

Pipeline Regulation Consultation Regulation Impact Statement – Stakeholder feedback template

Submission from Tasmanian Gas Pipeline Pty Ltd

This template is to assist you to provide feedback on the COAG Consultation RIS titled *Options to improve gas pipeline regulation*. The template focuses on the questions asked through the RIS, which seek your views on issues which are central to the identified problems and proposed options. You may not wish to answer each question and there is no obligation to do so. If you wish to provide additional feedback outside the template, wherever possible please reference the relevant question to which your feedback relates. Thank you for your feedback.

Chapter 5: Effectiveness of Part 23

No.	Questions	Feedback
1	If you are a shipper that has negotiated with the operator of a non-scheme pipeline since August 2017, or a service provider of a non-scheme pipeline, how effective do you think Part 23 has been in terms of:	
	(a) enabling shippers to make more informed decisions about whether to seek access and to assess the reasonableness of a service provider's offer?	
	(b) reducing the information asymmetries and imbalance in bargaining power that shippers can face in negotiations?	
	(c) facilitating timely and effective commercial negotiations between shippers and service providers?	
	(d) constraining the exercise of market power by service providers during negotiations by providing for a credible threat of intervention by an arbitrator?	
	(e) enabling disputes that cannot be resolved through negotiations to be resolved in a cost-effective and efficient manner?	
2	Do you agree with the observations and recommendations made by:	
	(a) respondents to the OGW shipper survey (see section 5.1)? If not, please explain why not.	
	(b) the Brattle Group in its review of the financial information (see section 5.2)? If not, please explain why not.	Brattle Group's comments on TGP information generally relate to requirements where the format of the information required was ambiguous. TGP is happy to work with the AER to ensure reporting is consistent with expectations

No.	Questions	Feedback
	(c) the ACCC in its review of the operation of Part 23 (see section 5.3)? If not, please explain why not.	
3	Are there any changes that you think need to be made to Part 23 to make it more effective or efficient in terms of achieving its stated objective (i.e. to facilitate access at prices and on other terms and conditions that, so far as practical, reflect the outcomes of a workably competitive market)?	See Chapter 10 below.

Chapter 6: Potential problems and objectives of action

No.	Questions	Feedback
4	Do you agree with the problems that have been identified and what effect do you think they could have on shippers, service providers, the relevant regulator, consumers and/or other gas market participants?	
5	Are there any other problems that you think should be considered as part of the RIS (e.g. access to regional pipelines)? If so, please set out what they are, what effect you think they could have on shippers, service providers, the relevant regulator, consumers and/or other gas market participants, and how you think the problem should be addressed.	The RIS is quite comprehensive in scope and identifying the issues in the industry.
6	Are there any other objectives that you think the Energy Council should be pursuing? If so, please set out what they are.	

Chapter 7: When a pipeline should be subject to regulation and how decisions should be made

No.	Questions	Feedback
7	Do you think that the current threshold for regulation (i.e. all pipelines providing third party access are subject to regulation) is giving rise to over-regulation (see sections 7.2.1 and 7.3.1), or do you think the current threshold should be maintained?	<p>TGP believes that providing a fit for purpose exemption regime is required in any changes to the application of pipeline regulation.</p> <p>Compliance with Part 23 involves a high level of administrative costs and there should be a mechanism to ensure that those pipelines can be exempted where the benefits do not exceed the costs.</p> <p>At the very least, TGP considers the current exemptions and thresholds should be maintained. Consideration should also be given to the AER having further discretion or mechanisms to exempt small pipelines from compliance in whole or part with Part 23 where warranted.</p>
	(A) If you think it is giving rise to over-regulation:	
	(a) How significant do you think this issue is and what are the consequences likely to be?	
	(b) Do you think the risk of over-regulation should be addressed by: <ul style="list-style-type: none"> (i) including an exemption mechanism in the regulatory framework to enable pipelines that do not have substantial market power to obtain an exemption from regulation? (ii) limiting the application of regulation to those cases where it is established that the pipeline has substantial market power? (iii) another means? 	As noted above, we consider further consideration should be given to expanding the exemption regime. However, TGP doubts whether a substantial market power test is the right one. There appears to be an assumption underpinning Part 23 that all pipelines have substantial market power. In TGP's experience, it has been considered to have market power in circumstances where it owns a single, volume challenged pipeline with a large State Owned Corporation being its primary customer with over 70% of contracted MDQ. In this case TGP is a price taker not a price setter. TGP would prefer some other test which is aimed at costs versus the benefits of the application of Part 23.
	(B) If you think that (i) or (ii) should be implemented, do you think the test for establishing whether a pipeline has substantial market power should be based on the combined market power-NGO test proposed by the ACCC (see Box 7.6)?	
	(a) If so, do you think the onus of demonstrating this test is met (or not met) should sit with the decision-maker or the service provider?	
	(b) If not, please explain why and what test you think should be employed.	
8	Do you think the application of Part 23 to pipelines providing third party access that have obtained a greenfield exemption is distorting investment	

	incentives for greenfield pipelines (see sections 7.2.2 and 7.3.2), or do you think the current approach should be maintained?	
	If you think it is distorting investment incentives: (a) How significant do you think this issue is and what are the consequences likely to be?	
	(b) Do you think this issue should be addressed by: (i) providing these pipelines with a full exemption from regulation? (ii) providing these pipelines with an exemption from the Part 23 arbitration mechanism, but not from the disclosure and negotiation elements of Part 23? (iii) another means?	
9	Why do you think:	
	(a) the greenfield exemptions in the NGL have not been used by a greater number of service providers?	
	(b) the CTP provisions in the NGR have not been used by a greater number of shippers or governments?	
10	Do you think the greenfield exemptions and CTP provisions should be retained in the regulatory framework, or do you think:	
	(a) changes to the greenfield exemptions and/or CTP provisions are required?	
	(b) the greenfield exemptions and/or CTP provisions should be replaced with another mechanism that would provide potential developers with greater certainty as to how new pipelines will be treated from a regulatory perspective, while also protecting potential users of these pipelines from exercises of market power?	
11	Do you think the current approach to seeking access to pipelines that are not providing third party access should be maintained (i.e. a decision must be made by the relevant Minister having regard to the NCC's recommendations and the coverage test), or do you think it should be mandatory for all pipelines to offer third party access on a non-discriminatory basis, as it is in the US and Canada (see sections 7.2.3 and 7.3.3)?	

	Please explain your response to this question and set out what you think the costs, benefits and risks are likely to be of mandating third party access.	
12	If the current threshold for economic regulation is maintained and a test for regulation is only required for third party access and greenfield exemption decisions, which of the following tests do you think should be employed (see section 7.3.4) and why: (a) the coverage test; (b) an equivalent test to the recently amended Part IIIA test; (c) an NGO-style test; or (d) a combined market power-NGO test?	
	Do you think the onus of demonstrating the test is met (or not met) should sit with the decision-maker or service provider?	
13	Do you think the governance arrangements associated with third party access and greenfield exemption decisions are giving rise to unnecessary costs and delays, or do you think the current arrangements should be maintained (see sections 7.2.4 and 7.3.5)?	
	If you think the current arrangements could give rise to unnecessary costs and delays: (a) How significant do you think this issue is and what are the consequences likely to be?	
	(b) Do you think this issue should be addressed by according a single organisation responsibility for making this decision? If not, please explain why not.	
	If so: (i) What expertise do you think this organisation should have? (ii) Which of the following organisations do you think should be responsible for making this decision: - the ACCC? - the relevant regulator (i.e. the AER or the ERA in Western Australia)?the NCC? - another organisation?	

14	If a change is made to the governance arrangements, do you think the same organisation should also be responsible for making form of regulation decisions (see Chapter 8)?	
15	Are there any other problems with this aspect of the regulatory framework that have not been identified in this chapter? If so, please outline what they are and how you think they should be addressed.	

Chapter 8: Forms of regulation

No.	Questions	Feedback
16	Do you think the use of the coverage test as a gateway between Part 23 and full regulation is resulting in under-regulation? (A) If not, please explain why not.	
	(B) If so:	
	(a) How significant do you think this issue is?	
	(b) Do you think the coverage test should be removed and a single test used for moving between the alternative forms of regulation? If so, do you think the single test should be based on: (i) the form of regulation test in s. 122 of the NGL (see section 3.1.1)? (ii) another test?	
	(c) Do you think: (i) the onus of demonstrating that a particular form of regulation should apply to a pipeline should sit with the applicant or decision making body; or (ii) the onus should be on the service provider to demonstrate why a heavier handed form of regulation is not required?	
	(d) Do you think the relevant regulator should play a greater role in monitoring the behaviour of service providers and be able to refer pipelines for a form of regulation assessment if it suspects market power is being exercised?	
17	Do you agree that the inconsistencies and overlap between the three forms of regulation that are currently available under the regulatory framework are increasing the complexity and administrative burden for regulators, shippers and service providers? (A) If not, please explain why not.	

No.	Questions	Feedback
	<p>(B) If so:</p> <p>(a) How significant do you think this issue is?</p> <p>(b) If the number of forms of regulation was reduced to two, do you think:</p> <p>(i) the heavier handed form of regulation should be based on:</p> <ul style="list-style-type: none"> - full regulation (i.e. negotiate-arbitrate with reference tariffs)? - direct price (revenue) control? - another form of regulation? <p>(ii) the lighter handed form of regulation should be based on:</p> <ul style="list-style-type: none"> - the existing light regulation? - Part 23? - a strengthened Part 23 (i.e. the existing Part 23 plus the safeguards available under light regulation)? - another form of regulation? 	
18	<p>Do you think there is a case for adopting a different lighter handed form of regulation for distribution pipelines?</p> <p>If so, do you think it should be based on:</p> <p>(a) the Default Price Path (DPP) approach used in New Zealand?</p> <p>(b) the negotiated settlements approach used in the US and Canada?</p> <p>(c) another form of regulation?</p> <p>Please explain your responses to these questions.</p>	
19	<p>Do you think additional measures are required in the regulatory framework to deal with dynamic market power?</p> <p>(A) If not, please explain why not.</p> <p>(B) If so:</p> <p>(a) Do you think the NGR should be amended to include:</p> <p>(i) an explicit right to interconnection to regulated pipelines?</p> <p>(ii) pricing principles for interconnections to regulated pipelines?</p>	

No.	Questions	Feedback
	(b) Do you think the NGR should be amended to prohibit regulated pipelines from cross-subsidising new capacity by requiring incremental pricing to be used where the cost of an expansion or extension would otherwise result in the price of existing capacity increasing?	
20	Are there any other problems with this aspect of the regulatory framework that have not been identified in this chapter? If so, please outline what they are and how you think they should be addressed.	

Chapter 9: Information disclosure requirements

No.	Questions	Feedback
21	Do you think the limited information available on full regulation pipelines is hindering the ability of shippers to negotiate access to non-reference services or having any other adverse effects (see section 9.2.1)? (A) If not, please explain why not:	
	(B) If so: (a) How significant do you think this issue is?	

No.	Questions	Feedback
	<p>(b) Do you think this issue should be addressed by requiring full regulation pipelines to publish the following information:</p> <ul style="list-style-type: none"> (i) a description of all the reference and non-reference services offered by the pipeline (pipeline service information); (ii) the standing terms for non-reference services (i.e. the standard terms and conditions, the standing prices and methods used to calculate standing prices); (iii) information on the prices paid by shippers for each reference and non-reference service; (iv) historic demand information for each service offered by the pipeline; and (v) historic financial information for the pipeline on an annual basis in accordance with a financial reporting guideline published by the relevant regulator. 	
	<p>Do you think the deficiencies that have been identified with the pricing methodologies and financial information published by service providers are limiting the reliance that shippers can place on this information and making them more susceptible to exercises of market power (see section 9.2.2)?</p> <p>(A) If not, please explain why not:</p>	<p>Given the Part 23 information publication requirements are new, the AER should work with pipeline operators to provide further guidance on what they expect should be published.</p>
22	<p>(B) If so:</p> <p>(a) How significant do you think this issue is?</p> <p>(b) Do you think the deficiencies that have been identified with the pricing methodologies should be addressed by amending the NGR to require:</p> <ul style="list-style-type: none"> (i) service providers to publish the inputs used to calculate standing prices? (iii) the relevant regulator to publish a guideline on what information should be contained in the pricing methodology? 	

No.	Questions	Feedback	
	<p>(c) Do you think the deficiencies that have been identified with the financial information should be addressed by requiring service providers to report on the extent to which future costs are likely to be in line with historic costs, and historic information on contracted capacity and volumes transported?</p>	<p>This is not practical. Whilst limited costs may be able to be estimated in future, there is no reliable way that future costs can determined accurately. Costs can vary significantly from year to year with opex and capex requirements changing depending on the point of time for the business.</p>	
23	<p>Do you think the deficiencies that have been identified with the weighted average prices are limiting the reliance that shippers can place on this information and making them more susceptible to exercises of market power (see section 9.2.2)? (A) If not, please explain why not.</p>		
	(B) If so:	<p>(a) How significant do you think this issue is?</p>	
	<p>(b) Do you think the deficiencies should be addressed by requiring service providers to report:</p> <ul style="list-style-type: none"> (i) the individual prices (plus key terms and conditions) paid by each shipper rather than weighted average prices; or (ii) the minimum and maximum prices paid for each service in addition to the weighted average prices? 	<p>TGP does not agree with these proposed changes. TGP considers the disclosure of information will breach Shipper confidentiality. Consequently, TGP objects to the disclosure of information coupled with the identity of individual Shippers.</p> <p>Further, TGP considers that the disclosure of this information will damage its competitive position, as a result of not providing the full context for the contractual arrangement.</p>	
	<p>If you are a shipper, please explain what, if any effect, the disclosure of individual prices may have on competition in the markets in which you compete.</p>		
<p>If you are a service provider, please explain what effect the disclosure of individual prices or the price range may have on your incentive to offer prudent discounts to shippers.</p>	<p>The disclosure of individual prices would defy commercial in confidence decisions and commercial confidentiality.</p>		
24	<p>Do you think the quality and reliability issues identified by the ACCC are limiting the reliance shippers can place on the information reported by service providers and making them more susceptible to exercises of market power (see section 9.2.3)? (A) If not, please explain why not.</p>		
	(B) If so:	<p>(c) How significant do you think this issue is?</p>	

No.	Questions	Feedback
	<p>(d) Do you think this issue should be addressed by implementing one or more of the following measures:</p> <ul style="list-style-type: none"> (i) amending the NGR to provide for greater regulatory oversight of the information reported by service providers? (ii) amending the access information standard in the NGR to require information to be updated as soon as practicable if the information is found to no longer be accurate? (iii) increasing the penalties for breaches of the information disclosure obligations and the access information standard? (iv) the changes to the Financial Reporting Guideline identified by the ACCC and the Brattle Group (see Appendix B) should be implemented? 	
25	<p>Do you think the current approach to reporting information should be maintained, or do you think:</p> <ul style="list-style-type: none"> (a) the NGR should be amended to require the relevant regulator to prepare a guideline that sets out where and how the information is to be disclosed on a service provider's website and to inform the regulator whenever changes are made? (b) links to all the information reported by service providers should be published in a single location (e.g. the regulator's website, the Bulletin Board or AEMC register)? (c) all the information reported by service providers should be made available through a single repository? <p>Please explain your response to this question and set out how significant you think the accessibility issue is for shippers.</p>	

No.	Questions	Feedback
26	<p>Do you think, the current approach to reporting information should be maintained, or do you think the usability should be improved by requiring:</p> <p>(a) a summary tab to be included in the financial reporting template to provide a high level summary of the key financial and pricing information; and/or</p> <p>(b) a template to be developed to enable shippers to use the information published by service providers to calculate one or more the pricing benchmarks identified by the Brattle Group?</p> <p>Please explain your responses to these questions and set out how significant you think the usability issue is for shippers.</p>	
27	<p>Do you think the current exemptions from information disclosure under Part 23 should be retained, or do you think the scope should be amended to require exempt pipelines to publish a basic set of information?</p>	<p>The current exemptions from information disclosure under Part 23 should be retained.</p>
	<p>If you think a basic set of information should be reported by all pipelines, what do you think it should include (e.g. pipeline service information, standing terms, the prices paid by other shippers, service availability and pipeline information)?</p>	
28	<p>Do you think the size threshold used for exemptions under Part 23 should be retained, or do you think it should be aligned with the 10 TJ/day nameplate rating used for the purposes of full and light regulation, the Bulletin Board and the capacity trading reforms?</p>	
29	<p>Are there any other problems with the information disclosure requirements or exemptions that have not been identified in this chapter, or changes you think should be made to address the information deficiencies, accessibility, usability, reliability and quality issues outlined in section 9.2? If so, please explain what they are.</p>	

Chapter 10: Negotiation frameworks and dispute resolution mechanisms

No.	Questions	Feedback	
30	<p>Do you think the differences in negotiation frameworks applying under Part 23 and full/light regulation is causing confusion, imposing unnecessary costs on negotiating parties or otherwise hindering the ability of shippers to negotiate access (see section 10.2.1)?</p> <p>(A) If not, please explain why not.</p>		
	(B) If so:	(a) How significant do you think this issue is?	
		<p>(b) Do you think this issue should be addressed by adopting a single negotiation framework that would apply under all negotiate-arbitrate models that is based on:</p> <ul style="list-style-type: none"> (i) the approach currently applied under full and light regulation (see Table 10.1)? (ii) the approach currently applied under Part 23 (see Table 10.1)? (iii) a hybrid of the two frameworks as described in section 10.3.1? 	
31	<p>Do you agree with the ACCC that the preliminary enquiry process in Part 23 could delay a shipper's access to arbitration if negotiations fail and also allow service providers to avoid the rules relating to access requests (including response times)?</p> <p>(A) If not, please explain why not.</p>	<p>No. Regulators seem to be under the misapprehension that shippers and pipelines slavishly follow some mandated regulatory process. This ignores how commercial negotiations occur which generally involves an iterative process of discussions and information provision as to whether the shipper wants services. Effectively making every enquiry subject to a mandated process is not efficient or real world. Shippers always have the ability to trigger formal processes. This is made clear in pipelines' User access guides.</p>	
	(B) If so:	(e) How significant do you think this issue is?	
		(f) Do you think the preliminary enquiry process should be removed from Part 23?	

No.	Questions	Feedback
	<p>Do you agree that the credibility of the threat of arbitration is weaker for smaller shippers (see section 10.2.2)?</p> <p>(A) If not, please explain why not.</p>	<p>TGP's experience is that arbitration can involve significant costs. Where arbitration has occurred all shippers will get the benefit of the result, including smaller shippers. Further, through the publication provisions, all shippers get insight into pricing obtained by bigger shippers who can credibly threaten arbitration in negotiations.</p>
32	(a) How significant do you think this issue is?	
	<p>(b) Do you think the position of smaller shippers would be improved by:</p> <ul style="list-style-type: none"> (i) making it easier for pipelines to move from lighter to heavier handed forms of regulation as set out in Chapter 8? (ii) requiring individual prices or maximum and minimum prices to be reported by service providers rather than weighted average prices (see Table 9.2)? (iii) improving the usability and accessibility of information reported by service providers in the manner set out in Table 9.2? 	
	<p>(B) If so:</p> <p>(g) Do you think any of the following should occur to further strengthen the position of smaller shippers:</p> <ul style="list-style-type: none"> (i) amend the cost provisions to prevent the dispute resolution body from awarding the service provider's costs against smaller shippers (relevant to full and light regulation only) and making smaller shippers pay more than half the dispute resolution body's costs? (ii) allow user groups to intervene in arbitral proceedings involving smaller shippers? (iii) give smaller shippers the option under Part 23 to have the dispute heard by the relevant regulatory dispute resolution body or a commercial arbitrator? 	<p>TGP does not support user groups intervening in arbitral proceedings under Part 23 – it will raise costs. TGP also does not support Part 23 moving away from commercial arbitration and a regulator to be the arbitrator. Part 23 was set up for commercial arbitration and not a regulatory price determination process with which a regulator is likely to approach the dispute.</p>

No.	Questions	Feedback
	(h) If any of the measures outlined in (c) are implemented, how should 'smaller shipper' be defined? If you think it should be based on a size threshold, what threshold do you think should be adopted?	
33	Do you think:	
34	<p>(a) there are any other groups of shippers for whom the threat of arbitration may not be considered credible by service providers?</p> <p>(b) there any other factors that may discourage shippers from threatening the use of arbitration?</p>	
34	<p>Do you agree that the limited guidance provided in the NGL/NGR on the matters to be considered by the dispute resolution body under full and light regulation as set out in section 10.2.3 are adversely affecting the efficiency, effectiveness and credibility of the dispute resolution mechanism applying to full and light regulation pipelines?</p> <p>(A) If not, please explain why not.</p>	
	<p>(B) If so:</p> <p>(a) How significant do you think this issue is?</p>	

No.	Questions	Feedback
	<p>(b) Do you think these deficiencies should be addressed by amending the NGL/NGR to:</p> <ul style="list-style-type: none"> (i) require the dispute resolution body to have regard to the NGO, the revenue and pricing principles, an applicable AA (where relevant), previous AAs or access determinations, pre-existing contractual rights and the price and revenue regulation provisions in Part 9 of the NGR? (ii) require the existence of a dispute to be made public and to set out the process for joining parties? (iii) introduce a 50-day fast-track option for certain disputes under full regulation? (iv) specify the maximum period of time to be taken by the dispute resolution body to resolve a dispute (e.g. 8 months or 12 months)? (v) only require the access determination to be binding on a shipper if the shipper decides to enter into a contract that reflects the access determination and to prevent a shipper that decides not to enter into such a contract from seeking arbitration for the same or a substantially similar service for 12 months? (vi) require the dispute resolution body to publish the access determination, statement of reasons, relevant financial calculations and information provided in the course of the dispute (subject to the confidentiality provisions in the NGL)? 	
35	Do you have any concerns with the Part 23 pricing principles (see Box 10.1)?	

No.	Questions	Feedback
	<p>If so:</p> <p>(a) Please explain what your concerns are, how significant you think they are and what, if anything, you think could be done to address these concerns.</p>	<p>TGP is generally supportive of the pricing principles outlined in Part 23, particularly the cost recovery principles under rule 569 of the NGR.</p> <p>However it is the specific application of these general principles to particular cases which may lead to unforeseen outcomes that may unfairly impact either the service provider or shippers and also reduce the strength of threat that arbitration may have for either party.</p> <p>Where a pipeline is significantly underutilised there is no incentive for a Shipper to contract firm forward capacity and in fact could practically rely on non-firm, as available capacity. In order for an asset valuation to be converted to a tariff for a shipper there needs to be an assumption and direct correlation made as to the level of contracted firm forward MDQ. If the actual contracted firm MDQ is higher or lower than the assumed level then the calculated tariff will lead to either an under or over-recovery of revenue by the pipeline.</p> <p>For example, if an annual revenue requirement of \$30M is required to recover costs (capital and operations) and 50TJ of contracted MDQ is assumed the tariff is \$1.64/GJ. If the actual contracted MDQ turns out to be 25TJ the pipeliner will recover only 50% of its costs. Conversely, if the contracted MDQ is 75TJ the shipper will pay 50% more than is required.</p> <p>In order to address this weakness, TGP suggests that the pricing principles are altered so that in the case of pipelines that are significantly underutilised (say <75% of nameplate capacity) tariffs could be set in order to recover the required annual level of revenue to achieve cost recovery. This facility could be introduced where the contracted level of MDQ would lead to an under or over recovery of +/- 10%.</p>
	<p>(b) Do you think these concerns will be addressed by making it easier for pipelines to move from lighter to heavier handed forms of regulation?</p>	

No.	Questions	Feedback
	<ul style="list-style-type: none"><li data-bbox="315 165 1039 229">(c) Do you think there would be value in providing greater clarity in Part 23 about:<li data-bbox="315 240 1039 405">(d) how prior regulatory decisions are to be accounted for by an arbitrator, in those cases where a pipeline has previously been subject to full regulation, particularly if it becomes easier to move between forms of regulation?<li data-bbox="315 416 1039 512">(ii) shared costs are to be allocated between other assets that are operated by the service provider and between the services offered by the pipeline?	

36	<p>Are there any other problems with the negotiation frameworks and dispute resolution mechanisms that have not been identified in this chapter, or changes you think should be made to address the issues identified in section 10.2? If so, please explain what they are.</p>	<p>TGP is well placed to comment on the practical application of the Part 23 negotiation frameworks and dispute resolution mechanisms given that it has been involved in the only Part 23 arbitration since the inception of the new Rules. Set out below are the key issues that became apparent during the TGP – Hydro negotiation and arbitration process.</p> <p>1. Firm vs As available services</p> <p>As set out above, on a pipeline with spare capacity, there is nothing stopping a shipper from requesting only as-available services, which are only paid for when used.</p> <p>It is a fundamental to pipelines, as sunk capital infrastructure, that shippers contract capacity on a take or pay, firm basis. If pipelines have spare capacity, it essentially means that shippers will never commit. Pipelines would be unfinanceable if shippers are able to avoid commitments consistent with their actual requirements. It will increase the cost of new pipelines as the value and financeability risk post-foundation contracts will need to be built in.</p> <p>2. Costs of arbitration</p> <p>TGP has incurred significant arbitration costs.</p> <p>3. Market power of shipper and price outcomes</p> <p>TGP is a single owner pipeline, with a limited customer base. The pipeline is significantly under-utilised and is servicing a shallow Tasmanian gas market consisting of a limited use power station and other industrial customers. The pipeline was valued at \$163m for the purpose of providing transport services. In contrast, Hydro has over \$6B in assets.</p> <p>The power station has underpinned the revenue and viability of the pipeline and fundamentally impacts TGP's transportation prices for the other major industrial customers in Tasmania. The two revenue sources are co-dependent. In the absence of knowing the pricing for the power station, it is impossible to set prices for other customers. Hydro has consistently through negotiations and the arbitration sought massive price reductions for the power station but minimal pricing changes for its industrial customers. The reductions sought by Hydro for its transportation prices would have resulted in significant price increases for industrial customers for the pipeline to remain viable. Even significant price reductions in commercial negotiations were insufficient to secure Hydro agreement which served to continue ongoing price uncertainty for the major industrials.</p>
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TGP's published pricing reflects the arbitrated outcome. The arbitration decision imposed small decreases for the industrial customers and a slightly higher decrease in prices for the power station (as compared to the foundation contracts).

4. A free option for shippers

The outcome of the arbitration was binding on TGP but not on Hydro. It gives shippers a free option, particularly where there is spare capacity. Under the new regime, shippers are encouraged to negotiate the pipeline down and then "roll the dice" at arbitration in the expectation that they can continue to negotiate post arbitration if the arbitrator's outcome does not meet the shipper's expectations. Given the cost imposition for what can be a short term arbitrated contract but long term implications for the pipeline, this aspect needs to be reviewed.

In particular, TGP's experience suggests that shippers will be encouraged to make ambit claims and use this process as a risk free option to try and shift risk onto pipeline owners; risks that are most effectively managed by shippers. They will do this, by not only demanding unreasonably low prices, but also trying to get preferable terms (e.g. in respect of short term tenor and maximum flexibility in respect of service bundling) that are inconsistent with an efficient allocation of risk and the outcomes that could be reasonably be expected in a workably competitive market.

There is no incentive for shippers to consider the legitimate business interest of pipeliners or their investors, rather the shippers are encouraged by self-interest knowing they can walk away from an unfavourable determination and most likely return to commercial negotiations outside of the arbitration regime. This issue is particularly pronounced for TGP as a single use, underutilised asset where the exercise of significant market power, in a limited market, is a particular risk.

This can only increase costs to consumers in the long term because future pipelines may experience difficulty in securing investment given the potential outcomes under the new regime.

5. Tenor

No.	Questions	Feedback
		<p>TGP has consistently sought a long term contract for TVPS consistent with the independently verified period for which the TVPS was required for Tasmanian energy security. Pipelines need long term revenue certainty for financing. Having an arbitration process which can apply short term contracts (eg one to three years) where pipelines have spare capacity and shippers know they don't have to contract their true requirements is gaming which comes at a real cost to pipelines. If short term determinations become frequent, there is an obvious unintended risk that investment in critical energy infrastructure is stifled due to financier concerns around long term revenues and lack of investor appetite (particularly in large sunk assets) for this additional risk.</p> <p>6. Reservation issue</p> <p>TGP had long recognised the revenue risk for recontracting and sought to diversify revenue sources. It spent \$16M to connect to the Victorian Transmission System to allow sale of high priority storage services. TGP had run an EOI process for sale of storage services and had significant interest. Storage is a competitive market in Victoria.</p> <p>The difficulty arises that where a shipper refers an application for services to arbitration, it effectively sterilises that capacity for the term of the arbitration because the pipeline is at risk that the arbitrator's determination would allocate that capacity to the shipper. For example, during the course of the arbitration, the storage tender was suspended because TGP could not be at risk of contracting it twice.</p> <p>This needs to be reviewed. It potentially enables one shipper to effectively reserve capacity (even if it is not taking going to take it up) to the detriment of the pipeline and other shippers and is open to being used strategically. A shipper can exert pressure on a pipeline by sterilising potential revenue for the duration of an arbitration, imposing additional financial constraint over a pipeline and impacting its economics from a debt finance perspective. This was a significant issue for TGP as an underutilised pipeline which actively sought to generate this additional revenue with significant capital investment.</p>

Chapter 11: Policy options

No.	Questions	Feedback
37	Of the four policy options that have been identified in Chapter 11, which option do you think should be implemented (i.e. Option 1, Option 2, Option 3 or Option 4) and why?	
38	If there are other policy options or refinements to these policy options that you think should be considered, please explain what they are, what they would involve and what the advantages, disadvantages, costs, benefits and risks are with these options.	Fine tuning with Part 23 as set out in other questions
39	Do you agree with the advantages, disadvantages, costs, benefits and risks that have been identified for each option in sections 11.2-11.4? If not, please set out what other advantages, disadvantages, costs, benefits and/or risks that you think are associated with each option?	
40	If you think any of the policy options out in Chapter 11 could be implemented through alternative means (i.e. non-regulatory), please explain how you envisage this would work.	
41	If options 2, 3 or 4 were implemented and 'light regulation' removed, which of the following transitional arrangements do you think should be employed for the 5.5 pipelines that are currently subject to this form of regulation:	
	(a) grandfather the existing light regulation arrangements until an application is made for the form of regulation to change on the 5.5 pipelines?	
	(b) deem all light regulation pipelines to be subject to full regulation?	
	(b) deem all light regulation pipelines to be subject to the new lighter handed form of regulation (i.e. the strengthened Part 23)?	
42	(c) require the decision making body to carry out an assessment of whether the pipelines should be subject to the heavier handed or lighter handed form of regulation using the form of regulation test? Are there any other transitional arrangements that need to be considered? If so, please outline what they are.	

Chapter 12: Regulatory impact assessment

No.	Questions	Feedback
43	<p>Do you agree with the risks that have been identified for:</p> <p>(a) the status quo in Tables A.1 and A.2?</p> <p>(b) identified for Options 2-4 in Tables A.3 and A.4?</p> <p>If not, please explain why not.</p> <p>If you think there are other risks and treatments that should be accounted for, please explain what they are.</p>	
44	<p>Do you:</p> <p>(a) agree with the categories of costs and benefit categories set out in Table 12.1, or are there other categories that you think should be considered in the CBA?</p> <p>(b) have any information on the costs and benefits outlined in Table 12.1? If so, please elaborate on the source and quantum of those costs and benefits.</p> <p>(c) agree with the proposed discount rate and appraisal periods to be used for the central case and sensitivity testing? If not, please explain why.</p> <p>(d) think there are other input variables that should be subject to a sensitivity analysis? If so, please explain what those inputs are.</p>	
45	<p>Do you have any information on the compliance costs associated with the policy options set out in Chapter 11 that could be used for the CRBM? If so, please elaborate on the source and quantum of the costs.</p>	
46	<p>What, if any effect, do you think the policy options summarised in Chapter 11 will have on competition in the gas market and, in particular on:</p> <p>(a) the relative bargaining power of shippers and service providers?</p> <p>(b) the search and transaction costs associated with contracting pipeline services?</p> <p>(d) the potential for collusive behaviour in competitive segments of the market?</p> <p>(e) changes to any barriers to entry that could promote or deter market entry?</p> <p>(f) the long-term outlook for investment in the sector?</p>	