SUBMISSION 2

APPEA

HEAD OFFICE
Level 10
60 Marcus Clarke St
Canberra ACT 2601

GPO Box 2201
Canberra ACT 2601

T +61 2 6247 0960
F +61 2 6247 0548
E appea@appea.com.au

ABN 44 000 292 713

BRISBANE OFFICE
Level 3
The Christie Centre
320 Adelaide St
Brisbane QLD 4000

T +61 7 3231 0500
E brisbane@appea.com.au

PERTH OFFICE
Level 1
190 St Georges Tce
Perth WA 6000

PO Box 7039
Cloisters Square
WA 6850

T +61 8 9321 9775
F +61 8 9321 9778
E perth@appea.com.au

SYDNEY OFFICE
Level 8
The Christie Centre
3 Spring St
Sydney NSW 2000

T +61 2 8241 1900
E sydney@appea.com.au

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Ms Julie Owens MP
Chair, Standing Committee on Economics
c/- Committee Secretary
PO Box 6021
Parliament House
CANBERRA ACT 2600

(via e-mail to: economics.reps@aph.gov.au)

Dear Ms Owens

RE: HOUSE STANDING COMMITTEE ON ECONOMICS *INQUIRY INTO CLEAN ENERGY AMENDMENT BILLS 2012*: APPEA COMMENTS

I refer to the *Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012* and six related Bills released introduced into the Parliament on 19 September 2012 and referred to the Committee for inquiry and report by 9 October 2012.

Please find following comments from the Australian Petroleum Production & Exploration Association (APPEA) on the package of Bills. The extremely short timeframe available to analyse and assess 197 pages of Bills and associated Explanatory Memorandum means that APPEA has focussed only on key issues from an upstream oil and gas industry perspective.

We have addressed primarily the amendments relating to the proposed link between the Australian carbon price mechanism and the European Union emissions trading scheme (EU-ETS) and the amendments concerning natural gas liability. In doing so, we have drawn on APPEA's 6 September 2012 submission to the Department of Climate Change and Energy Efficiency (DCCEE) on the exposure drafts of the Bills.

APPEA believes the consultation process that has given rise to this package of Bills has been inadequate. The amendments proposed raise significant and complicated liability, commercial and contractual issues for liable entities. Regardless of whether the amendments are supported or not, APPEA is concerned that such a truncated consultation process risks amendments being proposed without adequate consultation or attention to consequences.

Future consultation processes should include an appropriate timeframe for consideration of key issues by all stakeholders.

The proposed link between the Australian carbon price mechanism and the European Union emissions trading scheme (EU-ETS)

General comments

APPEA's *Climate Change Policy Principles*[1] support a national climate change policy that delivers abatement at least cost and facilitates investment decisions consistent with there being an international price on carbon.

While APPEA acknowledges a link to the EU-ETS may open up additional compliance options for liable entities, providing some cost savings in the short-term, the competitive challenge to Australian liquefied natural gas (LNG) projects continues to be from countries that are not taking action to introduce carbon pricing.

Most importantly, a link between the Australian and EU schemes will do little to alter the fundamental cost/competitiveness issues facing the Australian LNG industry. Indeed, in the medium-term, should a higher EU-ETS price eventuate, this will place additional competitive pressure on trade-exposed industries, like LNG.

Specific comments on the Bill

The proposal, under Part 3 of the *Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012*, to repeal the entire *Clean Energy (International Unit Surrender Charge) Act 2011,* is consistent with APPEA's recommendations in 2011 and earlier in 2012 that the Bill not proceed.

APPEA supports the repeal of the *Clean Energy (International Unit Surrender Charge) Act 2011* proposed in the Bill.

The Bill, however, at section 123A, proposes to introduce the concept of a "designated limit" on availability of specified eligible international emissions units (initially, eligible international emissions units that are Kyoto units). The limit proposed in the Bill is 12.5 per cent. We note that this is subject to potential future amendment through the regulations.

As set out in the Explanatory Memorandum at paragraph 1.34, the limitation aims to ensure the convergence of Australian and EU carbon prices. However, it also introduces additional cost and uncertainty for liable entities and is inconsistent with the policy goal of reducing greenhouse gas emissions at least cost.

Section 123A (and any associated sections) should be removed from the Bill.

[1] Available at www.appea.com.au/images/stories/mb_files/APPEA_Climate_Change_Policy_Principles_November_2010.pdf

Amendments concerning natural gas liability

General comments

The changes to the natural gas liability arrangements, set out in sections 35A and 35B of the *Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012*, purport to focus on a narrow set of (yet to be determined through regulation) arrangements that apply in a specific set of (yet to be determined through regulation) circumstances. However, the changes:

- Raise a series of potential commercial distortions, complications and administrative burdens that extend to the entire natural gas liability provisions currently contained in the *Clean Energy Act 2011*;

- Introduce new concepts that appear to run counter to the operation of the existing provisions (for example, the "own-use" provisions introduce what is essentially a parallel Obligation Transfer Number (OTN) system); and

- Appear targeted at a problem that has not been fully assessed before the first compliance period under the Act has even been completed.

In addition, it is unclear that the proposals contained in sections 35A and 35B would in practice be workable.

Specific comments on the Bill

Below APPEA has identified a number of examples of the complications and uncertainties introduced by the proposed amendments. Additional analysis of the Bill is likely to reveal additional examples and APPEA is aware other examples have been provided to the Department by other stakeholders:

- The provisions as drafted risk triggering liability in relation to exported LNG, depending on how various other provisions are interpreted. For example, under one interpretation of the provisions, the natural gas which is converted into LNG (as opposed to the gas combusted in the LNG production process) might not be caught by the 'embodied emissions' provisions. It would also not be caught by the 'ordinary' provisions (as it would not be combusted). The supplier of gas would then be liable for the emissions from the use of the gas. We have always understood that was not the intention of the Government. This would clearly be an issue of significant concern for the industry, and we would be surprised if that were the intention, in view of the history of the legislation.

- The proposed amendments introduce, in certain (yet to be defined) circumstances, an additional 'category' of liability that could potentially sit with the natural gas supplier supplying at the inlet to a natural gas pipeline. This appears inconsistent with the original intent of the *Clean Energy Act 2011* and the way in which liability is determined under the relevant provisions in the existing Act.

- Suppliers would have the compliance and administrative burden of having to form a view about whether or not customers will otherwise have liability for the emissions under other relevant provisions of the Act. While the inclusion of the "follow-up notification" concept (under section 64H) following comments on the exposure draft of the Bill provides some clarification, there remain administrative challenges in meeting the requirements under these provisions.

  For example, the supplier may not have information to calculate the interim surrender as this data is required prior to the end of the financial year and billing-related issues may arise, as the supplier will require data on a more regular basis (than is provided for in the Bill) in order to invoice the buyer correctly.

- Supply sources of natural gas for one facility can change daily, making it unlikely that data identifying the supply source for individual gas consuming facilities will be readily available. This results in onerous reporting and reconciliation procedures to identify the exact supply by supplier, and then transmit this data to upstream suppliers to ensure no double counting of liability occurs. This is even more problematic in wholesale trading markets (such as the gas Short-Term Trading Market), where by design the buyer does not know their supplier.

  To further exacerbate the issue, only part of a supply is likely to be covered by the proposed amendments.

- In addressing issues raised (during consultation on the exposure drafts of the Bills) with the operation of the "own-use notification" provisions and their interaction with the extended definition of 'use' in the *Clean Energy Act 2011*, the Bill gives rise to other issues. The first is that liable entities may have different definitions of 'supply' operating for different parts of the Act (and even within different paragraphs of the same section). The second is that sections 5A(3) and 6(3) do not specify that they are exclusive, that is, it is arguable that the amended definition will also operate for the remaining provisions of the Act anyway.

  The complexity introduced by these changes remains a major issue for administration and compliance.

- The "own-use" notification, by its nature, is intended to be given by sub-threshold users of natural gas (as above threshold users will be directly subject to liability for emissions resulting from combusted gas). Those sub-threshold users may not be subject to obligations under the *Clean Energy Act 2011*. As a result, they may be unfamiliar with any of the provisions of the Act, or the operation of the natural gas provisions specifically. However, whether or not the Government intends that a particular user of gas should have to give the notice, they will still have to perform the analysis necessary to determine whether they have to give it. This is particularly important given that there are administrative penalties (that may amount to as much as $1 million) for failing to give the notice. Each user of gas (including possibly, small business and householders) will need to undertake the analysis to determine whether they fall under the threshold.

As a result, assuming that a regulation is made under this provision, it will greatly increase the number of parties who may have to comply with obligations under the *Clean Energy Act 2011*, even if, upon analysis, no-one is required to give a notice.

- The proposed own-use provisions could apply (subject to how the regulations are drafted) to gas combustion emissions for upstream facilities that are currently below threshold. If this occurred, upstream natural gas facilities would be treated differently to other upstream facilities, raising competitive neutrality concerns.

- The proposed amendments do not appear to consider how an own-use notification may apply during the term of a gas supply agreement. For example, what happens if a user's facility goes above the emissions threshold? Can the "own-use notification" be end dated?

- Aspects of the 'double counting' provisions appear redundant. It is a condition of the own-use provisions proposed under section 35B(1)(e) that *"… no provisional emissions number under section 20, 21, 22, 23, 24 or 25 will be wholly or partly attributable to covered emissions from the use of the natural gas …"*. If that is the case, then by definition there should not be double counting.

The above comments show the complexity of attempting to introduce these proposed amendments against such a truncated timeline. While, as noted above, some amendments were made to the Bills between the exposure draft state and their introduction into the Parliament, a number of concerns remain.

Given these concerns, the proposed amendments concerning natural gas liability should be removed from the Bill. Any amendments and associated regulations should be developed in a considered way and following consultation with all relevant stakeholders. APPEA is willing to assist in this consultation process.

Yours sincerely

David Byers
CHIEF EXECUTIVE