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Mr Peter Livingston
A/g General Manager, MCE Secretariat
Department of Industry, Tourism and Resources
Box 9839, G P O
CANBERRA ACT 2601

Dear Mr Livingston

Further to the joint submission of the AER and ERA in response to the Exposure Draft of the National Gas Law (NGL), the AER and ERA have the following comments to make in relation to the draft Initial National Gas Rules.

Overall approach to drafting the initial gas rules

Officials' approach to drafting the initial rules has been to transfer provisions of the Gas Code generally without substantive change, where the provisions are not dealt with in the NGL. The AER and ERA support this approach, which is consistent with promoting regulatory certainty by continuing to apply well understood methodologies of the Gas Code, and reflects a similar approach taken to preparing the Initial National Electricity Rules.

In a few areas some revision of the Gas Code provisions would assist in clarifying how the Law will apply.

Clause 10: queuing requirements

Consistently with the NGL definition of 'queuing requirements' and the interpretation provisions of the NGL (Schedule 2, cl 7), we understand cl 10(1) to mean that a prospective user could be, at the same time, a prospective user of spare capacity and a prospective user of developable capacity. This might occur where the amount of spare capacity was insufficient to meet the needs of a substantial user.

In the interests of promoting a clear understanding of the provision, we suggest either adding an explanatory note to clarify the point, or amending 'spare or developable capacity' to read 'spare and/or developable capacity'.

Clause 11: extension and expansion requirements

The AER and ERA note that this clause gives examples of requirements that could form part of an access arrangement submitted to the regulator for approval.

The regulators do not read cl 15 of the NGL or cl 11 of the Rules as requiring the service provider or regulator to treat extensions and expansions alike and the regulators will give guidance to service providers through their decisions, and papers on regulatory issues, on factors relevant to the regulatory assessment of proposed extension and expansion requirements.

Clause 18: consultative decision-making model

The clause as drafted has a tight timeframe for decision-making but does not include a clock-stopping provision. The AER and ERA understand that the period for making a decision on the matters described in Schedule 1 to the Rules could be extended pursuant to cl 359 of the NGL. However, that would be possible only when the regulator considered the issue for decision was sufficiently complex or there had been a material change of circumstances – cl 359(2).

In our view, there is a need to incorporate a clock-stopping provision modelled on cl 179(c) of the NGL, so that time would not run during the period in which a service provider complies, or must comply, with a notice under cl 41 of the NGL or with a regulatory information notice.

Clause 21: access arrangement information

The AER and ERA are satisfied in most respects with the approach taken in cl 21 to reproducing, at a higher level of generality, the subject-matter of Attachment A to the Gas Code, the minimum access arrangement information requirements. The provisions for a general regulatory information order proposed in the NGL would provide the means for the regulator, following consultations, to specify the detail of content and form of information to be provided as access arrangement information.

However, Categories 5 and 6 of Attachment A contain useful information requirements that have not been incorporated in the Law or Rules. Category 5 lists information about system capabilities, capacity and volume and Category 6 lists industry key performance indicators (KPIs) and the service provider's own KPIs.

We suggest that clauses modelled on Categories 5 and 6 of the Gas Code Attachment A provisions be included in the Rules.

Clause 25: target revenue

At present, both pre-tax and post-tax approaches to modelling the revenues of regulated utilities are in use in Australia, depending on the regulator.

Under a post-tax model, an estimate of the cost of corporate income tax is required and is best expressed separately, as proposed in cl 25(2)(d). Under a pre-tax model, an estimate of the corporate tax rate would be required but the estimate of the effective cost of corporate tax is directly built into the calculation of return on capital.

To recognise that the building blocks differ according to the model in use, we suggest that the words 'if a post-tax revenue model is used,' be added at the start of cl 25(2)(d).

Clause 26: the capital base

General comments

We support the general approach in cl 26 of the Rules to determining the initial capital base (ICB) for the purposes of an access arrangement under the NGL. In particular, we note that:

- cl 26(1)(a) would apply the relevant provisions (in ss 8.10-8.11 of the Gas Code) to determining the ICB for the first access arrangement of a covered pipeline commissioned before the commencement of the Rules;
- cl 26(3) is a sensible way of dealing with circumstances in which a previously-covered pipeline again becomes covered; and
- cl 26(2) replicates s 8.9 of the Gas Code, updated for NGL terminology and with the addition of a provision, for completeness, for the value of assets disposed of.

Paragraph 26(2)(c)

Regulatory practice is to adjust the capital base in the circumstances described in cl 26(2) by ‘approved forecast depreciation’ rather than ‘depreciation’. Given that the revenue requirement has been set on the basis of approved forecast depreciation, if the capital base were subsequently adjusted for actual depreciation, there would be a risk of over or under-recovery of revenues.

We suggest that the words ‘approved forecast’ be inserted before ‘depreciation’.

Transitional issue

In the interests of regulatory certainty, the AER and ERA do not propose to reoptimise, for the purposes of assessing a replacement access arrangement under the NGL, any initial capital base determined under the Gas Code.

However, there is one circumstance relevant to that approach that cl 26 does not deal with at this stage. That is where the regulator has determined the initial capital base of a pipeline under the Gas Code and that pipeline has been continuously covered until the NGL commences.

In the view of the AER and ERA, there is a need for certainty that the closing asset base under the Gas Code will be the opening asset base under the new Law. We suggest that this be given effect by a transitional provision in the Law and a further sub-clause in cl 26.

Yours sincerely



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