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Doc ID: 66209693.1.1

22 December 2014

Mr Brent Stewart
Executive Chairman
Waveride Capital Ltd

BY EMAIL

Dear Sir

ATCO Gas Australia Pty Ltd – ERA Price Determination

We act for ATCO Gas Australia Pty Ltd (**ATCO Gas**) in relation to the Economic Regulation Authority's (**ERA**) review of the Gas Access Arrangement for ATCO Gas under the National Gas Law and Rules for the period July 2014 to December 2019.

As you are aware, on 14 October 2014 the ERA published its Draft Decision on ATCO Gas' Access Arrangement Review Proposal. You have already provided an expert report to ATCO Gas dated 25 November 2014 (**Initial Report**) and we refer to our previous letter of instruction dated 21 November 2014. ATCO Gas wishes to engage you to prepare a supplementary expert report in connection with the ERA's Draft Decision.

This letter sets out the matters which ATCO Gas wishes you to address in your supplementary report and the requirements with which the report must comply.

Opinion

Your report is prepared in the context of assessing whether ATCO Gas is an efficient operator.

We understand that, since providing your Initial Report, you have undertaken a quantitative market survey to further inform your opinion. This survey evidence was not available at the time of preparation of your Initial Report.

Accordingly, ATCO Gas wishes to engage you to prepare a supplementary expert report which addresses the following issues:

- 1 Providing your opinion as to whether ATCO Gas' proposed business development and marketing (**BDM**) strategy would likely be effective in achieving the increases forecast by ATCO Gas in:

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- (a) customer numbers; and
 - (b) consumption per customer,and the ERA's Draft Decision in relation thereto.
- 2 Providing your opinion as to whether to the increases forecast by ATCO Gas in:
 - (a) customer numbers; and
 - (b) consumption per customer,could likely be achieved with a BDM spend of \$1.76 million per annum (as allowed by the ERA), and the ERA's Draft Decision in relation thereto.
- 3 In the context of your answers to questions 1 and 2 above, providing your opinion as to whether ATCO Gas' proposed BDM expenditure meets the requirements of Rule 91(1) of the National Gas Rules.

It is intended that your report will be submitted by ATCO Gas to the ERA with its submissions in relation to the Draft Decision. The report may be provided by the ERA to its own advisers. The report must be expressed so that they may be relied upon both by ATCO Gas and by the ERA.

The ERA may ask queries in respect of the report and you will be required to assist in answering these queries. The ERA may choose to interview you and if so, you will be required to participate in any such interviews.

The report will be reviewed by ATCO Gas' legal advisers and will be used by them to provide legal advice as to its respective rights and obligations under the National Gas Law and National Gas Rules.

If ATCO Gas was to challenge any decision ultimately made by the ERA, that appeal will be made to the Australian Competition Tribunal and your report will be considered by the Tribunal. ATCO Gas may also seek review by a court and the report would be subject to consideration by such court. You should therefore be conscious that the report may be used in the resolution of a dispute between the ERA and ATCO Gas. Due to this, the report will need to comply with the Federal Court requirements for expert reports, which are outlined below.

Timeframe

ATCO Gas is required to provide any submissions to the ERA on the Draft Decision by **23 December 2014**. Your supplementary report will need to be finalised by **22 December 2014**.

Compliance with the Code of Conduct for Expert Witnesses

We have previously, with our letter of 21 November 2014, provided you with a copy of the Federal Court's Practice Note CM 7, entitled "*Expert Witnesses in Proceedings in the Federal Court of Australia*", which comprises the guidelines for expert witnesses in the Federal Court of Australia (**Expert Witness Guidelines**).

Please read and familiarise yourself with the Expert Witness Guidelines and comply with them at all times in the course of your engagement by ATCO Gas.

In particular, your report should contain a statement at the beginning to the effect that the author of the report has read, understood and complied with the Expert Witness Guidelines.

Your report must also:

- 1 contain particulars of the training, study or experience by which the expert has acquired specialised knowledge;
- 2 identify the questions that the expert has been asked to address;
- 3 set out separately each of the factual findings or assumptions on which the expert's opinion is based;
- 4 set out each of the expert's opinions separately from the factual findings or assumptions;
- 5 set out the reasons for each of the expert's opinions; and
- 6 otherwise comply with the Expert Witness Guidelines.

The expert is also required to state that each of the expert's opinions is wholly or substantially based on the expert's specialised knowledge.

It is also a requirement that the report be signed by the expert and include a declaration that "*[the expert] has made all the inquiries that [the expert] believes are desirable and appropriate and that no matters of significance that [the expert] regards as relevant have, to [the expert's] knowledge, been withheld from the report*".

Please also attach a copy of these terms of reference to your report.

Terms of Engagement

Your contract for the provision of the report will be directly with ACTO Gas. Please forward ATCO Gas any terms you propose govern that contract.

Please sign a counterpart of this letter and return it to us to confirm your acceptance of the engagement.

Yours faithfully

Johnson Winter & Slattery

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Signed and acknowledged by Brent Stewart

Date 22.12.2014