

08 November 2024

Stephanie Jolly  
Executive General Manager, Consumers, Policy and Markets  
Australian Energy Regulator  
*Submitted via email: PipelineFOR@aer.gov.au*

Dear Ms Jolly,

## **Draft Decision: 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 Draft Decision in relation to its Form of Regulation Review for the South West Queensland Pipeline.

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.

ENA supports the AER Draft Decision on the form of regulation to be applied to the South West Queensland Pipeline (SWQP). The AER's decision retains the current approach, following its assessment of the full likely costs and benefits of changing the applicable form of regulation, on the basis that this will best promote the long-term interests of Australian energy consumers.

### **Uncertainty and potential impacts on sufficient gas pipeline capacity to support the energy transition**

The Draft Decision and prior Discussion Paper note 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. AER analysis 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.

In ENA's view the continuing critical issue in the pending final decision is a careful and realistic assessment of 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 deter or delay capacity expansions which would better allow gas-fired generation to serve as essential back-up to expanding renewable sources.

The Draft Decision accurately sets out the potential for delayed investment, highlighting that regulated access arrangements would be unlikely to be in place until late 2027. It describes the resulting effect on investment as 'transitory and relatively short-term' while correctly noting that this could have broader implications for gas market functioning. On its face, a lack of appreciable regulatory certainty until late 2027 – around three years from now – would not appear to be short-term or transitory.

The Draft Decision further suggests that the imposition of scheme regulation would not necessarily result in any AER approved investments being delayed by several years.

As evidence for this, the AER indicates a number of recent access determinations relating to lateral pipeline investments, and network extensions that were completed in 'around 6 to 12 months'.<sup>1</sup> None of these cited determinations, however, would appear to be particularly comparable in scale or complexity to the establishment of an Initial Capital Base for a large existing pipeline, commissioned and constructed on the basis of a competitive tender, and falling outside the scope of scheme regulation for its entire operational life.

A more relevant comparison, for the purposes of assessing likely timeframes for the establishment of a first Access Arrangement and Initial Capital Base, would be those major transmission pipelines brought into the national gas access regime at its commencement (such as the Moomba-Sydney Pipeline, Moomba-Adelaide Pipeline and other comparably sized assets). The settlement of initial access arrangements for these pipelines routinely took 12-24 months, and longer, in many cases. Delays in the finalisation of initial Access Arrangements were a major issue documented and discussed in the Productivity Commission's *Review of the Gas Access Regime*.

### Establishing a counter-factual to non-scheme pipeline operation: adequately recognising uncertainty

A significant challenge in applying the form of regulation factors and other guidance in making this type of determination is difficulties in establishing a clear counterfactual. The Draft Decision undertakes a data informed qualitative assessment, setting out the likely costs and benefits of each potential option.

The provision of estimated counterfactual regulated reference tariffs to illustrate potential benefits of scheme regulation provides an example of the challenges involved. By definition, it is not possible for any regulatory agency to provide a credible well-informed view of the likely pricing outcomes of a complex and bespoke regulatory access pricing process it has not yet undertaken.

This is particularly the case where such pricing outcomes will be contingent on any approved opening Regulatory Asset Base. Establishing this value was one of the more contentious and technical issues in relation to major transmission pipelines brought into the gas access regime.

The AER's draft decision applies a set of alternative potential RAB valuation methodologies, correctly observing that the choices made between these methodologies would significantly impact the measured benefits to users of full regulation options. It is not clear, however, that the AER's quite precise range of anticipated price reductions considers an additional source of uncertainty – the potential for a wide range of plausible different values to arise within the application even of a single methodology. That is, any analysis which assumes a single point estimate for the application of a methodology – for example, the depreciated optimised replacement cost approach – is likely to both abstract from practice and understate the range of plausible outcomes.

Without undertaking the primary regulatory determination process contemplated, any estimates of potential savings from future regulatory pricing activities should be considered highly speculative. Consequently, indicative illustrative estimates based solely on alternative plausible methodologies do not represent a decision factor which should be given substantial weight in a form of regulation decision.

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<sup>1</sup> AER Draft Decision, p.77 and footnote 162

## Relying on existing and enhanced non-scheme arrangement to support pro-competitive outcomes

As ENA has previously noted, 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.

The continued 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.

It is understood 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 demonstrates a lack of need to move from existing arrangements.

A further benefit of reliance on existing mechanisms is the avoidance of a disruption to the operation of the long-term contracts which underpinned the development and expansion of the SWQP.

The effective undercutting - through regulatory intervention - of these commercial arrangements would introduce new risks for both the pipeline operator and shippers. In circumstances where these arrangements are effectively altered, it would be expected to result in an impact on the willingness and confidence of parties to enter comparable contracts into the future. This would likely impact significantly on future investment.

If you wish to discuss any of the matters raised in this letter further, please contact Garth Crawford, General Manager, Economic Regulation ( [REDACTED] ).

Yours sincerely,



Garth Crawford  
**General Manager, Economic Regulation**