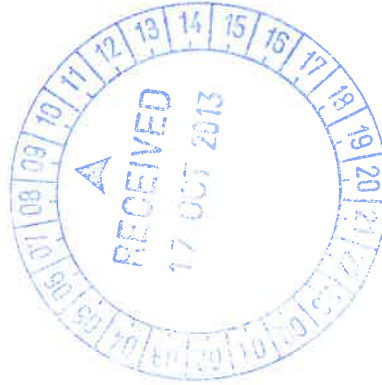


The Hon Tom Koutsantonis MP
Member for West Torrens



**Government
of South Australia**

13MMRE/0562



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Mr David Crawford
President
National Competition Council
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MELBOURNE VIC 3001


Dear Mr Crawford

Thank you for your letter dated 8 April 2013 regarding the National Competition Council's final recommendation on the application from Kimberly-Clark Australia Pty Limited (KCA) under the National Gas Law (NGL) for coverage for the South Eastern Pipeline System (SEPS).

I have determined not to make a coverage determination in relation to the SEPS. Please find enclosed a copy of my determination and statement of reasons, which I request you publish on your website. In reaching my decision, I have considered the pipeline coverage criteria and the National Gas Objective.

I have also written to the applicant and the Australian Energy Market Commission, advising them of my decision.

Yours sincerely



Hon Tom Koutsantonis MP
Minister for Mineral Resources and Energy

13 October 2013

Attachment: Minister's Determination

NATIONAL GAS (SOUTH AUSTRALIA) ACT 2008

DECISION OF THE RELEVANT MINISTER PURSUANT TO SECTION 99 OF THE NATIONAL GAS LAW (NGL)

IN RELATION TO AN APPLICATION FOR COVERAGE OF THE SOUTH EAST PIPELINE SYSTEM (SEPS)

Chapter 3 of the National Gas Law (NGL), a Schedule to the *National Gas (South Australia) Act 2008* (SA), provides for the classification and coverage of natural gas pipelines. As the South Australian Minister for Mineral Resources and Energy, to whom administration of the *National Gas (South Australia) Act 2008* has been committed, I, Hon Tom Koutsantonis MP, am the relevant Minister for the purposes of Chapter 3 of the NGL with respect to pipelines determined by the National Competition Council (NCC) to be transmission pipelines situated wholly within South Australia.

On 28 November 2012, Kimberly-Clark Australia Pty Ltd (KCA) submitted an application to the NCC for coverage of a pipeline known as the South East Pipeline System (SEPS) under the section 92 of the NGL (the application).

The SEPS is wholly located in south eastern South Australia and consists of four pipeline segments which total some 70 kilometres in length:

1. The lateral from Katnook to Safries
2. The pipeline from Katnook to Snuggery
3. The pipeline from Glencoe to Mt Gambier; and
4. The lateral from Kalangadoo to Nangwarry (decommissioned).

A full description of the pipeline can be found in the Department for Manufacturing, Innovation, Trade, Resources and Energy Petroleum Division's pipeline licences PL 3 and PL 4 available at:

http://www.pir.sa.gov.au/data/assets/pdf_file/0019/26614/pline_003www.pdf

http://www.pir.sa.gov.au/data/assets/pdf_file/0003/26607/pline_004www.pdf.

Following an initial public consultation process on the application in accordance with the NGL, the NCC published its draft coverage recommendation on 20 February 2013, which:

- classified the SEPS as a transmission pipeline situated wholly within South Australia;
- recommended that the SEPS not be a covered pipeline

Following a further public consultation process on its draft recommendation in accordance with the NGL, the NCC provided me with its final coverage recommendation on 8 April 2013 which:

- classified the SEPS as a transmission pipeline situated wholly within South Australia;
- recommended that the SEPS not be a covered pipeline.

The NCC's draft and final coverage recommendations, and the public submissions it received, are available on the NCC's website at www.ncc.gov.au.

Following receipt of the NCC's final coverage recommendation, and prior to deciding pursuant to section 99 of the NGL whether to make a coverage determination in respect of the SEPS, I received an additional submission from KCA (on 23 April 2013) (KCA's additional submission).

While not acknowledging that I was necessarily required to do so under the NGL, I decided that I may wish to take KCA's additional submission into account for the purpose of my decision under section 99, and I therefore afforded the parties who had provided public submissions to the NCC in relation to the application a further opportunity to provide further comments to me on the matters raised in KCA's additional submission. This prevented me from making my decision under section 99 within 20 business days after receiving the NCC's final coverage recommendation. I received further comments from Epic Energy South Australia Pty Ltd (the current owner and operator of SEPS) on 23 August 2013; and from Origin Energy Limited also on 23 August 2013.

Having received a final coverage recommendation from the NCC, section 99 of the NGL requires that I must decide whether to make a coverage determination in relation to the SEPS. Section 100 sets out the principles governing the making of a coverage determination, or decision not to do so, as follows:

- (1) In deciding whether to make a coverage determination under this Division, the relevant Minister—
 - (a) must give effect to the pipeline coverage criteria; and
 - (b) in deciding whether or not the pipeline coverage criteria are satisfied in relation to the pipeline—
 - (i) must have regard to the national gas objective; and
 - (ii) must have regard to the coverage recommendation; and
 - (iii) must take into account any submissions or comments he or she receives on request under section 99(4); and
 - (iv) may take into account any relevant submissions and comments made to the NCC by the public under the Rules in relation to the application.
- (2) The relevant Minister gives effect to the pipeline coverage criteria as follows:
 - (a) if the relevant Minister is satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline—the Minister must make a coverage determination;
 - (b) if the relevant Minister is not satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline—the Minister must not make a coverage determination.

The pipeline coverage criteria are set out in section 15 of the NGL as follows:

- The pipeline coverage criteria are—
- (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 1 market (whether or not in Australia), other than the market for the pipeline services provided by means of the pipeline;

- (b) that it would be uneconomic for anyone to develop another pipeline to provide the pipeline services provided by means of the pipeline;
- (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;
- (d) that access (or increased access) to the pipeline services provided by means of the pipeline would not be contrary to the public interest.

In accordance with section 100 of the NGL, I am required to give effect to the pipeline coverage criteria. This requires me to decide whether I am satisfied that the pipeline coverage criteria are satisfied, having regard to the matters set out in s100(1)(b). I note that in accordance with section 100(2), if I am satisfied that all the pipeline coverage criteria are satisfied in relation to the SEPS, I must make a coverage determination. If I am not satisfied that all the pipeline criteria are satisfied in relation to the SEPS, I must not make a coverage determination.

For the reasons that follow, I have decided not to make a coverage determination in relation to the SEPS. This decision has been reached based on the material before me, namely the application, the public submissions to the NCC on the application, the NCC's final coverage recommendation, and the additional submissions I received (from KCA and others) as discussed above.

I commenced my analysis with pipeline coverage criterion (a). As set out above, this criterion requires that I consider whether access to the SEPS would promote a material increase in competition in any other dependent market. This requires me to determine, first, that at least one separate dependent market exists, generally upstream or downstream from the SEPS; and second, that there would be a causal connection between access or increased access to the SEPS and promotion of competition in that market or markets.

I consider that this approach is consistent with the national gas objective set out in s23 of the NGL. I consider that this approach promotes the efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers by requiring consideration as to whether increased regulation (which will inevitably increase costs) is likely to result in a promotion of competition in a dependent market for the benefit of consumers.

I agree with and adopt the NCC's identification of the following three most relevant separate and dependent markets in this case:

- i. the Australian (and global) markets for paper tissue products market and other product markets in which local natural gas users compete;
- ii. upstream gas supply/production markets centred Katnook comprising local producers and other shippers delivering gas to Katnook via the SEAGas and SESA pipelines; and
- iii. a downstream market comprising usage of gas for industrial, commercial and domestic purposes in the South East region of South Australia.

I agree with and adopt the NCC's analysis to the effect that access or increased access to the SEPS is unlikely to promote a material increase in competition in markets identified at (i) and (ii) above.

In regard to the market identified at (iii) above, I consider that competition in that market may be promoted by a new entrant seeking to sell gas to users in the region supplied by the SEPS. I agree with and adopt the NCC's analysis to the effect that Beach Energy is the only likely such new entrant based on current information. However I am not satisfied that there would be a causal connection between access or increased access to the SEPS and the new entry by Beach Energy into the downstream gas supply market as identified.

Based on the information presently before me, and in particular the information provided by Beach Energy to the NCC via letters dated 29 January 2013 and 2 April 2013, I understand that Beach Energy is not currently in a position to enter the dependent market, and is unlikely to be in that position in the short, medium or long term unless the results of its current review of existing gas fields, and its further exploration projects in the area, suggest that sufficient gas supplies are available. This appears to be the major barrier to market entry currently facing Beach Energy (or any other potential entrant), and it would not be alleviated (or affected in any way) by increasing regulated access to the SEPS.

Given those current circumstances, there is in my view insufficient information to support my satisfaction that access or increased access to the SEPS would promote a material increase in competition in that dependent market, even considering a forward-looking 10 to 15 year time frame. My understanding of the information set out in the NCC recommendation, based on the submissions received by the NCC, suggest that there is no guarantee or even probability of sufficient gas becoming available so as to enable enhanced competition in the dependent gas sales market. I therefore agree with and adopt the NCC's view that I:

... would need to see greater surety as to the availability of sufficient gas and be convinced that coverage is instrumental before [I] could conclude that coverage would materially promote competition in the downstream gas sales market.

Whilst I accept KCA's additional submission to the effect that, in a dependent market subject to a monopoly, the facilitation of any competition (even via "extremely ambitious" potential entrants) may be of significance, the current position in relation to the SEPS is not analogous to the facts in issue in the *Services Sydney Pty Ltd* case. There, the Australian Competition Tribunal found that "*the scope for entry to the markets, absent any absolute regulatory barriers to entry, is real and cannot be described as trivial.*"¹ I consider that, on the information currently before me, the scope for entry to the relevant dependent market is not real, and would not be improved by increased access to the SEPS.

Therefore, I am not satisfied that pipeline coverage criterion (a) is satisfied in relation to the SEPS.

¹ *Application by Services Sydney Pty Ltd* [2005] ACompT 7 at [154].

As such, and pursuant to section 100(2)(b) of the NGL, I must not make a coverage determination in relation to the SEPS.

It is therefore not necessary for me to give independent consideration to any of the other pipeline coverage criteria. I note in particular that pipeline coverage criterion (d) does not constitute an additional positive requirement which can be used to call into question the result of my analysis in relation to pipeline coverage criterion (a).

In accordance with Rule 17 of the *National Gas Rules* this decision will be given to KCA (as the applicant), Epic Energy South Australia Pty Ltd (as the service provider), the NCC (for publication on their website) and the Australian Energy Market Commission.



Hon Tom Koutsantonis MP
Minister for Mineral Resources and Energy

13th October 2013