
Application for revocation of coverage of the Peabody - Mitsui Gas Pipeline

1 Applicant's name and contact details

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(the **Applicant**)

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2 Applicant's address for the delivery of documents

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Attention: Mr Jonathan Vandervoort
Commercial Manager

3 Description of the pipeline

The Pipeline consists of the Peabody - Mitsui Gas Pipeline (the **Pipeline**) (formerly called the Moura Mine to PG&E Queensland Gas Pipeline), a natural gas transmission pipeline extending from Moura Mine in Queensland to the Duke Queensland Gas Pipeline (formerly called the PG&E Queensland Gas Pipeline) in Queensland. The Pipeline is routed within the Moura Mine Mining Leases and within the road easement of Three Chain Road and Theodore-Baralaba Road. The Pipeline is approximately 6 km from the township of Moura. A map of the Pipeline is attached to this application and marked annexure "A".

<i>Pipeline Licence</i>	<i>Location/Route</i>	<i>Operator</i>	<i>Length (km)</i>	<i>Pipe Diameter (mm)</i>	<i>Regulator</i>
PL 61 (formerly operated under Qld2:MLA 80032)	Peabody-Mitsui Pipeline (formerly called the Moura Mine to PG&E Qld Gas Pipeline)	Peabody Moura Mining Pty Limited (the previous operator was BHP Mitsui Coal Pty Ltd)	23	219.1	ACCC

4 Name of the pipeline owner and operator

Owner: Peabody Moura Investments Pty Limited (55%)
(ABN 20 078 906 411)
of Level 23, AGL Centre
111 Pacific Highway
North Sydney NSW 2060

and

Mitsui Moura Investment Pty Limited (45%)
(ABN 92 088 091 356)
of Level 46, Gateway
1 Macquarie Place
Sydney NSW 2000

(the **Moura Joint Venture**)

Operator: Peabody Moura Mining Pty Limited
(ABN 15 006 746 701)
of Level 23, AGL Centre
111 Pacific Highway
North Sydney NSW 2060

5 Background

The Pipeline is owned by the Moura Joint Venture. The participants of the Moura Joint Venture are Peabody Moura Investments Pty Limited and Mitsui Moura Investment Pty Limited. The participants are associated together as a joint venture for the purpose of mining coal and extracting seam gas from the Moura coal lease.

The Pipeline, which was previously owned by BHP Mitsui Coal Pty Limited, was acquired by the Moura Joint Venture on 20 August 1999.

Since the acquisition of the Pipeline by the Moura Joint Venture, the Pipeline has been physically operated by Peabody Moura Mining Pty Limited, a wholly owned subsidiary of Peabody Resources Limited.

The Pipeline was constructed to carry gas from the Moura Mine gas drainage operation to the Duke Queensland Gas Pipeline. It first carried gas in 1996 and, until December 1999, was physically operated under MLA80032, a mining lease application under the Mining Resources Act 1989 (Qld). In 1999 a service line was built to allow gas to be delivered from the Pipeline to the Queensland Nitrates

Pty Limited plant (**QNP Plant**). This service line does not form part of the Pipeline - it is owned by a non-related third party. The gas delivered to the QNP Plant through the Pipeline is sourced both from the Moura Mine and the Duke Queensland Gas Pipeline. The Pipeline is now physically operated under Pipeline Licence 61 which was granted in December 1999.

The Pipeline presently carries gas from the Moura Mine to:

- (a) the Duke Queensland Gas Pipeline inlet; and
- (b) the QNP Plant service line inlet.

The gas is sold at the Duke Queensland Gas Pipeline inlet and the QNP Plant service line inlet by Moura Sales Pty Limited as agent for the Moura Joint Venture. Moura Sales Pty Limited is owned by the joint venturers in the same proportions as the Pipeline.

The Pipeline also carries gas for Energex Retail Pty Limited (**Energex**) from the Duke Queensland Gas Pipeline to the QNP Plant service line inlet.

The Pipeline has a nominal capacity of 50 TJ/day. It is currently carrying 3 TJ/day from Moura Mine and up to 5-7 TJ/day from the Duke Queensland Gas Pipeline.

The Pipeline is listed in Schedule A of Schedule 2 (the National Third Party Access Code for Natural Gas Pipeline Systems (the **Code**)) of the Gas Pipelines Access (Queensland) Act 1998. This inclusion in Schedule A requires that an Access Arrangement and associated Access Arrangement Information be created in respect of the Pipeline and submitted to the ACCC.

Moura Mine's Mining Leases cover an area of 66 km, north to south, by 2-5 km, east to west. It is anticipated that gas will continue to be drained from these Mining Leases as is economic or required for the safe operation of the mine. Adjacent to Moura Mine is Petroleum Lease 94 (**PL 94**) owned by Oil Company of Australia (Moura) Pty Limited (**OCA**). PL 94 covers an area of 36 km, north to south, by 8 km, east to west at its widest point. Both operations are for the drainage of gas from coal seams.

Oil Company of Australia (Moura) Transmission Pty Limited (**OCA Transmission**) owns and operates a gas pipeline (the **OCA Pipeline**) that runs from OCA's operations adjacent to Moura Mine to the Duke Queensland Gas Pipeline. The OCA Pipeline, which is physically operated under Pipeline Licence 26, lays approximately 20 metres to the west of the Pipeline for 12 km of the Pipeline's length and within 5 km for the remainder of the Pipeline's length. The map attached as annexure "A" shows the relative positions of the two gas drainage operations and the two pipelines. The Applicant understands that OCA Transmission plans to extend its pipeline to include a service line to the QNP Plant. This pipeline will allow the QNP Plant to purchase gas sourced from the Moura Mine gas drainage operation, the OCA gas drainage operation or other suppliers to the Duke Queensland Gas Pipeline and allow Energex to select the provider of transportation services to the QNP Plant.

6 Whether the applicant is seeking revocation of coverage of all or part of the Pipeline

The Applicant seeks revocation of Coverage of all of the Pipeline presently covered under the Code. Part of the Pipeline (namely upstream from "the

downstream face of the flanged ball valve SLV 0202 located between the dehydration unit and the launcher station, as shown on Drawings Nos NP03777-P11 and NP03777-P77”) has, by the Gas Pipelines Access (South Australia) Regulations 1999, been excluded from the definition of “Pipeline” under the Code and therefore is not “Covered” by the Code.

7 Reasons for seeking revocation of coverage of the pipeline

Under section 1.9 of the Code, the National Competition Council (NCC) must recommend to the relevant Minister that Coverage of a Covered Pipeline be revoked if the NCC is not satisfied of one or more of the following matters:

- (a) that access (or increased access) to services provided by means of the Pipeline would promote competition in at least one market (whether or not in Australia) other than the market for the services provided by means of the Pipeline;
- (b) that it would be uneconomic for anyone to develop another pipeline to provide the services provided by means of the Pipeline;
- (c) that access (or increased access) to the services provided by means of the Pipeline can be provided without undue risk to human health or safety; or
- (d) that access (or increased access) to the services provided by means of the Pipeline would not be contrary to the public interest.

The paragraphs below consider each of these criteria in turn.

(A) Whether Code access would promote competition in another market

The Applicant acknowledges that the NCC will recommend that this criteria is not met if it is satisfied that:

- (a) the service to which access is sought is in the same market as the market in which any competition is promoted; or
- (b) access would actually not promote more competitive outcomes (such as lower prices) in any other markets.

In determining what the “relevant markets” are, the Applicant recognises that different forms of energy, for instance gas and electricity, are usually treated as separate markets and that upstream production and downstream sales are also generally treated as separate markets vis-a-vis each other and the gas transport services market.

Geographically the Applicant submits that, given that the Queensland pipeline network allows gas from the Moura Mine to be delivered and sold in either the Gladstone/Rockhampton region or backhauled to the Brisbane region, the relevant downstream gas sales market is the gas sales market for south-east and central Queensland.

It is the Applicant’s view that Coverage of the Pipeline under the Code would not promote competition in either the upstream gas production market or the downstream gas sales market for south-east and central Queensland. The paragraphs below address each of these markets in turn.

(1) Upstream Gas Production Market

In terms of upstream gas production, the Applicant submits that there is no gas producer near the Pipeline which would benefit from Coverage of the Pipeline under the Code. The only current gas producers in the region are the Moura Joint Venture and OCA. There are no other known natural gas deposits in the area, to date no third party gas producers have sought access or indicated a desire to seek access to the Pipeline, and the Applicant is not aware of any gas exploration plans by any third party.

The Moura Joint Venture drains gas from its Mining Leases that cover the area where underlying seams approach the surface and are economic to mine. OCA has a Petroleum Lease that covers the coal seams to the west of the Moura Mine as the seams become deeper. OCA also holds an Authority to Prospect (**ATP564P**) covering the entire coal bearing region from approximately 30 km north of the Duke Queensland Gas Pipeline to approximately 30 km west of the township of Moura and extending as far south as midway through PL 94. OCA further holds ATP602P which covers the coal bearing region to the south of PL 94 and continues south past the township of Theodore which is itself 45 km south of Moura.

Therefore, other than Moura Mine, all developed and undeveloped gas fields in the area are owned by OCA. Since the OCA Pipeline lies within OCA's PL 94 and Authorities to Prospect and since, as we understand, the OCA Pipeline has spare capacity, it is unlikely that OCA will wish to access the Pipeline irrespective of Coverage.

In sum, Coverage of the Pipeline under the Code will not increase competition in the gas production market because:

- (A) the only other gas producer in the region has its own pipeline and, as we understand, has a large amount of spare capacity in that pipeline;
- (B) no third party gas producers have sought access or indicated a desire to seek access to the Pipeline and there are no other potential gas producers which may seek to access the Pipeline; and
- (C) if there *were* other third party gas producers or potential gas producers:
 - (i) the Applicant (and presumably OCA Transmission as well) would welcome requests for access given the large amount of spare capacity in the Pipeline and, as we understand, the OCA Pipeline- whether or not the Pipeline was regulated would not impact on a gas producer's ability to gain access to the Pipeline;
 - (ii) the relatively short length of the pipeline coupled with the fact that the developed and undeveloped gas fields nearest the Pipeline are all owned by the Moura Joint Venture or OCA would mean that it is likely to be more cost efficient for a third party gas producer to interconnect with the Duke Queensland Gas Pipeline directly rather than construct the

infrastructure necessary to connect to the Pipeline;
and

- (iii) potential gas producers would know that if they did make a discovery, they would have ample opportunity while developing that new discovery to apply for re-coverage of the Pipeline.

(2) Downstream Gas Sales Market

There have been no third parties, other than the current users, which have sought access or indicated a desire to seek access to the Pipeline apart from Queensland Cotton. The Applicant understands that Queensland Cotton approached BHP Mitsui Coal Pty Limited (the former owner of the Pipeline) regarding the Pipeline's potential to supply gas to a nearby cotton gin at the time of the cotton gin's construction. However, the location of the cotton gin relative to the gas processing plant meant that a totally new pipeline would be required to service the cotton gin. Further, at that time the Pipeline could not backhaul gas from the Duke Queensland Gas Pipeline and, accordingly, gas supply could not be guaranteed if Moura Mine gas production ceased. As a result, the cotton gin was built to use liquid petroleum gas.

As noted earlier, the QNP Plant is already linked to the Pipeline by a service line but OCA Transmission plans to link the QNP Plant to its pipeline also.

In respect of future potential users, there are two businesses (a granary and the already mentioned cotton gin) located approximately 5 km from the Pipeline which currently use small quantities of liquid petroleum gas. These businesses have the potential to be converted to natural gas. Again, the Applicant understands that OCA Transmission intends to link both these customers to the OCA Pipeline as the OCA Pipeline runs adjacent to both properties.

The town of Moura is 6 km from the Pipeline (and significantly closer to the OCA Pipeline - the OCA Pipelines comes within approximately 2 km of Moura). This is a town of approximately 2000 residents. There is no reticulation of gas through the town and no apparent plans to do so.

Turning to the south-east and central Queensland market as a whole it appears, based on a gas marketing study commissioned by the Moura Joint Venture, that the gas market in south-east and central Queensland is approximately 45 - 50PJ / year. Through the Queensland gas pipeline network the gas from Moura Mine could conceivably be sold throughout this region. 1PJ / year of gas is presently transported through the Pipeline - i.e. only 2% of the total south-east and central Queensland market.

The Applicant submits that Coverage of the Pipeline under the Code would not increase competition in any other market because the climate for fair and reasonable third party access to transportation services, which the Code aims to bring about, already exists in this case due to the fact that two pipelines with large amounts of excess capacity run side by side. Essentially, the existence of the OCA Pipeline demonstrates that the Pipeline is not a natural monopoly and no competition benefits would follow from access to the Pipeline being regulated.

Alternatively, if the NCC is of the view that Coverage of the Pipeline under the Code *would* increase competition in any other market the Applicant submits, on the basis of the gas marketing study referred to above, that any increase in competition arising from Coverage under the Code would be trivial.

(B) Whether it would be uneconomic to duplicate the Pipeline

It would not be uneconomic for anyone to develop another pipeline to provide the services provided by means of the Pipeline. This is demonstrated by:

- (a) the short length of the Pipeline (23 km) and its proximity to the Duke Queensland Gas Pipeline;
- (b) the fact there is no difficult terrain in the surrounding area; and
- (c) the existence of the OCA Pipeline which, for a large proportion of its length, lays only approximately 20 metres west of the Pipeline and, like the Pipeline, connects to the Duke Queensland Gas Pipeline.

The Pipeline was built prior to the OCA Pipeline. The Applicant understands that OCA investigated the possibility of using the Pipeline but decided to build its own pipeline instead.

Both the Pipeline and the OCA Pipeline were constructed to transport gas from gas drainage operations to the Duke Queensland Gas Pipeline. The Applicant submits that it may only be uneconomic to duplicate the Pipeline where a gas field is close enough to the Pipeline to warrant connecting to the Pipeline rather than directly connecting with the Duke Queensland Gas Pipeline. As all developed or undeveloped gas fields in the region are owned by OCA or the Moura Joint Venture, this situation is unlikely to arise.

(C) Whether access can be provided without risk to health

There is no reason to believe that either Coverage or revocation would have any impact on the risk to human health and safety.

(D) Whether Code access would best promote the public interest

Code access to the services provided by means of the Pipeline would be contrary to the public interest for the following reasons:

- (1) the Pipeline is part of a small operation in a remote location. If as part of being Covered by the Code, ring fencing (as contemplated by the Code) was required to be introduced, an unreasonable commercial burden, in the form of unreasonably increased costs, would be imposed on the Moura Joint Venture; and
- (2) the costs of preparing an Access Arrangement and Access Arrangement Information bears little relationship to the length and capacity of the pipeline to which it relates - accordingly, these costs are disproportionately higher the smaller the pipeline.

Since:

- (a) regulatory and compliance costs, vary little depending the size or length of the pipeline;

- (b) the Pipeline has a relatively low throughput (8 - 10 TJ/day); and
- (c) the Pipeline currently has few customers and the likelihood of further requests being made in the foreseeable future is small,

the entirety of the regulatory and compliance costs would be recovered from the current users.

These costs (which would be real and incurred now) are ultimately passed on to end users of the gas and therefore any potential cost efficiencies which may theoretically be created by the introduction of increased competition are likely to be lost. In the Applicant's view, negotiated access is the most efficient form of access for small pipelines such as the Pipeline.

Furthermore, the throughput capacity of the Pipeline is 50 TJ/day so the Pipeline is presently significantly under-utilised. Coverage is unnecessary to encourage the use of the Pipeline because it is already clearly in the interests of the Applicant to encourage third party access. Moreover, monopoly tariffs could not be charged for such unregulated access because of the existence of the competing OCA Pipeline.

Accordingly, due to the time and resources involved in the initial and on-going compliance with the Code, given the size, location and configuration of this Pipeline and its management and operations, the Applicant believes that the public interest would be best promoted by revoking Coverage of the Pipeline.

Section 1.9 of the Code allows any person to make an application seeking Coverage of a pipeline at any time. It is the Applicant's contention that it would be preferable to grant revocation now whilst Coverage is not in the public interest and for the NCC to consider re-coverage under the Code if, at a later date, the public interest would be better served by re-instating Coverage of the Pipeline.

Overall, any potential benefits of regulated access would be outweighed by the costs of compliance and the public interest, therefore, would be best promoted by revoking Coverage of the Pipeline.