

12 March 2024

General Manager Compliance and Enforcement
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

Email: AERGasNetworksCompliance@aer.gov.au

Dear Sir/Madam,

AER Consultation: Annual Compliance Order – Confidential Submission [...Confidential
.....]

[.....Confidential] provide comment on
the AER's proposed Annual Compliance Order (ACO) for gas pipeline service providers.

Reporting Template

- Reporting compliance against the National Gas Rule (NGR) obligations through an Annual Compliance Order that requires completing a template reporting document is logical.

Draft ACO must reflect compliance obligations of non-scheme pipeline operators

- However the original ACO was designed for scheme pipeline service providers who generally provided different pipeline services to a number of shippers. The proposed draft ACO is intended to apply to non-scheme pipelines and appears to be drafted on the assumption that traditional non-scheme pipeline service providers have shippers on their pipelines.
- However non-scheme pipeline service providers may have no third-party shippers and therefore may have exemptions from reporting and/or publishing information under the NGL and/or the NGR. Some pipeline service providers may also have greenfield exemptions on their pipelines and are therefore exempt from a range of NGR and NGL obligations through the pipeline reform transitional provisions.
- [...Confidential.....
..] exemptions under Part 10 Division 2 Subdivision 1, Rule 102 (4) of the NGR in relation to obligations to publish:
 1. Service and access information specified in rule 101B,
 2. Standing terms in accordance with rule 101C
 3. Financial information, historical demand information and a cost allocation methodology in accordance with rule 101D; and
 4. Actual prices payable information in accordance with rule 101E.

- Requesting a party, even though exempt, to produce and report a substantial amount of data that it otherwise would not require to publish, under the ACO defeats the purpose of exemptions.
- In general terms, the NGR provides that this information is only required to be published and/or reported once there is a third-party shipper on the pipeline or a new pipeline service is added to an existing service arrangement, or an access contract is entered into or varied.
- [.....
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- [Confidential.....] Where the service providers have exemptions under Rule 102(4) and/or the ring fencing obligations do not currently apply, then the service providers should only be required to report against a limited number of questions in the ACO Reporting Template. This will require some re-drafting of the ACO, so it is clear and service providers know exactly which questions they need to respond to.
- [Confidential..] noted in **Annexure A** some changes to the draft ACO that could be used to provide this clarification.
- It is necessary to make changes to the draft ACO as responding to the ACO is mandatory under the NGL with an exemption from compliance only provided by the AER at its discretion and on application by the service provider.

Some reporting data may not be available to traditional non-scheme pipeline operators

- Some of the reporting data requested in the ACO may be difficult for traditional non-scheme pipeline operators to obtain and prepare. This is particularly the case where the pipelines were not originally developed to provide third party access
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- Operators of these pipelines did not contemplate at the time of construction of their pipelines that there would be a need to segregate data relating to CAPEX, OPEX, revenue, and retain data inputs and methodologies to the extent required by a scheme pipeline operator and to report that under an ACO. This would have added substantial administrative cost, systems and effort, which was not justified.
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- Therefore, these pipeline service providers should be given a reasonable amount of time to develop and finalise their data set, once the pipeline/s have a third - party shipper. In our view that reasonable time should only require reporting compliance with the ACO, for the reporting year commencing after third-party access was provided. For example, if the service providers obligation under the NGR is to commence reporting under Part 10 of the NGR on say a date in 2024, or say on 1 Feb 2025, the ACO compliance should be required for the year commencing 1 July 2025 – 30 June 2026 with the ACO report due 31 Oct 2026 (currently proposed).
- However, the reporting compliance date for the ACO of 31 October does not align with the obligation to report financial information under Part 10 of the NGR which is due 5 months after the end of the service providers financial year. The reporting date could therefore be either being 30 November (assuming the financial year ends on 30 June) or on 31 May where the financial year ends 31 December. Therefore the dates for ACO reporting of financial information should change and align with the NGR reporting dates.
- Whilst there is a provision in the ACO for estimated data to be provided as long as the basis for the data estimate can be identified, it is unclear when the provision of estimated data will be acceptable to the AER. Further clarification could be provided in the ACO or in supporting guidelines.
- The ACO also requires a service provider to explain any changes in the information sources or methodology reported that have occurred in the reporting period. It is unclear why this data is required. If this obligation is necessary, then this should only be reported where the change is significant. To do otherwise will over complicate the reporting requirements. There needs to be guidance on the level of change to be reported.
- In our view, producing this information, while the pipeline has no third-party shippers, also adds significant additional costs to the service provider which will then be passed on to any future pipeline users through the pipelines OPEX costs.

The proposed auditing obligations are onerous and costly

- In our view the requirement to obtain an independent audit report with independent attestation is onerous and excessive especially in relation to pipelines that have not historically provided third party access and have generally therefore received no revenue. Therefore, self-assessment of compliance is a more reasonable approach.

Conclusion

The current draft ACO needs to be amended to reflect traditional non-scheme pipeline operator exemptions under the NGR and NGL, and to reflect that the data set now required

for reporting is large and onerous and was not contemplated at the time these pipelines were constructed.

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.....], the cost of
compliance in terms of time and resources (internal and external) is significant
[.....Confidential.....].

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Yours sincerely,

Annexure A – Draft changes to the ACO for consideration:

Reference	Information Request	Section	Entities with Part 10 exemptions to complete
1.1	Provide the legal entity structure of the Service Provider in accordance with section 131 of the NGL.	National Gas Law, Chapter 4, Part 1, Section 131	
1.2	Provide the registered business name and ABN of the legal entity providing the scheme pipeline service.		
1.3	Outline the group structure which is controlled by or which the Service Provider is a part of (including identification of the head company, nature of investment or entity, relationship to the Service Provider and proportion of assets owned/share of investment within the group). Include any assets (businesses) it owns or that own it. This can also be represented as an organisational chart.		
2.1	Are you aware of any claims that the Service Provider has prevented or hindered access to services on the scheme pipeline?	National Gas Law, Chapter 4, Part 1, Section 133	
3.1	Has the Service Provider complied with the queuing requirements under both the applicable access arrangement and the NGR during the year?	National Gas Law, Chapter 4, Part 1, Section 135 National Gas Rules, Part 8, Division 12, Rule 68D	N/A if no 3P shippers
4.1	Has the Service Provider considered whether the interconnection is technically feasible and consistent with the safe and reliable operation of the pipeline?	National Gas Law, Chapter 4, Part 1, Section 136	N/A if no 3P shippers
4.2	Has the Service Provider funded the cost with making the interconnection?	National Gas Rules, Part 6, Rule 36 National Gas Rules, Part 6, Rule 37	N/A if no 3P shippers
4.3	Has the Service Provider developed, and maintained, an interconnection policy that complies with rule 39 of the NGR? If so, please provide such policy.	National Gas Rules, Part 6, Rule 38 National Gas Rules, Part 6, Rule 39	

5.1	For transmission pipelines, provide a statement as to whether charges for a service used by an existing user increased over the relevant compliance period. If there was an increase, outline the nature of the increase and whether the increase was subject to a contractual arrangement due to capacity increase.	National Gas Law, Chapter 4, Part 1, Section 136A	N/A if no 3P shippers
6.1	Has the Service Provider bundled services when providing access or negotiating access with a prospective user? If so, provide a description of the bundled services and related conditions of access.	National Gas Law, Chapter 4, Part 1, Section 136B	N/A if no 3P shippers
7.1	Provide any published information relating to pipelines and pipeline service (including, without limitation, the standing terms, financial information and actual prices payable information). Such information should be provided in the form, and comprise of details, set out in the NGR.	National Gas Law, Chapter 4, Part 1, Section 136C National Gas Rules, Part 10, Subdivision 1, Rule 101B(2)-(5) National Gas Rules, Part 10, Subdivision 1, Rule 101C National Gas Rules, Part 10, Subdivision 1, Rule 101D National Gas Rules, Part 10, Subdivision 1, Rule 101E	N/A if no 3P shippers and exemptions under Part 10 apply
8.1	Provide a list of associates of the Service Provider that take part in a related business For each associate describe what the nature of the related business is.	National Gas Law, Chapter 4, Part 2, Section 139	
8.2	Provide a list of associates that are Service Providers and/or provide pipeline services.		
	If a list of associates has been provided in response to 8.2 then proceed and respond to 9.1 – 11.2 If no then proceed to 12.1		
9.1	Provide a list of associates of the Service Provider that are directly involved in the sale, marketing or advertising of pipeline services.	National Gas Law, Chapter 4, Part 2, Section 140	
9.2	Provide a statement as to whether or not any of the Service Provider's marketing staff are also officers, employees, consultants, independent contractors or agents of an associate of the Service Provider that takes part in a related business.		
9.3	Provide a statement as to whether or not any of the Service Provider's officers, employees, consultants, independent contractors or agents are also marketing staff of an associate of the Service Provider that takes part in a related business.		

10.1	Provide a statement as to whether or not the Service Provider has prepared, maintained and kept a separate set of accounts in respect of the services provided by every pipeline owned or operated by the Service Provider.	National Gas Law, Chapter 4, Part 2, Section 141	
10.2	Name the legal entity or entities in which the separate accounts are reported, maintained or kept for the services provided by each pipeline owner or operator?		
10.3	Provide a statement as to whether or not the Service Provider has prepared, maintained and kept a consolidated set of accounts in respect of the whole of the business of the Service Provider.		
10.4	Name the legal entity in which the consolidated set of accounts are reported, maintained or kept for the services provided by each pipeline owner or operator?		
10.5	Provide a copy of the most recently lodged annual financial reports with the Australian Securities and Investments Commission or if no such reports exists other similar audited financial reports prepared for or provided to a state or territory department, agency or body under relevant state or territory legislation. These financial reports may be the consolidated set of accounts in respect to the whole of the business of the Service Provider, and if also separately lodged with the Australian Securities and Investments Commission the most recently lodged annual separate set of accounts in respect of the services provided by the Service Provider.		
11.1	Is the Service Provider aware of any additional ring fencing requirements? If yes, what are these requirements?	National Gas Law, Chapter 4, Part 2, Section 143	
11.2	Provide a statement that these additional ring fencing requirements have or have not been met.		
12.1	Has the Service Provider entered into or given effect to any new associate contracts, or varied the terms and conditions of an existing associate contract?	National Gas Law, Chapter 4, Part 2, Section 147	
12.2	If yes to 12.1 then for each new or varied associate contract, please indicate the date the new or varied associate contract was entered into or given effect?	National Gas Law, Chapter 4, Part 2, Section 148	
12.3	If yes to 12.1 then for each new or varied associate contract, please indicate if the contract or variation was approved by the AER and the date that it was approved?	National Gas Rules, Part 5, Rule 32(1)	
12.4	If yes to 12.1 then if the associate contract was not approved by the AER, please indicate what date the new or varied associate contract was provided to the AER?	National Gas Rules, Part 5, Rule 33	
13.1	Does the Service Provider have any exemptions for the minimum ring fencing requirements? If yes, list these exemptions.	National Gas Law, Chapter 4, Part 2, Section 148A	N/A if no 3P shippers
13.2	If yes to 8.1, does the Service Provider have any exemptions from the associate contract requirements? If yes, list these exemptions.		

13.3	If yes to 13.2 by what jurisdictional regulator and when where these exemptions granted?		
14.1	Has the Service Provider published the approved access arrangement on its website?	National Gas Rules, Part 8, Division 12, Rule 68A	N/A if no 3P shippers and Part 10 exemption applies
14.2	Please provide the website address where this access arrangement can be accessed and the date that this access arrangement was provided on the website.		N/A if no 3P shippers and Part 10 Exemption applies
14.3	Has the Service Provider received any requests from the AER to provide to prospective users generally other information specified as reasonably necessary to determine if access should be sought? If yes, provide details of when and how this request was met.		
15.1	Has the Service Provider been party to an access determination?	National Gas Law, Chapter 4, Part 5, Section 170(1)(a)	
15.2	If yes to 15.1, did the access determination require the service provider to provide access to the pipeline or to provide any other pipeline service		
15.3	If yes to 15.2, then when did the access determination become operative?		
15.34	If yes to 15.2, then for what period is the access determination in place?		
16.1	If yes to 15.2 then, provide a statement that the Service Provider has complied with the requirements under Part 11 of the NGR relating to access to a relevant pipeline service.	National Gas Law, Chapter 4, Part 3, Section 148C	
16.2	Provide a copy of the Service Provider's user access guide for each of its pipelines.	National Gas Law, Chapter 4, Part 3, Section 148D	
16.3	Has the Service Provider been granted access to a relevant pipeline service to any person? If so, provide the terms and conditions governing the provision of access to such personnel.	National Gas Rules, Part 11, Rule 105C National Gas Rules, Part 11, Rule 105D National Gas Rules, Part 11, Rule 105E	
17.1	Provide a statement that the confidentiality requirements under rule 137 of the National Gas Rules have or have not been met.	National Gas Rules, Part 16, Rule 137	
17.2	Has the Service Provider established an internal protocol or policy guideline or procedure manual for the handling of confidential information? If so, please provide the AER with the relevant policy document		