



**Australian Council for
Infrastructure Development
Limited** ACN 061 241 638

Level 7, 167 Macquarie Street
SYDNEY NSW 2000
Australia

Telephone: (02) 9231 0722

Facsimile: (02) 9231 0765/69

E-mail: research@auscid.org.au

<http://www.auscid.org.au>

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Ms K Kaur
General Manager
Regulatory Affairs - Gas
Australian Competition and
Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Ms Kaur

The Australian Council for Infrastructure Development (AusCID) appreciates the opportunity to make a brief submission in response to the ACCC's draft decision on the proposed changes to the GasNet Australia (Operations) access arrangements, which were approved in 1998 and are currently under review.

The Council formed in 1992 and currently has in excess of 100 members, drawn comprehensively from all economic infrastructure sectors including electricity generation, transmission and distribution, gas transmission and distribution, roads, rail, telecommunications, water, airports and ports. As a representative of investors, operators, financiers and service providers to regulated infrastructure, AusCID recognises the important role that regulation plays in the Australian economy, yet is concerned about the approach the ACCC is taking in reviewing existing access arrangements under the National Gas Code as set out in its recent draft decisions on GasNet's proposed revisions.

These concerns focus on the need for a clear and stable regulatory environment that reduces the perception of regulatory risk and creates incentives for long-term investment in essential infrastructure projects by sending out positive signals to the whole market. Given that this is the first review of access arrangements under the National Gas Code, the current regulatory decision making process will be closely observed by regulated and potentially regulated businesses, and its outcome will be crucial in determining the level of perceived regulatory risk.

It is the view of AusCID that the current approach by the ACCC, as set out in its draft decision, does not fulfil the above goals.

Infrastructure and utility businesses are highly capital intensive. The investors which are required to put equity into these businesses seek the best possible risk weighted return for their funds. The market for these funds is global, as evidenced by the very high proportion of foreign ownership of Australian infrastructure and utility businesses. Australian investors, too, seek the best risk weighted return from their shareholders funds wherever the investment may be. There is no room for parochialism.

One of the major risks an investor in any utility considers prior to investing is regulatory risk. This is the risk that the rules surrounding the regulation of the business will vary from those rules the investor assumes apply at the time of investment. Any perception of increased regulatory risk decreases Australia's chances of attracting investment funds or increases the required return on that capital. Ultimately, regulatory risk – real or perceived – has the effect of increasing the price of both regulated services for consumers and of reducing their quality.

What a regulatory regime should therefore do is to provide a credible and reliable mechanism for assessing the risks of regulation *ex ante*, and provide a mechanism for limiting the boundaries for regulation if regulation is to occur.

The ACCC's draft decision on GasNet's proposed revised access arrangements only serves to increase perceptions that regulatory risk is real. The key cause for concern is that by reducing GasNet's WACC to a level which is considerably lower than that approved in 1998, and likely to be the lowest WACC yet approved to date, the Commission fails to take account of the true risk parameters which GasNet operates in. The decision is based on an equity beta that is considerably lower than that approved for a recent pipeline project, and AusCID is concerned about the apparent lack of consistency in the ACCC's approach to reviewing access arrangements under the National Gas Code.

The message that the Commission will send out to the existing pipeline investment community is that the WACC on their investment is going to be lower in future. This has obvious consequences for investment decisions by other companies who may be contemplating building new systems or expanding existing ones.

The consequences of under investment are severe, and AusCID is aware that debt providers to regulated businesses have modified their lending behaviour as a result of regulatory risk. Concern regarding uncertainty has led several banks to restrict the structure of funding to regulated businesses beyond the current regulatory period.

Unless better mechanisms are devised to provide certainty about the scope of infrastructure subject to regulation, and unless more appropriate regulatory parameters for the terms and conditions of access are established, there will be significant adverse effects for the Australian economy in the medium and longer term. AusCID therefore urges the Commission to take our concerns regarding access prices into consideration before a final decision on GasNet access arrangements is released.

Yours sincerely

A handwritten signature in black ink, appearing to read "D. O'Neill", written in a cursive style.

Dennis O'Neill
Chief Executive Officer