

12 December 2008

Mr Mike Buckley
General Manager
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Australian Energy Regulator
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Dear Mike,

RE: Draft Gas Access Arrangement Guidelines

SP AusNet welcomes the opportunity to comment on the AER's Draft Gas Access Arrangement Guideline. SP AusNet notes that the guideline largely reflects the arrangements put in place under the National Gas Rules (NGR) and National Gas Law (NGL) and is useful in providing an understanding of the AER's interpretation of legislative requirements for both the AER and gas network businesses in relation to access arrangements.

SP AusNet appreciates the AER is not required to publish an access arrangement guideline but has done so to provide guidance to market participants on the AER's expectations and obligations in relation to access arrangements. The draft guideline is quite detailed and is successful in setting out an idea of the AER's expectations in terms of the content of an access arrangement proposal and how the AER will manage the procedural issues around access arrangement approval. SP AusNet considers the guideline to be a useful tool to assist businesses in preparing access arrangement proposals and understanding the review process.

However SP AusNet suggests that the AER's approach in relation to information gathering powers would benefit from refining and clarification. The guideline sets out the AER's information gathering powers which can be used to perform its regulatory functions. SP AusNet understands the necessity of such provisions in cases where a party is uncooperative in providing information. The guideline focuses on anticipated normal practice though, and SP AusNet is concerned that the approach taken in the draft guideline in relation to the use of Regulatory Information Notices (RINs) is unnecessarily heavy-handed and does not reflect regulatory experience and convention.

The NGL provides the AER with broad information gathering powers, including the use of RINs, to exercise its regulatory functions. An example of this is issuing a RIN setting out the information required in a proposal to commence an access arrangement approval process. This seems reasonable as binding submission guidelines do not exist for gas access arrangements (although the access arrangement guidelines will assist).

However the AER's draft guideline also indicates a RIN may be used routinely to clarify information, stating that:

The NGR does not specify any criteria for the AER to make an assessment as to the reasonableness of the terms and conditions included in an access arrangement proposal. The relevant terms and conditions **may be clarified** [our emphasis] as part of the information requirements in a regulatory information notice.¹

This approach in the draft guideline indicates a change in approach towards the use RINs. It seems to foreshadow a move away from the current practice where the complete access arrangement proposal and supporting information are provided from the outset, with any further information required during the course of the process being requested and provided on a free flowing basis. It is unclear whether the AER is actually intending a change in approach towards the use RINs. If the AER considers it is necessary to adopt a more formal approach as to how it gathers information to conduct reviews, SP AusNet would consider it useful for this to be explained in the guideline with supporting reasons.

SP AusNet recommends the guideline clarify the use of RINs with a view to reflecting best practice regulation. Guidance on information sharing should better reflect common practice where the AER and businesses maintain an open dialogue during the approval process. SP AusNet considers this would better facilitate timely information provision and enhance the regulatory process.

We would be pleased to respond to any queries you may have on our submission.

Yours Sincerely



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Manager Regulatory Strategy and Compliance

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¹ AER, *Draft access arrangement guideline*, September 2008, pp 44-and 45