



10 May 2011

Department of Climate Change and Energy Efficiency

Via email: DCCEE-CSMDConsultationsSupportTeam@climatechange.gov.au

PROPOSED ARCHITECTURE AND IMPLEMENTATION ARRANGEMENTS FOR A CARBON PRICE MECHANISM

The Australian Pipeline Industry Association (APIA) welcomes the opportunity to provide comments to the Department of Climate Change and Energy Efficiency (the Department) on the proposed architecture and implementation arrangements for a carbon pricing mechanism.

The gas transmission industry is in the business of transporting natural gas to markets and users. Once a pipeline is constructed, it cannot be moved. To invest in new pipelines and expansions of existing pipelines, pipeline owners must be confident the demand for a pipeline's services will endure. This is primarily managed through negotiation and entering into bi-lateral, long-term contracts.

As outlined below, many gas transmission contracts do not have provisions for a carbon price. There is a material risk that costs associated with a carbon price will not be able to be passed through the supply chain to the appropriate parties, the users of natural gas.

APIA supports the introduction of an efficient carbon price. However, the issue of contractual impediments to cost pass through must be addressed. This is an issue that was relevant in 2009 during consideration of the Carbon Pollution Reduction Scheme, and has continued to be a genuine concern for the gas transmission industry.

Contractual impediments to cost pass through

As noted by the Department in its Discussion Paper on Point of Liability and Carbon Cost Pass Through, dated 18 April 2011:

Carbon cost pass through

A carbon price mechanism will impose a cost on carbon pollution that will change the relative prices for goods and services throughout the economy. In general, the additional cost to those producers required to pay a carbon price will be passed through the supply chain and will be reflected in the final price for a product.

However, in some cases, economic, regulatory or contractual barriers might prevent carbon cost pass through initially. Where this occurs, price signals that guide production, investment

and consumption decisions to reduce emissions will be blocked or muted and the impact of a carbon price mechanism on particular firms or industries may be increased.

It is the policy intent that costs associated with a carbon price are passed through the supply chain. The gas transmission industry is one industry where there may be significant contractual impediments to the pass through of these costs.

The commercial frameworks of the gas transmission industry are such that the majority of transactions are conducted under long-term bi-lateral contracts. The long-term nature of these contracts means that many were entered into before there was wide-spread acceptance of the need for a carbon price. These contracts do not have adequate provision to treat a market based carbon price appropriately, with costs passed on to customers of pipelines (shippers) and ultimately to gas users. In some cases, these contracts will run well into the 2020s.

It is important to note that contractual impediments to carbon cost pass through impact the gas transmission industry unevenly. The majority of gas transmission pipelines in Australia are unregulated, which means they face competition from other pipelines or energy sources. Therefore, new government policy can shift the competitive balance between these companies because of the timing of a company's contracts and, thus, whether the contracts account for carbon costs.

Treatment of a carbon price mechanism as a tax

APIA proposes that a carbon price mechanism be specifically recognised as a tax under section 55 of the Constitution. It is standard practice to have clauses dealing with new taxes in contracts, and this would simply and substantially resolve the matter of cost pass through for the gas transmission industry.

In 2009, the Department had considered the possibility that costs associated with the Carbon Pollution Reduction Scheme (CPRS) may be found to be a tax, and had developed supplementary legislation that would address this matter in the event a court ruled the costs constituted a tax as defined by section 55 of the Constitution.

Given the acknowledgement by the Prime Minister that her proposal to introduce a fixed price for carbon emissions is effectively a tax and the uncertainty previously acknowledged in the CPRS that it may ultimately be found to be a tax (even without a fixed price), it is appropriate that the proposed carbon price legislation specifically deals with this issue and confirms that a carbon price is a form of taxation. This would substantially resolve contractual impediments to carbon cost pass through.

The acknowledgement by the Prime Minister that the price on carbon would be, effectively, a tax has occurred on several occasions. On 24 February 2011, when she announced that there would be an initial fixed cost period of three to five years for a carbon price mechanism, this acknowledgement was recorded in *Hansard* and subsequently during numerous media interviews.

From *Hansard* on 24 February, the Prime Minister:

The carbon pricing mechanism that I have announced today, arising from the discussions of the Multi-Party Climate Change Committee, is a carbon price mechanism that would start on 1 July 2012. It is a scheme that would start with a fixed price for a fixed period, effectively like a tax.

Clearly, this statement supports the case that the Government's carbon price proposal is a form of taxation.

The gas transmission industry is keen to engage with the Department to resolve these and any other implementation issues. If you would like to discuss these issues further, please contact me or APIA's policy adviser, Steve Davies, on (02) 6273 0577 or at sdavies@apia.asn.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'CCW', with a long horizontal flourish extending to the right.

CHERYL CARTWRIGHT
Chief Executive