

12 December 2008

Mr Mike Buckley
General Manager
Network Regulation North Branch
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

Mike

Dear Mr Buckley

ActewAGL Response to draft access arrangement guideline

Thank you for the opportunity to comment on the AER's draft Access Arrangement Guideline, released for public consultation in September 2008.

Given the relatively short time available for ActewAGL Distribution to prepare its revised access arrangement, as well as the new legislative provisions that apply to that access arrangement, ActewAGL Distribution considers the preparation of an access arrangement guideline by the AER to be an important step in clarifying legislative obligations. ActewAGL Distribution considers that the draft guideline provides useful clarification of the obligations placed on service providers under the *National Gas Law* and *National Gas Rules*, and the AER's expectations with respect to information to be included in, and provided with, a revised access arrangement proposal.

ActewAGL Distribution's comments responding to the draft guideline are outlined in the attached submission. Should you require further information on issues raised, please contact Ms Alexandra Curran, Senior Regulatory Adviser on (02) 6248 3190.

Yours sincerely



David Graham
Director Regulatory Affairs and Pricing

1. Introduction

ActewAGL Distribution welcomes the opportunity to respond to the Australian Energy Regulator's (AER's) draft Access Arrangement Guideline (the draft guideline), released for public comment in September 2008.

ActewAGL Distribution owns the regulated gas network in the ACT, Queanbeyan and Palerang. In parallel with the review of the NSW gas access arrangements, the forthcoming review of ActewAGL Distribution's gas access arrangement will be the first conducted by the AER under the new *National Gas Law* (NGL) and *National Gas Rules* (NGR). ActewAGL Distribution is required to submit its proposed revised access arrangement to the AER by 1 July 2009. The revised access arrangement is expected to come into effect on 1 July 2010.

The preparation of the AER's access arrangement guideline will assist ActewAGL Distribution in the preparation of its access arrangements revision proposal under the new legislative provisions. ActewAGL Distribution has reviewed the draft guideline and considers that there are some areas where the draft guideline may not reflect the degree of flexibility envisaged in the NGL and NGR to allow service providers to develop arrangements that are specific to their networks. These areas are outlined below.

2. Use of regulatory information instruments

ActewAGL Distribution notes that the draft guideline is not a binding instrument on the service provider, and therefore does not constrain the scope for service providers to propose arrangement that are different to those in the guideline. The draft guideline does, however, discuss the use of regulatory information instruments, which are binding on service providers. In particular, AER contemplates the use of regulatory information instruments where it considers that the NGL and NGR are silent on the form or scope of information to be provided to the AER.¹

ActewAGL Distribution considers that the NGR places the onus on the service provider to provide the AER with a complete access arrangement or access arrangement revision proposal, accompanied by information that is reasonably necessary for users to understand the basis of the access arrangement proposal and the derivation of its elements.² While there are minimum information requirements to be satisfied, the gas access regime includes scope for the service provider to propose arrangements, in particular the non-price terms and conditions of access, that are specific to the pipeline or network. This reflects the intention in the gas access regime to allow flexibility in the approach taken by service providers.

On this basis, ActewAGL Distribution does not consider it appropriate for the AER to use its information powers to prescribe the information to be provided as part of an access arrangement proposal, as is contemplated in the draft guideline, where the NGL and NGR do not include this level of prescription. Additional prescriptive information requirements have the

¹ Australian Energy Regulator (AER) *Draft Access Arrangement Guideline*, September 2008, p. 42, 44.

² *National Gas Rules* (NGR) r. 42.

potential to skew the review process towards issues which are not relevant to the network, or do not reflect the individual circumstances of the network.

ActewAGL Distribution also queries the basis of the AER's proposed approach to give confidential information less weight in the access arrangement assessment process. It is not appropriate for some proposed projects and costs to not have the same weight as all other information provided to the AER by the service provider. For example, confidential information relating to particular customers may underpin specific projects and costs that are just as critical to the AER's considerations.

The NGR contemplates that confidential information will be provided as part of the access arrangement approval process, and includes a process for the AER to manage that information.³ There is no provision in the NGL or NGR related to the weight that should be given to confidential information and, having qualified for this status, there is no reason for lesser weight to be applied to this information. Decisions taken on the basis proposed by the AER would therefore exceed AER's discretion in approving an access arrangement proposal.

3. Pre and post-tax revenue approach

The draft guideline includes a discussion of the AER's preference, and likely approach, to the treatment of income tax under the building block approach.⁴ The AER states that under a pre-tax revenue approach, the appropriate tax rate to use is the effective tax rate, rather than the corporate tax rate. The AER also states that it prefers a post-tax revenue approach. The NGR, however, does not prescribe either a pre or post-tax approach, and leaves the service provider with the discretion to include in the proposed access arrangement "the proposed method for dealing with taxation, and a demonstration of how the allowance for taxation is calculated".⁵

ActewAGL Distribution considers that the treatment of tax is a matter more appropriately considered as part of the access arrangement approval process, rather than as part of the access arrangement guideline. The most appropriate approach for a particular service provider is likely to be related to the historical circumstances of the pipeline or network, and how it has been regulated in past access arrangements determinations. As such, ActewAGL Distribution does not consider it appropriate for the AER to state a predisposition towards a particular approach which may prejudice its consideration of this issue as part of a specific access arrangement proposal.

4. Reference tariff variation

The draft guideline includes considerable detail on the information that the AER expects to accompany proposed cost pass through events to be included in the reference tariff variation mechanism. This includes details on estimates or forecasts of any relevant costs for a proposed event.⁶

³ NGR r. 43

⁴ AER Draft Guideline, p. 61

⁵ NGR r. 72(1)(h)

⁶ AER Draft Guideline, p. 74

However, the decision over inclusion of a pass through event in an access arrangement relates to the nature of the event, including whether it is a controllable event and whether the costs are compensated elsewhere in the access arrangement proposal. The likely cost of a proposed event is not relevant to these considerations. Instead, costs are considered at the time of a pass through application, if the proposed event occurs in the access arrangement period.

In addition, where the cost of events can be calculated at the time of submission of the access arrangement proposal, they are usually included in forecast expenditure. This means that pass-through events are often proposed for those events that cannot be forecast at the time of submission. Information on costs is therefore unlikely to be available for inclusion in the access arrangement proposal, and, if provided, can only be based on best available information at that time.

The draft guideline also states that an access arrangement needs to "provide a symmetrical mechanism so that both increases and decreases in tariffs are contemplated associated with additional costs incurred or reduced costs incurred arising from a defined event".⁷ ActewAGL Distribution notes that the NGR does not require pass through events to be symmetrical. The draft guideline therefore imposes a condition on proposed tariff variation mechanisms that is not required in the NGR. ActewAGL Distribution notes that many pass through events are not symmetrical in nature. For instance, an event related to the pass through of costs associated with a natural disaster.

The draft guideline also proposes that costs associated with pass through events be claimed through a process linked to the annual tariff variation mechanism, and be reflected in prices at that time. ActewAGL Distribution considers that scope should remain for pass through applications to be made throughout the year, and for those applications to nominate whether costs should be reflected in the annual tariff variation process or another process. This flexibility is particularly important for unanticipated events that may have a significant impact on costs, and which may occur towards the start of a new regulatory year.

In addition, even where additional costs may not be reflected in tariffs until the next regulatory year, it is important for service providers to have some certainty that costs associated with events will be recognised in future tariff variations. An early pass through application and decision, with the costs to be reflected as part of a future tariff variation, may therefore be a preferable approach for some pass through events.

⁷ AER Draft Guideline, p. 73