

BB/791/GasAct

## **Before the Energy Market Authority**

**Amendments to Gas Act (Cap. 116A)**

---

### **COMMENTS OF BAKER BOTTS L.L.P**

---

**Mr. David Renton  
&  
Mr. Russell Wilkinson  
Baker Botts L.L.P.  
3308 Gloucester Tower/The Landmark  
Central, Hong Kong,  
852.3601.9280  
david.renton@Bakerbotts.com  
russell.wilkinson@Bakerbotts.com**

**CONTENTS**

<b><u>I.</u></b>	<b><u>SUMMARY OF MAJOR POINTS</u></b> .....	1
<b><u>II.</u></b>	<b><u>STATEMENT OF INTEREST</u></b> .....	2
<b><u>III.</u></b>	<b><u>COMMENTS</u></b> .....	2
<b><u>IV.</u></b>	<b><u>CONCLUSION</u></b> .....	6

## **I. SUMMARY OF MAJOR POINTS**

1. In accordance with the Request for Feedback issued by the Energy Market Authority (“EMA”) on 13 February 2006, Baker Botts hereby submits its comments on the proposed amendments to the Gas Act (Cap. 116A). Baker Botts strongly supports the overall objective of the proposed amendments which guarantee open competitive access to the Singapore gas pipeline network, and require gas shippers in the Singapore market to adopt a common set of allocation and attribution rules allowing gas from multiple shippers to be transported in a commingled stream.

2. Baker Botts suggests three modifications to the Government’s proposed to amendments the Gas Act:

- a suggestion to amend section 63A(4) to extend the duty to comply with the Gas Network Code to licensed operators of onshore receiving facilities;
- a suggestion to clarify that the EMA’s powers under section 63 extend to giving directions to facilitate the timely adoption of the initial Gas Network Code and other codes of practice and the formulation of any modifications to keep them up to date; and
- a suggestion to define in section 2 what is meant by an offshore pipeline.

## II. STATEMENT OF INTEREST

3. Baker Botts L.L.P (“Baker Botts”) is an international law firm with a worldwide energy law practice which includes advising on the commercial and regulatory aspects of the gas industry. A number of our clients are interested in entering the Singapore gas market but have encountered difficulties in doing so because the Gas Act does not currently provide an effective commercial framework for implementing the Singapore Government’s open access policy.

### COMMENTS

4. We strongly support the proposed amendments to the Gas Act, which we regard as necessary and appropriate for achieving the Government’s policy of allowing new gas importers and retailers to gain open and competitive access to Singapore’s gas pipeline infrastructure. Our comments relate primarily to the measures for ensuring open and competitive access to Singapore’s gas pipeline infrastructure.

5. Open and competitive access requires all gas shippers to be bound together by a Gas Network Code setting out, among other things, the basic rules for measuring the gas injected into and taken off the gas transportation network, attributing commingled gas to the various shippers and allocating it among their gas sales agreements. Without a common attribution/allocation agreement, users of the pipeline whose gas transportation or sales agreements do not contemplate the commingling of their gas with gas supplied by other shippers

may claim that the use of the pipeline by other shippers will lead to breaches of their agreements. Often these alleged breaches are highly technical and do not give rise to any significant financial loss for any of the parties to the contract; indeed, the claimants are generally not interested in seeking damages (the normal remedy for a breach of contract). Rather, the existing contracts are being used to prevent the use of the gas transportation network by competitors.

6. We welcome the proposal to require gas shippers participating in the Singapore gas market to be licensed by the Energy Market Authority (“EMA”) and for shippers as well as gas transporters to be made subject to a license duty to comply fully with the Gas Network Code. **The Government may wish, however, to consider extending the duty to comply with the Gas Network Code in Section 63A to operators of onshore receiving facilities.** Onshore facilities such as receiving terminals and gas storage facilities are often regarded as part of the gas transportation network and should be subject to the same rules.

7. It is appropriate to give the EMA the power to issue and modify the Gas Network Code and other codes of practice on its own initiative rather than simply approve them, though we anticipate that the EMA will still expect the gas industry to play a significant role in their drafting to ensure that the code requirements are technically and commercially robust. **The Government may wish to consider whether the EMA’s powers under section 63 should specifically include the power to give directions to facilitate the preparation of the initial Gas Network Code or other codes of practice and their subsequent modification.** Directions might, for example, be given to PowerGas to take responsibility for drawing up proposals for the Gas Network Code and, after consulting the industry and others, to report back to the EMA with its recommendations within a specified period of time. Directions might also be given to

discontinue conduct that is unreasonably preventing or delaying the adoption or amendment of the Gas Network Code or other codes.

7. We agree that contractual arrangements for gas transportation that are inconsistent with the Gas Network Code or otherwise restrict access to the gas transportation network should be unenforceable, even if those arrangements were agreed before the Code took effect. Many of those arrangements may be open to challenge in any event on the grounds that they amount to an unlawful restraint on trade at common law. Even without the proposed amendments, the policy underlying the Gas Act is to promote competition in Singapore's gas market and it would not be in the public interest for private agreements that frustrate that policy to be given legal effect in Singapore. Even if some arrangements inconsistent with the Gas Network Code could be defended as having a legitimate commercial purpose, the necessity for all gas shippers to be bound by a common set of allocation and attribution rules if open access is to work justifies the EMA being given the power to direct the parties to existing gas transportation agreements who are subject to the EMA's jurisdiction to adapt their contracts to accommodate the Government's open access policy.

8. We also agree that the requirement to bring gas transportation agreements into line with the Gas Network Code should apply to agreements for the importation of gas into Singapore over pipelines outside Singapore - what are referred to in the amendments as offshore pipelines. **We would find it helpful, however, for the amendments to the Gas Act to include in section 2 a definition of offshore pipelines to avoid possible confusion.** In some sections of the Gas Act, references to offshore pipelines might reasonably be construed as referring only to submarine pipelines within Singapore, though we believe the term is intended to refer to pipelines used to import gas into Singapore wherever located.

9. It is reasonable for the Government to require anyone wishing to import gas into Singapore to agree to be bound by the rules of the Singapore gas market, either directly by applying for a gas shipper's licence, or indirectly by contracting with a gas shipper licensed by the EMA. The Request for Feedback document makes it clear that the Government intends to make it an offence for a gas shipper to enter into an agreement for the transportation of gas into Singapore that is inconsistent with the Gas Network Code, whether that agreement is with a gas transporter in Singapore or outside Singapore and regardless of the law governing that agreement. Nothing in these proposals would prevent Indonesia, for example, from adopting whatever rules it thought appropriate for the transportation of gas over its pipeline networks but would simply require any gas shipper seeking in future to use an Indonesian pipeline to import gas into Singapore to include in its transportation agreement *for those imports* provisions allowing the application of the allocation/attribution rules in Singapore's Gas Network Code.

10. Sections 38(6A) and 38(6B) deal with the case where a person outside Singapore and not subject to the EMA's jurisdiction has an *existing* contract to import gas into Singapore containing provisions that would prevent others from using the pipeline to gain access to the Singapore market. In such cases, if the parties to the contract do not voluntarily amend it to remove the obstacle to third party access, the EMA may give directions to any person within its jurisdiction to withdraw its objections to the required amendments (if the EMA considers the objections to be in conflict with Singapore's open access policy) or, if it is a person outside the EMA's jurisdiction who is preventing agreement, it may give directions to prevent imports under that contract until that party withdraws its objections to allowing open and competitive access to the pipeline for other importers of gas into Singapore. We consider that these provisions are a fair and reasonable exercise of Singapore's sovereign power to regulate its gas market and do not

conflict with Singapore's duties under public international law. Indeed, we think it unlikely that the EMA would ever need to exercise the power to block imports since gas importers located outside Singapore will appreciate that, if they are to maintain their access to the Singapore gas market in future, they will in any case need to accommodate Singapore's open access policy. No gas exporting country will want to exclude itself from the Singapore gas market by refusing to take reasonable steps to reconcile the rules of its own gas transportation network with Singapore's open access regime.

### **III. CONCLUSION**

11. The proposed modifications to the Gas Act are vital if the Government's policy of guaranteeing open access to Singapore's gas pipeline network is to be achieved and we urge the Government to put them before the Singapore Legislature at the earliest opportunity. Our suggested changes are generally no more than clarifications of what we perceive to be the Government's intent. We are concerned, however, that failing to impose on the operators of onshore receiving facilities a statutory duty to comply with the rules in the Gas Network Code and other relevant might open a loophole that could continue to frustrate the implementation of open and competitive access to Singapore's gas transportation network.

Respectfully submitted,

**David Renton**  
for  
**BAKER BOTTS L.L.P.**