



INFORMATION

AUSTRALIAN ENERGY MARKET COMMISSION LEVEL 6, 201 ELIZABETH STREET SYDNEY NSW 2000
T: 02 8296 7800 E: AEMC@AEMC.GOV.AU W: WWW.AEMC.GOV.AU

Northern Gas Pipeline — derogation from Part 23

The AEMC has decided not to make a rule to remove an exemption that is applicable to the Northern Gas Pipeline. As a result, the regulatory obligations under Part 23 of the National Gas Rules will not apply to the pipeline. It will continue to be regulated under the binding Northern Gas Pipeline access principles.

Final rule determination

The AEMC's assessment shows that there is currently an appropriate level of protection against Jemena's (the pipeline service provider) ability to exercise market power when negotiating with prospective users for services of the Northern Gas Pipeline (NGP). This is provided by the NGP access principles that are part of the project development agreement between the Northern Territory Government and Jemena, the current market conditions and the ability to apply to have the pipeline classified as a covered pipeline that is subject to full or light regulation.

Under the NGP access principles, prospective users are able to seek access to the NGP's key services on terms, conditions and tariffs that have been determined through a competitive tender process carried out by the Northern Territory Government. Importantly, the NGP access principles are legally binding on Jemena and include tender-derived maximum tariffs. Contrary to the rule change proponents' claims, the NGP access principles and the maximum tariffs cannot be changed unilaterally by Jemena. A comparison of tariffs across various transmission pipelines carried out by the AEMC does not provide evidence of excessive tariffs for the NGP, as claimed by some stakeholders.

The potential for Jemena to exercise market power when prospective users seek access to the NGP's services is also limited by the current market conditions and the threat of becoming a covered pipeline. Under the current market conditions for NGP's services, only a third of the NGP's services are contracted on a longer term basis, which would be likely to encourage Jemena to seek new users for the NGP. The NGP also faces the threat of becoming a covered pipeline as any party can at any time apply to the National Competition Council seeking that the NGP be classified as a covered pipeline.

In deciding not to make a final rule, the AEMC also notes that revoking the derogation applicable to the NGP under the current circumstances would be likely to lead to greater complexity and uncertainty in regard to the arrangements for seeking access to the NGP's services.

The revocation of the derogation would lead to both the Part 23 framework and the NGP access principles applying to the NGP at the same time. This would create complexity for prospective users and the service provider in negotiating access to the NGP's services. It may lead to uncertainty and confusion regarding what obligations are relevant and the expected outcomes. Additionally, the application of both regimes creates the potential of adverse outcomes such as forum shopping by potential users to occur.

Some stakeholders suggested that the derogation be revoked for pipeline capacity exceeding the current capacity of 90 TJ/day. The AEMC considers that this option is not desirable as it would lead to similar issues as revoking the derogation altogether.

The AEMC's assessment showed although the Part 23 framework provides a detailed and prescriptive approach to addressing a non-scheme pipeline's market power, its application to the NGP under the current circumstances is not likely to offer net benefits. There are special circumstances affecting the NGP in relation to the NGP's tender process, the timing

of that tender process with respect to development of the Part 23 framework, and the existence of a binding third access regime due to which a different regulatory regime for the NGP is acceptable. The AEMC expects that future investments in a similar scenario would make use of the competitive tender provisions in the NGR rather than seeking this type of specific exemption.

Rule change request

In July 2018, the AEMC received a rule change request from Environmental Justice Australia and the Institute for Energy Economics and Financial Analysis seeking to revoke the derogation in the NGR, which exempts the NGP from application of the Part 23 framework.

The rule change proponents sought revocation of the NGP derogation on the basis that the derogation would, in their view, lead to several issues including: allowing the NGP to operate as an unregulated monopoly pipeline with no limit on tariffs for 15 years; distortion of market signals for investment; and an uneven regulatory playing field with respect to other pipelines.

Rule making process

The AEMC commenced the rule making process on 15 November 2018 with the publication of a notice advising commencement and a consultation paper identifying issues for consultation. The AEMC received 21 submissions.

The draft rule determination was published on 21 February 2019. The AEMC determined not to make a draft rule to remove the derogation applicable to the NGP. Six submissions were received in repose to the draft rule determination. A request to hold a hearing prior to the final determination was also received from Environmental Justice Australia.

A pre-final rule determination hearing was held by on 7 May 2019 in which five parties presented their views to the Commissioners. In addition, a third consultation period was provided under which 26 submissions were received.

The issues raised in all the 53 submissions and at the pre-final rule determination hearing have been considered by the AEMC in making the final rule determination.

Background

The framework for arbitration and information disclosure set out in Part 23 of the National Gas Rules was introduced in August 2017 to address the market power imbalance between service providers and prospective users that was identified by the ACCC's East Coast inquiry and Dr. Vertigan's Examination of the current test for the regulation of gas pipelines. As part of the initial rules that were made to give effect to the Part 23 framework, a derogation from the framework was provided to the NGP.

The NGP was built through a competitive tender process that was carried out by the Northern Territory Government and won by Jemena in 2015. The NGP is subject to the Northern Gas Pipeline access principles as part of the project development agreement with the Northern Territory Government. It was commissioned in January 2019.

For information contact:

AEMC Director, **Meredith Mayes** (02) 8296 7849

AEMC Adviser, **Jashan Singh** (02) 8296 7853

Media: Communication Director, Prudence Anderson 0404 821 935 or (02) 8296 7817

4 July 2019