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Mr Tony Hinton
Presiding Commissioner
Gas Access Regime Inquiry
Productivity Commission
LB2 Collins Street East
MELBOURNE VIC 8003

Dear Mr Hinton

The Productivity Commission has invited written submissions to its review of the national gas access regime. Please find attached the South Australian Government's submission to the review.

The submission consists of two parts, one that is for the public domain and one that is not for public release as it contains commercially confidential material. The two parts are clearly identified. The South Australian Government requests that the confidential part of the submission not be publicly released.

As the lead legislator pursuant to the COAG *Natural Gas Pipelines Access Agreement*, the South Australian Government considers that it is well placed to contribute to the future development of the national gas access regime through participation in the review. Consequently, the submission covers issues relating to institutional and governance arrangements, coverage of pipelines and availability of information.

The Government emphasises its commitment to the development of more competitive arrangements in the gas industry, including through implementation of relevant COAG resolutions. Reform in South Australia has already moved a significant distance, as demonstrated by:

- The substantial progress that has been made towards the planned implementation of gas Full Retail Competition in SA in 2004.
- The certification by the Commonwealth of the effectiveness of SA's gas pipelines access regime;
- The establishment of third party access arrangements for transmission and distribution pipelines;

- The absence of vertical integration and exclusive franchises in the gas industry; and
- Facilitating the building of the SEA Gas gas transmission pipeline that will bring natural gas from Victoria to South Australia.

A key concern of the Government in relation to the national gas access regime is access to unutilised contracted capacity, particularly with regard to gate stations and laterals. A number of issues are raised in relation to this matter, which we believe require further consideration by the Productivity Commission.

Other major points in the submission include:

- The SA Government's support for recommendation 10.4 of the report of the Productivity Commission's inquiry on the national access regime, that Part IIIA of the *Trade Practices Act 1974* should be amended to make it explicit that the ACCC cannot accept an undertaking if the service concerned is subject to a certified access regime;
- Proposed alternative solutions to the issue of some pipelines being covered by the national gas access regime when others are not so covered;
- The view that the Code Registrar's public information, Code verification and coordination functions should be retained and performed independently of regulators, irrespective of changes to institutional arrangements; and
- The view that recommendations 7.1, 7.2 and 7.3 of the Parer Report will help to alleviate regulatory barriers to the expansion of natural gas networks in regional areas.

The South Australian Government notes that there is no intention that the review will reconsider existing or pending access arrangements.

[Original signed]

HON PATRICK CONLON MP
MINISTER FOR ENERGY

September 2003

South Australian Government Submission

to the

**Productivity Commission Review of the
National Gas Access Regime**

September 2003

INTRODUCTION

This submission provides the SA Government views on the National Gas Access Regime (the Regime). These include comments on the broader legislative and inter-governmental framework for gas access.

The first point of contact for discussion of any issues contained in this submission should be:

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BACKGROUND – THE SOUTH AUSTRALIAN GAS MARKET

The South Australian gas market is a contract carriage market, with the producers currently located mainly in the Cooper Basin. There is no formal gas spot market and no single pipeline operator.

Gas demand in South Australia has been growing strongly in recent years, following a decline between 1993 and 1995 due to the commissioning of the Heywood electricity interconnector between South Australia and Victoria, which resulted in a decreased demand for gas for use in electricity generation.

The following sections discuss various aspects of the South Australian gas market.

Gas Usage

In South Australia natural gas and electricity generation are very closely linked. Gas sourced from the Cooper Basin, in the vicinity of 90 PJ pa, represents around 97% of total State gas demand. Approximately 60% of Cooper Basin gas is used in power generation, with the rest consumed by industrial, commercial, domestic and other users. A number of gas supply agreements will wind down and expire over 2004 to 2006.

Gas Supplies - Current

Raw gas from the South Australian and Queensland sections of the Cooper Basin gas fields is processed at the Moomba gas processing plant from where it is transported to South Australian and New South Wales markets. Some gas from the Queensland section of the Cooper Basin is partially processed at Ballera. A gas interconnection pipeline links Moomba and Ballera. Other gas from the Queensland section of the Cooper Basin goes directly to Moomba.

A substantial part of gas from the Cooper Basin region destined for market in South Australia is purchased from the producers by the Natural Gas Authority of South Australia (NGASA), a statutory authority 'constituted of the Minister'.

The gas sales agreements previously held by the Pipelines Authority of South Australia (PASA) were assigned to NGASA in preparation for the privatisation of the pipeline assets of PASA. NGASA on sells the gas to the Terra Gas Trader and to Origin Energy at its purchase price.

NGASA's contracts with its customers 'mirror' the agreements it has with the producers. NGASA does not have a role in respect of new supply contracts between the Cooper Basin producers and South Australian buyers.

Gas Supplies – Future

Additional discoveries of significant quantities of gas in the offshore Otway Basin in 2001, for example, the Thylacine, Geographe and Casino Fields, and the contracting of both Otway and Gippsland Basin gas into SA and NSW markets in late 2002 indicate that basin-on-basin competition is developing and effectively constraining wellhead gas prices into the South East (SE) Australian gas markets. The commercial drivers for genuine basin-on-basin competition have existed since 2001 and were confirmed through gas contracts in 2002. This competition is exerting downward pressure on the wellhead price of gas into SE Australia.

Further, market intelligence indicates that the implicit price of the latest contracts is close to world's best. The 'threat' to existing gas suppliers into SE Australia of tens of stranded TCFs (trillions of cubic feet) of gas located in several fields on the North West Shelf, in the Timor Sea and onshore PNG are likely to constrain wellhead gas prices for at least the next 12 years.

Forecasts by the Department of Primary Industries and Resources SA (PIRSA) indicate proven reserves to cover SE Australia's needs to 2016 from fields in the Otway, Gippsland and Cooper Basins. An additional 3 years of gas reserves cover (beyond 2019) for SE Australia can realistically be expected from exploration in areas where 3D seismic has been recorded but exploratory drilling campaigns have yet to be completed. 3D seismic surveys provide results with a high degree of reliability.

Pipelines

Gas from Moomba is transported to Adelaide via the Moomba to Adelaide pipeline (MAP). The MAP currently has a maximum carrying capacity of around 415 TJ per day. The pipeline is owned and operated by Epic Energy. Its customers include Origin Energy, which primarily retails gas to industrial, commercial and domestic consumers, and Terra Gas Trader, which primarily retails gas to power generators. The capacity of the MAP is currently fully contracted until the end of 2005, making it difficult, in the absence of a sufficiently robust access arrangement, for large gas consumers or other retailers to secure capacity on a non-interruptible basis.

Epic is offering additional capacity through investments in enhanced pipeline capacity, although new users will be charged for the capital costs of the expansion.

The South East Pipeline System owned and operated by Epic Energy is not connected to the MAP and runs 48.1 km from near Katnook to Mt Gambier. It has an uncompressed capacity to haul approximately 20 TJ of natural gas per day. This pipeline is not fully utilized at present. Gas in this pipeline system is sourced from the Katnook Redman and Haselgrove fields operated by Origin Energy

Gas from the Ladbroke Grove (high CO₂) field in southeast South Australia is used in the Ladbroke Grove power generation plant. The gas and power stations are operated by Origin Energy.

The Riverland Pipeline, operated by Epic Energy for Envestra Limited, connects to the MAP at Angaston and serves the Riverland and Murray Bridge regions. Envestra has extended this system from Berri to Mildura in Victoria.

The pipeline linking South Australia and Victoria (SEA Gas) is currently under construction. The SEA Gas pipeline is a large pipeline capable of hauling up to 390TJ of gas per day and 125PJ of gas per annum. This is a similar size to MAPS. The pipeline is expected to be completed in late 2003 with commissioning in early 2004.

Retailing

Pursuant to agreement of the jurisdictions in the Council of Australian Governments (COAG), the South Australian Government is implementing a policy to progressively make retail customers contestable. At present, users consuming 10 TJ p.a. or more fall within a 'deregulated market' in which gas prices are not regulated and customers are contestable. It is planned that all customers will be provided with the ability to choose a retailer during 2004, and an industry body, REMCo, was established earlier this year to perform the necessary customer transfer functions, and operate the retail market systems.

There are four licensed gas retailers in South Australia – Origin Energy, Terra Gas trader and new entrants TXU Electricity Ltd, and AGL South Australia. The licences for all except Origin Energy (the incumbent retailer) apply to sales to contestable customers. Retailers and other large-scale gas users are currently able to buy gas at very low costs as they are in a position to take advantage of upstream competition.

ACCESS TO CONTRACTED CAPACITY

Third party access to contracted capacity of natural gas pipelines is the most critical area of concern in relation to the Regime for the South Australian Government. To assist the Productivity Commission in its consideration of this matter, key issues in the area have been highlighted through the use of boxed text.

A necessary condition for effective retail competition in the gas sector is the ability of retailers to transport gas from gas basins to their customers on fair commercial terms. The current Regime attempts to provide a mechanism for retailers to transport gas through both the transmission and distribution systems.

Moomba to Adelaide Pipeline System

At present, the only way to transport gas into the South Australian gas distribution network (excluding Mount Gambier) is through the MAP. This pipeline is covered by an ACCC drafted and approved access arrangement and is currently fully contracted for 100% of its gas haulage capacity for the entire period of the access arrangement.

The existing haulage contracts and access arrangement make access to any spare physical capacity in the pipeline, and access to laterals and gate stations along the pipeline, impossible to obtain on a transparent or generic basis.

The access arrangement states that, as at the lodgement date, there was no spare capacity on the pipeline and thus no register of spare capacity (as defined in the National Third Party Access Code for Natural Gas Pipelines (the Code)) exists for the Moomba to Adelaide pipeline. This decision, made at a particular point of time, is unable to take account of subsequent changes to gas infrastructure and markets which may result in an increased amount of spare capacity on the MAP. **The SA Government favours an examination of whether it is appropriate to require a public register of spare capacity for each transmission pipeline irrespective of the level of spare capacity that existed at the time the access arrangement was submitted.** This register would contain the information required by section 5.9 of the Code, and such spare capacity would be made known to market participants when it is known by the service provider.

Issue

Should all service providers be required to maintain a public register of spare capacity at all times, regardless of whether spare capacity is available at the date of submission of the access arrangement?

Under section 2.25 of the Code it is only possible for the regulator to overturn a contractual right if it can be characterised as an “exclusivity right” which arose on or after 30 March 1995. The ACCC has recognised that the contracts for the haulage of interruptible gas through the MAP can be considered to be exclusivity rights but decided not to overturn them and preserved these rights in the access arrangement. Essentially, a new user¹ is therefore required to negotiate with an existing user (i.e., a competitor) for access to the MAP, and hence the South Australian gas distribution network, for interruptible capacity only.

The current access arrangement on the MAP could restrict the opportunity to achieve benefits from gas Full Retail Competition, including benefits to regional customers along the MAP.

¹ In South Australia, most Shippers/Users are also Retailers.

The South Australian Government is of the view that reasonable and open access to unutilised contracted capacity throughout an entire pipeline (including gate stations and laterals) is a priority issue in relation to the Regime. Specifically, the Regime should provide disincentives for a user to contract for more capacity than is likely to be demanded by their customers. The Regime should be changed, so that where spare physical capacity for gas exists, it should be capable of being required to be allocated to another user on fair and reasonable terms through a transparent arrangement.

Currently the arbitration provisions within Part IIIA of the *Trade Practices Act 1974* (TPA) permit such a transfer. The Code under section 6.18 does not permit unused but contracted capacity to be transferred by the arbitrator to another user. This approach gives a high weight to contract sanctity over provisions to mitigate capacity hoarding.

Issue

Should the Regime increase the effectiveness of its anti-hoarding provisions by ensuring unused but contracted capacity can be made available to other users? What is the most appropriate means to make such capacity available?
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SEA Gas pipeline

Capacity issues concerning the MAP are likely to be reduced to a certain extent when the SEA Gas Pipeline, which will deliver gas from Victoria, comes into operation.

The expected completion date for the new SEA Gas pipeline is 1 January 2004. This new pipeline will bring extra gas capacity into the State and is expected to enhance full retail contestability within South Australia. A new gate station will be built at Cavan (near Gepps Cross) for entry into the Adelaide metropolitan distribution network. Therefore, potential retailers could rely upon the new gate station to give them access to the metropolitan distribution network.

Second tier retailers who have purchased, or wish to purchase, capacity will continue to face the problem of gaining access to gate stations off the MAP into the South Australian distribution network and to the laterals supplying to regional customers off the MAP.

The Code was developed around a non-contestable gas environment, which creates a number of issues for its application today. Firstly, there are two markets in pipelines. One is the market for the pipeline itself (service providers) and the other is in the capacity to haul gas (shippers).

Issue

The Code only seeks to control the behaviour of the service providers not of the shippers (i.e. those who have contracted for capacity). Are the necessary elements available for an effective secondary market in spare capacity?
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Should the Code better reflect the new gas environment in which the retail, transportation and upstream markets are very much dependent on each other? For example, should users have to
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notify the service provider once a marketable parcel of unutilized contracted capacity becomes available?

INSTITUTIONAL AND GOVERNANCE ARRANGEMENTS

The purpose of this section is to provide technical and background information to assist the Productivity Commission understand the institutional and governance arrangements for the Regime. The SA Government is well placed to provide such information, as South Australia is the lead legislator for the national framework for the regulation of access to natural gas pipelines, provides the secretariat for the National Gas Pipelines Advisory Committee (NGPAC) and provides the Code Registrar.

Existing Structure

On 7 November 1997 all Australian States and Territories and the Commonwealth signed the Council of Australian Governments (COAG) Natural Gas Pipelines Access Agreement (the Agreement). The Agreement establishes the national legal framework for the regulation of access to natural gas pipelines.

Under the Agreement SA became the lead legislator. It passed the *Gas Pipelines Access (South Australia) Act 1997* (the Act). The Act is the “lead legislation” that establishes the national access regime for natural gas pipelines in accordance with the Agreement. The Act contains the uniform Gas Pipelines Access Law (GPAL) comprising Schedule 1 (Third Party Access to Natural Gas Pipelines) and Schedule 2 the Code. The uniform provisions are applied in accordance with application legislation passed by all Australian jurisdictions (except Western Australia) in accordance with the requirements of the Agreement. Western Australia adopted the Code, but with respect to Schedule 1 agreed to enact legislation having an “essentially identical effect.”

Under clause 6.1 of the Agreement a Party to the Agreement must not amend its Access Legislation (of which Schedule 1 is a part) unless the amendments have been approved in writing by all the Ministers of the other Parties.

The Code

The Code establishes the rights and obligations of pipeline operators and users in relation to third party access to natural gas transmission and distribution pipelines. It provides the framework within which relevant regulators operate. Regulators are responsible for economic regulation, including the setting of reference tariffs and terms and conditions of access.

The Code was initially designed for the regulation of transmission pipelines, and was revised to permit a seamless regulatory instrument for all gas pipelines. With revocations of coverage and the non-coverage of new transmission pipelines such as the Eastern Gas Pipeline from Gippsland to Sydney, the emerging situation is that the Code will be likely to apply more to distribution than transmission pipelines.

The differences between transmission and distribution pipelines are, however, not of such a magnitude as to warrant the formulation of separate rules for them. Code changes, most notably the Fourth Amending Agreement, which removed the automatic requirement for access arrangements applying to distribution pipelines to incorporate a Queuing Policy and a register of spare capacity, have addressed some of the differences.

Code Change Process

The parties to the Agreement were required to establish NGPAC under clause 9.1 of the Agreement. NGPAC comprises an independent Chair, the Code Registrar, one representative of each jurisdiction, four industry representatives, two representatives of state regulators (on a rotational basis), one ACCC representative and one observer representative from the National Competition Council (NCC). Only jurisdictions are able to vote.

The main functions of NGPAC are to make recommendations to the State, Territory and Commonwealth Energy Ministers on amendments to the GPAL, including the Code, in accordance with the procedures in the GPAL, and provide advice on its interpretation and administration.

NGPAC is staffed by a secretariat situated within the South Australian Government. Under the Agreement, the Commonwealth funds one third of the costs of NGPAC and the balance is funded by the other jurisdictions on a population basis.

There is a perception that the wide ranging membership of NGPAC noted above, together with the uncertainty created from the Commonwealth announcement in October 2000 of a review of the gas access regime, has combined to limit NGPAC's ability to provide leadership on gas reform. This has been evidenced by a long running Code change proposal concerning the information collection gathering powers of the regulators which NGPAC agreed to defer to be considered as part of the pending Review of the Gas Access Regime.

One way forward may be for NGPAC's membership to be changed so as to achieve a better alignment of interests with a broader focus on advancing the public interest.

In contrast, uncontroversial Code changes have been able to be considered and recommended to Ministers after quite short periods. A recent example was the 7th Code Amendment, dealing with regulator approval of future capital costs, which was first put to NGPAC in December 2002, presented to Ministers in February 2003 and approved by Ministers and brought into operation in April 2003. For such Code changes, the process has worked quite smoothly.

The average time required for approval by all Ministers of Code changes is 2-3 months, once they receive a recommendation from NGPAC. If required, this could be shortened by a presumption of approval in the absence of a reply within a certain period such as 6 weeks.

The requirement under clause 6.1 of the COAG Agreement for unanimous Ministerial approval for changes to the Access Legislation of jurisdictions, and under the GPAL for a two-thirds majority (but unanimous approval for amendment of “Core Provisions” of the Code) has led to delays in Ministerial approvals. It should be noted, however, that this requirement reflects an attempt, particularly where unanimous agreement is required, to enshrine certain fundamental aspects of National Competition Policy.

The South Australian Government acknowledges the proposed establishment of the Australian Energy Market Commission (AEMC) as a national energy rule maker noted in the Ministerial Council on Energy Communique arising from the Council’s 1 August 2003 meeting. With the timetable for this proposed entity to take on gas matters in 2005, the Review should also consider how best to manage the transition of gas Code changes to the AEMC. If the AEMC is not to have direct representation from industry, then necessary consultation will need to occur as part of the Code change process.

The effectiveness of the Code change process, however, depends not only on the structures for that process, but also on the willingness of parties represented on NGPAC to utilise the structure to present proposals for Code changes. It is noted that industry groups represented on NGPAC have, to date, presented few proposals for fundamental changes to the Code (eg to facilitate investment). If the AEMC is to be the body responsible for Code changes, then its success would require engagement with and by industry.

The South Australian Government considers that the Code change structures need to be examined, which is reflected in this Review’s terms of reference.

Code Registrar

The SA Government provides the following information on the work of the Code Registrar for the Productivity Commission’s consideration, as the tasks performed by the Code Registrar are part of the effective functioning of the Regime.

Section 25 of the Act establishes the Code Registrar, who is appointed by the Governor of SA.

The Code Registrar performs functions on behalf of all Australian jurisdictions. These are outlined in the Agreement, the Act and the Code, particularly sections 7.9 and 7.10. The Code Registrar is responsible for maintaining the official version of the Code and a description of covered pipelines. During the development of the gas access regime, the option of using the private sector to provide registry services was rejected. At the time it was considered more appropriate for an official to have the role to ensure Ministerial approval, SA Government gazettal and Code veracity. Also the high transaction costs associated with liability issues that arise in outsourcing contracts were avoided.

The Code Registrar's functions include maintenance of the public register of all access arrangements and associated documents such as draft and final decisions, submissions and various other documents, and the approval of the form of applications for certain decisions by Ministers on coverage. Many of these documents are on the Code Registrar web site (<http://www.coderegistrar.sa.gov.au/>), including the functions of the Code Registrar.

In providing the above functions the Code Registrar provides a point of contact for any person in relation to the Code. This includes responding to requests for information made by any person about matters related to the Code. Through this role the Code Registrar acts as a "one stop shop" for gas pipeline access information. Additional to the formal functions, a number of other functions have arisen from the national scope of the role. For example, the coordination of approvals when all jurisdictions require approval of Ministers of all other jurisdictions for similar legislative changes such as following the High Court's decision in *Wakim*. Another example is coordinating the processes of classifying pipelines or the determination of jurisdiction of closest connection for distribution pipelines that straddle jurisdictional boundaries. These coordination roles will need to be performed irrespective of institutional arrangements if the current legislative structure remains.

Under the Agreement the Commonwealth funds one third of the costs of the Code Registrar and the balance is funded by the other jurisdictions on a population basis.

It is also considered that the public register maintained by the Code Registrar contains a large volume of information about the functioning of the Regime. In view of the conclusion of the first round of access arrangements, it would be useful to draw on the information for the purposes of research on the degree of effectiveness of the regime.

The SA Government believes the public information; Code verification and coordination functions of the Code Registrar should be retained and performed independently of regulators irrespective of changes to institutional arrangements.

REGIONAL SUPPLY

The South Australian Government is concerned about the continued difficulty of providing gas to regional areas, with their lower population densities and absence of gas infrastructure.

There have been a number of unsuccessful attempts to expand the gas distribution network in a number of regional areas of South Australia, including the Adelaide Hills, Upper Spencer Gulf (Port Augusta), South East and Riverland.

The construction of the SEA Gas pipeline has created additional opportunities to extend the gas distribution network to regional areas adjacent to the pipeline. Interstate experience has

shown that proximity to new (or proposed) major transmission pipelines and distribution networks has offered significant opportunities to co-locate (energy intensive) industry with existing natural resources in previously uneconomic locations. In some cases, new electricity generation and industrial land developments may be possible, potentially offering low energy prices as a regional development tool.

The Final Report of the National Energy Market Review (the Parer Report) made three specific recommendations (7.1, 7.2 and 7.3) that address the current regulatory impediments to wider penetration of natural gas. These recommendations provide a means to reduce greenfields regulatory uncertainty. These recommendations are of particular significance to regional development. Industry has publicly expressed considerable concern about the costs of complying with the Code requirements, especially in the early life of a pipeline. **SA considers that if implemented, these recommendations² will help to alleviate regulatory barriers to the expansion of natural gas networks in regional areas.**

The Regime in its present form of having a pipeline service either fully covered or not covered can place a disproportionate burden of regulatory compliance costs on smaller new pipelines. The successful revocations from the Regime of the Riverland pipeline and the South East pipeline provide examples of the Regime's flexibility. If the Regime is to continue in its current form of coverage, then it would be beneficial (as per Parer's recommendation 7.1) if the proponent was able to obtain a ruling from the NCC that the prospective configuration would not be covered. This would remove the current level of regulatory uncertainty for the pipeline developer, and would assist in the construction of smaller pipelines.

² The actual regulatory institution to consider binding rulings has yet to be considered and agreed by the SA government. Currently it is the NCC.

COVERAGE

The SA Government understands that coverage of pipelines by the Code will be a critical aspect of the Review's deliberations and offers the following information to assist the Productivity Commission in this task.

The Agreement sought to establish a uniform national framework for access to natural gas pipelines. All States and Territories through the Agreement have submitted their gas access regimes to the NCC for certification as an effective access regime under Part IIIA of the TPA. This conveys the approach of CoAG to provide a national pathway for access to gas pipelines through the National Third Party Access Regime for Natural Gas Pipelines (the Regime). Subsequently all jurisdictions have applied to the NCC, with South Australia having its regime certified for 15 years. This Regime contains an avenue for a voluntary access arrangement, essentially mirroring the access undertaking approach available under Part IIIA of the TPA.

Dual pathways for Coverage

The National Access Regime under Part IIIA of the TPA, enables an exemption from its provisions if the service provider gives an undertaking to the ACCC or if State and Territory governments have conforming regimes. For a State or Territory regime to be conforming it has to be consistent with the access principles within the Competition Principles Agreement (CPA). Such consistency is clearly established through having a State's regime certified "effective" by the relevant Commonwealth Minister. Currently an "effective" State access regime precludes the National Access Regime from being applied, but not a service provider lodging an access undertaking with the ACCC.

SA is concerned about the possibility that a service provider could be subject to both an access undertaking under Part IIIA of the TPA and an access arrangement under the Code. This possibility arose during 1999 when Duke put an access undertaking to the ACCC for the prospective Eastern Gas Pipeline that covered terms and conditions, dispute resolution, and a process for determining access. During 2000 an applicant requested that the NCC recommend coverage for this pipeline, which was subsequently approved by the Commonwealth Minister. Later the Australian Competition Tribunal overturned this decision. This example indicates that dual regulation is a real possibility.

A related concern is that service providers have the option of either filing an access undertaking under section 44ZZA of the TPA (Part IIIA) or an access arrangement under the Code. These options leave open opportunities for "forum shopping", as exemplified herein. Duke in its submission to the ACCC for the access undertaking stated that it was submitting an undertaking under Part IIIA of the TPA because it considered that approach to provide more flexibility, compared to an access arrangement under the Code. In particular, Duke wished to avoid the "cost of service" approach to tariff setting, short tariff review periods and focus on the maintenance of the revenue streams.

The SA Government considers that there should only be one pathway for access to gas pipelines. As the Regime was envisaged as the primary mechanism for regulating gas pipeline access in Australia, SA suggests that this be clearly established by nullifying other paths, such as an access undertaking through Part IIIA, for seeking access to gas pipelines. A means to implement this suggestion is contained in recommendation 10.4 of the Productivity Commission's report on the Review of the National Access Regime which proposed that Part IIIA should be amended to make explicit that the ACCC cannot accept an undertaking if the service concerned is subject to a certified access regime. This recommendation is consistent with having the Regime as the national means to obtain gas pipelines access. **The South Australian Government supports this recommendation.**

Effect of pipeline revocations on scope of the Regime

From a broad perspective, one of the problems that have arisen under the current Regime, particularly given the increasing number of revocations of coverage of transmission pipelines, is the increasing incongruity that arises when some pipelines are fully covered, and others not covered at all, even when they serve the same downstream market. This result is not in accordance with an approach where all competitors are subject to the same degree of regulation by a common set of rules. At present, pipelines are either fully covered by the Code or not covered at all (as a result of revocation of coverage or never having been covered).

An implication flowing from a pipeline being covered is the current system of regulation, which does not permit flexibility in terms of the reference tariff principles of the Code (ie section 8). It may be, as suggested by the Parer Report (see recommendations 7.1 to 7.3), that a level of elasticity is required for new pipelines.

Possible Solutions

Two broad alternative models for change to the Regime that could address such issues are outlined below for consideration. These options have been proposed in the knowledge that the current arrangements were developed to be consistent with those used in the Competition Principles Agreement (CPA). Jurisdictions are likely to have to reconsider the access principles in the CPA if one of these options is recommended. Both options are consistent with the Parer Report's recommendation 7.5 concerning an enforceable minimum requirement for all gas pipelines.

1. Full coverage, but less prescription

Under this model all commercial transmission and distribution pipelines would be covered. Dedicated end-user owned pipelines, would not be subject to coverage, though the point of interconnection to the main pipeline would be covered to permit the end user retail choice. Outside of this exclusion, there would be no coverage test or procedure for revocation of coverage.

The Code would be amended to substitute a small number of key performance indicators (KPI) in lieu of the existing section 8 concerning reference tariff principles. Consequential amendments to other provisions of the Code would be required.

Foremost among these KPIs could be a requirement to keep tariffs below a specified ceiling that would not necessarily reflect costs for a particular period of time. The regulator would not probe into many of the financial matters outlined in section 8 of the Code. The Code would need to be amended to also provide for monitoring of adherence to the KPIs. The success of this type of arrangement would be dependent upon the regulator having adequate access to information held by the pipeline operators. This proposal is a modified “negotiate/arbitrate” model.

Regulators would still need to approve the terms and conditions of access to ensure that anti-competitive or unconscionable provisions are not incorporated into contracts between service providers and users. Also as noted under **Access to Contracted Capacity**, this option should consider mandating the requirement to maintain a register of spare capacity for transmission pipelines irrespective of whether such capacity exists at the time of lodging terms and conditions.

2. Full coverage, but incorporating different types of regulation.

Under this model all commercial transmission and distribution pipelines would also be covered, and some provisions of the Code would apply to all pipelines (eg ring fencing, dispute resolution, associate contract approval), but a range of provisions that apply specifically to different types of pipelines, would also be included. The categories of pipelines could include, for example, transmission, distribution and greenfields pipelines. Such an approach would need flexibility to allow the expression of market forces, if for example multiple service providers were supplying the same market. A procedure to classify pipelines, or an amendment to the Code to define such categories, would be required.

The category-specific regimes should address the particular features of each category. For example, the regulation of greenfields pipelines would be relatively “lighthanded” (in some respects mirroring aspects of the TPA) and would give the service provider a high degree of pricing flexibility, but address matters such as unconscionable conduct. The recommendations contained in the Parer Report dealing with greenfields pipelines (ie recommendations 7.1, 7.2, 7.3) are consistent with the above approach.

The South Australian Government considers the alternative solutions outlined above to be of merit and asks the Productivity Commission to consider them.

INFORMATION

An ongoing concern of potential users of gas infrastructure relates to the availability of information on gas networks. Whilst the Code prescribes certain requirements on public information disclosure (as is contained in access arrangements and associated documentation), the reticence of service providers to divulge sufficient information to enable users to negotiate has been an ongoing concern. It is noted that distribution pipeline regulators across the nation have indicated they have had significant problems ensuring that the requirements for information disclosure have been met by various service providers. There is an important need to streamline the process whilst ensuring that information disclosure obligations on the major gas networks are met in fulsome fashion.

SA considers that transparency should be an integral part of the Regime. Consideration should be given to disclosure of contractual terms (without specific monetary amounts, where these are considered by a regulator to be commercial in confidence) as already occurs under the *Petroleum Act 2000*.

SA considers the Code should be amended to enable regulators to monitor compliance with the requirements of an access arrangement at periodic intervals.