

16 November 2004

Mr Michael Walsh
Director, Gas Group
Regulatory Affairs Division
Australian Competition and Consumer Commission
GPO Box 3648
Sydney NSW 2001

Dear Mr Walsh

Draft Regulatory Reporting Guidelines for Gas Pipeline Service Providers

APIA welcomes the opportunity you have given to make this submission in response to the Commission's Draft Regulatory Reporting Guidelines for Gas Pipeline Service Providers.

The forum held in September was worthwhile in providing APIA members with an understanding of some of the practical aspects of the accounting approach being proposed. However, the consultation process on the proposed guideline to date has highlighted three principal areas of concern which APIA believes have not been dealt with adequately by the Commission:

- the extent of the Commission's powers under the Gas Access Code;
- consistency with Scheme of the Code
- costs and benefits of compliance

Of these issues, APIA believes the most significant is the question of the Commission's powers under the Code.

Commission's Powers under the Gas Access Code:

A number of APIA members have obtained legal advice to the effect that aspects of the guideline as drafted are not consistent with the Code and go beyond the Commission's power. I understand that the advices support the view that the Commission is not empowered to require:

- that a Service Provider submit a "regulatory accounting manual" for approval by the Commission;
- that the accounts to be kept under Section 4.1 be submitted annually; or
- that the accounts be audited and certified in the manner proposed.

While it will be up to individual APIA members to decide their positions, there appear to be reasonable grounds for a Service Provider to decline to comply with a number of aspects of guidelines which followed the form of the Commission's draft. In APIA's view, such an outcome would be regrettable, especially if the Commission then felt compelled to test its position through litigation.

It is a matter of concern to APIA that the Commission has not engaged more fully with the industry on this important threshold issue, including providing an explanation for the Commission's views as to the extent of its powers. As a result there is significant uncertainty as to the validity of the proposed guidelines and thus whether Service Providers would be obliged to comply with the guideline if published in their current form.

At the very least, the Commission's approach appears to be inconsistent with the principles of Best Practice Utility Regulation developed by the Utility Regulators' Forum.

Consistency with Scheme of the Code

There is no doubt that Sections 4.1(c) to (e) of the Code impose on Service Providers an obligation that accounts be kept. However, the Code only specifies that financial and other relevant information is to be provided to the Regulator at the times of access arrangement reviews. Between reviews, the scheme of the Code is that the service provider is permitted to act in accordance with the approved access arrangement, including any incentive arrangements, without ongoing regulator involvement, except to provide regular assurance to the regulator about the adequacy of its ring fencing procedures and compliance with its obligations.

Section 4.12 requires the establishment of procedures to ensure compliance with the obligations in section 4. Section 4.13 provides for periodic reporting on compliance. That requirement is supported by the obligation in section 4.14 to report any breaches of section 4. These reporting requirements clearly do not include the provision of detailed accounting information.

Cost and Benefits

APIA is concerned that there is no evidence that the guideline, as currently drafted, is required, nor that the cost of compliance will be outweighed by the benefits. In addition, there is the particular case of pipelines in Queensland which have tariffs covered by derogations. It is unlikely to be of any benefit to any party for those pipelines to provide detailed accounting information.

APIA believes the current scheme and policy intent of the Code is clear and notes the finding by the Productivity Commission that:

Regulators are currently seeking to have their powers under the Gas Access Regime extended so they can obtain information between access arrangement reviews. This extension has the potential to add unnecessarily to service providers' compliance costs. (Finding 7.7, page 314)

Given this finding, and the yet to be finalised consideration of this report by the Ministerial Council on Energy, APIA submits that it would be inappropriate for the Commission to proceed to issue guidelines that required additional reporting at this time, even if authorised by the Code.

Conclusions

In APIA's view the materiality of the issues outlined above is such that it would be inappropriate for the Commission to proceed to issue guidelines as drafted.

There is a clear need for the Commission to reconsider the draft guideline. APIA and its members are ready to work with the Commission in its development of a guideline consistent with the Code.

I would appreciate the Commission's early advice on how it intends to proceed with this matter.

Yours sincerely

Allen Beasley
Chief Executive Officer