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REF: JW-SL-JW: 0429

21 February 2014

Submission on the Economic Regulation Authority's Draft Gas Access Arrangement Guideline

Lodged electronically by e-mail to publicsubmissions@erawa.com.au

Goldfields Gas Transmission Pty Ltd (GGT) appreciates the opportunity to comment on the *Draft Gas Access Arrangement Guideline* (Draft Guideline) which the Economic Regulation Authority (ERA) published on 7 February 2014. Our comments are set out in this submission.

GGT operates the Goldfields Gas Pipeline for the Goldfields Gas Transmission Joint Venture. The Goldfields Gas Pipeline is one of the three Western Australian regulated gas pipelines identified in the Draft Guideline.

Draft Guideline

The Draft Guideline maps out processes for:

- gas access arrangement revision proposal submission;
- public consultation on the revision proposal;
- regulator decision making and approval; and
- decision review.

GGT is of the view that, in mapping out these processes, the Draft Guideline carefully follows the scheme set out in the National Gas Law (NGL) and the National Gas Rules (NGR) as these have been implemented in Western Australia by the National Gas Access (WA) Act 2009.

However, in one area – in its proposals for the maintenance of confidential information (section 3.5) – the Draft Guideline departs from the specific requirements of the NGL and the NGR. Paragraph 73 advises that the ERA has adopted the Australian Energy Regulator's three stage approach for handling confidentiality claims. This three stage approach was developed by the national regulator in accordance with the requirements of rules 6.2.8 and 6A.2.3 of the National Electricity Rules.

Pre-submission conferences

The first stage of the Australian Energy Regulator's approach envisages pre-submission conferences on confidentiality issues.

We agree that many of the issues around the confidentiality of information will be capable of resolution in discussions with the regulator. Those discussions can provide the opportunity, as the Draft Guideline indicates, to limit the scope of any requirement to maintain confidentiality through:

- minimal redactions;
- specific and targeted confidentiality requirements;
- changes in presentation to minimise the risk of the disclosure of confidential information; and
- limited release of information to third parties, subject to those to whom the information is to be released providing confidentiality undertakings.

GGT appreciates the positive endorsement, in the Draft Guideline, of dialogue with the ERA on the issue of the confidentiality of information before the information is provided. However, in our view, that dialogue does not require the formal process of pre-submission conferences that the Australian Energy Regulator proposes.

Confidential information submission process

The second stage of the Australian Energy Regulator's approach to confidential information is, we think, inefficient and unworkable. It will not assist the regulator performing its functions under the regime of the NGL and the NGR.

In explaining our view in the paragraphs which follow, we adopt the perspective of the pipeline service provider. GGT's concerns may not be those of other information providers.

What should be kept confidential in the commercial interests of a pipeline service provider will not be easily dealt with through administrative processes including the provision of page numbers and paragraph numbers in documents in which confidential information might be found, through the identification of particular topics in those documents, or through the categorization of confidential information using categories which appear relevant to a regulator. Providing descriptions of information which allows stakeholders in the regulatory process to understand the nature of confidential information is largely irrelevant to any role those stakeholders might play in that process, but it is a beacon to a service provider's competitors both within and outside the regulated sector.

Others, as we have recently seen in the Pilbara, are vigorously pursuing business opportunities similar to those being pursued by GGT opportunities, including opportunities to encroach on the supposed "natural monopoly".

In competitive markets, competitive advantage lies in the capabilities of an organization's people and in well-developed organizational routines. Information about these capabilities and routines, information which is not usually available in competitive markets, is often disclosed through regulatory processes. GGT has found that the disclosure of certain cost information, of asset management practices, of the details of systems and facilities, and of commercial processes, as often occurs in the practice of regulation, has been of benefit to its competitors and potential competitors in a range of activities outside the provision of regulated services.

Requiring that reasons be provided supporting how and why the disclosure of confidential information would cause detriment to the service provider places a considerable and, we think, unnecessary burden on the service provider. In the absence of any specific reason which the regulator might have for seeking the disclosure of confidential information, it will be a largely speculative exercise which will, in all likelihood, be redundant. It will not assist the regulator in performing its functions.

In addition, there will be information which the service provider identifies as confidential, not because its disclosure would directly cause detriment to the service provider itself, but because other parties require of the service provider that its confidentiality be maintained. Information of this type includes:

- information in contracts which the service provider has with suppliers of materials and services;
- information related to user or prospective user energy usage, or which would allow a user's or prospective user's energy usage to be derived; and
- information covered by confidentiality provisions in agreements to which the service provider is a party (for example, financing agreements).

Going further, and requiring that the service provider provide reasons as to why any detriment is not outweighed by the public benefit from the disclosure of confidential information is unworkable. The service provider is not in a position to assess public benefit. Such an assessment, if it can be made at all, should be made by the state. It should be made by an agency of government which is called upon to make, and which has experience in making, such assessments. It should be made by the regulator. That is clearly the intention of section 329 of the NGL. The assessment of public benefit is not a task to be delegated to the service provider though a guideline for which there is no statutory requirement.

Information disclosure process

Section 329(1) of the NGL incorporates two criteria in respect of which the regulator must be satisfied before it is authorized to disclose information given in confidence. One concerns the detriment to the person who has provided the information, and the detriment to the party from whom that person received it. The other criterion is whether detriment caused to the person who has provided the information, or to the party from whom that person received it, would be outweighed by the public benefit in disclosing the information. We are concerned that, in paragraph 87 of the Draft Guideline, the ERA goes beyond the scope of section 329(1) in determining whether to use its information disclosure powers. Whether a service provider (we note that paragraph 87 refers to the service provider, and not to the information provider) has discussed the issue with the ERA during a pre-submission conference, the reasons which the service provider may have given in requiring confidentiality, and whether, in the past, other service providers have claimed confidentiality over or publicly disclosed similar information, are irrelevant to the use of those powers.

The Australian Energy Regulator's three stage process for submission of confidential information is, in GGT's view, cumbersome and inefficient. Aspects of it are unworkable, and the entire process does not enhance the ability of the regulator to perform its functions. It is unnecessary under the regulatory regime of the NGL or the NGR, and should not now be adopted by the ERA.

GGT would be pleased to discuss the Draft Guideline and, in particular, its concerns about the proposed confidential information submission process, with the ERA. To this end, I can be contacted on (08) 6189 4594, or at john.williams@apa.com.au.

Yours faithfully

John Williams
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