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20 December 2010

Mr Chris Pattas
Level 35, The Tower
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Envestra

Chris
Dear ~~Mr Pattas~~

Response to AGL SA Submission to Envestra Access Arrangement Review

On 26 November AGL SA put forward a submission on Envestra's revised Access Arrangement proposals for South Australia and Queensland. The issues raised by AGL SA are similar to those raised by Origin Energy, and as expected, focus predominantly on the terms and conditions relating to the supply of reference services by Envestra in South Australia and Queensland.

Envestra's review of that submission on terms and conditions suggested that the comments made were either immaterial in nature or arose from a mis-understanding of the context of the terms and conditions. Envestra therefore considers it appropriate to address such issues prior to the release of the Draft Decision, which response is attached to this letter.

On another matter, AGL SA also proposed that because new customers use less on average than existing customers, they are uneconomic. We note that no analysis is provided substantiating this assumption. More importantly, this conclusion is incorrect. Despite falling average consumption, all new connections to Envestra's network are economic.

Envestra tests each new connection to its network to determine if it will satisfy the economic test in Rule 79. If a new connection is uneconomic, the customer is offered the opportunity to make a customer contribution to make up any shortfall. The contribution received from these customers ensures that the connection satisfies Rule 79. Contrary to the position put forward by AGL SA, all new connections to Envestra's network satisfy Rule 79 and will continue to lower tariffs to consumers relative to the case had they not connected.

Envestra has clearly not sought to address all issues raised by the submissions, but to instead focus on matters relating to terms and conditions.

To the extent it is required, Envestra will provide a fuller response to the submissions in response to the Draft Decision. Please contact either myself (08 8418 1125) or Craig de Laine (08 8418 1129) should you wish to discuss this matter further.

Yours Sincerely

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Andrew Staniford
Group Manager - Commercial

Attachment 1: Access Arrangement Terms and Conditions

Note: The clause reference in the first column reflects the clause number cited by AGL. In some instances, AGL's reference is to the new clause number, and in other instances to the old clause number.

AGL SA COMMENTS

Clause	AGL Comment - SA	Envestra Comment
-	AGL argues against the 50 GJ/day criterion for Demand customers: - It would be a burden - Seeks clarification and justification - Not in interests of retailers - Not in interest of customers	- Was previously in place without being a burden. Envestra confirms there is no change to systems or AEMO rules or processes involved. (AGL operates in Victoria which has used MHQ criterion for many years). - Justification set out in section 4.1 of AAI. - Envestra does not understand how interests of retailers are adversely affected. - The criterion will ensure that one group of consumers is not subsidising another group (that place high demands on the network).
2.2	Does not support inclusion of new clause	This is an existing clause (cl. 2.2) and not a new clause.
2.3	Does not support inclusion of new clause	This is an existing clause and not a new clause. Old cl. 2.2 essentially split into new cl. 2.2and cl. 2.3
2.4	Does not support inclusion of new clause	Reflects reality and current practice – Envestra does not know who is in every property and whether they are the retailer's customer.
2.5	Does not support inclusion of new clause	Reflects reality, and follows from 2.4
2.8	Does not support inclusion of new clause.	This is an existing clause (cl. 2.4) and not a new clause.
6A.2	Large increase in fee from \$150 to \$200 and \$85 to \$100	The level of these fees stem from the Access Arrangement submission in Sept 2005. The fees will be in place until mid 2016. An analysis of movements in engineering labour costs over this period would show that the cost increases are justified.

Clause	AGL Comment - SA	Envestra Comment
		In any event, it appears that these fees have *never* been used/charged (and we only receive about one request per year).
6B.2	Clarification of why “significant” reduction replaced with “at least 10% reduction”	Provides clarity and transparency to retailers, as opposed to a range of interpretations.
8.3	Removal of telemetry already factored into tariffs. Cost should remain with Envestra.	These costs are not included in the tariffs. This clause simply reflects current/historical practice of user (customer) pays. (Envestra currently raises MRC or UMS (change meter service) job request and retailers pay (and presumably pass on to customer).
9.6	Meter tolerance changed from +/-2% to ‘in accordance with ‘law’	Laws, regulations and approvals from technical regulators may change over time and differ from state to state. New terms are to be applied consistently in SA and Qld and soon in Victoria, where allowed standards differ.
12.3	Does not support new cl. 13.4. Network Users should not bear loss of gas delivered at wrong pressure. Envestra should seek redress from entity that delivered the gas.	Cl. 13.4 provides clarity with respect to failure of retailers to abide by cl. 13.1 (Receipt Pressure). Since gas supplied by retailers is commingled together in the upstream pipeline, it is not possible to segregate one retailer’s gas from another. Envestra has no control over the pressure of gas injected, so Network Users must bear the loss, as has always been the case.
18.1	AGL has concerns over change from “Envestra will Disconnect Delivery Points” to “Envestra will undertake Disconnection of Delivery Points”.	Words reflect change in defined terms –previously “Disconnect” was a defined term. Now “Disconnection” is the defined term. Does not make sense to have “Envestra will Disconnection Delivery Points”.
18.2	AGL concerned at allowing Envestra to “unilaterally” consider what is a reasonable charge.	Cl. 19 allows retailers to request services other than reference services. Envestra must determine the charges for such services on a reasonable basis. This is how the Access Arrangement has operated since inception.
19.2	AGL does not agree with payment in advance.	This has been the case since Access Arrangement inception and was specifically allowed for by ESCOSA. The costs of administering this arrangement are marginal relative to alternate billing arrangements. AGL does not explain why prepayment is inconsistent with the National Gas Objective.

Clause	AGL Comment - SA	Envestra Comment
19.5	AGL seeks definition of the word "valid" in the context of valid tax invoice.	Envestra does not understand the issue, but is happy to delete the word.
20	Query over correction of billing errors within 11 months.	Clause unchanged from that in the current Access Arrangement, which has not posed any issues in the past.
21.1	Query over new words "expected" to be delivered.	Merely reflects the fact that some invoicing is in advance.
21.7	Query over new words "expected" to be delivered.	Merely reflects the fact that some invoicing is in advance.
22.2	AGL believes "no set off" should also apply in respect of payments made by Envestra to AGL.	This is an existing clause and not a new clause. Payments for services are from AGL to Envestra, and not vice versa.
23.1	AGL seeks clarification of "any" in the context of failure to "pay any amount due".	This is an existing clause and not a new clause. Self explanatory. Envestra does not understand the issue.
23.2	AGL seeks clarification of what "any amount" refers to.	This is an existing clause and not a new clause. The clause is a generic one used in contracts, and while not used to our knowledge, exists in the event that Envestra were to ever seek a service from a retailer.
23.3	AGL seeks clarification of "any amount due" in context of retailer paying any amount due.	This is an existing clause and not a new clause. Self explanatory. Envestra does not understand the issue.
27.3	Change in words re Force Majeure payment obligations	This is an existing clause (in Qld terms) and not a new clause. The SA terms included an unnecessary reference to payment obligations which might arise during a Force Majeure event. Such obligations would not arise, by the very nature of such an event.
34.1	Email notices do not appear to be explicitly allowed for	Clause will be amended to allow for e-mail notices.
36.2	AGL queries Envestra right not to amend agreement.	There may be specific terms and conditions in a user's agreement (more likely with a user that is not a retailer, but a large consumer) that have the effect of varying a standard term approved by the Regulator. Subsequent amendments to standard terms may therefore not be applicable to the user's agreement. For example, if a user's agreement specified a minimum supply pressure of 500 kPa, and the regulator approved terms stipulated a minimum pressure of 1 kPa, then 500 kPa as specified in the user's agreement must continue to apply.
10.8	AGL does not support the inclusion of the new clause.	Clause already exists (currently cl. 9.8)

Clause	AGL Comment - SA	Envestra Comment
12.5	AGL does not support the inclusion of the new clause. It is Envestra's responsibility to ensure gas is delivered within specification.	Envestra relies upon retailers to inject gas that is within specification. Envestra has no control over the gas injected and therefore cannot be held liable for the quality of gas delivered by retailers. (Clause is consistent with obligations of retailers under cl. 12.1).
14.2	AGL does not support the inclusion of the new clause.	This is an existing clause (currently cl. 13.2) and not a new clause. Clause reflects the fact that Envestra cannot be accountable for things outside of its control, and that Envestra should not be forced to design a network to take account of 1 in 100 year events (such a cost would be inefficient and inconsistent with the Rules).
26.8	AGL seeks clarification of the new clause (Holding Over)	This new clause has been adopted from existing agreements with retailers, who have requested its inclusion to provide certainty of continuity of service provision in the event of a new contract not being finalised upon expiry of old contract. It is therefore unclear why this issue has been raised as a matter of clarification. .
27.4	AGL seeks clarification of the new clause whereby retailers must use reasonable endeavours to mitigate claims.	This is a common contract clause in agreements. For example, if AGL became aware that the supplier of its gas was providing AGL with off-spec gas, then AGL must use reasonable endeavours to instruct its supplier to cease supplying that gas.
40.3	AGL strongly recommends removal of the new clause "Contra Proferens". AGL "do not consider it fair that the Agreement should be interpreted in Envestra's favour".	This is an existing clause in the Qld Access Arrangement (cl. 38.3). This is a standard clause in agreements. The clause ensures that the agreement is interpreted in a neutral manner.
40.4	AGL recommends removal of new clause Contra Proferens. AGL does not consider that implied warranties should be excluded.	This is an existing clause in the Qld Access Arrangement (cl. 38.4). This is a standard clause in agreements.

AGL QLD COMMENTS

Note: See above for comments duplicated from AGL SA submission.

Clause	AGL Comment - Qld	Envestra Comment
-	AGL does not support Envestra continuing to invoice in advance	Envestra does not invoice in advance in Qld.
-	AGL sees no justification for separating Volume customers into Residential and Commercial; would place an unnecessary burden on industry and potentially require significant changes to AGL systems.	Justification contained in section 14.1 of the AAI. Envestra notes that AGL has separate tariffs for its residential and commercial customers. If any change to systems was required to accommodate the additional customer category, then the costs are most likely to be immaterial.
4.2	Reasoning for new clause.	This is an existing clause (cl. 5.2) in Envestra-AGL SA haulage agreement (and Access Arrangement).
4.5	Reasoning for new words "If it is necessary"	With the advent of REMCo and more recently AEMO, it is no longer necessary for Envestra to determine injection allocations, but the clause covers any location or circumstance where it might be necessary.
5.4, 5.5	Reasoning for change from "Telemetered DP" to "Demand DP"	"Telemetered" is an outdated term, relating to an era whereby all Demand points were not telemetered. Since every Demand DP is now telemetered, there is no need to identify such points as telemetered Demand DPs.
7.1	New clause penalises new customers who have to wait for 12 months.	This is an existing clause (cl. 6B.2) in Envestra-AGL SA haulage agreement (and Access Arrangement). New customers do not have to wait 12 months for a reduction in MDQ. The MDQ of new customer is divorced from the MDQ of a previous customer at the same site.
7.4	Reasoning for new clause (accepting a request from retailer)	This is an existing clause (cl. 6B.5) in Envestra-AGL SA haulage agreement (and Access Arrangement). Envestra does not understand issue – clause merely relates to acceptance and implementation of a request.
7.5	New clause. Request insertion of timeframe for providing an explanation.	This is an existing clause (cl. 6B.6) in Envestra-AGL SA haulage agreement (and Access Arrangement).

Clause	AGL Comment - Qld	Envestra Comment
		Frequency of requests/rejection are very rare. Never been an issue.
7.7	New clause penalises new customers who have to wait for 12 months.	This is an existing clause (cl. 6B.8) in Envestra-AGL SA haulage agreement (and Access Arrangement). New customers do not have to wait 12 months for a reduction in MDQ. The MDQ of new customer is divorced from the MDQ of a previous customer at the same site.
7.8	New clause penalises new customers who have to wait for 6 months.	This is an existing clause (cl. 6B.9) in Envestra-AGL SA haulage agreement (and Access Arrangement). New customers do not have to wait 6 months for a reduction in MDQ. The MDQ of new customer is divorced from the MDQ of a previous customer at the same site.
8.1	New clause. Request inclusion of communication protocols.	This is an existing clause (cl. 7A) in Envestra-AGL SA haulage agreement (and Access Arrangement). Existing communication means will continue (email, letter, etc)
14.1	Reason for removal of words.	The delivery pressure of 1.13 kPa is obsolete as some areas are now being reticulated at higher pressures.
17.2	Reason for removal of words.	Curtailment requirements are set out in various jurisdictional codes (soon to be replaced by NECF framework/obligations), and replicating them is unnecessary and results in inconsistencies
17.3	Reason for removal of words (that Envestra will not discriminate between retailers).	Words were unnecessary, as Envestra is obliged not to discriminate in all its dealings.
18.1	AGL seeks justification for introduction of 2 new ancillary reference services.	Refer section 4.2 of AAI.
27.2	New clause. AGL seeks justification.	This is an existing clause (cl. 25.1) in Envestra-AGL SA haulage agreement (and Access Arrangement). This is a standard clause in agreements.
29.2	Reason for new words re Force Majeure.	Obligation is symmetrical. Words appear self-explanatory.
33.2	What is "reasonable notice" of entry?	Whatever is reasonable under the circumstances.
35.5	Why expert changed from Institute of Arbitrators to AER?	Envestra believes AER would be more familiar with issues.