



INFORMATION

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Northern Gas Pipeline – derogation from Part 23

The AEMC has decided not to make a draft rule to remove an exemption that is applicable to the Northern Gas Pipeline. As a result, the regulatory obligations under Part 23 of the National Gas Rules will not apply to the pipeline.

Draft rule determination

In deciding not to make a draft rule, the Commission considers that revoking the derogation applicable to the Jemena-owned Northern Gas Pipeline (NGP) under the current circumstances would be likely to lead to greater complexity and uncertainty in regard to the arrangements for seeking access to the NGP's services. In addition, the revocation would offer minimal benefits in terms of better providing access to the NGP's services on fair terms and conditions.

The Commission's assessment shows that there is currently likely to be an appropriate level of protection against Jemena's ability to exercise market power when negotiating with prospective users for NGP services. This is provided by the NGP access principles that are part of the project development agreement between the Northern Territory Government and Jemena, the current market conditions and the ability to apply to have the pipeline classified as a covered pipeline that is subject to full or light regulation. Revoking the derogation is likely to give rise to increased regulatory complexity, increased uncertainty of outcomes and adverse outcomes such as forum shopping by potential users of the NGP.

Under the NGP access principles, prospective users are able to seek access to the NGP's key services on terms, conditions and tariffs that have been determined through a competitive tender process carried out by the Northern Territory Government. Importantly, the NGP access principles are legally binding on Jemena and include tender-derived maximum tariffs. Contrary to rule change proponents' claims, the NGP access principles and the maximum tariffs cannot be changed unilaterally by Jemena. Under the current market conditions for NGP's services, only a third of the NGP's services are contracted on a longer term basis, which would be likely to encourage Jemena to seek new users for the NGP. The NGP also faces the threat of becoming a covered pipeline as any party can at any time apply to the National Competition Council seeking that the NGP be classified as a covered pipeline.

The revocation of the derogation would lead to both the Part 23 framework and the NGP access principles applying to the NGP at the same time. This is expected to create complexity for prospective users and the service provider in negotiating access to the NGP's services and may lead to uncertainty and confusion regarding what obligations are relevant and the expected outcomes. Additionally, application of both regimes creates the potential of adverse outcomes such as forum shopping by potential users to occur.

The Commission's assessment showed although the Part 23 framework provides a detailed and prescriptive approach to addressing a non-scheme pipeline's market power, its application to the NGP under the current circumstances is not likely to offer net benefits. There are special circumstances affecting the NGP in relation to the NGP's tender process, the timing of the tender process with respect to development of the Part 23 framework, and the existence of a binding third access regime due to which a different regulatory regime for the NGP is acceptable. The Commission expects that future investments in a similar scenario would make use of the competitive tender provisions in the NGR rather than seeking this type of specific exemption.

Consultation process

The draft determination and the rule change request are available on the AEMC's website. Stakeholders are invited to make submissions by 4 April 2019.

Rule change request

In July 2018, the Commission received a rule change request from Environmental Justice Australia and the Institute for Energy Economics and Financial Analysis seeking to revoke the derogation in the NGR, which exempts the NGP from application of the Part 23 framework.

The rule change proponents sought revocation of the NGP derogation on the basis that the derogation would, in their view, lead to several issues including: allowing the NGP to operate as an unregulated monopoly pipeline with no limit on tariffs for 15 years; distortion of market signals for investment; and an uneven regulatory playing field with respect to other pipelines.

Background

The framework for arbitration and information disclosure set out in Part 23 of the National Gas Rules was introduced in August 2017 to address the market power imbalance between service providers and prospective users that was identified by the ACCC's East Coast inquiry and Dr. Vertigan's Examination of the current test for the regulation of gas pipelines. As part of the initial rules that were made to give effect to the Part 23 framework, a derogation from the framework was provided to the NGP.

The NGP was initiated through a competitive tender process that was carried out by the Northern Territory Government and won by Jemena in 2015. The NGP is subject to the Northern Gas Pipeline – access principles as part of the development agreement with the Northern Territory Government.

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