



GOVERNMENT OF WESTERN AUSTRALIA

**MINISTER FOR ENERGY; SCIENCE AND INNOVATION**

Your ref: sjd541.9a  
Our ref: 18-4571

Mr David Crawford  
Acting President  
National Competition Council  
GPO Box 250B  
MELBOURNE VIC 3001

Dear Mr Crawford

**APPLICATION FOR REVOCATION OF COVERAGE OF THE TUBRIDGI AND GRIFFIN PIPELINES**

I refer to the application by BHP Petroleum (Ashmore Operations) Pty Ltd for revocation of coverage of the Tubridgi Pipeline (PL16) and Griffin Pipeline (PL19) received by the National Competition Council (the Council) on 4 November 2005.

Following consideration of the Council's final recommendation and the relevant criteria and issues, I am not satisfied that the Tubridgi and Griffin Pipelines meet criteria (a) and (d) in Section 1.9 of the National Third Party Access Code For Natural Gas Pipeline Systems. I have therefore concluded that the Tubridgi and Griffin Pipelines should not remain subject to coverage of this Code.

Enclosed is a copy of my decision and the reasons for that decision.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Francis Logan'.

FRANCIS LOGAN MLA  
MINISTER FOR ENERGY

Att

- 3 APR 2006



GOVERNMENT OF WESTERN AUSTRALIA

**MINISTER FOR ENERGY, SCIENCE AND INNOVATION****DECISION ON COVERAGE**

I, FRANCIS LOGAN,

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 the Tubridgi Pipeline (PL16) and Griffin Pipeline (PL19) be revoked.

As required in section 1.34 of the National Third Party Access Code for Natural Gas Pipeline Systems (the Code), and after consideration of the material described below, I make the following decision:

that Coverage of the Tubridgi Pipeline subject to the license WA:PL16 issued under the *Petroleum Pipelines Act 1969* and the Griffin Pipeline subject to the license WA:PL19 issued under the *Petroleum Pipelines Act 1969*, are both revoked.

This decision has effect from 1 May 2006.

***Description of the Covered Pipeline the Subject of This Decision***

My decision relates to the Tubridgi Pipeline and Griffin Pipeline described in Schedule 2 of the Code which are respectively covered by pipeline licenses WA:PL16 and WA:PL19 issued under the *Petroleum Pipelines Act 1969*.

***Revocation Process and Background***

The National Competition Council (the Council) received two applications from BHP Petroleum (Ashmore Operations) Pty Ltd (ABN: 97 006 918 832) on 4 November 2005 seeking revocation of coverage of the Tubridgi Pipeline and Griffin Pipeline. I shall refer to the applicant as BHP Ashmore. The Council has considered the two applications together and has referred to them as the Tubridgi Pipeline System.

The Council invited interested parties to make submission by advertising in the *Australian* newspaper on the 7 November 2005. The Council allowed adequate time for interested parties to provide submissions (21 days).

The Council received two submissions in its first round of consultation:

- Chevron Australia Pty Ltd on behalf of Thevenard Production Joint Venture; and
- Apache Energy Ltd.

The original application from BHP Ashmore and the two submissions from Chevron and Apache were assessed by the Council and contributed towards the draft

recommendation which was released on 19 January 2006. The Council's draft recommendation was to revoke coverage of the Tubridgi Pipeline System.

On 19 January 2006 the Council called for further submissions, two were received in response to the draft recommendation:

- BHP Ashmore; and
- Norton White Lawyers on behalf of Thevenard Production Joint Venture.

The Council's final recommendation released on 27 February 2006 was to revoke coverage of the Tubridgi Pipeline System. This recommendation took into account the original application and all submissions received during the process. Throughout the process the Council also sought and received information from the Western Australian Department of Industry and Resources. The Council used staff that have a combination of law and economic qualifications and have considerable experience in competition principles.

The Council's Final Recommendation, its draft recommendation and public submissions in response to the public consultation processes can be downloaded from the Council website at [www.ncc.gov.au](http://www.ncc.gov.au) (via the 'energy' and 'gas' tabs).

I received the Council's final recommendation on 27 February 2006. To appropriately consider the recommendation I extended the timeline for my decision from 20 March 2006 to 10 April 2006. This extension was listed in the *Weekend Australian* on 18 March 2006. In coming to a decision on whether to revoke coverage of the Tubridgi Pipeline System I received advice from the Office of Energy who were in consultation with the Department of Industry and Resources, Department of Treasury and Finance and the State Solicitor's Office.

### ***Provision of the Code***

I make the decision based on 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**

Sections 1.26 to 1.33 of the Code provide for the Council to undertake an assessment of the merits of the application. It provides for the Council to consider the application, seek public submissions, issue a draft recommendation, consider second round submissions and issue a final recommendation.

I am satisfied in relation to the Tubridgi Pipeline System, of the matters set out in criterion (b) and (c) of Section 1.9 of the Code. I am however not satisfied that matters set out in criterion (a) and (d) of Section 1.9 of the Code are met. Accordingly I have made the decision to revoke coverage after careful consideration of the Council's Final Recommendation and the advice provided to me.

**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 satisfied that the Council has undertaken an adequate examination of the issues in criterion (a), that it has consulted widely, considered the views of BHP Ashmore, other interested parties and that the conclusions are supported by the information available to it. I am not aware of any relevant state specific issues that have not been considered by the Council.

I accept the Council's conclusions that the dependent markets of relevance are:

- the upstream market for gas exploration, gas production and gas sales from any field within the feasible scope of interconnection with the Tubridgi Pipeline System; and
- the downstream market for gas sales, which includes any producers and customers in Western Australia connected, or within feasible interconnection, with the Tubridgi Pipeline System – which encompasses most major markets in Western Australia.

I accept the Council's view that owing to the relatively low quality of any additional gas that might be supplied through the Tubridgi Pipeline System, quantities would be small

and in this context unlikely to have a material impact on the Western Australian downstream gas sales market.

I note that current demand for the Tubridgi Pipeline System is covered by contracts for the life of that demand. I also note that the Tubridgi Pipeline has been mothballed because of insufficient demand to justify its operation.

I note Apache concerns that BHP Billiton group's vertical linkages in the gas industry could result in an anticompetitive outcome. However I accept the Council's conclusion that such an incentive is not strong given the scope of power BHP Billiton might derive from what is a relatively peripheral part of the transmission system in Western Australia and the relative positions of other larger participants in the Western Australian gas market.

I accept the Council's adoption of the BHP Ashmore argument that competition for upstream gas production is constrained by factors other than access to the Tubridgi Pipeline System, and that these factors dilute demand for transmission services:

- gas discoveries surrounding the area are associated with oil fields and are of low quality;
- gas production is interruptible because the volume produced is dictated by oil production requirements;
- there are no known gas discoveries that meet the broadened gas specification for transport on the Dampier to Bunbury Natural Gas Pipeline;
- transport on the Dampier to Bunbury Natural Gas Pipeline is necessary to reach main gas use markets in Western Australia; and
- low quality gas requires a new blending envelope to be available on the Dampier to Bunbury Natural Gas Pipeline before transport can be accepted.

I note the BHP Ashmore argument that the above constraining factors have led to oil fields in the region re-injecting their associated gas and to a situation where no gas producer has shown formal access interest in the past six years.

I am satisfied with the Council's consideration of and conclusion that the gas specification requirements on the Dampier to Bunbury Natural Gas Pipeline, even with a broadened gas specification, remain a significant constraint on the production and marketability of low quality gas upstream of the Tubridgi Pipeline System.

I accept the Council's view that there is likely to be little or no additional demand, in the short term, beyond the currently contracted volumes for transport on the Tubridgi Pipeline System.

I accept the Council's view that it considers the arguments raised in submissions regarding possible future use, to be speculative in nature and that there is insufficient evidence to be affirmatively satisfied that gas finds will be developed over the longer term.

I note that in response to the BHP Ashmore's application for revocation of coverage, no party submitted that it was likely to use the Tubridgi Pipeline System. I note that even

after prompting by the Council in their draft recommendation that they were seeking information on the likelihood and timing of any possible demand for the transmission services no information was forthcoming from potential users.

I am satisfied with the Council's approach to and views on the arguments raised by Norton White Lawyers on behalf of Thevenard Production Joint Venture.

I accept the Council's view that in the short term there is likely to be little or no additional demand beyond the currently contracted volumes for transmission services on the Tubridgi Pipeline System and as such no current benefit from coverage.

I agree with the Council conclusion that in the absence of any likely additional demand for transmission services that can be supplied by the Tubridgi Pipeline System in the near future, in the immediate and short term, coverage is unlikely to have an effect on competition in the relevant markets the Council has identified.

I also accept the Council conclusion that in the longer term it appears unlikely that supply and demand for gas from the upstream dependent market is such that transmission services from the Tubridgi Pipeline System will be required. Consequently coverage would not promote competition in the upstream dependent market.

My decision to accept the Council conclusions reflects the lack of conclusive evidence that any parties (other than those already contracted) will seek to access the Tubridgi Pipeline System in the foreseeable future.

My decision is that criterion (a) is not met.

**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 satisfied that the Council has undertaken an adequate examination of the issues in criterion (b), that it has consulted widely, considered the views of BHP Ashmore and other interested parties and that the conclusions are supported by the information available to it. I am not aware of any relevant state specific issues that have not been considered by the Council.

I accept the Council's adoption of a point-to-point approach to defining the services of the Tubridgi Pipeline System and that it provides forward and back haul services from the Tubridgi processing facility to Compressor Station 2 on the Dampier to Bunbury Natural Gas Pipeline.

I am satisfied with the Council's view that, while under current circumstances there is no demand requiring differentiation of services, because of the existence of two pipelines with different capacities and dimensions within the Tubridgi Pipeline System and the ability for different specifications of gas to be transported, users may seek to use a specific pipeline and thus there is potential for differentiated services between the Tubridgi and Griffin pipelines comprising the system.

I accept the Council's view that even though it is feasible to offer competing services on the two pipelines of the Tubridgi Pipeline System, BHP Ashmore has the incentive to manage the pipelines in such a way as to maximise profit across the system (as

evidenced by the mothballing of the Tubridgi Pipeline) and that the existence of parallel pipelines does not preclude criterion (b) being satisfied.

Consequently, I accept the Council's conclusion that assessment of criterion (b) turns on whether it is uneconomic to develop another pipeline or pipelines to provide the services of the Tubridgi and/or Griffin pipelines to meet current and projected levels of demand. I am satisfied with the Council's assessment of the potential capacity of the Tubridgi Pipeline System for the purposes of this assessment.

I note the Council's comment that the existing pipelines represent a sunk cost and have excess capacity. I accept the Council's view that from an overall societal view it is more efficient for demand to be met from existing pipelines rather than new pipelines being developed.

I note that the Tubridgi Pipeline System is currently significantly under utilised, in particular the Tubridgi Pipeline which is mothballed. This indicates to me the Tubridgi Pipeline System currently has ample capacity for small to medium users to utilise its transmission services.

I accept the Council's analysis that even if the pipeline is operating at installed capacity it is still likely to be cheaper to increase capacity (through the addition of loops/or compression) than to replicate all the costs associated with constructing another pipeline (including land access issues).

I accept the Council's conclusion in respect to criterion (b) that it would not be economic to develop a pipeline to provide the services of the Tubridgi Pipeline System at current and foreseeable levels of demand.

I therefore accept the Council's recommendation and my decision is that it would be uneconomic for anyone to develop another pipeline to provide the services provided by the Tubridgi Pipeline System.

My decision is therefore 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 am satisfied that the Council has undertaken an adequate examination of the issues in criterion (c), that it has consulted widely, considered the views of BHP Ashmore and the comments of Chevron Australia Pty Ltd on behalf of Thevenard Production Joint Venture and that the conclusions are supported by the information available to the Council. I am not aware of any State specific issues that have not been considered by the Council.

I accept the Council's conclusions that access (or increased access) can be safely provided to the services of the Tubridgi Pipeline System.

I therefore accept the Council's recommendation and my conclusion is 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.

My decision is 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 satisfied that the Council has undertaken an adequate examination of the issues in criterion (d), that it has consulted widely and considered the views of BHP Ashmore and other parties. I am satisfied that the Council's conclusions are supported by the information available to it. I am not aware of any relevant state specific issues that have not been considered by the Council.

I accept the Council's approach to and views on the arguments raised by Norton White Lawyers on behalf of Thevenard Production Joint Venture.

I note that the submissions received by the Council on this criterion raised issues about the direct costs of regulation and adverse indirect impacts of revocation on incentives for investment, which the Council considered.

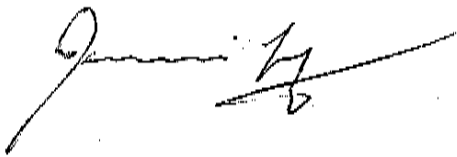
I am satisfied with the Council's analysis that while BHP Ashmore's costs of maintaining an access arrangement are not overly high, some of the costs commonly associated with regulation would still be incurred.

I note the consideration of the Council on the impact of revocation of coverage on investment related to development of gas fields.

I accept the Council's conclusion that there appear to be no tangible benefits from coverage given that (in the assessment of criterion (a)) there was insufficient evidence to be affirmatively satisfied that gas finds will be developed over the long term that require the services of the Tubridgi Pipeline System.

I concur with the Council's conclusion of not being satisfied that continued coverage of the Tubridgi Pipeline System would not be contrary to the public interest.

My decision therefore is that criterion (d) is not met.



FRANCIS LOGAN MLA  
MINISTER FOR ENERGY