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Our Reference: APLNG – COR – 0011477

Energy Council Secretariat  
GPO Box 787  
Canberra  
ACT 2601

Via email: [energycouncil@industry.gov.au](mailto:energycouncil@industry.gov.au)

Dear Sir/Madam

**Binding Arbitration for Gas Pipeline Access Disputes  
National Gas (South Australia) (Pipelines Access – Arbitration) Amendment Bill 2017**

Australia Pacific LNG (APLNG) is pleased to be able to provide this submission on the draft amendments to the National Gas Law for binding arbitration for gas pipeline access disputes. APLNG is a coal seam gas (CSG) to liquefied natural gas (LNG) project conducted through an incorporated joint venture among Origin Energy, ConocoPhillips and Sinopec. APLNG is also a significant supplier of gas into the Queensland domestic market, currently supplying a large percentage of Queensland's needs.

APLNG agrees with the recommendations from Dr Michael Vertigan AC's *Examination of the Current Test for the Regulation of Gas Pipelines* report (the **Vertigan Report**) and supports the draft Bill for the arbitration of access disputes for non – scheme pipelines. APLNG strongly believes in the principle that arbitration should be designed to be a credible threat that should be used only after good faith negotiations have failed.

APLNG considers that the draft Bill should closely reflect the recommendations of the Vertigan Report and offers the following comments on the proposed amendments:

**1. Provisions for enhanced disclosure and transparency of pipeline information (s216F)**

The draft Bill is designed to implement the recommendations in the Vertigan Report. Apart from the framework for binding arbitration, the Vertigan Report also recommended that the disclosure and transparency of pipeline service pricing and contract terms and conditions be enhanced (see Recommendation 1 in the Vertigan Report).

This is a fundamental policy principle that, in our view, should be enshrined in the Bill and not left to rules to address. As currently drafted, s216F does not contain any obligation to provide information nor any details about how this information disclosure regime will work, but merely provides a number of topics that the Rules 'may' (rather than 'must') address.

APLNG does not consider that the draft Bill adequately reflects the Vertigan Report nor provides any certainty or guidance regarding the disclosure principle or the detail on the information transparency and disclosure requirements.

APLNG submits that the draft Bill itself (rather than the Rules) should include the substance of all the important principles adopted by COAG and include the obligation for pipeline operators to provide enhanced information on the full range of pipeline services available. In line with the recommendations of the Vertigan Report, pipeline operators should provide information on the pricing principles, and/or pricing methodology for each service, including costs incurred, to enable shippers to better assess the reasonableness of the terms offered.

## **2. Retention of 15 year No Coverage Period (s216 C)**

Under s216C(1) of the draft Bill, the Chapter applies to "non-scheme" pipelines - and covered pipelines and international pipelines to which a price regulation exemption applies are specifically excluded by definition. It is important to note that the draft Bill does not currently contain an exemption for "greenfield" pipelines. Potentially, such pipelines could be subsequently excluded from the operation of the Chapter by the Rules under s216(2). However, there is no certainty around this, given that the Rules are yet to be drafted.

The intention of the Vertigan Report with respect to greenfield pipelines was clear (Recommendation 2 at p. 15):-

*"The existing provision for a fifteen year 'no-coverage period' would be retained and during that period any negotiations on services which are contained in the foundation contracts would be governed by the provisions of those contracts. However, negotiations involving parties to foundation contracts relating to services not covered in those contracts, or involving a new party, would be subject to the arbitration framework."*

APLNG submits that an exemption for greenfield pipelines is an important policy and as such, declared no coverage pipelines should, to the extent indicated by the Vertigan Report, be excluded from the draft Bill itself, by the Bill, rather than in the Rules.

## **3. Principles to be taken into account (s216M)**

The pricing and other principles that the arbitrator must take into account under s216M are not identified in the draft Bill. Instead, they will be specified in the Rules which are yet to be drafted. These principles will be important in whether or not the arbitration framework is effective and achieves the outcomes intended in the Vertigan Report.

## **4. Access determination is enforceable (s216Q)**

The Vertigan Report envisages that the decision of the arbitrator would be binding on both parties. The draft Bill adopts this concept in s216Q which states that "subject to the Rules, the access determination is enforceable as if it were a contract between the parties to the access determination". It is unclear if this is intended to mean that both parties to the arbitration would be forced to enter into a transportation contract on the arbitrated terms for the duration of the access request.

APLNG submits that ordinary commercial principles require that if the outcome of the binding arbitration did not meet the needs of one of the parties (e.g. for a producer, high transportation costs might make the gas production no longer economical), either party may decide not to enter into a contract on the arbitration decision. However, the decision of the arbitrator should be binding if the parties wish to enter into a contract, then the terms of that contract should be the arbitrated terms.

APLNG believes that addressing the process for the potential improvement of pipeline service terms is a good first initiative and should lead the agenda of the related gas transportation reforms proposed by COAG Energy Council.

APLNG appreciates this opportunity to provide this submission and its views on the proposed NGL amendment for pipeline access arbitration which will assist in the development of a more transparent and efficient natural gas industry.

Yours sincerely



**Warwick King**  
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Australia Pacific LNG Pty Limited