# SUBMISSION

EUAA
Energy Users Association of Australia

## FORM OF REGULATION REVIEW – SWQP

## 27 MARCH 2024

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The Energy Users' Association of Australia (EUAA) is the peak body representing Australian commercial and industrial energy users. Our membership covers a broad cross section of the Australian economy including significant retail, manufacturing, building materials and food processing industries. Combined our members employ over 1 million Australians, pay billions in energy bills every year and in many cases are exposed to the fluctuations and challenges of international trade.

The EUAA has been a strong supporter over many years of the Gas Market reforms that followed confirmation in the first ACCC Gas report in April 2016[1] that all parts of the gas supply chain were exercising market power. In the area of gas pipeline reforms, we have been strong supporter of the various measures implemented through the Vertigan reforms on Part 23 and, more recently, the March 2022 package of measures agreed to by Energy Ministers to simplify the gas pipeline regulatory framework and increase transparency on pipeline tariffs.

Consumers have had to wait a long time to see the reforms being implemented and we hope that the benefits will start to follow.

Given the large number of non-scheme pipelines, we think it is appropriate for the AER to undertake a review of the regulatory status of these pipelines to see if the evidence that they ***may*** have some degree of market power can be substantiated. This submission provides some initial high-level thoughts given the hurdles we faced being:

- The short three-week timetable from issuance of the Discussion Paper to submissions being due which has prevented us from engaging with our members who use the SW Queensland pipeline
- The limited amount of information provided in the Discussion Paper on a range of issues, and
- The absence of information that APA and other parties will no doubt provide in their submissions to help us assess the claims and counterclaims being made.

Unfortunately, we do not have sufficient information that enables us to answer the key question on whether the AER should make a scheme pipeline determination for the SWQP.

We would recommend that the AER hold a public forum a couple of weeks after the publication of submissions on the Discussion Paper and then provide for another round of submissions due a month later. This should not disrupt the existing timetable to produce a Draft Decision in September 2024 – indeed we believe it would underpin a better decision. Even if the AER thinks it might delay its timetable, as this is the first of an expected series of regulation reviews, we think it is important to get the process right from the beginning.

[1] https://www.accc.gov.au/system/files/1074_Gas%20enquiry%20report_FA_21April.pdf

The decision on SWQP may well set an important precedent for the remaining reviews. We want that precedent to have a sound basis not only in fact, but also in consumer engagement.

<u>AER Discussion Paper</u>

*Section 3.2 Key gas market trends relevant to the SWQP*

We agree with the issues discussed that may affect the demand for SQQP services:

- The 2024 GSOO further emphasises the risk of supply shortfalls even more so that the 2023 GSOO discussed in the Paper
- State and Territory jurisdictional polices to reduce gas consumption as part of their net-zero policies – though it remains to be seen if their reduction targets are achieved given the costs of electrification, particularly for residential consumers
- The expanded role of gas fired generation at peak demand periods with the forecast winter peak gas demand greater than the existing pipeline capacity to deliver
- The demands of LNG exports
- The business case for LNG import terminals
- Potential competitor pipelines like the Hunter Gas pipeline from Wallumbilla to Newcastle, and
- The route to transport Beetaloo Basin gas into southern markets.

*Section 4.2 – Effect of regulating the SWQP as a scheme or non-scheme pipeline on access and costs*

The short time given for submissions means that we have been unable to engage with our members on their experiences – in any case some of the reforms have been in place for a relatively short time and our members may have long term contracts that mean they have not had the opportunity, for example, to test the negotiate/arbitrate framework. Also, some of our members buy through retailers on the basis of a delivered price and hence leave it to the retailers to negotiate transport.

Prior to the Part 10 publication in recent months of all prices paid by shippers it was very difficult to answer a question about whether users consider terms and conditions are 'reasonable'. Now that tariff transparency does at least enable them to compare their price with others (assuming they can understand the very complex APA spreadsheet[2]). We would expect that unless they have the lowest cost of any shipper for a similar bundle of services they will say the price is not 'reasonable'. But that does not get you very far in answering Question 3.

To answer this question the user would have to now the counterfactual under full regulation of SWQP. But they have no idea what that price would be, and the AER provides no indication – the implication seems to be that the price would be lower but, if so what would be the basis for that argument?

A key determinate of the price under full regulation is the approach to measuring the opening RAB. This matter is not discussed in the Paper. This value can vary greatly as we saw in the AER assessment of APA's application to have

[2] https://www.apa.com.au/our-services/gas-transmission/east-coast-grid/south-west-queensland-pipeline/

Basslink become a regulated asset[3]. This opening value is becoming even more important as policies to reduce gas consumption and regulated gas networks apply to the AER for accelerated depreciation that can have large impacts on the regulated reference tariff.

Then our members could look at the AER Gas Network Performance Report and see that the actual return on assets for VTS and Roma-Brisbane has been between 200-300bpts higher than the allowed WACC since 2014[4] and wonder what impact full regulation is having.

The Paper only discusses regulatory costs for APA and consumers. We leave APA to advise on their comparative costs but note it would depend on the level of engagement they undertook e.g. the extent to which they followed the Better Resets Handbook. Transmission pipelines have few customers and we would expect the regulatory reset process to be much less than for a distribution pipeline. This suggests costs for customers would be relatively small. Historically very few end use customers have been more than peripherally involved in gas pipeline resets, leaving their involvement to be through membership of advocacy groups like the EUAA.

For consumers, the regulatory costs are likely to have fallen since the publication of all customers rates on the APA website. We are unaware of any members who have exercised their rights to arbitration, so we are unable to comment on these costs.

Given a regulated SWQP would only result in the AER setting a reference tariff and most shippers are not on that tariff, there would still be varying levels of negotiation on the tariff for a shipper's particular bundle of services. Under full regulation the reference tariff provides a reference point. Under non-scheme regulation the published rates provide a range of reference points. We expect the regulatory/transactions costs would be lower under a fully regulated pipeline given the reference tariff and the AER as the arbitrator.

*Section 4.3 Promotion of the National Gas Objective*

Based on previous discussions with members, we expect them to have two key issues in how they consider the NGO in this matter:

- Who bares stranded asset risk?
- Will the necessary augmentations be built in a timely manner to meet projected gas shortfalls, particularly in Victoria on peak demand winter days?

On the former, AER data on regulated transmission pipelines (VTS, Roma-Brisbane and Amadeus) shows only 41% utilisation in 2022 with gas withdrawals declining since the peak in 2017[5]. Moving a pipeline to full regulation moves stranded asset risk from the asset owners to consumers – in the absence of Governments stepping in. Our members are not relying on the latter happening. The Paper is asking our members to decide if they would prefer a regulated price that may or may not be lower than their current price depending on the AER's approach to allowing accelerated depreciation (and opening RAB). It is difficult for them to answer that based on the information provided in the Paper that does not provide a regulated counterfactual.

[3] https://www.aer.gov.au/system/files/2023-11/AER%20-%20Issues%20Paper%20-%20Basslink%20-%20Conversion%20and%20revenue%20determination%202025-30%20-%20November%202023.pdf
[4] https://www.aer.gov.au/documents/gas-financial-performance-data-2023
[5] See p. 6 https://www.aer.gov.au/system/files/2023-12/Gas%20Network%20Performance%20Report%202023.pdf

On the latter, the Paper highlights the looming gas shortages discussed in the 2023 GSO. The 2024 GSOO makes that risk even clearer[6]:

> "The report signals that new investment is urgently needed if gas supply from 2028 is to keep up with demand from homes and businesses, and for gas-powered electricity generation.
>
> It also highlights risks of peak-day shortfalls on some days under extreme winter conditions from 2025 and the potential for small seasonal supply gaps from 2026 in southern states."

This additional investment is not just for Queensland CSM supply, but also to connect the Beetaloo field into the east coast pipeline system.

It would help our response to the Paper's questions if the Paper had set out the regulatory timetable where it to decide to regulate SWQP. With a decision on the form of regulation before the end of 2024, would the regulatory reset process begin in 2025? What period would it cover? Given the usual two year reset process this suggests the earliest the first regulatory period could start is 2027 or 2028. How would the investment the 2024 GSOO says is necessary be made in a timely manner with a fully regulated SWQP on this timetable? It is unclear how APA might consider this investment. Will they be asked to make an investment decision before they know whether the AER would approve that investment in a 2028-33 reset review and what the WACC would be? If so then we could understand if APA was hesitant to invest.

Would there be transitional arrangements that would allow the investment to be made e.g. on the basis of long-term transport contracts with shippers and hence excluded from regulatory review until the end of those contracts? Even if that were possible, shippers might be unwilling to enter into a long-term contract because of their uncertainty about what the regulated tariff might be in the future that could be available to their competitors from the start of the first regulatory period. Grandfathering of contracts may be attractive to APA, but not always to shippers.

*Section 4.4.3 Countervailing market power and Section 4.4.5 Substitutes and elasticity of demand for gas*

Given the short consultation time, we have not been able to engage with our members on this issue. What we do know is that many of our members have no alternative to using gas e.g. it is not technically possible or very expensive to electrify their operations or modify to take hydrogen even if it were competitively priced. A small number of shippers on a pipeline does not automatically translate into countervailing market power if those users are reliant on gas for their industrial process.

*Section 4.4.4 Substitutes and elasticity of demand for pipeline services*

There is no business case for a SWQP by-pass given the high capital costs and stranded asset risk for a 60-year asset. LNG terminals are most likely to have to rely on spot sales. Large C&I users have been unwilling to sign-up to long term deals at an LNG netback linked price, particularly with what they hope a Mandatory Gas Code will deliver.

[6] https://aemo.com.au/newsroom/media-release/gas-market-outlook-signals-need-for-new-investment#:~:text=The%202024%20GSOO%20reaffirms%20the,the%20electrification%20of%20some%20gas

*Section 4.4.6 The extent of any market power held and exercised by APA on the SWQP*

We are unable to comment on this given the short time period for consultation.

We understand the AER has been given this job to do by energy ministers and that the timetable for making this decision is not necessarily being driven by them.  However, we would urge more consultation as we have previous described to help facilitate a better decision, allow for meaningful engagement with end users and ultimately set a positive precedent for future reviews.

Regards

Andrew Richards
Chief Executive Officer