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Australian Energy Regulator
Level 17, Casselden, 2 Lonsdale Street,
Melbourne **VIC** **3000**

Via email: Amadeus2021@aer.gov.au

Dear Sir or Madam

RE: Energy Matrix Comments on Amadeus Gas Pipeline Revised Access Arrangement

We refer to the Amadeus Gas Pipeline (the **AGP**) 2021-2026 Access Arrangement Revision Proposal presented by APT Pipelines (NT) Pty Limited (**APA(NT)**) to the Australian Energy Regulator (the **AER**) dated 1 July 2020 (the **Proposed Access Arrangement**) and to the invitation by the AER to provide a submission regarding the subject matter of the Proposed Access Arrangement pursuant to the principles set out in the Natural Gas Law (**NGL**).

This submission comprises: an outline of Energy Matrix Group Pty Limited's interests in the subject matter of the Proposed Access Arrangement; key comments on the operation of the NGL and the Natural Gas Rules (**NGR**) regarding the adequacy of the Proposed Access Arrangement; and responses to selected specific matters raised in the Proposed Access Arrangement.

INTRODUCTION

Energy Matrix Group Pty Limited (ACN 050 889 604) (**Energy Matrix**) comprises four wholly owned subsidiaries engaged in energy sector consulting and commercial project management, gas supply management, gas trading, gas transportation, gas retailing and equity dealing in gas. Please refer to the structure diagram below, Figure 1.

Energy Matrix group companies and its principals have conducted business in the Australian energy sector for more than 25 years. As Project Consultancy Services Pty Limited (**PCS**), Energy Matrix provides strategic advice, commercial project management and contract negotiation support to governments and companies across Australia. Among other roles, PCS assisted the office of the Northern Territory Chief Minister in support of the successful tender for the Northern Gas Pipeline (from Tennant

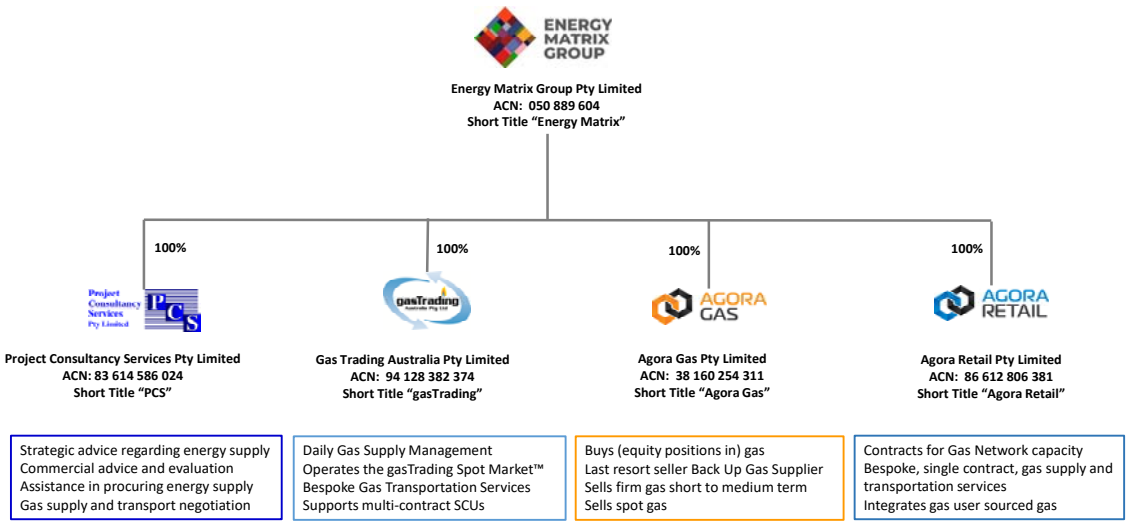
Creek to Mt Isa) and acted as Lead Negotiator for the sale of Power and Water Corporation gas in the south east Australian gas market.

Gas Trading Australia Pty Limited (ACN 128 382 374) (**gasTrading**):

- manages the daily gas supply and transport obligations for over thirty clients/sites located from Kwinana in WA to Mt Isa in Qld;
- has developed, and operates, the gasTrading Spot Market™ in WA; and
- provides tailored gas transport services to selected clients.

gasTrading has sought to establish a gasTrading Spot Market™ in the Northern Territory and Queensland but has not been successful in securing a sufficiently reliable day ahead AGP Day Ahead Firm Service on which to base trading. As an integral part of the gasTrading Spot Market™, gasTrading has been a leader in transparency, publishing market, price and trading volume information since mid-2012.

Figure 1 Energy Matrix Structure



Agora Gas Pty Limited (ACN 160 254 311) (**Agora Gas**) is a wholesale gas trader, currently buying and selling gas in Western Australia's Wholesale Gas Market. In August 2020, Agora Gas has arrangements in place to purchase over 1,100 TJ of Firm and As Available gas and has arrangements in place to sell in the order of 1000 TJ of that gas in the gasTrading Spot Market™ (600 TJ) and in "Off Market" spot and short term transactions. Agora Gas has underwritten the supply of gas to the gasTrading Spot Market™ since 2017, when the last market participant selling "distressed gas", or low priced "legacy gas", left the market. This distressed and legacy gas was gas which was surplus take or pay gas under contracts written before 2008 and which gradually left the market as those legacy contracts rolled over.

Agora Retail Pty Limited (ACN 612 806 381) (**Agora Retail**) was established as a gas retail business in Western Australia in 2016. The creation of a gas retail business was leveraged off the experience of key staff members and Energy Matrix group members in the Western Australian gas market. Agora Retail offers retail gas services in Western Australia and holds a Gas Retail Licence in Victoria.

THE FIRST ORDER ISSUE

APT(NT) states in its Proposed Access Arrangement and Overview (in a section entitled "Agreement between Amadeus and PWC") that:

- capacity for firm transportation service on the AGP is fully contracted to existing pipeline users;
- APT(NT) has a gas transportation agreement with PWC and notes that PWC is a foundation customer using the AGP;
- the gas transportation agreement with PWC is confidential;
- APT(NT) has other gas transportation agreements in place which are also confidential;
- these pre-existing agreements fully contract the capacity available in the AGP for provision of the firm transportation service; no capacity is available for the firm service reference service;
- if other users require the firm service reference service, the capacity of the pipeline will have to be expanded; and
- certain provisions in the pre-existing agreements give the holders prior rights to expanded pipeline capacity, even if expansion were financed by another party.

APT(NT) advise that the "pre-existing gas transportation agreements have access to capacities, at receipt points, for firm transportation service, which total 145.0 TJ/d".

Of the known pre-existing agreements, Tanami Mine consumes approximately 9 TJ of gas per day, EDL Pine Creek consumes approximately 5.5 TJ per day (based upon its reported 2 PJ per annum gas purchase) and McArthur River Mine is less than 10 TJ per day, being too small a load to report as a Major Gas User to AEMO's Gas Bulletin Board. Based upon that data it would appear that PWC controls 120 TJ (>80%) or more of the contracted AGP capacity.

Energy Matrix acknowledges the efforts of PWC and APT(NT) to partially address this problem of control by amending pre-existing agreements to limit the right of holders of those agreements so that pre-existing rights do not apply to expanded capacity. This matter was discussed in the Public Consultation process (at least as far as PWC pre-existing rights are concerned) and non-specific undertakings to amend existing arrangements were given to those meetings. We look forward to understanding these arrangements.

APT(NT) goes on to state that an interruptible service can be made available using any unused part of the AGP capacity which has been contracted to users with pre-existing agreements. That capacity can be made available by APT(NT) to other users, subject to those other users recognising the rights in pre-existing agreements, for gas to be scheduled ahead of gas scheduled for these interruptible services. The service is interruptible because users with pre-existing agreements have higher priority access to pipeline service. These services are not interruptible in the same way that interruptible services are offered on other pipelines. The reason that the AGP concept of an interruptible service is different from that offered on other pipelines is that:

- on other pipelines, an interruptible service will be interrupted because the capacity used to deliver that service is withdrawn from operation for maintenance, or used to meet firm sales when other plant or equipment is withdrawn from operation; whereas
- on the AGP, an interruptible service will be interrupted because APT(NT) (the seller of the service) is gazumped by a holder of a pre-existing right, both before or after the interruptible service has been scheduled.

This situation underpins our principal concern with respect to APT(NT)'s Proposed Access Arrangement, specifically that the capacity of the AGP is not controlled by APT(NT) but it is controlled by one or more parties with pre-existing gas transport contracts for AGP services. We understand that the AER has access to all pre-existing transportation agreements and that it should be aware of this situation.

Section 8 of the NGL defines a service provider of a pipeline, or scheme pipeline, to be a person who:

- owns, controls or operates; or
- intends to own, control or operate,

a pipeline or scheme pipeline, or any part of a pipeline or scheme pipeline.

Based on the information provided by APT(NT), parties with pre-existing AGP rights have the capacity to influence or direct the course of events and determine the behaviour, or supervise the running, of the AGP. Parties with such power are prima facie in control, albeit joint control or commercial control, of the AGP. This clearly raises questions as to whether some, or all, of those parties are AGP service providers for the purposes of the NGL.

Further, the arrangements raise a prima facie concern as to whether these arrangements:

- constitute contracts, arrangements or understanding, wherein a provision of those contracts, arrangements or understandings has the purpose, or would have or be likely to have the effect, of substantially lessening competition; or
- give effect to a provision of a contract, arrangement or understanding, where that provision has the purpose, or has or is likely to have the effect, of substantially lessening competition; or
- constitute an engagement in a concerted practice that has the purpose, or has or is likely to have the effect, of substantially lessening competition.

Many of the arrangements which give rise to the situation described above are legacy arrangements which respond to circumstances that may no longer persist, so there is no suggestion that these arrangements represent any wrongdoing by the parties to these arrangements. More so, the question is whether these arrangements remain fit for purpose and fit for current circumstances.

It is a first order consideration in the evaluation of APT(NT)'s Proposed Access Arrangement that:

- the obligations of parties, with pre-emptive, pre-existing AGP access rights giving them effective control of the AGP , under the NGL; and

- the status of these pre-existing agreements under Competition Law,

be thoroughly reviewed and resolved. It goes without saying that these pre-existing rights may well have been valid when the principal role of the AGP was to supply fuel used to generate electricity for Northern Territory communities. The question now is whether these rights still remain valid when they deliver control of the supply of third-party gas to Warrego and eastern Australia . During the Amadeus Customer Reference Group sessions, the frustration of prospective pipeline users with a process of engagement managed by a party without effective control of its own assets, was very much to the fore.

OTHER MATTERS

Capacity

APT(NT)'s assessment of the capacity of the AGP is based on two primary contract/pipeline constraints. However, neither of these constraints is an AGP capacity constraint. One is AGP's assessment of the capacity and contract arrangements on the Bonaparte Gas Pipeline and the other is the capacity of the Northern Gas Pipeline Nitrogen Removal Facility capacity. APT(NT) works backwards from these constraints to assess the capacity of the AGP. In this way the capacity of the AGP aligns largely with the anticipated throughput of the AGP.

However, the estimated capacity of the AGP is a physical measure not constrained by contract arrangements or constraints imposed by other infrastructure. This information is important to potential shippers who are considering using the AGP. We would find it much more helpful if APT(NT) defined a hypothetical flow regime for the AGP and then quoted the physical capacity of each segment of the AGP based upon that flow regime. For example the flow regime might assume that gas is delivered into the AGP at Ban Ban Springs and Mereenie/Palm Valley at say, 10,200 kPa and that gas will be delivered to each of the current delivery points at the current delivery obligation pressures (and volumes) with all load growth occurring at Darwin and at Warrego. The question then becomes what is the estimated steady state physical capacity of the Ban Ban Springs to Darwin, Ban Ban Springs to Warrego and Amadeus Basin to Warrego segments of the AGP and what if any are the bottlenecks in those AGP segments?

This capacity information would be substantially more informative and useful in planning than estimates of the capacity of a system limited by the current capacity of connecting infrastructure.

Expansion Policy

The Energy Matrix company, PCS, currently acts for [redacted] Project will require the expansion of AGP capacity.

Nonetheless, APT(NT), in its Proposed Access Arrangement, does not include an Expansion Policy, or any guidance on how expansions will be approached or how expansion tariffs will be determined. We propose that the AER either, elicit an Expansion Policy, or guidelines for developing an Expansion Policy, from APT(NT) for inclusion in its Approved Access Arrangement, or incorporate a conditional Trigger Event in the Approved Access Arrangement (as provided for in s.51 of the NGR) defined in terms of a requirement to expand the AGP. The conditionality might be driven, for example, by a prospective shipper request for AER to initiate an Access Arrangement revision in light of APT(NT)'s response to a specific service request requiring AGP expansion.

Throughput as a tariff calculation numerator

APT(NT) has used throughput as the numerator when allocating costs to determine the Reference Tariff. While this is the common approach, it is clear from the Proposed Access Arrangement that the AGP is controlled by rights to Receipt and Delivery Point MDQ well beyond the capacity of the AGP to flow gas. A clear statement of what these contracted rights are at each Receipt and Delivery Point would be very informative for those seeking access and could be provided without identifying the party holding those rights.

Having said that, there is a strong case for the proposition that, in this instance, the numerator for calculating the Reference Tariff should be Receipt and Delivery Point MDQ rights. That way, those parties using these rights to control the AGP would at least pay for the privilege. This proposition, however, is not an alternative solution to properly resolving the question of control.

APT(NT) describes its tariff structure as an MDQ based tariff model. The difference between the methodology used by APT(NT) and that proposed herein is that, under the proposed methodology all MDQ of all shipper's would be used to calculate the reference tariff, not some capped measure of MDQ which reflects the shipper's effective service utilisation. Shippers who clearly control pipeline capacity, by controlling underutilised MDQ, would in this way pay for that privilege and the reference tariff applicable to other shippers would fall.

Tariffs based on total MDQ reservations can be designed to recover essentially fixed costs and to mirror APT(NT)'s proposed/preferred tariff structure in that regard.

Interruptible Service

We note APT(NT)'s efforts to define and offer an Interruptible Service but there is little point in a "third party" buying an Interruptible Service from APT(NT) (the "first party") when the parties who actually control the capacity used to provide this service (the "second party") can sell that capacity to a "fourth party", as interruptible capacity (as between the second party and the fourth party), and demand that the capacity be treated as "firm" capacity under a pre-existing AGP service contract (as between the first and second party). APT(NT) really has little to offer.

Recognising the above reality creates a dilemma when evaluating APT(NT)'s allocation of cost to the Interruptible Service. By definition, the capacity used to provide APT(NT)'s Interruptible Service is already paid for under pre-existing agreements. So,

the cost of providing the service to APT(NT) is negligible. The logic behind allocating costs to the Interruptible Service would be stronger if the question of control can be resolved. Otherwise, there is little relevance in the cost allocation argument.

Rate of Return

Energy Matrix and members of the Energy Matrix group of companies are on the record elsewhere as holding the view that the proposed Rate of Return set out in the 2018 Rate of Return Instrument (and previous Approved Access Arrangements) is an ill-conceived interpretation of the objectives of third party access law and represents an inadequate rate of return for third party services properly defined.

Other Reference Tariff inputs

Energy Matrix is generally comfortable with APT(NT)'s approach to other Proposed Access Arrangement and Reference Tariff inputs and is not in a position to rigorously review some of these provisions in detail. We await the AER Draft Decision before commenting further.

User specific dedicated assets

The definition of the AGP includes a number of lateral pipelines which clearly connect a single user's facility to the main AGP pipeline asset. Typically, these assets would be isolated from the regulated asset and invoiced separately to the party benefiting from use of the asset. The exception would be where the installation of the lateral asset reduced the cost of the main regulated asset by allowing route optimisation.

While this arrangement may be understood in the context of pre-existing arrangements and historical asset utilisation, serious consideration should be given to whether this remains appropriate given the AGP's current flow dynamics. If this practice continues there needs to be consideration of a consistent policy to address how such lateral pipeline extension will be treated if, and when, the AGP is expanded to meet the needs of new shippers.

Distance based or segmental tariffs.

APT(NT) places considerable emphasis on the fact that the AGP, under its current flow regime, is a segmented pipeline. However, APT(NT) does not take this discussion to its natural end point and consider or suggest distance based or segment based Reference Tariffs. A distance based, or segment based, approach to tariff making could be expected to promote efficiency and utilisation of the AGP and yet it has not even been raised as a possibility. It may also open up options for modest incremental investments to optimise access to, and use of, the distinct AGP service segments described by APT(NT).

Again, distance or segmental tariffs can be designed to recover essentially fixed costs and to mirror APT(NT)'s proposed/preferred tariff structure in that regard.

Public Consultation

Energy Matrix (through PCS) was engaged in the Proposed Access Arrangement public consultation process and, while we would appreciate more disclosure of relevant detail

in future consultation, we would like to express our appreciation to APT(NT) for engaging in this process.

Yours sincerely

Mike Lauer
Director