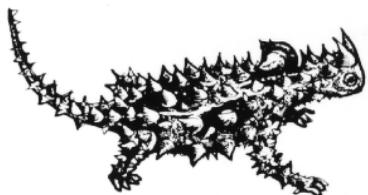


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Rule Change Request Northern Gas Pipeline Part 23 Derogation: Arid Lands Environment Centre Submission

The Arid Lands Environment Centre (ALEC) is central Australia's peak environmental organisation that has been advocating for the protection of nature and the ecologically sustainable development of the arid lands since 1980. ALEC advocates for proper accountability and transparency in the use and distribution of natural resources to protect the public interest and provide for more equity in the use of those resources.

ALEC considers that the operation of the derogation from the National Gas Rules for Jemena fundamentally goes against the National Gas Objective and grants the operator unfettered market influence to the detriment of gas suppliers and consumers. This derogation introduces uncertainty and volatility into a constrained market by permitting Jemena to dictate the terms of market participation in accordance with their own financial incentives.

Essentially, the exemption (derogation) allows Jemena to:

1. Charge twice the reasonable rate of return as determined by the Australian Energy Market Operator
2. Raise its prices by merely writing a letter to the NT minister to inform the Minister of their new prices
3. Operate below expected and appropriate standards of disclosure and transparency by avoiding the disclosure provisions of the NGR.
4. Operate the pipeline with apparent financial and legal impunity for 15 years.

The net effect is any perceived benefit to the East Coast gas consumer of cheaper NT gas will be captured by Jemena and its shareholders, the governments of China and Singapore. This is effectively preventing a material economic benefit to Australia for 15 years and a strangle hold on any potential expanded gas supply.

The derogation undermines the importance of Part 23 of the NGR to provide market stability and certainty for gas providers. These rules have been anticipated by NT Gas supplies to address market uncertainties and ensure that distribution prices enable affordable access to east coast gas markets.¹

Jemena lobbied the NT government for the exemption and is under investigation by the ATO for a \$500m tax evasion scheme. It is therefore reasonable to assume the derogation operates in the interests of Jemena rather than future gas shippers and customers, contrary to the National Gas Objective.

¹ <<https://www.asx.com.au/asxpdf/20170127/pdf/43fkj0hhz09gfh.pdf>> at page 3.

Without AER oversight consumers could be out of pocket \$2.7bn based on reasonable rates of return for other pipelines. That's based on current NGP tariffs. Jemena can change those tariffs at any time by merely notifying the NT government. This grants Jemena an unprecedented level of economic influence compared to other gas pipelines in Australia. There is no economic justification for the NGP having the only derogation from 23 in Australia, especially considering the already confined market dynamics of the NT/Qld gas infrastructure.

The AER oversees pricing and access disputes with a set arbitration regime. Jemena can terminate any arbitration dispute without recourse. It is currently an unregulated monopoly with market abuse capabilities. The exemption was granted "on the basis that the dispute resolution processes in place for the NGP provides similar protections" to the rules. This is clearly not the case under the current access regime. We therefore submit that the regulatory framework that could apply if the revocation is granted would provide for more appropriate regulatory and economic outcomes.

Revoking the derogation will provide certainty for Australian consumers by ensuring that it is the rules that are properly regulating gas transmission rather than the financial and economic interests of Jemena. Access principles can be determined at their discretion and are not necessarily ever consistent with the interests of consumers.

As a corporate entity their requests for access rule modifications will be informed shareholder interests in China and Singapore which are not consistent with the interests of domestic gas consumers. Ensuring certainty and consistency in the application of these rules will help achieve the National Gas Objective.

If AEMC accepts the rule change request and removes the derogation in this instance, it would simplify operation of the national framework and provide an enormous advantage to consumers. This is consistent with the ACCC's findings from the east coast gas supply inquiry on addressing the monopoly control of gas pipelines.

Response to the consultation questions

Question 1

- The access principles applicable to the NGP will produce different outcomes than if the regime under part 2.3 applied. The intention of the derogation is to provide a material benefit through a less onerous framework of regulation, as confirmed in the financial reports of SGSP Limited.
- It is clear that the derogation was requested by Jemena and therefore furthers their financial interests. This effectively increases their market power by limiting the capability of customers and supplies to participate in the market through a restricting access to information and limiting access to effective dispute resolution through arbitration.

Question 2

- The information disclosure provisions of Part 23 of the NGR were intended to provide greater transparency and improved reporting processes that would improve the bargaining power of shippers to be comparable with that of the operator.
- The current access principles do not provide for an adequate level of disclosure and will therefore provide different outcomes than part 23 of the NGR.
- Jemena can modify the level of disclosure required by the current access principles at their own discretion at any time over 15 years thereby creating the very real possibility of varying outcomes over time with respect to information.

Question 3

- ALEC is not aware of any circumstances that would mean application of Part 23 of the NGR to the NGP would be inappropriate.
- Applying Part 23 would provide a necessary level of oversight and accountability consistent with gas pipeline governance across Australia.

Question 4

- The rule change request will decrease the complexity of the regulatory arrangements. Subjecting the NGP to the NGR will provide for greater consistency across national gas markets and improve public confidence in the enforceability and democratic integrity of gas transmission through the NGP.
- Jemena is permitted to amend the rules at any time according to their own circumstances, which introduces regulatory volatility and uncertainty into the market that would otherwise be stable with the consistent application of the NGR.

Question 5

- The proposed rule will not increase costs for participants in the NT and east coast gas markets. The derogation essentially permits the operation of the NGP within a monopoly market.
- Limiting the concentration of market power through this rule change will therefore likely reduce downstream costs for consumers.