NORTHERN TERRITORY GOVERNMENT

DEPARTMENT OF
TREASURY AND FINANCE

Under Treasurer
Level 14 Charles Darwin Centre
19 The Mall
Darwin NT 0800

Postal Address
GPO Box 1974
Darwin NT 0801

T +61 8 8999 7425
F +61 8 8999 7150
E craig.graham@nt.gov.au

File Ref: 18:D19:14899

Mr Jashan Singh
Australian Energy Market Commission
PO Box A2449
SYDNEY NSW 1235

Dear Mr Singh

Re: Draft Rule Determination – National Gas Amendment (Northern Gas Pipeline – Derogation from Part 23) Rule 2019 – GRC0047

The Northern Territory Department of Treasury and Finance (DTF) welcomes the opportunity to comment on the Australian Energy Market Commission's (AEMC) Draft Rule Determination on the National Gas Amendment (Northern Gas Pipeline – Derogation from Part 23) Rule 2019.

DTF supports the AEMC's Draft Rule Determination not to make the proposed rule to revoke the derogation exempting the Northern Gas Pipeline (NGP) from the application of Chapter 6A of the National Gas Law and Part 23 of the National Gas Rules (NGR).

The AEMC's Draft Rule Determination provides a thorough examination of the complex issues related to the proponent's proposed rule change and DTF broadly agrees with the AEMC's assessment and reasons.

Terms and conditions of access

The AEMC's assessment that 'due to the application of the NGP access principles, the current market conditions and the threat of coverage [under Parts 8–12 of the NGR] there are likely to be appropriate constraints on Jemena's ability to exercise market power, particularly in negotiations with prospective users of the NGP …'[1], is consistent with the Northern Territory Government's position outlined in its submission to the AEMC's rule change consultation paper.

DTF agrees with the AEMC's assessment that 'the combination of a competitive tender process setting key tariff and non-tariff terms and conditions of access to the NGP with the contractual obligations placed on Jemena through the project development agreement limit the ability of Jemena to exercise significant market power …'[2]. However, DTF considers that the qualification made by the AEMC that the constraint on Jemena's ability to exercise market power will apply 'during the initial years of the NGP's life'[3] is unnecessary.

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[1] AEMC 2019, *Northern Gas Pipeline –derogation from Part 23*, Draft Rule Determination, 21 February, p. 9.
[2] AEMC 2019, *Northern Gas Pipeline –derogation from Part 23*, Draft Rule Determination, 21 February, p. 31.
[3] AEMC 2019, *Northern Gas Pipeline –derogation from Part 23*, Draft Rule Determination, 21 February, p. 31.

The AEMC's qualification reflects commentary made by the Australian Competition and Consumer Commission (ACCC) in its Inquiry into the east coast gas market that '"competition for the market" can impose an effective constraint on the behaviour of new pipelines [but] ... the effect of this competitive constraint will dissipate once the new pipeline has been developed'[4].

DTF suggests that the mechanisms by which the constraint on the market power of new pipelines may dissipate are: the expiry of the initial foundation customer contracts and the full utilisation of any initial spare uncontracted capacity over time. Neither of these situations can occur for the capacity covered by the NGP derogation which includes the entire capacity of the initial pipeline and expansions up to 300 terajoules per day for a period of 15-years.

Regarding the potential for constraint on market power for new pipelines to dissipate, the ACCC stated that this 'is why foundation shippers tend to use competitive tension between prospective pipeline operators to negotiate long-term [Gas Transportation Agreements (GTA)] that protect their investments over the term of the GTA'[5]. Through the project development agreement, the Northern Territory Government has effectively secured a long-term GTA for all future users of the NGP for a period of 15-years for capacity up to 300 terajoules per day. As such, the constraint on Jemena's market power will not dissipate during the initial years of the NGP but will be sustained for the 15-year life of the project development agreement and access principles.

In relation to the other market power constraints, DTF agrees that the threat of coverage provides further ongoing constraint on Jemena's incentives to exercise market power.

Current market conditions, in which the majority of the NGP's capacity is uncontracted long-term, also acts as a further constraint on Jemena's market power in the short to medium term. However, DTF considers that the project development agreement, access principles and threat of coverage are sufficient to constrain Jemena's market power if market conditions change in the future.

Regulatory complexity and certainty

If the proposed rule was made, Part 23 would apply to the NGP in addition to the access principles and this would result in regulatory duplication. DTF agrees with the AEMC's assessment that 'the costs arising from the increased complexity of arrangements for seeking access to the NGP, potential uncertainty surrounding obligations and outcomes, potential forum shopping, and additional regulatory compliance are likely to be greater than the potential benefit of enabling users and prospective users to seek access to the NGP via Part 23 of the NGR and aligning the regulatory arrangements of the NGP with other non-scheme pipelines'[6].

The revocation of the access principles would not be a viable option to overcome regulatory duplication in the event the proposed rule change was made. Apart from the likely detriment to gas shippers from the loss of certainty provided by the legally binding and competitively determined tariffs in the access principles, it is not clear that Part 23 would adequately constrain Jemena's market power in isolation. This is because, as identified by the AEMC, Part 23 may not apply to Jemena's nitrogen removal skid of which the services are essential for

[4] ACCC 2016, *Inquiry into the east coast gas market*, April, p. 97.

[5] ACCC 2016, *Inquiry into the east coast gas market*, April, p. 97.

[6] AEMC 2019, *Northern Gas Pipeline –derogation from Part 23*, Draft Rule Determination, 21 February, p. 9.

Territory gas to meet the east coast gas market specification and for which the access principles provide for legally binding and competitively determined tariffs.

Special circumstances impacting the Northern Gas Pipeline

DTF agrees with the AEMC's assessment that the timing of the NGP tender process, which pre-dates the inquiries and reports that resulted in the introduction of Part 23 of the NGR, represent a special circumstance.

Notwithstanding that there are a number of avenues that pipeline operators can pursue to manage the regulatory risk for new pipelines, including approval of a competitive tender pipeline access arrangement, the competitive tender for the North East Gas Interconnector (now the NGP) was undertaken on the basis of the regulatory framework in place at the time. The development of the Part 23 framework was a significant change in the regulatory framework that could not have been foreseen.

If you would like to discuss these matters further, please contact Ms Samantha Byrne, Senior Director Utilities Reform, on (08) 8999 7487 or at samantha.byrne@nt.gov.au.

Yours sincerely

CRAIG GRAHAM
Under Treasurer

5 April 2019