



Hon Reece Whitby MLA
Minister for Energy; Environment; Climate Action

Our ref: 79- 14226

Mr Justin Martyn
Director
National Competition Council

Email: NGI@ncc.gov.au

Dear Mr Martyn

NORTHERN GOLDFIELDS INTERCONNECT: 15-YEAR NO-COVERAGE DETERMINATION

Thank you for your letter of 24 November 2023 to the former Minister for Energy regarding the National Competition Council's recommendation that the Northern Goldfields Interconnect (NGI) gas pipeline be exempt from coverage for a period of 15 years.

As Minister for Energy, I have decided to grant a 15-year no-coverage determination for the NGI. In making the determination, I have carefully considered the requirements under the National Gas Access (Western Australia) Law. Given the consultation undertaken by the National Competition Council (NCC), I did not invite further submissions. Please find my determination and statement of reasons attached.

As you are aware, under National Gas Rule 124, my decision and statement of reasons must be published on the NCC's website.

As also required by National Gas Rule 124, I have written to the Applicant and the Australian Energy Market Commission providing them with my determination.

Yours sincerely



Hon Reece Whitby MLA
Minister for Energy; Environment; Climate Action

Att: *Determination and Statement of Reasons*
cc: justin.martyn@accc.gov.au

10/4/24

MINISTER'S DETERMINATION FOR THE NORTHERN GOLDFIELDS INTERCONNECT PIPELINE

I, the Hon Reece Whitby MLA, Minister for Energy, Environment and Climate Action being the relevant Minister to make a 15-year no-coverage determination on a gas transmission pipeline under section 156 of the National Gas Access (Western Australia) Law (**NGAL(WA)**), within the meaning given in the *National Gas Access (WA) Act 2009*, make the following determination in relation to the application from APA Northern Goldfields Interconnect Pty Ltd (**the Applicant**) for a 15-year no-coverage determination for the Northern Goldfields Interconnect pipeline (**NGI**).

The application process

The Applicant submitted the application for a 15-year no-coverage determination (**the Application**) to the National Competition Council (**the Council**) in respect to the NGI on 23 June 2023. The Applicant wholly owns the NGI.

The Council undertook a public consultation process from 26 July 2023 to 16 August 2023 and received no submissions. The Council also sought supplementary information from the Applicant on 6 September 2023 and received a response on 15 September 2023. On 18 October 2023, the Council published its Draft Recommendation that I grant a 15-year no coverage determination.

Subsequently, the Council sought public submissions on its Draft Recommendation by 13 November 2023. The Council received no submissions, and released its Final Recommendation on 24 November 2023. The Council's Final Recommendation is that the NGI be exempted from being a covered pipeline for a period of 15 years.

The Council's draft and final recommendations are available on the Council's website: www.ncc.gov.au.

In accordance with section 156 of the NGAL(WA) and rule 124(2)(a) of the National Gas Rules made under the NGAL(WA), I am providing my determination to the Applicant, the Council and the Australian Energy Market Commission as soon as reasonably practicable after the end of the specified period.

Considering there were opportunities for interested parties to provide submissions to the Council twice, I have not requested further submissions or comments in relation to the Application (as allowed for under section 156(4) of the NGAL(WA)).

Description of the pipeline

My decision relates to the NGI as outlined in Map 1 (**Attachment 1**). The NGI is a buried pipeline, approximately 580 kilometres long, with an external diameter of approximately 300 millimetres and maximum operating pressure of 15.3 megapascals. The pipeline's initial design capacity maximum is 76 terajoules per day. From July to September 2023 throughput was around 6 terajoules per day, with the Applicant expecting this to increase to 13 terajoules per day by the end of the Financial Year 2024.

A further description of the NGI is available in the Council's Final Recommendation (paragraphs 1.4 to 1.11).

Decision

In accordance with Part 2 of Chapter 5 of the NGAL(WA) I am making a determination in respect to the NGI.

This determination is based on the Application, the Applicant's additional information provided to the Council, and the Council's Final Recommendation.

In making my determination, I give effect to the pipeline coverage criteria in section 15 of the NGAL(WA) in accordance with section 157(1)(a) of the NGAL(WA).

In deciding whether or not the pipeline coverage criteria are satisfied in relation to the NGI, in accordance with section 157(1)(b) of the NGAL(WA) I:

- have regard to the national gas objective in section 23 of the NGAL(WA) (section 157(1)(b)(i));
- have regard to the Council's no-coverage recommendation (section 157(1)(b)(ii); and
- have taken into account that no submissions or comments were received in relation to the Application (section 157(1)(b)(iv)) and note that I did not make any request under section 156(4).

In relation to the pipeline coverage criteria in section 15 of the NGAL(WA), I am satisfied that criterion (c) is met, but I am not satisfied that criteria (a), (b) and (d) are met. Given that I am not satisfied that all the pipeline coverage criteria are satisfied in relation to the NGI, in accordance with section 157(2)(b) of the NGAL(WA), I must make a 15-year no-coverage determination in relation to that pipeline.

This determination takes effect from the date of this determination set out at the end of the Statement of Reasons.

My Statement of Reasons follows.

STATEMENT OF REASONS

In accordance with rule 124 of the National Gas Rules (NGR), I provide this Statement of Reasons for my decision to grant a 15-year no-coverage determination in respect to the NGI to the Applicant.

Pipeline coverage criterion (a): that access (or increased access) to pipeline services provided by means of the pipeline would promote a material increase in competition in at least one market (whether or not in Australia), other than the market for the pipeline services provided by means of the pipeline.

The Council's final conclusion on criterion (a): The Council does not consider criterion (a) is satisfied.

Ministerial finding on criterion (a)

Section 157 of the NGAL(WA) requires that I must have regard to the pipeline coverage criteria (section 15 of the NGAL(WA)), including criterion (a).

In deciding whether coverage criterion (a) is satisfied in relation to NGI, I have given consideration to the National Gas Objective "to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interest of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas".

I compare the degree of competition in two states:

- one in which the NGI is covered; and
- one in which it is uncovered, i.e., the NGI is a non-scheme pipeline.

I agree with the Council's finding that there is increased access to covered pipelines as compared to non-scheme pipelines. This is because the regulatory frameworks that apply to covered and non-scheme gas pipelines in Western Australia are distinct, with the potential for full regulation to apply to covered pipelines.

- Covered pipelines may be subject to either full regulation or light regulation. Full regulation requires the regulator to assess and approve an access arrangement containing at least one reference service, along with prices and terms of access. A light regulation pipeline is required to disclose certain information but may set its own prices, subject to arbitration if it cannot reach agreement with a customer.
- A non-scheme pipeline is subject to Part 23 of the NGR applying under the NGAL(WA), under which it may be subject to information disclosure and binding arbitration if it cannot reach agreement with a customer. This regulatory framework is similar in concept, although different in design, to light regulation of covered pipelines.

I have particular regard to whether there is a causal connection between access (or increased access) to the NGI and the level of competition in the dependant markets, recognising the importance of competition for both efficient investment and the long term interest of consumers. In undertaking my assessment, I draw upon the principle that there is unlikely to be a material increase in competition in a market that is already competitive. It follows that a market that is currently competitive when the pipeline is not covered cannot be materially more competitive with access (or increased access).

I find that the Applicant does not have the incentive or ability to deny access or set a materially higher price in the absence of coverage, relative to coverage because:

- the ability to set a high price is similar in both situations assuming a covered pipeline was subject to light regulation because of the similarity between light regulation and the regulations applying to non-scheme pipelines that I describe above; and
- the incentive and ability for the Applicant to set a price that is materially above that of a covered pipeline (assuming it is subject to full regulation) is limited due to:
 - some degree of substitutability between piped natural gas and trucked energy fuels, including diesel and Liquid Natural Gas;
 - the importance of spare capacity on the NGL in driving incentives to sell access to cover its large fixed costs; and
 - the uncertainty that a regulated price for the NGL would be lower than a price offered by the Applicant without coverage given the role of forecast demand as an input to the determination of prices based on a building block model, and the uncertainty of future demand for the services provided by the NGL.

Further, the absence of submissions made to the Council during its consideration of the Application supports a conclusion that, in the absence of coverage, the Applicant does not have the incentive or ability to deny access or to set prices that are materially higher than if the NGL were covered. This is because a party expecting to gain a commercial advantage from seeking coverage of the NGL, in the form of better access or lower prices, would be expected to make a submission opposing the Application.

I agree with the Council's finding that the relevant dependent markets include:

- the market for gas produced in the Perth and Carnarvon Basins;
- the market for energy fuels in the Mid-West and Goldfields regions; and
- the market for mineral products and mineral processing in the Mid West and Goldfields region. The Council found there was one such market, but I note that there could be multiple markets for the supply of different mineral products.

For each of these markets, I have considered the relevant information and make the following assessments of the impact of access to the NGL on competition in those markets:

- **In regard to the market for gas produced in the Perth and Carnarvon Basins,** I find that this market is already competitive in the absence of coverage based on both the Council's findings and the discussion of supply in the Australian Energy Market Operator' 2023 WA Gas Statement of Opportunities (particularly for the Perth Basin), which was published after the Council's final recommendation. It follows that coverage is unlikely to increase competition materially in that market, for the reasons I give above. I note and agree for the reasons I set out above, with the Council's observation that the Applicant does not appear to have the incentive or ability to deny access or set excessively high prices compared to a regulated price. As such, I am not satisfied that access to (or increased access) to pipeline services provided by means of NGL would promote a material increase in competition in this market.
- **In regard to the market for energy fuels in the Mid-West and Goldfields regions,** I note that there appears to be competition between gas fired energy and other forms of energy such as renewable energy options (as submitted by the Applicant and accepted by the Council). It follows that the effect on competition for energy fuels would be muted even if access to the NGL was limited. Again, I note and agree for the reasons I set out above with the Council's observation that the Applicant does not appear to have the incentive or ability to deny access or set excessively high prices

compared to a regulated price. As such, I am not satisfied that access to (or increased access) to pipeline services provided by means of NGI would promote a material increase in competition in this market.

- **In regard to the market (or markets) for mineral products and mineral processing in the Mid-West and Goldfields regions**, I note the active and highly prospective Western Australian market (or markets) for mineral products and mineral processing in the area. The Western Australian Government expects further growth in the sector including due to the energy transition requirements for minerals. I see this as evidence that this market (or these markets) is and will remain competitive. This is consistent with the Council's finding that there is some evidence that the market (or markets) is already competitive. It follows that the effect on competition in the market (or markets) for mineral products and mineral processing would be muted, even if access to the NGI was limited. I note and agree with the Council's observation that the Applicant does not appear to have the incentive or ability to deny access or set excessively high prices compared to a regulated price, for the reasons I set out above. As such, I am not satisfied that access to (or increased access) to pipeline services provided by means of NGI would promote a material increase in competition in this market (or markets).

Accordingly, I am not satisfied that criterion (a) is met in relation to the NGI.

Pipeline coverage criterion (b): that it would be uneconomic for anyone to develop another pipeline to provide the pipeline services provided by means of the pipeline.

The Council's final conclusion on criterion (b): The Council does not consider criterion (b) is satisfied.

Ministerial finding on criterion (b)

Section 157 of the NGAL(WA) requires that I must have regard to the pipeline coverage criteria (section 15 of the NGAL(WA)), including criterion (b).

In deciding whether this coverage criterion is satisfied I have given consideration to the National Gas Objective, including that the efficient investment in and competition for provision of pipeline services is in the long term interest for natural gas consumers.

I agree with the Council's approach to consider whether it would be profitable for anyone to:

- construct a new open access pipeline;
- extend an existing open access pipeline; and
- construct a new pipeline as part of a broader project.

I also agree with the Council's assessment that this is specific to a broad geographic area given the interconnectivity of the main gas pipelines in Western Australia.

I have considered the relevant information and make the following assessments of whether it would be uneconomic for anyone to develop another pipeline to provide the pipeline services provided by means of the NGI:

- **In regard to the construction of a new open access gas pipeline** (i.e. with no foundation customers similar to the NGI), I note the slow uptake and spare capacity on the NGI as well as the relatively short economic life of the NGI, which APA submits is 18 years. I also note the significant risks associated with the future demand for pipeline gas (due to uncertainty in investments in mining and mineral processing, impacts of net zero emissions policies, availability of competitive renewable and long duration energy storage technologies, and the long-term role of gas as a firming product). Finally, I note the potential to expand capacity on the NGI through compression, which

is relatively cheap compared with building a new pipeline. As such, I am satisfied that it would be uneconomic for anyone to develop a new open access pipeline to provide the pipeline services provided by the means of the NGL.

- **In regard to the extension of an existing open access pipeline**, I agree with the Council's observation that this would be limited to the Mid-West Pipeline. The Mid-West pipeline has limited capacity (<https://www.mwpjv.com>) and would be relatively expensive to expand. As the Council observes, this is supported by the Applicant's choice as a previous 50% owner of the Mid-West Pipeline to divest its share in that pipeline and construct the NGL. Further, I note the relative size of the NGL compared with the Mid-West Pipeline, the NGL's spare capacity and scope for efficiently increasing its capacity, and risks associated with future demand for pipeline gas. As such, I am satisfied that it would be uneconomic to extend an existing open access pipeline.
- **In regard to the construction of a new gas pipeline as a part of a broader project**, whether or not it would be uneconomic for anyone to develop another pipeline to provide the pipeline services provided by means of the pipeline depends on the size of that broader project and the benefits and costs of controlling assets (including a pipeline) that are vital to the broader project. I note and agree with the Council's general assessment about the economics of construction of a new pipeline as a part of a broader project and its specific discussion about the Mindax-supported infrastructure corridor project submitted by the Applicant as an example of this. Regardless, of whether this particular project materialises, I note:
 - the prospectivity of the broader region and potential for further local processing or value adding (similar to the Mindax project);
 - the size of energy demand of a project or group of projects;
 - a possible incentive to better control and manage the risk of energy supply; and/or
 - the location of a project or group of projects relative to the NGL;are such that I cannot be satisfied that it would be uneconomic to construct a new gas pipeline as a part of a broader project.

Given that I am not satisfied that it would be uneconomic for someone to construct another pipeline to provide the pipeline services provided by means of the NGL, I am not satisfied that criterion (b) is met in relation to the NGL.

Pipeline coverage criterion (c): that access (or increased access) to the pipeline services provided by means of the pipeline can be provided without undue risk to human health or safety.

The Council's final conclusion on criterion (c): The Council considers criterion (c) is satisfied.

Ministerial finding on criterion (c)

Section 157 of the NGAL(WA) requires that I must have regard to the pipeline coverage criteria (section 15 of the NGAL(WA)), including criterion (c).

In deciding whether this coverage criterion is satisfied I have given consideration to the National Gas Objective, including the promotion of efficient operation and use of natural gas pipeline services for the long term interest of consumers of natural gas including with respect to safety of supply of natural gas.

I agree with the Council's finding that the following matters for assessing this criterion are:

- whether there is a statutory health and safety scheme, which will apply to the pipeline services in circumstances where access is granted to third parties; and

- whether the terms and conditions of access can adequately deal with any safety issues.

For each of these matters, I have considered the relevant information and make the following assessments of whether access (or increased access) to the pipeline services provided by means of the pipeline can be provided without undue risk to human health or safety:

- I am satisfied that the broader regulatory framework in Western Australia with regard to the safe use of natural gas transmission pipelines is well established and operates in a satisfactory manner, and the relevant regulators will deal adequately with the safe operation of natural gas pipelines. I also have no reason to believe that the Applicant would not operate in a safe manner, or would not comply with all relevant laws and conditions of its licence (PL129).
- Similarly, I am satisfied that the broader regulatory framework for safety in Western Australia is such that there is no basis to consider that increased access by third parties to the services provided by the NGI would compromise human health or safety. Therefore, I also agree with the Council's assessment that detailed consideration of the terms and conditions is not necessary.

Accordingly, I am satisfied that criterion (c) is met in relation to the NGI.

Pipeline coverage criterion (d): that access (or increased access) to the pipeline services provided by means of the pipeline would not be contrary to the public interest.

The Council's final conclusion on criterion (d): The Council does not consider criterion (d) is satisfied.

Ministerial finding on criterion (d)

Section 157 of the NGAL(WA) requires that I must have regard to the pipeline coverage criteria (section 15 of the NGAL(WA)), including criterion (d).

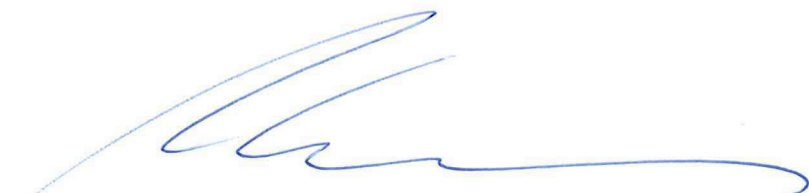
In deciding whether this coverage criterion is satisfied, I have given consideration to the National Gas Objective, including the promotion of efficient investment in and efficient use of natural gas services in the long term interest of consumers of natural gas. I note:

- the outcome of both the Council's and my findings in relation to criterion (a) and (b), which support the Applicants argument that there would be little or no benefit of tariff regulation, while it would impose a not insignificant regulatory cost. I also note the finding in relation to criterion (c), which found that any 'undue risk to human health and safety' is substantially a matter for a separate broader regulatory framework.
- the Council's detailed discussion of the administrative and compliance cost associated with full regulation, and its finding that these are significantly greater than those applying to non-scheme pipelines.

Although I note above that covered pipelines may not necessarily be subject to full regulation, I accept that there may be some additional costs from coverage for both the access provider and the regulator without any identified material benefits specifically in relation to competition in dependent markets or future investment in these markets. Accordingly, I am not satisfied that criterion (d) is met in relation to the NGI.

Conclusion

Given that I am not satisfied that all of the pipeline coverage criteria are satisfied in relation to the NGI, in accordance with section 157(2)(b) of the NGAL(WA), I must make a 15-year no-coverage determination.

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke.

HON REECE WHITBY MLA

MINISTER FOR ENERGY; ENVIRONMENT; CLIMATE ACTION

10 / 4 / 2024