



14 May 2013

Chris Pattas
General Manager–Network Operations and Development
Australian Energy Regulator
GPO Box 520
Melbourne Vic 3001

Dear Mr Pattas

AER Confidentiality Guidelines: Issues Paper

APA Group (APA) welcomes the opportunity to contribute to the development of the Australian Energy Regulator's (AER's) confidentiality guideline.

The APA is a major ASX-listed energy infrastructure business, owning and/or operating over \$12 billion of assets. These assets include significant gas transmission and distribution interests, as well as investments in the Murraylink and Directlink electricity interconnectors which operate in the National Electricity Market.

APA notes that the confidentiality guidelines are required under the National Electricity Rules, however the AER also states in its issues paper that it is considering applying the guidelines as policy to all information it receives. APA's comments in this submission therefore also relate to information it provides to the AER in respect of its gas assets.¹

Information disclosure assumptions

One of the foundation assumptions of the issues paper, and one that shapes the approach to information disclosure it contains, is the assumption that the businesses that are providing information to the AER are natural monopolies.² While it is true that the assets to which regulation applies are largely natural monopolies, the businesses providing that information are likely to provide a number of other services to the energy and potentially other markets, many of which will be provided on a competitive basis.

It is therefore important to ensure that the AER's approach to information disclosure sufficiently recognises that information provided to it in the regulatory process may be sensitive information in the nature of market intelligence or intellectual property that has value to the business beyond its application to specific regulated assets. This is particularly true of gas infrastructure businesses, which may own and operate a mix of regulated and unregulated pipeline and network assets, including by provision of asset management services to other businesses on a competitive basis.

¹ Australian Energy Regulator 2013, *Better regulation – Distribution and transmission confidentiality guidelines: Issues paper*, March, p 6

² AER 2013, *Confidentiality guidelines issues paper*, p 10



In these cases, disclosure of some asset management strategies, systems and approaches may cause a business to lose its competitive advantage in a contestable market. This threat reduces the incentive on such businesses to pursue new and innovative business processes where they may be disclosed to their competitors. APA therefore supports the inclusion of market intelligence as an item that the AER would consider protecting in the confidentiality guideline.

Use of confidentiality claims template (AER questions 1 and 6)

APA works to minimise confidential material in its regulatory proposals. APA's key strategy to do this is to include summary information of projects, processes or data in the body of submissions that is able to be published, and then providing the AER with full information as a confidential attachment that is not intended for publication.

Because of this approach, APA has made what would appear to be 'blanket' confidentiality claims in the past; however APA considers that it has included sufficient summary information in the body of its submission making publication of the sensitive document unnecessary. APA notes that this approach is consistent with Rule 43 of the National Gas Rules which provides for a service provider to submit sensitive information (that is, information that is confidential and its public disclosure could cause undue harm to the legitimate business interests of the service provider, a user, or a prospective user) in aggregated or generalised form so as to avoid disclosure of elements that make it sensitive.

APA considers that the AER should continue to accept the submission of confidential and public versions of information in this form. The guideline should also provide for confidentiality claims over entire documents to be made where relevant summary information has been provided in another document that is on the public record.

Categories of confidential information (AER questions 2 and 3)

APA supports the AER's proposed approach not to include compulsory categories for classification of confidential information in the confidentiality guidelines. In their place, APA supports the AER's proposal to include guidance as to the kinds of information that the AER would consider protecting, noting that the AER could still decide to disclose information of these types in line with the national electricity and gas laws.

The AER lists a number of possible items that it would consider protecting. APA supports the items included in the AER's list, but also considers that the following additional items should be added:

- Information related to a particular user's or prospective user's energy usage, or information that would allow a user's or prospective user's energy usage to be derived; and
- Information covered by confidentiality clauses under contract.

The first of these categories is important for ensuring that the confidentiality of users and prospective users is maintained. Information on usage or expected usage can be commercially sensitive to users or prospective users as it can signal market intent (such as the intent to establish operations in a new jurisdiction). APA considers that this information should be protected. APA further notes that this was a key reason why information was suppressed (with the AER's agreement) in the APA GasNet access arrangement proposal



referred to by the AER in its issues paper.³ APA is concerned that the citing of this example by the AER in the issues paper as a 'concern' signals its intention to release this type of information in the future. APA does not consider that this would be in the long term interest of consumers as it has the potential to significantly impact competitive rivalry amongst users.

The second category relates to information that is confidential under contract. APA enters into individual contracts with users for the transportation of gas, the terms of which are often determined through negotiation and which are confidential between the parties. In addition, many of APA's contracts with suppliers include confidentiality clauses, in particular in relation to the supplier's intellectual property. APA considers that the AER should also give consideration to retaining confidentiality over information subject to such contractual confidentiality clauses.

In respect to the AER's proposed item related to market sensitive cost inputs, APA also considers that the description of this item should be expanded to include details of all items (labour and materials) provided by external providers on arm's length terms. APA considers that this is needed to protect suppliers that themselves operate in a competitive market, and to ensure that the threat of information disclosure does not dissuade a supplier from entering into contracts with regulated service providers.

For example, a supplier may be disinclined to enter into more beneficial terms with a regulated service provider if it considered there was a risk that those terms may be made public, particularly to other customers that may not have been offered similar terms. This outcome would not be in the long term interests of consumers. APA considers that supplier information can be published at an aggregated or summary level to limit this risk.

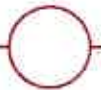
Information provided outside of regulatory proposals

The AER proposes extending the application of the guideline to also apply to information provided outside of regulatory proposals, including responses to regulatory information notices, information requests, and submissions on proposals. It is unclear whether the AER intends that businesses be required to complete confidentiality templates for all information provided of this kind, or whether the AER also intends to publish this information in the form it is provided to them by the businesses. APA does not support either approach.

APA considers that the completion of confidentiality templates in respect of all information it provides to the AER would impose an unreasonable compliance burden on businesses. Most information provided to the AER in response to information requests is unlikely to be publicly disclosed, either because it is genuinely confidential, and/or because it represents a level of detail that is unsuitable for publication. The publication of this data is also unlikely to lead to a discernible gain for customers due to its level of detail, relevance, and volume.

For example, in the recently completed regulatory process for the APA GasNet Victorian Transmission System, APA responded to over 200 individual questions from the AER, made in over 60 separate requests. These questions related to APA GasNet's regulatory proposal, which was publicly available, and generally sought further detail or clarification over numbers and calculations, or for APA to provide additional supporting documentation.

³ AER 2013, *Confidentiality guidelines issues paper*, p 11



APA notes that very little of this information was referred to by the AER in its draft or final decisions, indeed the information sought by the AER was more in the form of 'checks' over information already supplied than new information. It is therefore unclear how publication of this information would materially assist stakeholders, and the process to assess and clear this information for publication would be highly labour intensive, leading additional costs for network businesses.

APA notes that alternative approaches are available for the AER to release information that it considers should be in the public domain that it may have acquired outside of the regulatory proposal. For example, where the AER did refer to information provided by APA GasNet in response to its questions, the AER sought APA GasNet's consent to its disclosure in the draft or final decision. While this approach is necessarily *ad hoc*, it ensures that administrative processes are only applied when necessary, and businesses are not forced into ever increasing compliance obligations that add to costs and impede the important flow of information between the AER and the regulated business.

APA looks forward to taking part in the next consultation stage for this guideline. Please contact Alexandra Curran, Regulatory Manager on 02 92750020 if you would like further information on this submission.

Yours sincerely

Peter Bolding
General Manager Regulatory & Strategy