environment for future investment, which may well be the proponent's intention.

Jemena assumed an unprecedented level of risk when winning this project, given the initial foundation contract offered by the Northern Territory Government only covered 30 per cent of the total capacity built. The willingness to take such a risk to invest in infrastructure in Australia must be encouraged. A stable and robust regulatory framework, immune from frivolous change, is essential to support efficient investment, and the AEMC's draft decision in maintaining the stability and robustness of the National Gas Rules delivers this and thus further achieves the National Gas Objective. Thank you.

MR PIERCE: Thank you. And finally Matthew Sargeant from the Northern Territory Treasury and Finance Department.

MR SARGEANT: Thank you. I am here today representing the Northern Territory Department of Treasury and Finance. The department is the adviser to the Territory Government on policy matters related to economic regulation, including matters related to the National Gas Law and Rules. The department welcomes the opportunity to appear at this pre-final determination hearing and does so to support the AEMC's draft rule determination not to make the proposed rule to revoke the derogation exempting the Northern Gas Pipeline from the application of Part 23 of the National Gas Rules.

The Northern Territory Government is responsible for the derogation being in place today. During the development of the Part 23 framework in 2017 we became aware that there would be conflict in how the proposed framework would interact with the pre-existing access regime for the NGP. Specifically, the access principles which were developed are as a result of a competitive tender process to construct and operate the pipeline and which are legally binding on the pipeline operator, Jemena.

We were concerned that the application of the Part 23 framework to the NGP would unnecessarily duplicate the existing access principles, which were intended to address many of the same issues the Part 23 framework is intended to address. The Territory Government put its concerns to the Gas Market Reform Group, the body tasked with developing and implementing the Part 23 framework, and the Energy Council, whose membership comprises ministers of each Australian state and territory and the Energy Council agreed to implement a derogation in the initial rules exempting the NGP from Part 23 framework for the life of the access principles, which is 15 years from the

commencement of the pipeline.

Both the access principles and Part 23 framework are intended to facilitate access to pipeline services on reasonable terms. The Part 23 framework achieves this through the provision of financial information about pipelines and a binding arbitration mechanism. Under Part 23 "reasonable terms of access" are taken to mean "prices and terms and conditions that, so far as practical, reflect the outcomes that would occur in a workably competitive market". The NGP access principles achieve this same outcome in a different way, by imposing an obligation on Jemena to provide non-discriminatory access to third parties at competitively determined prices, and by providing for a dispute resolution process with binding arbitration.

Instead of requiring the publication of financial information about the pipeline to enable access seekers to determine the reasonableness of price offers, as occurs under the Part 23 framework, the access principles require Jemena to provide access at prices no higher than established through the Territory Government's competitive tender process. The information available, both at the time the derogation was made and at present, indicates that the binding prices set out in the access principles reflect a competitive market outcome and therefore achieve the same outcome for the NGP as intended by the Part 23 framework.

This is evidenced by the Australian Competition and Consumer Commission's 2016 inquiry into the east coast gas market, which highlighted the NGP as an example, illustrating that competition for the market can impose an effective constraint on the behaviour of new pipelines. Also, submissions by oil and gas explorers in central Australia to Dr Mike Vertigan's 2016 examination of the current tests for the regulation of gas pipelines indicated a high degree of comfort with the Territory Government's tender process and access principles, access prices, for the NGP.

This has been confirmed in the AEMC's consultation on this rule change request with the AEMC's draft determination noting that the AEMC has not received any submissions from gas shippers that are unhappy with the access principles. To the contrary, the Energy Users' Association of Australia, many of whose members have a stake in the competitive provision of gas transportation services, made a submission to the AEMC's draft determination in support of the competitiveness of the NGP access principles.

In addition, as noted in the AEMC's draft determination, Jemena's ability to exercise market power is further constrained by the potential for the NGP to be declared a full or light regulation pipeline. This outcome is explicitly contemplated in the access principles. We support the AEMC's draft determination that the access principles and the threat of full or light regulation

establish appropriate constraints of Jemena's ability to exercise market power in negotiations with perspective users of the NGP.

The department acknowledges the commentary of the ACCC in its inquiry into the east coast gas market, that the constraint on market power offered by competition for the market for new pipelines may dissipate over time. However, we do not think this will occur for the NGP for the life of the derogation since, in effect, the Territory Government, through its competitive tender, has established competitive foundation access rights for all parties seeking access to the pipeline for 15 years and capacity up to 300 terajoules per day.

Our analysis is that the application of the Part 23 framework to the NGP, in addition to the access principles, would likely have few if any benefits but has a potential to generate costs. If the proposed rule was made, Part 23 would apply to the NGP in addition to the access principles and this would result in regulatory duplication. The department agrees with the AEMC's assessment in its draft determination, that the uncertainty surrounding the obligations and outcomes, potential forum shopping, and additional regulatory compliance costs are likely to be greater than the potential benefit of enabling pipeline users and prospective users to seek access to the NGP via the Part 23 framework.

The revocation of the access principles would not be a viable option to overcome regulatory duplication in the event the proposed rule change was made. Apart from the likely detriment to gas shippers from the loss of certainty provided by the legally binding and competitively determined tariffs in the access principles, it is not clear that Part 23 would adequately constrain Jemena's market power in isolation. This is because, as identified by the AEMC in its draft determination, Part 23 may not apply to Jemena's nitrogen removal skid, of which the services are essential for Territory gas to meet the east coast gas market specification.

This issue of different gas specification in the Territory and the east cost gas markets is an issue that is unique to the NGP at present. The Territory Government's principal concern in relation to establishing the access principles, requesting the derogation for the NGP, and making submissions related to this rule change request, has been to further the National Gas Objective and the long-term interests of consumers. The department has sought to assist the AEMC wherever possible in its assessment of the rule change request and we would be happy to provide any further information the AEMC considers necessary. Thank you.

MR PIERCE: Just one or perhaps two questions, if I may. What would the government expect the process to be if there's a proposal to expand the

pipeline? Under which regulatory regime would you expect that might fall?

MR SARGEANT: Well, if it's an extension of the pipeline up to 300 terajoules per day, that would be covered by the access principles and then, beyond that, usual processes under the National Gas Law and Rules would apply.

MR PIERCE: At the time of the tender, can you just clarify, I mean, the option of somebody applying for a pipeline to be covered existed, can you just clarify the time of the tender where the Gas Market Reform Group was up to with the development of what we now know and love as Part 23.

MR SARGEANT: So I might have to clarify - take that on notice - but my understanding is the tender process was run and completed well prior to the Gas Market Reform Group being tasked with developing or undertaking the task of developing and implementing the Part 23 framework.

MR PIERCE: I'm sure we can establish that. So if you wouldn't mind following up with the staff on that timing question.

MR SARGEANT: Sure.

MR PIERCE: Thank you.

MR SARGEANT: Thank you.

MR PIERCE: So, look, I thank everyone for coming along today. Of course I presumed that if you had a question you wanted to attend - - -

MS SHEPHERD: No, I have no questions.

MR PIERCE: No. So we appreciate you taking the time to participate in our processes. The experience and perspectives that you bring, not just in your submissions but in the hearing today, is of great assistance to the commission to coming to its decisions. The submissions in response to that are open and we would encourage submissions in response to statements that were made today at this hearing, but we'd ask that those be made by the close of business, Thursday, 23 May, to allow our final decision to be made in due time.

The statements that people have made today at this hearing and any of the subsequent responses or submissions in response to those statements, of course will be, as is our usual practice, published and made public, and will be taken into account and considered when the commission makes its final determination. That final determination is scheduled to be published on Thursday, 4 July, and, once again, thank you, everyone for coming along to

this hearing and for your contributions today, and I now bring the hearing to a close. Thank you.

HEARING CONCLUDED