28 August 2017

Mr Warwick Anderson

Rate of Return Guideline Review

Australian Energy Regulator

GPO Box 520

MELBOURNE VIC 3001

Via email: rateofreturn@aer.gov.au

Re: Process for Reviewing the Rate of Return Guidelines

Dear Warwick

Australian Gas Networks Limited (**AGN**) is one of Australia's largest natural gas distributors, owning around 25,000 kilometres of natural gas distribution networks and 1,100 kilometres of natural gas pipelines serving over 1.2 million consumers in Victoria, South Australia, Queensland, New South Wales and the Northern Territory.

We appreciate the opportunity to respond to the Australian Energy Regulator’s (**AER’s**) consultation paper (**the Paper**) in respect of how the AER plans to undertake its forthcoming review of the Rate of Return Guideline (**Guideline Review**). We understand that the AER is seeking comment on the process they are proposing to undertake to review the Guidelines.

This consultation is consistent with the AER’s stated commitment, *“… to continually improve the quality of [their] engagement…”.*[[1]](#footnote-1) We support the AER’s focus on continuous improvement in this area and consider that this commitment to ongoing improvement should be key to any stakeholder engagement, whether led by the AER or business.

The Guideline Review is an important process for all stakeholders. Developing a clear and suitable Guideline that is underpinned by effective stakeholder engagement is important to deliver outcomes that are in the long-term interests of consumers, including by ensuring that network businesses are able to earn a sufficient return on investment.

To this end, we believe that the AER should consider setting a clear objective for the Guideline Review. This objective could be to develop a Rate of Return Guideline that is underpinned by effective stakeholder engagement and is capable of being accepted and applied by all stakeholders.

Such an objective makes clear the consultative nature of the review process and the balance required in setting a Guideline that is accepted by all parties. We consider this particularly important given the reluctance of many stakeholders in the past to accept and apply the current Rate of Return Guideline.

We are supportive of the process outlined by the AER in its Paper and consider this should deliver stakeholder confidence in the Guideline. We consider the AER process is also consistent with developing a Rate of Return Guideline that is capable of being accepted and applied by stakeholders.

We support the decisions to establish a Consumer Reference Group and a Consumer Challenge Sub-Panel to ensure greater consumer participation in the review process. We also support the use of expert “hot tubs” as a means of identifying areas where common views are held, but to also narrow the scope of work required to resolve matters of contention. We also agree that the proposed review timeline appears appropriate.

Further to our broad support to the process outlined in the Paper, we believe there is an opportunity for further refinement to ensure the appropriate participation of all stakeholders and with a view to ensuring efficient engagement efforts. These incremental improvements are described in the remainder of this letter and include:

* *early engagement* – prior to the release of the AER Issues Paper, that would seek to ascertain where common agreement already exists on aspects of the existing Rate of Return Guideline, thereby allowing stakeholders to focus on areas of particular importance or contention;
* *hot-tub enhancements* – in relation to the way in which expert hot-tubs are formed and operated to ensure they are best utilised in the process; and
* *operation of the Independent Expert Panel* – with a view to increasing the level of independence given to the eventual Rate of Return Guideline and the confidence that the allowable rate of return objective will be achieved.

We also note our support of the submission made by our representative organisation, the Energy Networks Association on the Paper.

Early Consumer Engagement

We are supportive of the AER’s initiatives to develop the Consumer Reference Group and Consumer Challenge Sub-Panel. We are keen to be active participants in the Guideline review process to the greatest extent possible. We are seeking to ensure open and transparent engagement through the process and consider AER initiatives could be supported through a:

* consideration of allowing broader stakeholder working groups, including through either expanding certain meetings of the Consumer Reference Group to allow for industry participation and/or for industry to observe meetings of the group;
* related to the above, consider the role that industry could play to facilitate the education phase of the engagement process, which will have the additional benefit of strengthening stakeholder relations through the review process;
* facilitate direct discussions wherever appropriate between industry and the Consumer Reference Group and Consumer Challenge Sub-Panel, which could include to jointly determine the issues to be considered by the expert hot-tubs and jointly engaging experts wherever relevant; and
* ensure agreed meeting minutes/summaries and agreed actions from the Consumer Reference Group meetings are made publicly available to all stakeholders (along with similar from the expert hot-tubs and Independent Expert Panel).

The above suggestions are consistent with the type of processes AGN would seek to implement if we were facilitating our own stakeholder engagement process. We consider that these suggestions are consistent with effective, open and transparent stakeholder engagement that would assist network businesses to efficiently engage with stakeholders rather than, for example, establishing a separate stakeholder group.

The Issues Paper

We support the submission of the ENA that the Issues Paper should seek to identify issues of low, medium and high priority for the review process. This could take the form of identifying those areas that are considered to be settled or commonly agreed between parties, including through the considerable legal review that has occurred over the past two years.

To this end, and consistent with the ‘educate theme’ at the early part of the review process, it would be very beneficial if the Issues Paper explains the outcomes of the legal review process and the timing and relationship of the remittal processes with the Guideline Review. This is consistent with an approach that seeks to identify key issues at the earliest possible time.

We note and would agree that, given the early stage of the review process, any views expressed in the Issues Paper would only be indicative. The key benefit of identifying indicative key issues would be to ensure submissions are more targeted and that resources are focussed on those areas where value can best be provided.

Identifying indicative key issues in the Issues Paper could involve some engagement with stakeholders prior to the release of the paper. This could occur through targeted stakeholder meetings and or preliminary stakeholder workshops prior to the release of the paper. Alternatively, and by way of example, the AER could also call for submissions prior to the release of the Issues Paper.

A key benefit of the Issues Paper in our view is to also clearly establish the terms of reference for the expert Hot-Tubs, which ideally have broad stakeholder support when finalised following submissions to the Issues Paper.

Expert “Hot-Tubs”

We consider the proposed expert “Hot-Tubs” to be a significant advancement used to support the decision-making process.

Consistent with the Independent Expert Panel, we believe it is important that there is stakeholder confidence in this part of the engagement process. We believe there are certain improvements that could be made to ensure transparency and confidence of all stakeholders in the process and that outcomes are reasonable and accepted. These improvements include:

* *Expert selection* – we believe there will be greater stakeholder confidence in the Hot-Tub process if stakeholders are able to input into the participating experts, and ideally select experts. For example, different stakeholder groups could propose experts who they believe have sufficient expertise to represent their interests;
* *Terms of Reference* – as noted, ideally the issues to be covered by the Hot-Tubs would be agreed be stakeholders following submissions to the Issues Paper. We consider the experts should focus on technical and methodological issues, including by focusing on the range of outcomes from the agreed best use of methodology and data;
* *Open and Transparent* – we believe that any Hot-Tub process should be made accessible to all stakeholders to either attend in person or through a web-cast (or similar) and that, to the extent practicable, allow stakeholders to participate in the process. We also consider that clear outcomes from the Hot-Tub process should be made publicly available prior to the release of the AER Draft Decision;
* *AER Draft Decision* – the AER should clearly set out in its Draft Decision how the Hot-Tub has influenced its decision, including where the AER agreed with the expert views, resolved conflicts and reasons where it may not agree with the experts.

The Independent Expert Panel

We agree with the AER’s proposed Independent Expert Panel. We also consider that it is appropriate to limit the panel to experts who have not participated in a regulatory review process over a recent period, with the proposed two year period being reasonable. We think this should be extended to all submissions/input provided to a regulatory process, including through (or by) members of the Australian Competition Tribunal.

In contrast to our view on how the experts in the hot-tub ought to be chosen, at this stage we consider it appropriate that the AER choose the panel members, acting in good faith and considering the views of all stakeholders. We do not however believe that the role of the panel should not be restricted to consider only those issues set out in the Paper.

While we understand the desire not to replicate the work of the expert Hot-Tubs particularly where they have a technical focus as we suggest above, we consider it important that the panel is able to determine whether the AER decision best promotes the long term interests of consumers. This would include whether the expert advice relied upon is reasonable and judgement where necessary is appropriately used.

A key role of the Independent Expert Panel is to ensure an independent assessment of important elements of the guidelines, in particular the use of regulatory discretion applied ultimately to achieve the allowable rate of return objective. This would include allowing the panel to critically assess the outcomes from the Hot-Tub if the panel considers there is value in doing so.

Also important is that the views of the panel are made publicly available. The AER should also describe how the views of the panel have influenced its decision, including the exercise of judgement, consistent with reporting on the impact of all other parts of the stakeholder engagement process.

Summary

We support the AER’s proposed process for reviewing the Rate of Return Guideline and have put forward several suggestions on how this process may be enhanced for the benefit of all stakeholders.

We have proposed that the AER set an objective, perhaps in the Issues Paper, of developing a Guideline that is underpinned by effective engagement and is capable of being accepted and applied by all stakeholders. This will guide all stakeholders on ensuring an open and transparent engagement process and highlight the need to balance the interests of all stakeholders.

Our remaining suggestions are focused on ensuring stakeholder confidence in the review process to support the AER achieving the type of objective proposed in this submission. Our suggestions reflect actions we would take if we were facilitating the stakeholder engagement and are design to ensure effective participation in rather than duplication of the AER engagement efforts.

We look forward to participating in this important process. Please feel free to contact me if you would like to discuss the matters raised in this submission further.

Yours sincerely,



Craig de Laine

General Manager – Strategy and Regulation

1. AER, *“Consultation Paper Draft Revised Stakeholder Engagement Framework”*, June 2017, page 2. [↑](#footnote-ref-1)