

61 3 9270 3898



Input to the Productivity Commission Inquiry into the National Access Regime

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We refer to the invitation to input to the inquiry into the National Access Regime and the Commission's recent Issues Paper on the subject. We make the following major points on Access, primarily from a gas producer point of view:

General Legislative/Regulatory Background

While commercial negotiation is clearly seen as the best means of achieving optimal access arrangements, we appreciate that general trade practice legislation/regulation is a key part of the commercial background. It is important, however, that this regulatory background is not overbearing, contradictory or inefficient.

Further, we believe it is necessary that the issue of security of supply is included in considering access. In the gas industry alternative supply arrangements are important in this respect as well as in a competition context. Security of supply issues are best handled by commercial negotiation and are often major considerations in the evaluation of competing gas supply alternatives.

Gas Pipeline Access

The current regulatory structure for pipeline access in the gas industry, however, overshadows negotiation and is unclear. Access being covered both by Part IIIA of the Trade Practices Act and the National Access Code for Natural Gas Pipelines (the "Code") makes the situation unclear and we understand has resulted in difficulties in establishing access arrangements in recent times. This also raises the potential for over-regulation, given the highly prescriptive nature of the Code. The involvement of all State jurisdictions and the Commonwealth in the application of the Code adds the potential for confusion; in particular, complicating major interstate pipeline developments. It is important that access arrangements be more efficiently and commercially established wherever possible.

In a more specific sense, incorporation of the Victorian "Market Carriage" system in the Code raises serious concerns. In particular, "Market Carriage" further

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complicates the Code, introduces incompatibility issues for interstate pipelines and uniquely excludes normal contracting arrangements for gas transportation.

Gas producers need access to reasonable cost transmission and distribution facilities to develop and expand gas production. Clearly, this is also important to gas consumers and the nation. A general legislative/regulatory background for negotiating access to these facilities may be a requirement but it should not be overbearing, unclear or inefficient, as the current regulatory arrangements for gas pipelines seem to be.

Access to Upstream Petroleum Facilities

Access to upstream facilities is not normally likely to be covered by Part IIIA. We believe this is appropriate and this should not be changed. Upstream facilities are not generic monopoly facilities, as gas transmission pipelines are often seen to be, but are production facilities specific to the fields served. They are equivalent to similar manufacturing facilities in other industries such as coal plants or power stations. Commercial access arrangements are made in the case of some upstream petroleum facilities when this is practicable and mutually advantageous. The upstream petroleum industry has guidelines for working such arrangements and we are not aware of any case where this approach has been found inappropriate.

From time to time we have been involved in extensive discussions with other producers seeking to find ways to share access to upstream facilities in a way that provides commercial advantage to both access seekers and service providers. For reasons of commercial confidentiality, we would not want to provide any further comment on these, but the relevant regulatory jurisdictions are aware of and support these discussions. In this free commercial environment, we can see no place for and are unaware of any need for regulatory intervention.

Overall

Generally in the gas industry, there is need to maintain an appropriate trade practice legislation/regulation background for commercial negotiation of access. However, action is required to address current uncertain, contradictory and inefficient regulation. We would support moving more toward simpler background federal trade practice regulation. We see potential to enhance the competitive landscape by reducing the level of overlap and prescription which characterises current access arrangements.