

Submission to AEMC: *Northern Gas Pipeline - Derogation from Part 23*

The Northern Gas Pipeline from the NT was given special treatment outside the National Gas Rules. The exemption is problematic and based on an “anomaly”. It should be revoked for future pipelines, to prevent subsidising new unconventional gas development in the NT.

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The Australia Institute welcomes the opportunity to make this brief submission on the AEMC’s draft determination.

Background

Environmental Justice Australia (EJA) asked the AEMC to revoke a derogation or exemption for the Northern Gas Pipeline (NGP) from Part 23 of the National Gas Rules (NGR).

In 2006 the Northern Territory (NT) Government contracted for long-term gas supplies for local use but it contracted far in excess of requirements. Later, to sell this excess, the NT Government sought tenders for the NGP, from Tennant Creek NT to Mt Isa in Queensland. The NT Government sought tenders for a pipeline ‘covered’ by access rules in the NGP. Jemena, an energy infrastructure company, tendered but on the basis that it was unwilling to build a ‘covered’ pipeline. Jemena won the tender under alternative access principles agreed with the NT Government.

EJA contended the derogation gave Jemena the ability to charge excessively high fees. They give evidence the derogation is already subsidising gas production in the NT and that it will in turn subsidise unconventional gas expansion in the NT.

AEMC has decided in its draft determination that the alternative access arrangements limit fees and conditions and constrain Jemena’s ability to exploit its market position over gas customers. AEMC argues these fees and conditions are reasonable because they were set by competitive tender.

Submissions from EJA and from the Institute of Energy Economics and Financial Analysis (IEEFA) raise numerous problems with AEMC’s reasoning. They question the efficacy of the tender process, in particular the effect of potential transfer pricing on the tender, and challenge the prices that Jemena will be able to charge relative to costs, neither of which AEMC has considered relevant or considered in detail.

Previous research by The Australia Institute has raised concerns about the NGP (formerly the NEGI) and the economics of gas extraction in the NT. As noted there:

The only way east coast prices can go down is if world prices go down. Recent reductions in the world prices for oil and gas have given some price relief to east coast gas users, but supply from Northern Territory gas reserves that would use the NEGI would not be likely to significantly reduce this price.

... The NEGI is likely to make very little difference to the NT government’s revenue.

... The NEGI is not a “critical nation-building project”. It is a project that would benefit gas companies wanting to develop unconventional gas reserves in the Territory by giving them access to the east coast market and its export facilities. The project limited benefit to eastern states who have ample gas supply, albeit at prices far higher than has historically been the case due to exports through Gladstone. These prices will not be materially affected by the NEGI.¹

While noting these significant concerns about the existing project and the derogation, the greater concern is the potential for new pipelines to be invested in under the derogation.

Based on “anomaly” that does not apply prospectively

AEMC justifies the derogation as a response to an “anomaly”.

The exclusion of the NGP from the Part 23 regime through the NGR itself is an anomaly, reflecting the timing of the Northern Territory Government tender process compared to [i.e. before] the development of the Part 23 regime.

¹ Campbell (2015) <http://www.tai.org.au/sites/default/files/P187%20NT%20Gas%20paper.pdf>

For investment in new pipelines, the regulatory context is now that the Part 23 framework applies to all pipelines that are not covered pipelines.²

AEMC is not arguing a similar derogation would be justified in other cases. Presumably AEMC does not intend to set such a precedent. That is the natural reading of AEMC's comment framing the timing of the NTG tender as an anomaly.

On this basis, AEMC should revoke the derogation as regards future investment in pipelines that currently would enjoy the derogation.

As EJA notes the current derogation provides for volumes of gas far in excess of the capacity of the NGP as constructed.

Allowing this derogation to apply to potential future investment in gas pipeline infrastructure from the NT to Mt Isa would set a broader precedent. If governments can be convinced to agree to alternative access principles, this sends a message to project proponents that Part 23 is merely discretionary.

Given AEMC's concerns about "forum shopping", it would be surprising for AEMC to signal intentions to allow further derogations for future pipelines.

If, as AEMC asserts, the current access principles provide sufficient constraint on Jemena's market position, there should be nothing lost in this respect by removing the derogation. It would also seem that complexity would be reduced, rather than increased, by removing a derogation where the pipeline has not yet even been built.

If AEMC is not correct and Jemena is able to exploit its market position in further extending its pipeline capacity under the derogation, it will not only impact on prices for consumers but also decisions about unconventional gas extraction in the NT. The NT Government's Fracking Inquiry found that the economics of gas extraction in the NT makes large-scale production unlikely.³ Of course if uncommercial projects are sufficiently subsidised they become more likely. Excessive charges for transport provide one avenue through which otherwise uncommercial projects could be subsidised.

² AEMC (2019) *Draft Determination* <https://www.aemc.gov.au/sites/default/files/2019-02/Draft%20Determination.PDF> page 5

³ See Swann (2018) *Getting Offset: Submission re NT Climate Change Discussion Paper*, <http://www.tai.org.au/content/getting-offset-submission-re-nt-climate-change-discussion-paper>