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Productivity Commission review of the national access regime: draft report

The Australian Pipeline Industry Association (APIA) welcomes the opportunity to comment on the Productivity Commission's draft Report from its Review of the National Access Regime. APIA supports the conclusions of the Commission in most aspects of the draft Report and would use this submission to comment on issues we believe it is appropriate for the Commission to give additional consideration to in the preparation of the final Report.

The use of gas transmission pipelines as the example infrastructure in Box 1: The Potential Use of Market Power: an example.

APIA considers the use of gas transmission pipeline infrastructure to demonstrate the potential use of market power in Box 1 on page 10 an unfortunate one for a number of reasons.

Most transmission pipelines in Australia operate as uncovered or unregulated pipelines. This is because either no access seeker has sought to cover that pipeline, or that the Designated Minister or the Australian Competition Tribunal has determined that the pipeline does not satisfy the coverage criteria. Both cases suggest that most transmission pipelines in Australia do not exhibit strong natural monopoly characteristics such that they are in a position to exercise market power. Therefore, the ability of pipeline operators to abuse market power in one of the "traditional" ways does not apply for the following reasons:

- The availability of substitute facilities – most capital cities are served by more than one gas transmission pipeline.
- The availability of substitute goods - in almost all circumstances gas is a fuel of choice, in competition primarily with electricity in most of the country and diesel and other substitutes in more remote areas.

- Users with countervailing market power – the gas transmission industry’s direct customers are often larger than gas transmission companies and include Australia’s largest energy retailers, miners, manufacturers and power generators. These companies are sophisticated and more than capable of dealing with gas transmission companies on even ground. By way of example, the gas transmission industry is the only energy sector that has had limited merits review appeals initiated by customers.

Certification

The Commission identifies many benefits from certification of state and territory regimes and states that:

The purpose of certification of a state or territory access regime is to improve the consistency and quality of access regimes, to promote regulatory certainty, and reduce the scope for regulatory duplication.

The Commission’s preliminary view that the requirement to certify the national electricity and gas regimes be removed from the Australian Energy Market Agreement (the AEMA) does not seem to align with the purpose of certification.

Whilst APIA understands the Commission’s request for further evidence of the costs and benefits of certification of the national energy regimes, it is disappointing that industry is again being asked to justify certification. The AEMA requires that these regimes be certified. When the AEMA was entered into, it was considered appropriate by (the then) Ministerial Council on Energy (MCE) that certification occur. The MCE and its successor, the Standing Council on Energy and Resources (SCER), have since failed to progress certification. SCER conducted a review of the certification requirement in 2009 in which industry was asked to justify certification. The findings of that review are not public, however we know that the AEMA was not modified. If the requirement for certification of the national energy regimes is to be removed from the AEMA, it is incumbent on SCER to demonstrate that the costs of certification outweigh the benefits.

APIA believes certification of the national energy regimes is essential to ensure the regimes remain consistent with the national access regime. The reforms undertaken by SCER since 2011, particularly the review of Limited Merits Review, have had the potential to reduce the consistency of the energy and national access regimes. The recommendation of the review of Limited Merits Review proposed a review system that shared very few attributes with that of the national access regime. Certification would, at a minimum, ensure the question of consistency is asked before any changes are entered into.

APIA appreciates that the national energy regimes cover many matters outside of access regulation and that it has been suggested that recertification would be required after each rule change. It should be a simple matter to ensure that those rule changes that are relevant to access are identified and that the question of certification is considered as part of the Australian Energy Market Commission’s extensive consultation process.

The regulatory power to direct extensions

APIA disagrees with the Commission’s finding that:

To improve regulatory and investment certainty, the CCA should be amended to confirm that the ACCC’s power to direct extensions also encompasses expansions.

Rather, APIA submits that the issue that needs to be considered by the Commission is whether there is a risk that service providers are able to abuse market power or hinder access to infrastructure

services without being regulated. APIA submits that this is not the case for either extensions or expansions of gas transmission pipeline capacity. Extensions and expansions to pipelines are very different incremental additions to an infrastructure asset. However, the example of the Kemerton Lateral given by the Commission in relation to extensions is not an example of a shipper being unable to secure access to capacity.

In that case, the lateral was built to service solely one customer (this is the case in most situations where it is also the case that the sole customer contracts). The customer paid a surcharge rather than having the costs wrapped into the general tariff for the pipeline. This is because the lateral doesn't offer system wide benefits that warrant the costs being recovered from all customers on the main transmission pipeline that the lateral connects to. It is not because the service provider can extract "monopoly rents". Furthermore, because the capacity is fully contracted by the sole shipper under, in most cases a long term contract, there seems little point in it being subject to coverage.

In relation to expansions, the case of expansions of pipelines seems to demonstrate that there is no case for expansions to be within with ACCC's power. Here are some examples:

- the capacity of the DBNGP has been expanded on three occasions over the past seven years under commercially negotiated arrangements.
- The incremental cost of expanding capacity on transmission pipelines can vary dramatically depending on many factors. In the case of a covered asset, it is exposed to the substantial regulatory risk that a regulator will ignore the difference in costs of providing capacity through the initial asset and any expansion and establish a single tariff for the asset. In circumstances where the incremental cost of the expansion is higher than the base tariff, the service provider may not be able to recover the costs of the expansion because the "average" tariff would therefore be lower.

The Commission makes the observation:

Private negotiation is generally preferable to regulated extensions (or expansions), particularly because of the practical difficulties of directing investment.

Rather than 'generally' APIA believes the Commission should reconsider its view and find that private negotiation is almost always preferable to regulated extensions. In the case of expansions, negotiations are always preferable and if a commercial outcome cannot be reached between counterparties APIA does not envisage any circumstance where a regulated outcome will improve efficiency.

APIA will be presenting to the Commission at its public inquiry in Melbourne on Monday July 29 and looks forward to raising these and issues from our earlier submission with the Commission on this occasion.

Yours sincerely

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