



Review into the scope of economic regulation applied to covered pipelines

AEMC commences review

On 5 May 2017, the AEMC received from COAG Energy Council terms of reference to review the scope of economic regulation applied to covered pipelines.

Background

At the request of the Australian Government, the Australian Competition and Consumer Commission (ACCC) held an inquiry into the competitiveness of wholesale gas prices in eastern and southern Australia. The ACCC released its report in April 2016, and made a suite of recommendations. The recommendations included that the COAG Energy Council ask the AEMC to review Parts 8-12 of the National Gas Rules (NGR). The ACCC recommended that the AEMC review make recommendations on changes that would address the concern that pipelines subject to full regulation may be able to exercise market power to the detriment of consumers and economic efficiency. The ACCC considered that in carrying out this review, the AEMC should also consider whether any changes can be made to the dispute resolution mechanism in the National Gas Law (NGL) and NGR to make it a more effective constraint on the behaviour of pipeline operators.

On 19 August 2016, COAG Energy Council released a comprehensive gas market reform package. The package included a request that Dr Michael Vertigan examine the current regulatory test for the regulation of gas pipelines, and provide recommendations to the COAG Energy Council. Dr Michael Vertigan released an examination paper in December 2016, which recommended that the coverage test not be changed. However, the paper recommended that a framework for binding arbitration, available to all open access pipelines in the event parties are unable to reach a commercial agreement, be introduced into the NGL. The paper also recommended the introduction of a requirement for all pipelines to provide information on all pipeline services.

The COAG Energy Council reform package also established the Gas Market Reform Group (GMRG) that is chaired by Dr Michael Vertigan. Dr Michael Vertigan's examination paper recommended that the GMRG be tasked with developing a detailed design of the arbitration framework, in addition to the disclosure and transparency requirements.

Scope of the review

Following these developments, the COAG Energy Council has asked the AEMC to:

- make recommendations on any amendments to Parts 8-12 of the NGR that it considers necessary to address concerns that pipelines subject to full regulation are able to exercise market power to the detriment of economic efficiency and the long term interests of consumers
- consider whether the access dispute resolution mechanism that is set out in the NGL and NGR should be amended to more effectively constrain the exercise of market power by pipeline service providers, and become more accessible to shippers
- examine the issues in Parts 8-12 that the ACCC inquiry report identified
- consult with stakeholders on additional issues in Parts 8-12
- work closely with GMRG to develop consistent recommendations

The AEMC review will consider issues including reference service definition, extension and expansion requirements, and information and arbitration frameworks for regulated pipelines.

The review will focus on transmission pipelines, but will also consider the implications of any recommendations on distribution pipelines.

The final report of the AEMC review will be published in June 2018.

Parts 8-12 of the NGR

Part 8 of the NGR sets out the requirements for pipelines subject to full regulation to provide full access arrangements, and for pipelines subject to light regulation to provide limited access arrangements.

Part 9 applies to full access arrangements, and sets out how prices and revenue are determined.

Part 10 includes other access arrangement provisions, such as extension and expansion requirements.

Part 11 provides that the applicable access arrangement and other information must be made available to prospective pipeline users and sets out the process for parties to seek access to pipeline services

Part 12 sets out access dispute resolution requirements

In its April 2016 inquiry report, the ACCC identified the following issues with Parts 8-12 of the NGR:

- The current definition of 'reference service' is that the service is sought by a 'significant part of the market'. As a result, some non-contestable services are not subject to regulated terms and conditions (including prices). The ACCC suggested that pipeline owners may be able to exercise market power on these services to the detriment of consumers and economic efficiency.
- When a pipeline that is subject to full regulation is expanded (for example, through the addition of a compressor), the additional capacity is not necessarily included within the definition of the covered pipeline and consequently not subject to economic regulation. Again, the ACCC noted that pipeline owners may, as a result, be able to exercise market power on these services provided by the expansion to the detriment of consumers and economic efficiency.
- There may be barriers that are preventing participants from using the access dispute resolution provisions in the NGR. As a result, the ACCC commented that the threat of arbitration was unlikely to be a constraint on the behaviour of pipeline service providers.

Next steps

The AEMC will publish an Issues Paper by 30 June 2017.

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