



12 August 2013

Mr Warwick Anderson
General Manager - Network Regulation
Australian Energy Regulator
GPO Box 3131
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Dear Mr Anderson

AER Consumer Engagement Guideline

APA Group (APA) welcomes the opportunity to comment on the Australian Energy Regulator's (AER's) draft Consumer Engagement Guideline and Explanatory Statement.

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.

General comments on the guideline

APA supports the AER draft consumer engagement guideline. Non-binding guidelines can be helpful in setting out the regulator's expectations for regulated businesses, and providing a framework within which regulated businesses can plan and act to meet those expectations, and the expectations of the wider community.

APA considers that consumer engagement by regulated businesses is a positive, and ought to be recognised and encouraged by the regulator. In this respect the guideline provides regulated businesses with helpful guidance and assistance in identifying potential approaches that businesses may consider, and in this respect it is welcomed.

Notwithstanding this, guidelines of this type should not extend beyond the scope of the legislative frameworks from which they derive. In this respect, APA considers that the link the AER has drawn between consumer engagement and the assessment of gas businesses' regulatory proposals for compliance against the National Gas Law and Rules may be beyond the current scope of the gas law and rules.

In developing guidelines, it is important to ensure that they include sufficient information to be useful to the regulated business (and other interested stakeholders), while also providing scope for the regulated business to shape its approach in line with individual circumstances. APA considers that the AER's consumer engagement guideline strikes a good balance between these objectives, most importantly by providing scope for regulated businesses to develop consumer engagement activities that are:

1. Suitable for the size and scope of the pipeline/network;
2. Suitable for a type of customers of that pipeline/network; and



3. Reflective of the degree to which there are decisions or approaches adopted by the regulated entity on which customers and consumers can meaningfully contribute and influence.¹

APA considers that this flexibility is appropriate particularly given the specific circumstances of gas transmission businesses, which, except for large industrial users, do not have a direct contractual or service delivery relationship with end use consumers of gas.

APA notes that the explanatory statement includes details of the IAP2 engagement spectrum to guide service providers in their engagement with consumers. APA has found this spectrum useful in considering its approach to consumer engagement. As such, APA recommends that further detail of the spectrum (in particular the diagram on page 2 of the explanatory statement), be included in the guideline to aid the clarity of the guideline.

Application of the guideline to the gas sector

APA believes that its current engagement with shippers (customers) and end use consumers of gas through its normal business processes provides a strong basis for future engagement. In assessing APA's consumer engagement activities, however, the AER must be mindful of the specifics of the gas sector that mean that the type and scope of consumer engagement, in particular the identification of consumers and the type of issues on which engagement can be most constructive, are different between the electricity and gas sectors, as well as between the transmission and distribution sectors.

Gas transmission businesses (with the exception of GasNet which operates under a 'market carriage' framework), engage directly with their customers through periodic contract negotiations, and in the day to day operation of those contracts, providing strong scope for tailored service delivery. These customers include gas producers, retailers and large end use consumers of gas (in particular, industrial customers and power generators), for whom terms and conditions of service, including price, are set under contract. In this respect, APA's customer engagement can be viewed as being highly advanced, being in the form of negotiated settlements, as represented in the hierarchy of engagement presented by Mr Mark Henley of Wesley Uniting Care.²

It is important to note, however, that while some contracts are with the ultimate end users of gas, others are with retail intermediaries. Because of this, APA has no direct contact or knowledge of which members of the community are end use consumers of the gas it transports.

In these circumstances, APA may not be able to identify whether an identified gas consumer would be impacted by a regulatory decision. This limits the ability of a business to make a credible commitment to a particular consumer of gas over the outcomes of consultation, or even whether consultation is directly relevant to that consumer.

In light of this, APA considers that the relevance of the guideline to gas transmission and distribution businesses could be improved by a recognition that in many cases the interests

¹ For example, consumer input is unlikely to influence a service provider's approaches to compliance with legally binding safety obligations, but may be important in matters related to reliability improvement or security of supply.

² Hierarchy reproduced in presentation by Linda Parmenter, Queensland Council of Social Service, *What is the new role for consumers in regulatory decision making?*, ENA Regulation Seminar, Brisbane, 24 July 2013.



of end use customers can be appropriately represented by retailers or aggregators, particularly in circumstances where the regulated business is not able to identify specific end use consumers of its services.

This is not to say that there are no opportunities for regulated gas transmission and distribution businesses to directly engage in and potentially improve consumer engagement. APA believes that there is sufficient flexibility in the draft guideline to allow regulated gas businesses to engage in meaningful consumer engagement given the above market conditions. APA cautions, however, against the AER including further prescription in its guideline in relation to consumer engagement as this risks moving consumer engagement activities into a compliance framework, and would likely lead to activities that do not deliver value to either consumers or regulated businesses.

Use of information and confidentiality

Effective consumer engagement and consultation requires a commitment on both sides to manage information disclosure and exchange responsibly and in line with the intent of the process. For example, regulated businesses may be disinclined to disclose early or preliminary information in consultation processes if that information may be used against the service provider later in the regulatory process, in other processes with the regulator, or more generally in the media or other public fora. To address part of this risk, it may be appropriate to explore a separation between consumer stakeholders that are represented in the AER's consumer challenge panel for a particular review, and those involved in consultation processes in the lead up to the same review.

A further issue may be the release of confidential information in the regulatory process to particular consumer representatives and members of the AER consumer challenge panel. It will be very important for the AER to ensure that the release of some information to consumer challenge panel members is not detrimental to competition because of conflicts of interest for members of the panel.

For example, some members of the AER consumer challenge panel act for individual users in other capacities (in particular industrial customers). It will be important to ensure that information on end user tariffs and demand (including any prudent discounts in place) is not disclosed to a member of the consumer challenge panel that may act for a competitor of those businesses, even in another jurisdiction. APA believes this issue may be specific to the gas sector where there are individual contracts and prudent discounts in place. To address this risk, APA considers that the AER should be required to follow the processes in the National Electricity Law and the National Gas Law (as appropriate) for the disclosure of confidential information to members of the consumer challenge panel.

Please contact Alexandra Curran, Regulatory Manager on 02 92750020 if you would like further information on this submission.

Yours sincerely

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