

Submission
to the
Productivity
Commission
Review of Gas Access
Regime.

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Introduction

The Energy Action Group is a 26 year old membership-based not for profit incorporated Association looking after the interests of residential and small business consumers in the national electricity and gas markets.

A number of EAG's comments are based on the jurisdictions and the industry failure to develop a national gas market. This failure has cost consumers tens of millions, if not hundreds of millions of dollars in over investment in Information Technology, compliance costs and participation costs associated with the plethora of regulators, licenses, codes and rules that a national retailer or a multi-state transmission or distribution company has to deal with.

EAG has not had the time or resources to effectively address a number of important issues raised in the Productivity Commission Issues Paper.

EAG recognizes that the National Gas Code is far less prescriptive than the National Electricity Code. Both Codes and regulatory regimes have had the same problems in developing truly national markets under the current light handed regulatory regime. The development of the national gas market has been hampered by a combination of different jurisdictional licensing systems, rules codes, and the development of different market ISO companies. One market company, the NSW based GMCo uses contract carriage arrangements and the other, the Victorian VENCORP arrangement uses a unique market carriage arrangement. Both organizations have been lobbying other jurisdictions to adopt their market arrangements. This division market models alone, makes a national gas market impossible at this point in time.

System balance is a problem that both the market carriage and contract carriage arrangements have failed to solve. There is the need to develop a single market model and clear and transparent system balance arrangement that minimises risk for gas shippers and retailers across the country.

The problem is further complicated by the convergence of the electricity and gas markets, given that the electricity market is becoming more reliant on gas as the preferred fuel for new peak load generation plant to meet the growing air-conditioning load. This structural change in gas demand makes the development of a more transparent transmission cost and risk structure even more important than in the past.

A national gas retailer has to pay for a separate license to comply with different rules and codes and set up different Information Technology systems for each jurisdiction. The Victorian gas Full Retail Competition implementation, for instance, appears to be costing the 3 retail and 3 distribution businesses and VENCORP an investment for capital and running costs a sum in the order of \$ 300 m over 5 years period to meet the technical specifications necessary to trade in the Victorian gas market.

Different jurisdictionally based Business to Business (B2B) arrangements further add to the IT complexity, increasing the industry revenue requirements and consumer

costs. A gas retailer, distribution or transmission company has to build in to their pricing stack, the costs for risks associated with the consumer's behavior on the transmission system, including a component for exceeding the AMDQ /MDQ¹ limits in at least one jurisdiction. If the company has a multi-jurisdictional base then they have to model all the risk arrangements across the supply area.

It is clear that the light handed implementation of the Gas Code has come slightly off the rails when one jurisdiction, Victoria has 5 different Market System Operating Rules within the state boundaries. The different MSOR's cover the Principal Transmission System, Western Trunk System, the Eastern Pipeline, Carisbrook to Horsham and Mildura (which uses the recently developed (Greenfield) South Australian MSOR arrangements).

The various MSOR across the various gas markets expose the retailer and consumers to risk around the system balance arrangements and associated AMDQ and MDQ payments. One pressing issue that needs to be resolved is how the contract and market carriage models solve the changing risk associated with gas fired peak electricity and how those risks are allocated to the various parties-suppliers shippers, transmission and distribution companies, counterparties, retailers and consumers. The systemic failure to address the issues on system balance and AMDQ/MDQ has added a risk premium which is paid for by consumers to gas retailers. In Victoria this figure is currently valued at around \$ 0.2 /GJ.

The Productivity Commission Report must address the issues of a common system balance arrangement, Market System Operating Rules and Information Technology protocols across the country to increase retail competition and market efficiency.

The current light handed approach to regulation means that provided the particular approach complies with the Code, the regulator has no choice but to approve the particular application no matter how much it may cost consumers. There is a real rail gauge issue in the development of the national gas market that must be resolved before consumers see any benefits.

Recent GasNet Australian Competition Tribunal Hearing – Consumers do not have access to the Appeals process.

The Energy Action Group has serious concerns about the promotion of light handed regulation in a regulatory legal environment that denies consumers any rights to challenge a regulatory Determination.

It is important to note that the first GasNet access arrangement was the first access arrangement to be challenged by a number of consumers working in a concerted manner together. The result was a tighter/more rigorous determination than the very generous presale legislated Victoria and South Australian electricity determinations.

EAG made a submission to the recent ACCC GasNet determination and when GasNet appealed the ACCC decision, EAG was granted intervener status in the GasNet

¹ Authorised Maximum Daily Quantity /Maximum Daily Quantity

Appeal to the Australian Competition Tribunal (ACT). EAG made the contention that the ACCC Access arrangement determination was at least rather generous with their determination for WACC and Opex. The Tribunal on an application from EAG for a merits review of the full determination made a ruling that EAG would only be able to address GasNet's contentions for appeal and not conduct the full merit review that EAG requested for the ACCC decision. EAG was then excluded from addressing a number of issues initially brought forward by GasNet. When both GasNet and ACCC withdrew their objections to a number of contentious issues in the appeal process, this resulted in even further "cherry picking" of the final decision. That is appealing the items that the applicant was dissatisfied with or the regulator agreeing with the proponent's contentions the result is that the Tribunal only examined issues where the regulator ACCC had been generous or had erred in law as part of the determination that was examined by the ACT".)

ACCC conceded that they were high on the Weighted Costs of Capital (roughly 10% high), generous on some Opex expenses (another 3-5%); accelerated depreciation was not part of the appeal and would have added another 4-5%. It would appear that if ACCC had adopted a more rigorous assessment of GasNet's total revenue requirements consumers would have been able to save up to 20% of gas transmission charges or around \$ 16-17 m/a. This amount is on top of savings achieved after the first attempt by consumers to limit regulatory largess.

If the GasNet figure was translated across the electricity and gas industries minus the specific GasNet depreciation requirement, the figure projects cost to consumers of at least \$200/300 m /a in the first year 2003 moving up to \$350/500 m/a in the final year of the regulatory cycle, 2008.

What also became clear during the Tribunal hearings on the GasNet appeal, was almost the complete lack of incentive for a regulated organisation like GasNet to improve their performance under the so called light handed incentive regime, particularly if they could make 20% extra over an efficient price for the regulatory period by doing nothing more than complying with the reporting regime. This is neither economically efficient nor does the outcome replicate a competitive outcome.

The GasNet appeal to the Australian Competition Tribunal further demonstrated that the light handed regulatory regime fails to deliver competitive outcomes. Australian regulators under the current light handed incentive regime are supposed to ensure that their determinations simulate competitive outcomes. It is clear from a cursory examination of the information provided by the regulated entities to the regulators, the lack of skills base within the regulatory offices and the conflicted nature of most of the consultants employed by regulators, that the current regime across all jurisdictions is very light handed. GasNet² for instance was able to save over \$ 7 m/a in Opex expenditure just before GPU sold the company by floating the company on the Australian Stock Exchange. After the float, GasNet's Opex increased back to the regulatory expenditure forecast.

² ACCC (2002) GasNet Australia access arrangement revisions for the Principal Transmission System 13th November Table 10.3 p 287.

The results to date from the regulatory process and judicial reviews (recognizing that most consumers don't have the resources to appeal or are excluded from the appeals process) is that it is better than an even money bet to "cherry pick" the regulatory decision. It would appear that Regulators make determination in a manner so as to try and minimize the number of regulatory appeals. At one level the amount of money involved in the gas industry has minimised the number of appeals of distribution determinations, but it is clear that that gas transmission companies have adopted an aggressive approach to regulatory appeals.

Regulated entities under the current light handed regulatory regime are subjected to minimal risk compared to companies operating in a competitive market. The regulatory approach creates a benchmark company with less than competitive outcomes-

- Using inflation free (real) costs – competitive companies have to wear inflation costs and in many cases international competitive pressures. A bout of high inflation will quickly sort out the differences between a regulated entity under the current building block incentive regime and a competitive company³.
- The use of a simple 60:40 debt to equity rated BBB⁴ company, when the regulated entity is far more like an A, AA or even an AAA rated company. Particularly given the low revenue and forecast consumption risk associated with covered pipelines. ACCC was prepared to give GasNet 11.15% return on equity for 40% of its real Regulated Asset Base particularly compared to a company subject to strong competitive pressures.
- Any claim to regulatory risk is minimal for any company complying with the regulatory requirements. The regulators participating in the National Regulators Forum have shown minimal creativity in setting the building block parameters. Currently a 6.3% real Vanilla WACC far exceeds most corporate returns for listed companies with a BBB rating on the ASX. This is even higher than for most AAA companies.
- Under incentive regulation, companies get to keep their savings for 5 years and to share the savings for another 5 years. In a competitive market, the savings evaporate well before 5 years and certainly not over the 10 years, unless the innovation happens to be patented.
- A regulated company can make substantial sums of money by creatively interpreting the regulatory determination and adjusting their behavior to maximize their returns. Currently overseas interest rates are cheaper than the Australian Capital Market. Therefore a policy of borrowing offshore and swapping to \$A is cheaper than bank finance or going direct to the Australian capital market for funds. It is worth mentioning that these types of savings are not shared with consumers.

³ Fitch (2003) Argentine Regulated Entities August 15th provides a useful example of the problems of regulated entities in a period of high inflation. In the case of Argentina the regulated entities have under recovered. The outcome in Australia under the generous regulatory regime provided is that consumers will underwrite the costs of inflation.

⁴ The rating agencies S&P, Moody's and Fitch rate the whole company and specific debt offerings to the market based on the total company performance. GasNet for instance earns 20% of its revenue from unregulated sources.

This avenue is available to a competitive company but consumers and investors get to share the gains.

- Guaranteed cash flow- once the 5 year revenue determination is made, the regulated entity can cover some of the volatility in load by making price adjustments between customer classes.
- The current regulatory arrangements leave consumers picking up the bill but with no rights.

The Productivity Commission Reports have failed in any attempt that it has made to date, to show that light handed regulation has provided a better outcome to consumers than a more interventionist regulatory regime.

EAG recommends that the Productivity Commission address the issue of equity for consumers, (mostly non market participants) who should have the same access to the courts and the Australian Competition Tribunal as do the market participants.

Consideration should be given to funding consumer participation in the development of a national gas market. However the recommendation should not make the same mistake of the NEM Advocacy Panel of including industry participant members on the decision making body.

Greenfield Pipelines

It is clear that there is an urgent need for a national pipeline strategy. Currently the development of gas fired electricity generation and possible development of large energy intensive projects are forming the basis for pipeline owners and potential participants in the gas industry to invest. Generally this means long term -take or pay contracts to underwrite a significant pipeline investment or possibly some regulatory certainty would be required.

EAG is still not sure of the right answer in the case of greenfield pipeline development; however it is clear that there is minimal upstream competition between production basins and transmission companies have been reluctant to compete on transport charges to lift flows.

There is some evidence from the electricity industry, particularly NSW, where regulated distribution businesses have invested in un-authorized infrastructure investment (around \$ 1.3 b in 1999-2004 regulatory cycle) and are hoping to roll this into the Regulated Asset Base for the 2004-2009 regulatory period.

However EAG would need further convincing that the current rates of return given to covered pipelines in the current Gas Access Regulatory Regime should be sufficient to encourage future investment. It is true that project finance and new infrastructure carry some risks of uncertainty but the specific nature of the Gas Access Regime for covered pipelines ensures that the owner will receive a reasonable level of reward from the generous levels of WACC and Opex provided for in Australian building block incentive regulatory determinations, illustrated by the ACCC GasNet Determination.

Pareto Associates⁵ suggest that returns to Australian regulated gas entities should be no higher than those required for UK utilities. Some disparity has emerged between Australian, UK and US interest rates utilities. This issue has yet to be addressed by members of the National Regulatory Forum.⁶ The current price differential between Australian Regulators and their US and UK counterparts should act as an incentive to encourage Greenfield developments.

The industry groups APIA and AGA and even the Productivity Commission's previous Report into the gas access arrangements has not shown any evidence that the current regulatory approach/ determinations have deterred Greenfield developments. If assertions that the current arrangements act as deterrents are going to be made by any party or even the Commission they need to be justified!

Several gas shippers have attempted to underwrite Greenfield developments with long term take or pay contracts for gas. Long distances leading to high transmission charges and the lack of sufficient interest and demand have in turn deterred a number of Greenfield pipeline developments.

Ring Fencing Arrangements

The failure to develop a set of national regulatory accounting standards does not inspire confidence in the process. The lack of confidence is further exacerbated by the almost blind acceptance of any material submitted by the regulated entity. This point started to come through the GasNet Australian Competition Tribunal hearing.

EAG recommends that the National Regulators Forum needs to develop a clear, precise, transparent and verifiable set of regulatory accounting and benchmark standards that minimise the level of utility gaming or the perception of gaming. Even if the utility or ISO is not gaming the regulatory system, consumers need to have a high level of confidence that like is being compared with like and historic costs with current costs on a meaningful basis over time. A number of consumers raised questions on GasNet's Opex expenses in their submissions to the ACCC GasNet Discussion paper and Draft Determination only to be discounted, but ACCC in the Appeal process agreed that they may have been generous.

Some brief comments to the Questions Raised by the Productivity Commission Issues Paper.

1) To what extent, if at all, has the Regime led to unmet demand, where consumers would be willing to pay more to increase supply but service providers are unwilling to make the necessary investment?

EAG is unaware of any examples.

⁵ Pareto Associates (2002) Victorian gas distribution access arrangements 2003-07 for the Victorian Customer Energy Coalition to the Essential Services Commission 8 October 2002

⁶ The price differential between UK and Australian regulators has been raised to the Victorian ESC Gas Distribution pricing determination 2003 -8, the IPART Electricity distribution pricing Review 2004-09 and the ACCC GasNet and TransEnd Access Arrangement Determinations

2) What is the cost of government administration of the Regime?

At the government level, large as there are substantial jurisdictional regulatory and policy costs across the country.

In the case of Independent System operators -not a completely fair question as VENCORP is government owned and GMCO is run as a private company.

3) What are the compliance costs for businesses?

A nationally based gas company has to purchase licenses, comply with different codes and rules and keep separate regulatory operations for each jurisdiction. EAG does not have the resource to troll through regulatory determinations to work out the costs. But it is also clear that some companies are keeping separate companies after amalgamation to gain the benefits from their regulatory departments being charged as separate duplicate costs to the different jurisdictions.

4) Are these costs likely to be significantly greater than the costs associated with unregulated commercial negotiations between pipeline owners/operators and users?

The answer to this question depends on the time frame. If a consumer is able to develop a long term contract, the outcome will be cheaper than 5 year regulatory price and access arrangement resets. If however the user has short term contracts, it may be more expensive than the current regulatory arrangements.

5) Do compliance costs differ significantly between proposed and existing pipelines and between transmission pipelines and distribution networks?

The various regulatory regimes have extensive level of fixed costs so that regulatory costs of an extension can be written off against the existing operation. Having 5 different for instance MSOR's adds to costs.

The answer depends on the jurisdiction and the level of industry development and the role that government wants to play in industry development. The Victoria government is currently trying to attract residential/small business customers in low population density areas to the gas distribution networks. The Victorian government seems to have forgotten Envestra's experience with their Mildura extension and the low customer take-up due to the high connection charges.

Tasmania is going to provide a useful example.

6) Are there any efficiency costs that arise from the constraints on pipeline owners to independently set the terms and conditions for providing services?

No comment on this issue at this time.

- 7) Are there costs that arise from strategic behavior by pipeline owners or access seekers?

No comment on this issue at this time.

- 8) Has the Regime led to inefficient investment (timing, levels) in pipelines? If so, what has caused this and what evidence is there?

Large energy intensive mineral development projects (like magnesium smelters) and the substantial investment into gas fired/ dual fuel open cycle gas turbine generators to meet summer air-conditioning peaks will determine the answer in the longer term.

- 9) Do the effects differ between existing and greenfield pipelines and between transmission pipelines and distribution networks?

One of the clear drivers is load- demonstrated by the Victorian South Australian SeaGas pipeline⁷.

Tasmania provides a useful case study.

All the other jurisdictions appear to have developed their domestic/small business markets (unless Qld, northern WA and the NT develop the gas hot water market) to the extent that the market will bear, so augmentation depends on generation and large industrial consumers.

- 10) What and how significant an effect does the Regime have on investment in upstream and downstream markets?

The long transportation distances, restricted exploration acreages and the lack of upstream competition have strongly impeded the development of the National Gas Market. The Regime fails to set any direction so it is giving mixed (both good and bad) outcomes.

It is clear that different market models and regulatory arrangements are giving bad outcomes for consumers.

- 11) Does it encourage efficient investment in these markets?

The evidence points to a mixed outcome of good and bad depending on the jurisdiction.

- 12) What are the advantages and disadvantages of allowing regulators to apply for coverage of pipelines which they will regulate?

⁷ If the second pipeline had been built in competition to the single SeaGas pipe line, this submission would have had a different tone! A duplicate pipeline was a possible outcome under the current Natural Gas Access regime.

One competent regulator and one set of rules consistently applied would solve a number of problems faced by the gas industry.

13) How consistent should the Gas Code's coverage criteria be with the criteria for declaration in Part IIIA and coverage criteria in other industry-specific regimes?

It is clear that the Part IIIA should be consistent across all regulated industries and across jurisdictions.

14) What changes might be needed to achieve the appropriate level of consistency?

Section 8 of the National Gas Code⁸ for instance provides for 4 different reference tariff approaches as well as-

e) any variation or combination of the above.

This allows for great regulatory discretion and clearly adds to the difficulties of providing any level of national consistency across jurisdictions on regulatory determinations. Under the current arrangements a network service provider can change the basis of regulatory reference tariff setting to the advantage of their financial position and to the detriment of consumers

EAG has not been through the Access Code in any detail but there are other examples. There needs to be greater harmonization between electricity and gas regulatory tariff setting approaches and access arrangements.

In EAG's experience regulators across the jurisdictions conveniently forget to apply Section 8.1 (b) *replicating the outcomes of a competitive market*.

15) Do you have any views on the Commission's recommendations on the National Access Regime (and the Government's interim response), particularly where they are relevant to the industry-specific access arrangements for gas pipelines?

No comments on this issue at this time.

16) To what extent does the Gas Code promote the use of commercial negotiation? between access seekers and service providers?

Is that a desirable objective?

Does the presence of an access arrangement discourage commercial negotiation?

Do the dispute resolution procedures of the Code, combined with the prescription required in access arrangements — particularly with respect to reference tariffs — facilitate or hinder commercially negotiated outcomes?

What proportion of negotiations between access seekers and providers have involved a dispute that was resolved by the arbitrator?

Do access seekers and providers use commercial negotiations as a legitimate step before seeking regulatory intervention?

⁸ National Third Party Access Code for Natural Gas Pipeline Systems Reference Tariff Principles Section 8.3 p. 50

What changes to the Gas Code might better facilitate its effectiveness in promoting commercial negotiations?

Are changes required to the Gas Code to better facilitate its effectiveness in promoting competition in upstream and downstream markets?

No comment on these issues at this time.

17) Does capacity trading facilitate upstream and downstream competition? Or is there scope for misuse of market power by upstream or downstream industries?

EAG is more than aware that this will be a growing issue for the Code and the Gas market to address as peak load electricity generation grows in importance.

18) To what extent, if any, does the Regime's impact on pipeline investment hinder the development of competition in upstream and downstream markets?

In the short term very little, but this will change with manufacturing development and the growth in gas fired electricity generation.

19) Effective retail contestability! Effective retail contestability involves removing entry barriers to the retail sector and allowing gas customers to select their retailer of natural gas.

The current industry arrangement for FRC across the jurisdictions (Vic, ACT, NSW and SA) has resulted in consumers paying a huge price for a less than efficient outcome.

20) Has the Gas Access Regime led to a level of investment in gas pipelines that is inefficient?

No Comment on this issue at this time

21) Do the impacts differ between reinvestment in existing networks and the construction of new pipelines?

GasNet's change in their depreciation cycle from Longford to Melbourne, accelerating the depreciation cycle by 10 years, has some interesting long term ramifications if the arrangement is continued into the next regulatory cycle, 2008-2013.

22) Do the impacts differ between transmission pipelines and distribution networks?

No comment on these issues at this time.

23) Does the Code create an incentive to delay investment and/or build smaller pipelines than optimal so as to minimise the possibility of pipeline investment being subject to access regulation?

No comment on these issues at this time.

24) To what extent have incentive mechanisms been used in practice?
What impact do incentive mechanisms have on pipeline investment and maintenance?

EAG is unaware of the incentive mechanism effectively working in Australia (with one exception in electricity⁹) There have been some minor savings in delaying some works like GasNet's pipe pigging operations, but nothing substantial offering useful long term savings to gas consumers.

Why would a regulated gas entity (or any other regulated entity) look to the incentive mechanism, particularly given the bloated regulatory returns and lack of the simulation of competitive markets as practiced by all Australian members of the National Regulators Forum.

GasNet managed a saving in Opex but lost it after they were floated on the ASX. See the reference on Page 1 of this submission.

25) To what extent do they address concerns about the truncation of returns?
What would be the advantages and disadvantages of amending the Code to enable binding rulings on the coverage of pipelines prior to their construction?
What would be the advantages and disadvantages of providing investors in a proposed transmission pipeline with the option of a 15 year (or some other fixed term) access holiday?
What are the pros and cons of limiting access holidays to transmission pipelines?
Are further changes required to address the issue of regulatory truncation of potential returns from new investment? If so, what are they and why are they necessary?

No comment on these issues at this time.

26) How effective have tender arrangements been in achieving appropriate and efficient prices?
Does the tender process for setting reference tariffs for new pipelines facilitate or hinder investment in gas pipelines?
Are there significant administrative and compliance costs involved in getting approvals prior to and following a tender process?

Tendering does not offer the lowest cost solution if there is a shortage of contractors or the proponent is gaming the tendering arrangements.

27) What is the effect of the ring fencing provisions in the Code on the incentives to invest in gas pipelines?

⁹ Citipower provided an example of a dramatic reduction in Opex expenditure in the Office of the Regulator General's 2000 Electricity Distribution Pricing Review.

Are the investment effects similar for distribution and transmission pipelines?
To what extent have regulators waived minimum ring fencing requirements or imposed additional obligations?
Has the appeals mechanism been used to any great extent and, if so, with what implications for application of the Code?
What, if any, have been the effects of limiting the scope for marketing staff to work for an associate in a related business?
Are there any changes that could be made to the operation of the Code to minimise any adverse effects of the ring fencing provisions on pipeline investment?

No comment on these issues at this time.

28) Do the information gathering requirements of the Code significantly hinder investment?

If so, what changes would ensure an appropriate balance between the interests of access seekers and providers, while not significantly discouraging infrastructure investment?

To what extent have sections 6.22 and 6.23 of the Code (Obligation to Develop Capacity) been used?

Could improvements be made to the operation of this part of the Code? If so, how?

Do the provisions for pipeline extensions and expansions hinder or facilitate investment? Please provide examples.

Does the possibility that service providers fund pipeline expansions create an asymmetry between access providers and users, such that risk is transferred from users to providers?

Do you think there is scope to improve the effectiveness and timeliness of the access arrangement process providing for an appeal on the merits of a regulator's decision earlier in the process? What are the advantages and disadvantages of doing so?

No comments on these issues at this time.

29) Are the reference tariff objectives specified in the Code appropriate? If not, what improvements could be made?

The application of different reference tariffs add to jurisdictional and regulatory complexity. It is not unfair to say that each of the approaches will work. The Section 8.3 (e) approach, however makes it is possible that the outcomes could be gamed over several regulatory cycles to the detriment to consumers.

30) Do the multiple objectives assigned to reference tariffs, and the discretion regulators have to make tradeoffs between them, lead to any problems?

The transcripts of the Australian Competition Tribunal make some interesting reading on this issue.

31) For example, has there been unnecessary uncertainty or inconsistency? Do the current arrangements for determining reference tariffs lead to inconsistencies and create an unnecessary level of uncertainty for pipeline

owners/operators, particularly given the discretion provided to regulators?
Do you think that the creation of a national energy regulator would address these problems?
Is the level of prescription provided in the Code on reference tariffs appropriate?
If not, should it be increased or decreased and why?
What, if any, improvements should be made in determining reference tariffs? Are clearer reference tariff principles required in the Code?
Do reference tariffs set an upper bound on prices for access seekers in negotiations with a pipeline owner/operator?
Is it feasible for access suppliers to negotiate lower prices than the reference tariff, if the reference tariff is set so as to recover no more than the efficient costs of providing a service?
Should changes be made to the review procedures available for reference tariff decisions?

EAG has had insufficient time to comment on this important issue.

32) Is there scope for more light-handed options within the regulatory Gas Access Regime?
Should a more light-handed approach be applied to all gas pipelines, or is it more appropriate when coverage decisions are marginal? Are there differences between transmission or distribution pipelines, or jurisdictions that might justify a more light-handed approach in some cases but not others?
In considering the potential for more light-handed approaches, do you think such approaches would work better as an alternative to coverage (as discussed above) or as an option after coverage?
Which elements of the existing access arrangements might form part of a light-handed option?

EAG has had too little time to effectively address this issue, but the tenor of this submission is an indication of the direction that we would take!

33) Could a more light-handed approach continue to balance effectively the interests of all parties and provide a fully competitive, open and transparent third party access service on a non-discriminatory and economically efficient basis?
How effective are the light-handed approaches identified here (price monitoring and information disclosure)?
Are there other approaches that might be more effective in the context of the Australian gas industry?
Are the current minimum requirements for access arrangements appropriate and effective?
What changes to the current minimum requirements would improve the prospects that the Code enables pipeline and/or network owners and operators to provide a fully competitive, open and transparent third party access service on a non-discriminatory and economically efficient basis?
What scope is there to increase the use of incentive regulation?
What are the barriers to its practical application?
How might such barriers be overcome?
Are current and proposed institutional and governance arrangements appropriate?
How consistent are the roles and responsibilities of these entities under the Gas

Code, Part IIIA of the Trade Practices Act 1974, and other specific industry regimes? What are the advantages and disadvantages of increasing consistency in roles and responsibilities?

EAG has not had the time to comment on these issues.

34) Are different approaches used in practice to regulate access to gas transmission and distribution?

Given the broad latitude of the Code this question has little relevance.

35) What is the rationale for having State Government regulators oversee access arrangements for gas distribution, rather than a national regulator (as occurs for transmission in most jurisdictions)?
Which approach is better?

A competent single national regulator with a low turnover of staff, who is committed to ensuring the convergence between the gas and electricity industry. The current arrangements are costing consumers tens of millions of dollars per annum

The reduction in the number of regulators would greatly reduce the industry and consumers' work load. It also would minimize a number of duplicate costs paid for by consumers, giving the benefits of economies of scale.

36) How timely are decisions made under the Gas Code? Do you think the process is unnecessarily protracted?
If so, what has caused this and what do you think could be done to improve it?

No comment at this point in time.

37) Are there other necessary changes to the Gas Access Regime, its objectives and its application, to ensure uniform third party access arrangements are implemented and applied on a consistent, national basis?

The lack of specificity in the Code limits the industry's and the various regulators' ability to have a consistent approach to effective regulation.

38) Are special measures required to encourage the extension of gas distribution to regional areas?

Until the issue of consumer connection cost is effectively addressed, regional extensions will be a dream. The Victorian government has put \$ 70 m on the table for rural extensions of the Victorian distribution systems. Members of the distribution industry have commented to EAG that the extension program needs more like \$ 400 m to be successful. The Envestra Mildura extension's low level of connection rates highlights the problem.

39) What, if any, has been the impact of requiring service providers to have associate contracts approved by the relevant regulator (sections 7.1 to 7.6 of the Code)?

Are current arrangements for reviewing decisions by regulators appropriate?

If not, what changes could be made and why would they be an improvement?

No comments at this point in time.

Conclusion

The National Third Party Access Code for Natural Gas Pipeline Systems almost completely excludes any rights for consumers supposedly the main beneficiaries of the reform process.

This review of the Productivity Commission should examine the costs and benefit effects of the multitude of jurisdictional approaches to regulation and Full Retail Competition that the Code has facilitated.

The Code needs to be amended to place more emphasis on achieving competitive outcomes.

Regulators need to take a more rigorous approach to making regulatory determination and to fully explain their rationale in a clear, concise, reproducible and transparent way. The Victorian Essential Services Commission Determinations currently set the benchmark amongst Australian regulators on clarity, conciseness and reproducibility. However VESC too is erring with the other regulators giving far too generous a side in their determinations setting their benchmarks, financial and revenue outcomes too high.

The national gas market will only develop if upstream competition occurs.

The problems of huge load variation, system balance issues and AMDQ/MDQ pricing problems created by the projected massive investment in peak load gas fired electricity generation needs to be addressed on a national not just on a jurisdictional basis.