

3 June 2024

Stephanie Jolly
Executive General Manager, Consumers, Policy and Markets
Australian Energy Regulator

Submitted via email: PipelineFOR@aer.gov.au

Dear Ms Jolly,

Form of Regulation Review: South West Queensland Pipeline

Energy Networks Australia (ENA) appreciates the opportunity to respond to the Australian Energy Regulator's (AER) recent Discussion Paper *Form of Regulation Review: South West Queensland Pipeline*.¹

ENA is the national industry body representing Australia's electricity transmission and distribution and gas distribution networks. Our members provide more than 16 million electricity and gas connections to almost every home and business across Australia.

Network businesses recognise the important roles and duties provided to the AER under recent legislative changes, which empower the AER to initiate reviews of the form of regulation to apply to a range of gas pipelines.

ENA supports the AER undertaking a careful, evidence-led and balanced assessment of the full likely costs and benefits in terms of the long-term interests of consumers of any change in form of regulation to be applied to the South West Queensland Pipeline (SWQP).

Role of sufficient gas pipeline capacity to support the energy transition

The Discussion Paper notes that under both AEMO's and other market participants' projections there will be an increasing need to transport gas from Queensland to meet supply shortfalls, driven by reduced production and declining gas reserves across southern Australian markets. The Discussion Paper also highlights the critical role that gas transportation services provided by the SWQP will play in supporting gas-fired generation that underpins energy security, customer reliability and lower prices in cases and at times where renewable generation is not sufficient.

A range of recent modelling assessments has highlighted the critical role of sufficient pipeline infrastructure capacity and timely expansions to underpin a stable and least-cost transition. AEMO's draft 2024 Integrated System Plan highlights the specific risk

¹ AER, [Discussion Paper Form of Regulation Review](#), March 2024.

that during periods of peak electricity and gas demand gas supply to gas-fired power generation may be curtailed by pipeline infrastructure constraints.²

This suggests that the AER, in its pending form of regulation decision, should carefully assess the likely impacts of moving the SWQP to a new form of regulation, including the potential for the uncertainty generated by any such change to defer or delay capacity expansions which would better allow gas-fired generation to serve as essential back-up to expanding renewable sources.

ENA understands that APA has currently indicated a pause to any capacity expansions for the East Coast gas grid, due to this uncertainty, and notes consistent public guidance from existing APA investors.³

Consideration of the counterfactual: impacts on investment of movements towards full regulation

In practical terms, movement to full pipeline regulation for a pipeline which had its initial tariff pathways established by a competitive tender process is likely to be a complex, costly, and lengthy regulatory process.

In particular, it would require the development and assessment of a regulated asset base, and estimation of other building block elements for a pipeline which has operated as a commercially operated open-access pipeline since commissioning. The development and settlement of these required values for comparable pipelines under the original gas access regime typically required detailed analysis, consultation and assessment over multiple years.

Beyond the development of a set of regulatory asset values, the transition to full regulation would need to be accompanied by the development of a proposed Access Arrangement informed by pipeline customer engagement, and settlement of that through the substantial established regulatory process set out in the National Gas Law and Rules.

This creates the likelihood of APA, its owners and investors, and pipeline users having little certainty or clarity about the prices, terms and conditions of access until 2027 or later, if the existing form of regulation approach were to change. This regulatory uncertainty would be likely to defer substantial investments in capacity expansion projects until beyond this date and have a substantial chilling impact on any APA-initiated and funded capacity expansions ahead of expected increased demand for SWQP services.

These circumstances create a substantial risk that the undertaking of a discretionary form of regulation review (and future such reviews) will have the practical impact of negatively impacting the investment environment for capacity expansions which will help support the achievement of the optimal pathway set out in the draft 2024 ISP. This risk arises in the current case from the potentially lengthy delays to APA

² AEMO, Draft ISP (December 2023), p.66

³ For example, the Yarra Capital submission to AER Discussion Paper.

investments in pipeline capacity that would underpin the expansion in renewable generation across southern Australian states and territories.

Evidence from initial stakeholder responses: implications for the AER's regulatory determination

Since the release of the AER Discussion Paper nine public submissions have been received.

While acknowledging the task of the AER in conducting the review, the majority of published submissions from existing SWQP users, shippers, the Business Council of Australia and infrastructure investors have raised the critical issue of increased uncertainty arising from the possibility of future full regulation of the SWQP. A number of submissions from currently active and future SWQP users have indicated they have no material concerns relating to access or pricing of services that would warrant a change in regulatory status.

EUAA has provided a view that it does not have sufficient information to answer the key question on whether the AER should make a scheme pipeline determination, while noting that any such decision would effectively move substantial stranding risk onto gas consumers.

In ENA's view, the response to the AER's Discussion Paper suggests that a scheme determination is unlikely to promote access to pipeline services or result in materially lower costs for users, compared to the alternative of applying the enhanced information and other obligations under the existing non-scheme regime. Taken collectively, the responses published do not provide any clear evidence of the presence, or exercise, of market power.

In circumstances where there are significant countervailing regulatory risks and uncertainty introduced by any decision to impose full regulation on needed pipeline capacity expansions, the balance of submissions suggest the AER should conclude there is currently no clear need to change the existing form of regulation applied to SWQP, in order for the long-term interests of consumers to be promoted.

Allowing enhanced non-scheme arrangement to support pro-competitive outcomes

A core design consideration for the gas pipeline access regime has been its capacity to support efficient commercially negotiated outcomes between pipeline users and pipeline owners, to allow for the dynamic development of commercial services, available on a non-discriminatory open-access basis. As part of this the availability of commercial arbitration for access disputes, and the threat of regulation, provides pipeline owners with clear incentives to provide efficient access. Recent enhancements to the non-scheme pipeline disclosure regime provide users and prospective users with an even greater range of price and terms and conditions information to support future access negotiations.

ENA understands that no APA customer has sought to use the arbitration regime that has been in place since 2017. Under these existing commercially-based arrangements APA has made significant pipeline expansions to increase the range of services

available to users. These expansions have increased the capacity for Queensland gas to flow south, providing greater energy security to NSW, SA and Victoria. This record of APA undertaking its own commercially funded expansions, and the lack of a record of recourse to existing arbitration avenues strongly suggests that the AER should be extremely cautious in considering any movement from existing arrangements.

A particular question for careful assessment should be whether likely future required capacity expansions are more likely to happen in a timely and efficient manner under the existing non-scheme arrangements, or under alternative full regulation approach. This issue should be critical to any AER review assessment around the long-term interests of consumers in efficient investment in, and operation and use of, the SWQP.

If you wish to discuss any of the matters raised in this letter further, please contact Garth Crawford, General Manager, Economic Regulation

[Redacted contact information]

Yours sincerely,

A handwritten signature in blue ink that reads "D van den Berg".

Dominique van den Berg
Chief Executive Officer