DECISION ON COVERAGE

I, Eric Ripper

Deputy Premier; Treasurer; Minister for Energy

Western Australia's Relevant Minister in relation to Coverage decisions under the National Third Party Access Code for Natural Gas Pipeline Systems

make the following decision in relation to the

Application to the National Competition Council requesting that Coverage of Parmelia Pipeline (PL1-3, 5 and PL23) be revoked

13 March 2002

In accordance with section 1.34 of the National Third Party Access Code for Natural Gas Pipeline Systems ("the Code"), and after consideration of the Final Recommendation by the National Competition Council ("NCC") received on 21 February 2002, I make the following decision:

> that Coverage of the Parmelia Pipeline, subject to the licenses PL1-3, 5 and PL23 issued under the *Petroleum Pipelines Act 1969*, is revoked.

This decision has effect on 1 April 2002. This is after the date before which a person adversely affected by the decision may apply to the Gas Review Board for a review of the decision under section 38 of the Gas Pipelines Access Law (contained in Schedule 1 of the *Gas Pipelines Access (Western Australia) Act 1998*).

I note, however, that Coverage could be reinstated later upon successful application by a person if the Coverage criteria are satisfied, either due to a change in circumstances in the Western Australian market, or changes in interpretations of how the Code is to be applied.

Description of the Covered Pipeline the Subject of This Decision

My decision relates to the Parmelia Pipeline, the subject of the licences listed in the table below.

Pipeline Licence	Location/Route	Operator	Length (km)	Pipe diameter (mm)	Regulator
WA:PL1-3, 5	Dongara to Pinjarra (incl. Fremantle & Rockingham laterals)	CMS Gas Transmission of Australia	445	356, 168, 114	Western Australian Independent Gas Pipelines Access Regulator
WA:PL23	CMS Pipeline to DBNGP (Dongara Area)		0.5	168	

The Pipeline is listed in Schedule A to the Code and as such was covered at the commencement of the Code in Western Australia.

Revocation Process

On 31 October 2001, an application under section 1.25 of the Code was made to the NCC requesting that Coverage of the Parmelia Pipeline be revoked. The applicant is CMS Gas Transmission of Australia, the operator of the pipeline.

The NCC Final Recommendation and public submissions in response to the public consultation processes can be downloaded from the NCC website at www.ncc.gov.au (follow the links through the "gas" tab).

Provisions of the Code

I make the decision in accordance with sections 1.34 and 1.36 of the Code, which provides that:

"1.34 Within 21 days after a revocation recommendation is received by the Relevant Minister, the Relevant Minister must make a decision:

(a) that Coverage of the Covered Pipeline is revoked; or

(b) that Coverage of the Covered Pipeline is not revoked.

If the Relevant Minister decides that Coverage of the Covered Pipeline is revoked, the Relevant Minister may do so to a greater or lesser extent than requested by the applicant if, having regard to the part of the Pipeline that is necessary to provide Services that Prospective Users may seek, the Relevant Minister considers it appropriate.

1.36 The Relevant Minister must decide not to revoke Coverage of the Covered Pipeline, to any extent, if the Relevant Minister is satisfied of all of the matters set out in paragraphs (a) to (d) of section 1.9, but the Relevant Minister must decide to revoke Coverage of the Covered Pipeline (either to the extent described, or to a greater or lesser extent than that described, in the application) if not satisfied of one or more of those matters."

In reaching this decision, I have considered the following criteria for Coverage contained in section 1.9 of the Code:

"(a) that access (or increased access) to Services provided by means of the Pipeline would promote competition in at least one market (whether or not in Australia), other than the market for the Services provided by means of the Pipeline;

(b) that it would be uneconomic for anyone to develop another Pipeline to provide the Services provided by means of the Pipeline;

(c) that access (or increased access) to the Services provided by means of the Pipeline can be provided without undue risk to human health or safety; and

(d) that access (or increased access) to the Services provided by means of the Pipeline would not be contrary to the public interest."

REASONS FOR THE DECISION

I am not satisfied, in relation to the Pipeline, of all of the matters set out in paragraphs (a), (b), and (d) of section 1.9 of the Code. I have made the decision to revoke Coverage after consideration of the Recommendation submitted by the NCC.

Criterion (a) that access (or increased access) to Services provided by means of the Pipeline would promote competition in at least one market (whether or not in Australia), other than the market for the Services provided by means of the Pipeline.

I am not satisfied that the Parmelia Pipeline meets the criterion in section 1.9(a) of the Code.

I note that the approach taken by the NCC and the question posed by criterion (a), as clarified by the Australian Competition Tribunal ("ACT") is:

> *"whether the creation of the right of access for which the Code provides would promote competition in another market. The enquiry is as to the future with coverage and without coverage."* (**NCC Recommendation** p47).

I agree with the NCC's assessment of the relevant markets and its conclusion that the Pipeline does not have sufficient market power in the transmission market to hinder competition in the upstream and downstream markets, on the basis of the material that was before the NCC.

I agree with the NCC that there is significant unused capacity on the Parmelia Pipeline, and that gas consumers in the South West of Western Australia have a choice of either Perth Basin gas transported via the Parmelia Pipeline or the Dampier to Bunbury Natural Gas Pipeline ("DBNGP") or Carnarvon Basin gas transported via the DBNGP.

I note the "withdrawal" of the submissions by AWE and AusAm, indicating that their concerns have been addressed outside of the protection of the Code, and the following statement from CMS:

> *"Concerns expressed by AWE that the tariff for using Parmelia will increase following revocation are not supported by fact as CMS has undertaken to honour the existing, regulatory approved, published and historically consistent tariffs. (CMS 2002a, p11)"* (**NCC Recommendation** p60).

The NCC recognised that the undertaking by CMS is limited to honouring the current regulated tariffs and it is not a commitment to continue to provide gas transmission services on the basis set out in the Access Arrangement approved by the Regulator in December 2000.

I agree with the NCC's conclusions that, given the limited market power of the Pipeline, the constraints on exercising any market power it may have, and in particular CMS' undertaking to honour current regulated tariffs, continued coverage of the Pipeline is unlikely to improve efficiency, prices or services in the upstream or downstream markets.

Therefore I am not satisfied that Coverage or continued Coverage of the Pipeline would promote competition in either the upstream or downstream markets.

Criterion (b) that it would be uneconomic for anyone to develop another Pipeline to provide the Services provided by means of the Pipeline.

I am not satisfied that the Parmelia Pipeline meets the criterion in section 1.9(b) of the Code.

I note the approach taken by the NCC, to consider whether another pipeline can be developed to provide the services provided by the Pipeline. This required the definition of the services provided and assessment as to whether it is economic to develop other pipelines to provide those services.

I agree with the NCC's conclusion that:

> *"The essence of the service is point to point transportation rather than being limited to field to market transportation."* (**NCC Recommendation** p36).

A new pipeline or expansion of the DBNGP are potential alternatives to provide this service.

I agree with the NCC's conclusion, on the basis of the information available to it, that development of a new pipeline for a demand up to 120 TJ/day, the maximum capacity of the Parmelia Pipeline, is unlikely to be economic. This view is due to the lack of economies of scale for such a load relative to the likely cost of expanding the DBNGP and is not related to the cost of access to a pipeline easement. I do not agree with the AusAm submission that securing land access will be a substantial problem. The Western Australian Government is substantially advanced with the process of securing a widened natural gas corridor from the North West to Perth area, primarily by widening the existing DBNGP corridor from 30 to 100 metres. This State gas corridor will be capable of containing several additional natural gas pipelines as well as a looped DBNGP.

I agree with the NCC that it is technically possible for the DBNGP to provide the services provided by the Parmelia Pipeline. Accordingly, the NCC assessed whether it would be economic to develop the DBNGP, to provide these services.

In my view three relevant considerations are: the cost of incremental expansion of the DBNGP; access to part haul tariffs on the DBNGP; and the feasibility of meeting the required gas quality specification for the DBNGP or accommodating within the DBNGP, inlet gas quality differences.

Is it Economic to Develop the DBNGP?

I note that the test, adopted by the NCC, for whether it is uneconomic to develop another pipeline to provide the services provided by the Pipeline was set by the ACT in the Eastern Gas Pipeline decision as follows:

> *"the test is whether, for a likely range of reasonably foreseeable demand for the services provided by means of the pipeline, it would be more efficient, in terms of costs and benefits to the community as a whole for one pipeline to provide those services rather than more than one."* (**NCC Recommendation** p41)

Cost of expansion of the DBNGP

Differing views on whether it is uneconomic to use the DBNGP to transport Perth Basin gas were submitted, and the NCC was:

> *"unable, on the information provided, to accurately compare the cost of the Parmelia Pipeline alone meeting the demand for transportation of Perth Basin*

> *gas to Perth with the cost of the DBNGP providing that service."* (**NCC Recommendation** p46)

The cost to expand the DBNGP by extra compression and possibly some looping, to replace the current Parmelia Pipeline capacity (ignoring the LPG requirements) is significant, but lower than the regulatory asset base of the Parmelia Pipeline of $62.5million (**CMS Parmelia Pipeline Access Arrangement Information**, 20 November 2000):

> *"the estimated cost of adding compression to expand the DBNGP capacity from Mondarra to Perth to provide a further 120TJ/d of gas transportation is $30-$45 million (CMS 2001, p. 22, CMS 2002b, p 8)."* (**NCC Recommendation** p43).

Whilst the development cost of the DBNGP appears to be lower than the regulatory asset base of the Parmelia Pipeline, I am concerned that the Perth Basin producers may face significant additional cost if they choose to use the DBNGP to transport their gas. This stems from the nature of the current legal right to access the DBNGP, which I canvass below.

Access to Part Haul Tariffs on the DBNGP

The access right for gas entering the DBNGP, in this case in the vicinity of Dongara, is currently provided by the *1998 Access Manual* (as amended) and related legislation. The charges for this service are the same as the full haul tariff for gas transported from the Pilbara.

The Proposed Access Arrangement for the DBNGP before the Regulator does not provide specifically for access to the DBNGP other than in the Pilbara. However, the Regulator in his Draft Decision has proposed amendments be made to provide access at any location down the length of the DBNGP.

In the meantime, Epic Energy (operator of the DBNGP) may choose to negotiate charges other than the full haul Access Manual tariff or the Reference Tariffs under the Proposed Access Arrangement and would presumably have to do so to win Perth Basin customers. I note from the NCC recommendation that:

> *"CMS states that it is aware that Epic Energy is offering to transport gas from Perth Basin producers to Perth at "rates which are significantly lower than the approved regulated tariff on Parmelia"."* (**NCC Recommendation** p46)

LPG Inlet Specification on the DBNGP

Perth Basin gas does not meet the minimum DBNGP LPG inlet specification. Submissions to the NCC indicate that there is a cost associated for Perth Basin producers meeting the current DBNGP inlet gas specification. I note that possible means by which this inlet gas specification can be overcome, as considered by the NCC in its final recommendation (at p44), are by:

> *"Perth Basin producers blending the natural gas which they produce with LPG so that the gas which they transport via the DBNGP meets the specification; or*
>
> *DBNGP blending Perth Basin gas so that it meets the specifications. Presumably, were DBNGP to provide such blending service, a tariff would be imposed. No details of these costs have been provided to the Council."*

I note the NCC also stated that:

> *"The cost to the producer of such blending does not appear to the Council to be a relevant cost of "developing the pipeline"."* (**NCC Recommendation** p44).

I also note that:

> *"The Draft Decision on the DBNGP Access Arrangement requires:*
>
> *the Access Contract Terms and Conditions to be amended "to make a gas quality specification to apply from 1 July 2005 where that gas quality specification is no more restrictive than the broadest gas specification currently set out in the Dampier to Bunbury Pipeline Regulation of 1998";* (**NCC Recommendation** p39).

This LPG inlet specification requirement may be overcome in 2005 for new entrants to use the DBNGP, as at that date the legal restriction on LPG content is to lapse and the conditions required by the Regulator in relation to inlet specification then apply.

In the meantime, the DBNGP is understood to apply an LPG penalty to Perth Basin gas in the order of 50 cents/GJ (NCC recommendation p35). With this level of penalty and the part haul tariff (Access Manual or an Approved Access Arrangement) that would apply to Perth Basin gas entering in the vicinity of Dongara, the total DBNGP transportation charge is expected to exceed the 57 cents/GJ charge on the Parmelia Pipeline.

For the DBNGP to be a practically economic alternative for transporting Perth Basin gas it would be necessary for the DBNGP operator to waive the LPG penalty and/or accept less than the regulated tariff for access (Access Manual or an Approved Access Arrangement). This is conceivable for commercial reasons, given that the LPG penalty phases out in the near term. The value to the DBNGP operator of a longer term transport contract could outweigh the short term cost to the DBNGP of effectively absorbing part of the LPG penalty that it has to pay to others.

The information provided to the NCC whilst not being conclusive, did suggest to the NCC that it is a credible possibility to economically develop the DBNGP, leading the NCC to conclude that it could not be affirmatively satisfied that criterion (b) is met.

On the basis of the information available to the NCC, its analysis and the matters I have canvassed above, I am unable to be affirmatively satisfied that criterion (b) is met.

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

I note that none of the submissions made to the NCC indicated that access cannot be provided without undue risk to human health or safety.

The pipeline is licensed under the *Petroleum Pipelines Act 1969 (WA)* and there are provisions regarding safety in these licenses.

There is no evidence to suggest that regulated access cannot be provided to the Parmelia Pipeline without undue risk to human health or safety. Consequently, I am satisfied that criterion (c) is met.

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

I am not satisfied that the Parmelia Pipeline meets the criterion in section 1.9(d) of the Code.

Based on the NCC's analysis, and given there is no evidence that third parties will seek access under the Code to the Pipeline in the immediate future, it is likely that the regulatory compliance costs involved in continuing to administer and revise the Access Arrangement outweigh any benefits. I therefore conclude that continued Coverage beyond 1 April 2002 of the Pipeline is not in the public interest.

Eric Ripper

ERIC RIPPER MLA
DEPUTY PREMIER; TREASURER;
MINISTER FOR ENERGY

11 MAR 2002