

3 April 2006

Mr John Ryan
Deputy Secretary
Chair, MCE Standing Committee of Officials
Department of Industry, Tourism and Resources
GPO Box 9839
Canberra ACT 2601

Dear Mr Ryan

Expert Panel draft report on Pricing in the Energy Market

Please find attached the Australian Pipeline Industry Association (APIA) response to the Expert Panel's draft report.

The task undertaken by the Panel involved exploration of a number of significant issues which will significantly affect the future of infrastructure operation and investment in Australia. As demonstrated by the preparation of a dissenting/minority report, the issues considered by the Panel are not amenable to simple/absolute answers. In light of this, APIA is concerned that the draft report suggests substitution of the Panel's conclusions for the findings of the Productivity Commission's review of the gas access regime, which was a far more comprehensive and robust review process. This is particularly the case given the limited scope of the enquiry undertaken by the Panel compared with the broad scope which informed/underpinned the Productivity Commission's considerations.

The draft report runs counter to the direction of recent debate on regulatory reform, which has recognised the importance and benefit of a more light-handed regulatory approach. In contrast, the Panel's recommendations suggest a move toward more intrusive and prescriptive regulation.

Critically, implementation of the recommendations of the draft report would reflect a significant reduction of existing rights of the gas transmission industry, particularly the right of a regulated business to propose an access arrangement tailored specifically to its business and the established presumption in favour of accepting the business's proposal where it is reasonable and meets the requirements of the code. APIA considers that this change has not been justified by the Panel.

If the Expert Panel's recommendations were to be adopted, the energy reform process will miss the current opportunity to make the positive and long-lasting reforms which are necessary for the ongoing development of Australia's energy infrastructure.

Attached is a brief summary of APIA's response to key issues, as well as a detailed submission.

Yours sincerely



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SUMMARY

APIA response to the Expert Panel draft report on Pricing in the Energy Market

Overview

- Report sets aside the findings from the PC's more extensive review;
- The recommendations in key areas are not consistent with the national access regime;
- Recommendations represent a significant unwinding of existing rights for the gas transmission industry;
- The rejection of the propose-respond model is an overly prescriptive approach.

Legal and regulatory framework

- Too many important issues are left to future discretion of AEMC and AER, rather than establishing fundamental rights in the law.
- There is considerable risk of 'regulatory creep' over time;
- MCE should give guidance on level of prescription that is desirable.

Objects clause

- Objects clause should be consistent with that in the national access regime;
- It is critical that it retains a reference to competition, as the means of achieving efficiency.

Selection of form of regulation

- Supportive of law establishing a suite of options;
- Different approaches under gas and electricity regarding coverage and form of regulation decisions should be preserved;
- NCC (or successor body) should make decision on coverage and form of regulation at same time.

Framework for regulatory decision making

- APIA supports retention of propose-respond model. Panel has not justified rejecting this approach;
- Propose-respond model serves to minimise cost and risk of regulatory error, while retaining the benefits of regulation;
- Issues for greenfields pipelines still need to be considered in regulatory framework.

Guidance on application of price control

- Total factor productivity approach requires significant further development before it can be implemented in Australia;
- It should be open to service provider to propose TFP in context of propose-respond model, but it should not be imposed;
- Pricing principles in law should be consistent with the national access regime.

Information requirements

- Need to balance need for regulator to obtain information to perform functions against cost to business of providing it;
- Need to guard against information requirements becoming too intrusive over time, particularly through development of AER guidelines.