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Ms Kanwaljit Kaur  
Acting General Manager - Gas  
Australian Competition and Consumer Commission  
PO Box 1199  
Dickson ACT 2602

Dear Ms Kaur

**Re: ACCC Issues Paper on Duke's QGP**

I refer to the Australian Competition and Consumer Commission's (ACCC) recent Issues Paper dealing with two access arrangements submitted for approval in respect of two covered pipelines ("approval applications"), one being for the Wallumbilla to Rockhampton (via Gladstone) Pipeline (known as the Queensland Gas Pipeline ("QGP")) operated by Duke Australia Operations Pty Ltd ("Duke").

Duke has a number of concerns in the manner in which the Issues Paper addresses itself to the access arrangement submitted in respect of the QGP.

While it is appreciated that the Issues Paper is aimed at promoting public comment, it is believed that some issues are not properly addressed in that Paper, which could result in some general misunderstanding of the process and issues. Duke believes these matters warrant public clarification by the ACCC prior to the conclusion of the public submission period.

Our main concerns are:

1. issues and questions raised in the Issues Paper which relate to matters which the ACCC has no statutory power/authority to determine in the context of the access arrangement for the QGP.
2. an apparent confusion of the access arrangement approval process (which is the ACCC's responsibility) with the certification of the *Gas Pipelines Access (Queensland) 1998* ("Act") as an "effective access regime" in accordance with the *Trade Practices Act 1974* (which is the National Competition Council's ("NCC") responsibility). These two processes are completely independent of each other and the outcome of one does not affect, nor is it relevant to, the other.

Duke's specific concerns relating to the Issues Paper are outlined below:

- **Regulatory Framework – Certification of Act**

While it is true that the Act is yet to be certified by the NCC as an effective access regime in accordance with the provisions of Part IIIA of the *Trade Practices Act 1974*, any decision on this issue by the NCC would not affect the validity of any aspect of the Act.

The ACCC is obliged to consider the access arrangement in accordance with the provisions of the Act as it currently stands. The NCC's certification process is totally separate from the ACCC's determination of whether to approve the access arrangement.

It is considered inappropriate to seek to link the certification process and the access arrangement approval process. The information in section 2.3 of the Issues Paper is considered not relevant to the issue at hand – i.e. whether the access arrangement for the QGP should be approved by the ACCC.

It is submitted that the ACCC should specifically clarify the reasoning behind the inclusion of the information in section 2.3.

- **Consideration of derogated aspects of National Code**

It is noted that on page 8 of the Issues Paper, the ACCC acknowledges that the derogations from the National Third Party Access Code "can not currently be reviewed in this process".

This is reinforced by Annexure I to the CoAG Natural Gas Pipelines Access Agreement of 1997 that states:

*"The Access Arrangement...will be submitted to the ACCC...under the following conditions:*

- *Reference tariffs (and reference tariff policy) will be those taken from the existing access principles and will be included in the deeming provision of the Queensland Access Legislation. These will not be subject to public and ACCC scrutiny until the nominated review date expressed in the individual access arrangements;*
- *Non-tariff related matters will be submitted to the ACCC for consideration by the ACCC in the normal manner;*
- *Other derogations required to achieve these outcomes will be included in the Queensland Access legislation."*

Under Section 58 of the Act, and in accordance with the 1997 Agreement, Reference Tariffs, the Reference Tariff policy, and requirements relating to Access Arrangement Information (in relation to Reference Tariffs) have been approved by the Queensland Minister for Mines and Energy ("Minister") (by gazettal notice dated 16 June 2000) and accordingly cannot be reviewed in the ACCC's assessment process.

Notwithstanding the express limitations to the scope of the ACCC's jurisdiction, the Issues Paper nevertheless seeks comments from interested parties on the following key issues which fall outside the ACCC's jurisdiction:

- The impact of the derogated review period on the non-tariff elements of the proposed Access Arrangements; and
- Whether limited provision of Access Arrangement Information is appropriate.

It is considered that the Commission should clarify why it is seeking comments on such issues which appear to have no bearing on the matters which the ACCC can consider in reaching a decision.

- **The Review Period**

The Revisions Submission Date has been approved by the Minister in accordance with the Act and the 1997 CoAG Agreement. As such, it is deemed to be the revisions submission date for the access arrangement.

In this light, the purpose and utility of the ACCC's questions on (a) whether triggers should be included that require early revision and (b) whether mechanisms should be included to address the risk of forecast error, may be questioned. We would seek clarification as to why the ACCC has found it necessary to raise these issues.

- **Access Arrangement Information disclosure**

The Reference Tariff Policy approved by the Minister in accordance with section 58 of the Act does not require Duke to submit Access Arrangement Information to the ACCC in relation to the reference tariffs and related provisions in the Reference Tariff Policy until the Revisions Submission Date.

On that basis, all relevant information that Duke is required by the Act to disclose as part of the Access Arrangement Information has been disclosed as part of the Access Arrangement.

However, the ACCC suggests that arguably Category 5 information is required to be disclosed as part of Access Arrangement Information, as this category of information is not "*directly (sic) related to Reference Tariffs.*" It is contended that the relevant question is not whether the information is *directly related* but merely whether it is *related*. The ACCC's thinking upon the bounds of information provision, in light of the derogation, should be clarified in order that submissions might be made. It may be contended on this matter that the ACCC is being critical of the derogation rather than Duke's access arrangement. The purpose of the ACCC raising this issue, due to its lack of relevance might be questioned.

As noted earlier, Duke is of the view that immediate clarification of the above issues is appropriate prior to the conclusion of the public submission period. This would remove some current confusion and permit submissions to be more relevant in light of clarification. There is also a view that some of the issues contained in the ACCC's Issues Paper are beyond the power of the ACCC to consider in the current context, with any such consideration potentially flawing the approval process.

We request that the concerns raised here (or this letter) be circulated to all parties to which the ACCC's Issues Paper was distributed, to serve as an information adjunct to persons making submissions.

Should you have any questions in relation to the above or wish to advise of progress, please contact Mr Anthony Cribb, Senior Analyst, Government Policy on (07) 3334 5897.

Yours sincerely

**Peter Staveley**  
**Group Manager, Government Policy**  
**Asia Pacific**