



14 September 2005

Manager – MCE Secretariat
Department of Industry, Tourism and Resources
GPO Box 9839
Canberra ACT 2601

Dear Sir

**Response to the "Review of the National Gas Pipelines Access Regime
Consultation Paper"**

Australian Pipeline Trust (APA) is a major investor in Australia's gas transmission pipelines, owning approximately 7,500 kilometres of gas pipelines. Accordingly, APA has a strong interest in the regulatory framework for gas infrastructure.

APA welcomes the opportunity to respond to the Review of the National Gas Pipelines Access Regime Consultation Paper prepared by the Ministerial Council on Energy Standing Committee of Officials (SCO). While APA is pleased to see that action is now being undertaken in response to Productivity Commission review of the Gas Access Regime, we have a number of concerns with the consultation paper.

Concern with Potential for Further Delay

The Gas Access Regime was referred to the Productivity Commission (PC) in 2003 and following detailed consultation the "Review of the Gas Access Regime" was released in 2004. Despite the conclusion by the PC, more than a year ago, that it was necessary to reform the Regime to overcome detrimental aspects of the Regime, nothing has been done to date to implement the changes recommended by the Commission.

It is therefore concerning that the SCO process has the appearance of a further review of the Regime.

In particular, the consultation paper proposes that the Government's response to the PC's recommendations needs to be integrated with broader reforms being undertaken in the energy sector and that this integration will require a number of the PC's recommendations to be modified or deferred to future, energy-wide review processes. However, no compelling reason is given to adopt this approach, and there is no recognition of the adverse impact of the delay which this proposal will necessarily involve.

APA supports the implementation of all of the PC's recommendations now, without waiting for the possible development of an overall energy market framework because:

- the PC's recommendations were developed as an integrated policy package in response to identified deficiencies in the Regime, and after an extensive consultation process;
- many of the recommendations are specific to gas infrastructure in any event;
- waiting for the development of an overall energy market framework will further delay these necessary reforms, for the unidentified and unquantified benefits of consistency between gas and electricity; and
- the PC recommendations were identified in 2004 as necessary to promote the continued development of gas infrastructure. The need for gas infrastructure development is becoming more critical and continued delay in the implementation of the PC recommendations adds to the uncertainty facing investors considering such developments.

Areas of Particular Concern

Areas of particular concern to APA are as follows:

Overarching Objective - the SCO suggests overarching objectives for the Gas Access Regime that refer to economically efficient outcomes and the interests of consumers. This creates potential for the objectives to be in conflict and gives unnecessary importance to only one participant group's interest in gas pipeline infrastructure.

APA supports the overarching objective proposed by the PC. This objective focuses on efficiency and therefore serves the interests of all market and industry participants, including consumers.

Price Monitoring - the consultation paper proposes an extension of price-monitoring regulation to pipelines that have had coverage revoked. However, coverage is revoked by a Ministerial decision when pipelines effectively have little market power. The application of price monitoring to pipelines that do not satisfy the coverage criteria is not justified, and in fact extends the current application of the Gas Access Regime. Seeking to establish a new form of regulation on pipelines which do not have market power undoes a key recommendation of the PC report and creates additional regulatory uncertainty.

Regulatory Discretion - the consultation paper argues against limits on regulatory discretion contained in the current Regime; in contrast, the PC supported and strengthened these limits.

An example of this is in PC Recommendation 7.9, which states that when assessing a service provider's proposed rate of return, the regulator's role is to assess whether the proposal is within the range of plausible values. The regulator must approve the proposal if it is within this range and does not have discretion to decide another rate of return. This is consistent with the current provisions of the Code, as demonstrated by the decision of the Australian Competition Tribunal in the *GasNet* decision.

However, rather than seek to implement the recommendation, the consultation paper argues that limits on regulatory discretion act against certainty and encourage disputes. This reasoning is counter intuitive - allowing an owner to propose

reasonable variables, such as rate of return, and then permitting the regulator to disallow the proposal only when the owner's proposal is implausible would:

- reduce uncertainty as the pipeliner can be more confident the outcome will be within reasonable range, rather than a single value chosen by a regulator; and
- lessen the potential for disputes as it moves away from an approach of a regulator having to determine a single correct value for a variable usually understood in the context of a range.

Greenfields Incentives - APA strongly supports reforms that improve incentives and opportunities for investment in greenfields projects. To this end APA supports the implementation of the PC's recommendation that developers of greenfield projects should be able to seek an assessment as to whether a project would be covered and, if the project does not meet the coverage criteria, a binding ruling which would preclude regulation for 15 years.

Merits Appeal - APA acknowledges that a separate paper on merits appeals is to be released by SCO, however no explanation is given as to why the PC's recommendations regarding merits appeals should not be introduced now, or why the existing review rights should be modified other than as proposed by the PC. In this respect, APA notes that of the two recommended changes to the review mechanisms, one slightly enlarges rights of review and the other reduces the matters which can be argued on a review.

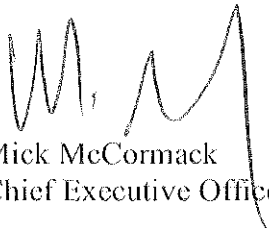
Reviews of decisions have been sought by both owners and users and, in the case of the Moomba Sydney Pipeline, by the ACCC. The experience under the Gas Code has demonstrated the value of review rights, including ensuring accountability and transparency to the benefit of all participants in the regulatory process. The need for such rights was identified in when the Gas Code was being established in 1997 and has been reinforced by the PC.

Support For Australian Pipeline Industry Association (APIA) Submission

APA understands that the Australian Pipeline Industry Association (APIA) has responded to the Consultation Paper. APA strongly endorses the APIA response.

We would be happy to meet with you to discuss any of the matters raised in this submission. Please contact either Sandra Dureau on (02) 9693 0016 or Stuart Ronan on (02) 9693 0038.

Yours faithfully



Mick McCormack
Chief Executive Officer